INTERNATIONAL ORGANIZATIONS:
SERBIA AND CONTEMPORARY WORLD

Duško Dimitrijević
Toni Mileski (Eds.)

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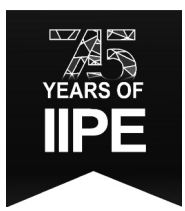
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International Organizations: Serbia and Contemporary World

VOLUME I

Duško DIMITRIJEVIĆ
Toni MILESKI (Eds.)

Belgrade, 2022

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FOREWORD

INTERNATIONAL ORGANIZATIONS – SERBIA AND THE CONTEMPORARY WORLD

The thematic proceedings, *International Organizations – Serbia and the Contemporary World*, which we offer to the public, was prepared with a lot of diligence and refined research zeal, in a methodologically and scientifically acceptable manner, with the aim of shedding light on numerous questions about international organizations as one of the most dynamic social phenomena that marked the 20th and early 21st centuries. The collection contains very concise intellectual debates and reflections based on epistemological procedures and planning predictions of eminent scientists, diplomats, and researchers from Serbia and the world.

Taking into account that the issue of cooperation with international organizations is an important factor in the positioning of states in international relations, the strengthening of this cooperation seems very important today since the modern world is full of challenges and risks that require the institutional linking of states to solve all serious international problems. A re-examination of the legal and political status of the most important international organizations, their structural and functional organization, their competencies, powers, and responsibilities, as well as their *modus operandi,* in this sense, is an important prerequisite for a realistic assessment of the place and role of states in contemporary international relations.

From historical experience, it can be argued that in international relations, the general principle of association has always been valid, not only for individuals but also for states. States connect on the basis of the same motives as individuals – achieving common benefit, eliminating common danger, and regulating mutual relations. Just as there is considerable variety in the associations of individuals, there is undoubted variety in the associations of states. Linking means limiting the power to the extent that

enables the coordination of mutual activities. The laws of integration and the merging of states into one higher political unit are the creation of opportunities, historical necessities, and political needs. Hence, there is no international relationship that cannot be the subject of cooperation and integration into an international organization. After all, this is evidenced by the huge number of international governmental and non-governmental organizations in the world since the beginning of the 21st century. International organizations have become important subjects of international relations and the basic form of their institutionalization. Although international organizations had their spiritual supporters back in the Middle Ages (starting with Pierre Dubois, the Czech King Poděbrady, Emeric Crucé, William Penn, Jacques-Henri Bernardin de Saint-Pierre, Jean-Jacques Rousseau, Jeremy Bentham, Immauel Kant, and others), the process of evolution of international organizations became visible on the international level only with the holding of large international congresses and peace conferences (such as the congress that took place after the thirty-year religious war in Münster and Osnabrück, which led to the conclusion of the Peace of Westphalia, then the Congress of Vienna from 1814-1815, the Berlin Congress of 1878, and the Hague Peace Conferences of 1899 and 1907). On the other hand, the historical course of connecting states did not depend exclusively on political circumstances but also on the specifics of the development of international economic relations, which, due to the intertwining of interstate and private interests, indirectly or directly influenced the complexity of international forms of cooperation and the emergence of specialized organizations with limited and practical goals (such as river commissions on the Rhine, Danube, Elbe, etc.), or on the creation of the so-called *administrative unions* that functionally united and placed under the control of a central international body various areas of interstate cooperation (for example, provision of telegraphic and postal services, standardization of measures and weights, protection of industrial property and copyright, health, agriculture, etc.). International organizations that had the features of modern international organizations (e.g., the League of Nations as a true universal international organization or the International Labor Organization) were created after the First World War. Modern international organizations, on the other hand, were formed only after the end of the Second World War, with the establishment of the universal organization of the United Nations. This organization encouraged the establishment of new international organizations and the revival and strengthening of existing ones. Many such organizations today are connected to the so-called *United Nations system.*

From the above, it follows that the objective process of development of international relations after the Second World War is moving towards global social integration, which does not prevent the existence of wider or narrower forms of cooperation and connection of states at the intercontinental, regional, and sub-regional level. This association moves through various forms of institutional cooperation with the aim of solving common problems and achieving common interests. Considering the great diversity of international organizations, as well as the diversity of their activities in the modern period of the development of international relations (from politics, science, and culture, to the economy, trade, and transport, as well as other important social areas), one could also speak of "the century of the international organization". Their importance goes beyond the narrow framework that associations and communities of states had in the past. The expansion of international organizations shows most visibly the tendency for the continuous development of institutionalized international cooperation. Given that they are created on the basis of international treaties, international organizations are regulated by a relatively young branch of international public law – the law of international organizations. This branch of international law regulates the internal organizational and legal structure of international organizations, their legal capacity in international relations, their legal relations with states and other international organizations, as well as with other subjects of international law (jurisdiction, ability to conclude contracts, right of delegation, privileges and immunities, international responsibility, financing, etc.), acquisition and loss of membership, the process of decision-making and executing decisions, and changes in the structure and disappearance of international organizations (succession).

Starting from the fact that the rules on the basis of which a single concept of international organizations would be built do not exist, a comparative overview of the main characteristics of some of the existing international organizations is briefly presented in the introductory part of the thematic compendium that deals with general issues. In this part, the problem of the legal subjectivity of international organizations, their role in the creation of international law, up to the application of diplomatic law to the officials of international organizations, through specific questions related to the place and role of non-governmental organizations in contemporary international relations and international law, has been studiously investigated.

In order to make the most authoritative conclusions regarding some of the most current issues of international organizations that could contribute to the optimal positioning of states in contemporary international relations

(first of all, I mean Serbia), the thematic collection of papers is methodologically systematized in such a way as to include the most diverse analyses of global and regional international organizations and bodies.

Given that global international organizations serve in the realization of common human interests and values, such as the preservation of international peace and security and the promotion of international cooperation between states (primarily through the system of the universal organization of the United Nations and its specialized agencies, and related international organizations and contracting bodies), a special chapter of the proceedings is dedicated to the place and role of these organizations in the current international order. In this regard, care was taken not only about the volume of the material but also about the practical needs of the readers, which is why the editors of the collection carried out a certain rationalization of several important thematic areas to provide easier access to the most important information about global international organizations, their position and role, as well as the need for their further reform and transformation in view of the dynamics of the development of international relations. At the same time, it was taken into account that in the existing constellation of international relations, international law is conditioned by a complex system of interactions between various subjects and actors of international relations; i.e., in contemporary international relations, in addition to classical (*inter-states or intergovernmental*) organizations, various organizations and associations of civil society play an increasingly important role, whose founders and members are not states (which is why they are often called *international non-governmental organizations*). Therefore, certain works dedicated to non-governmental organizations and bodies (primarily those that exercise specific public powers in the pursuit of broader humanitarian goals, such as the International Committee of the Red Cross) found a well-deserved place in this part of the proceedings.

In the continuation of the thematic collection, issues related to the status and functioning of important regional international organizations and their place in the system of contemporary international relations are also discussed. Thus, *inter alia,* regional organizations such as the European Union, the Council of Europe, the Eurasian Economic Union, the Association of Southeast Asian Nations, the Asia-Pacific Economic Cooperation, the African Union, the League of Arab States, the Organization of Islamic Cooperation, the Organization of American States, etc. For didactic reasons, regional international organizations are analyzed within special chapters under the names: *European, Eurasian, Afro-Asian*, *and American international*

organizations. In the aforementioned chapters, a synthesis of the thematically close theoretical studies of the authors covering various issues and problems of regional integration, as well as the creation and application of international law, was made. Individual analyses of Serbia's status in certain international organizations, as well as analytical studies on the process of European integration, i.e., assessments of its further improvement in the Western Balkans, give special weight to this part of the proceedings.

In the last part of the thematic proceedings, the very current issues of the positioning of international organizations in contemporary international relations are dealt with. This is done through an evolutionary approach in research and with reference to political, legal, economic, and security points of view about changes in the existing institutional system of international relations. The change in the security paradigm in the modern world has led to the need for the emergence of new organizational forms of strategic partnerships in the world. In this regard, this part of the proceedings analyzes the security architecture in Europe through a synthesis of discussions on the role and place of the EU, NATO, and the OSCE. At the same time, through individual analyses, projections of Serbia's positioning towards these international organizations (as well as some others, including international police organizations) are presented. In this context, the questions of the emergence and recognition of new states in the United Nations system, the role of small states with regard to the problem of NATO expansion, and the foreign policy and legal position of Serbia in the UN regarding the problem of regulating the status of Kosovo and Metohija and the continued presence of NATO in this area are analyzed. Very important studies in this part of the collection are also devoted to the issues of the emergence of multipolarity in the modern world, which is projected through the relations of great powers and international organizations (e.g., through the relationship between NATO and China), but also through the strengthening of the position of some regional security pacts (such as the AUKS), and transnational forms of international security and economic organization (such as the CSTO and the BRICS).

Taking into account all of the above, it should be pointed out that international organizations in contemporary circumstances, along with states, represent the most important subjects in the creation of a new international order whose goals are generally related to the democratization of contemporary international relations and the globalization of the world economy. Their continuous expansion indicates their increased importance for the further development of international relations. Today, international

organizations represent irreplaceable forums for the exchange of different views and experiences of importance for the preservation of international peace and security, more balanced social development, political cooperation, and overall economic progress.

In conclusion, I would like to thank all the authors of this thematic proceedings for the diligence they invested in writing articles and analyses dedicated to the topic: *International Organizations – Serbia and the Contemporary World.* Also, I would like to express my sincere gratitude to my colleague and Co-Editor of this collection, *Toni Mileski,* a Full Professor at the Faculty of Philosophy of the University of St. Cyril and Methodius in Skopje, as well as to the Faculty itself, which is the co-publisher of this edition with the IIPE. I thank, with deep respect, the esteemed members of the international Editorial Board. Finally, I would like to express my heartfelt gratitude to Professor *Branislav Đorđević*, Director of the IIPE, for his trust in me during the preparation of this internationally important scientific publication.

Duško Dimitrijević
Editor in Chief

GENERAL TOPICS

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INTERNATIONAL ORGANIZATIONS AS CREATORS OF INTERNATIONAL LAW

Ljubo RUNJIĆ*

Abstract: The capacity to create international law is one of the most important elements of international legal subjectivity. Moreover, the creation of international law for many subjects of international law is also their *raison d'être*. A look at the contemporary international law reveals that one type of these entities – international organizations, is playing an increasingly important role in the international legislative process. Therefore, the purpose of this paper is to analyze the participation of international organizations in the creation of international law primarily through two main ways of creating international legal norms – treaties and customary international law. Regarding the creation of international law by treaties, the paper discusses situations when international organizations directly create international law by concluding treaties, as well as situations when international organizations participate in the creation of international law indirectly through states that conclude multilateral treaties. When considering the participation of international organizations in the creation of customary rules of international law, special emphasis is placed on soft law. Finally, the paper reviews the binding acts of international organizations that can become a 'secondary' source of international law.

Keywords: International organizations, international legislative process, treaties, customary international law, soft law, binding acts of international organizations.

INTRODUCTION

There is no doubt that law can only exist in society, and that society cannot exist without law – *ubi societas, ibi ius* (Brierly, 1960, p. 42; Shaw, 2014,

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p. 1).[1] For this reason a system of legal rules has been established in the international community that regulates the relations of members of that same community. Members of the international community have thus become subjects of international law – holders of rights and obligations under the rules of international law. One of the important elements of international legal subjectivity is the capacity to create international law. Therefore, in this circular process that has been going on for centuries, the international community, i.e., its members – subjects of international law, guided by joint needs and interests, create international law whose rules, in turn, create subjects of international law – members of the international community. Moreover, due to the strong interconnectedness and existential dependence of the international community and international law, participation in the creation of international law for many writers is one of the most important elements of international legal subjectivity (Degan, 2011, p. 205; Mosler, 2000, p. 711; Portman, 2010, p. 8). However, as with most subjective rights in the international legal order, this right has long been reserved exclusively for states. From the very beginning of international relations, states began to develop two main ways to create international legal norms – treaties and customs. The two ways of creating international law mentioned above were also confirmed by Article 38(1) of the Statute of the International Court of Justice, which included them among the sources of international law. Article 38(1) thus lists three sources of international law: a) international conventions, whether general or particular, establishing rules expressly recognized by the contesting states; b) international custom, as evidence of a general practice accepted as law; c) the general principles of law recognized by civilized nations (Charter of the United Nations, United Nations, 1945). It should be noted that Article 38, despite the disagreement of some writers with the enumeration of sources of international law in it, is the most authoritative contractual provision which determines the sources of international law. However, in addition to the sources of international law listed in Article 38, there are other sources of international law in international practice: unilateral acts of states (e.g., promises and renunciations) and binding decisions of

[1] Brierly points out: "Law can only exist in a society, and there can be no society without a system of law to regulate the relations of its members with one another. If then we speak of the *law of nations*, we are assuming that a 'society' of nations exists (…)". Shaw presented a similar view: "Every society, whether it be large or small, powerful or weak has created for itself a framework of principles within which to develop".

international organizations (International Law Commission, 2006, pp. 369-381). It is precisely the emergence of international organizations on the international stage, among other things, that has resulted in the intensification of the creation of international law. Namely, the creation of international law for many international organizations is their main function, so the mentioned capacity of international organizations is one of the most developed elements of their *capacitas agendi*, i.e., business capacity in the international legal order. Today, it is an international practice that international organizations participate in the creation of international law in many ways (Brownlie, 2008, pp. 691-693).[2] They have achieved their participation in the creation of international law through two main ways of creating international legal norms – treaties and customs.

INTERNATIONAL ORGANIZATIONS AND TREATY-MAKING

With regard to the creation of international law by treaties, which, like international customs, are one of the formal sources of international law, the role of international organizations is twofold. On the one hand, by concluding treaties, international organizations directly create norms of particular international law, which over time may even become part of general customary international law. Beginning with the first treaty concluded by an international organization – the Concession Convention between France and the International Bureau of Weights and Measures of October 4, 1875 – we find many treaties in international practice whose parties are international organizations, including those aimed at the progressive development and codification of international law (Chiu, 1966, p. 7). For example, in 1998, the European Union became a party to the United Nations Convention on the Law of the Sea, the most important international legal instrument in the field of the law of the sea, which not only codified existing international law of the sea but also carried out its progressive development. It is interesting to note that only a part of international organizations in their constitutions contain provisions on the capacity to conclude treaties, and thus the capacity to create international law. Of the

[2] Brownlie highlights seven ways in which international organizations are involved in creating international law: a) forums for state practice; b) prescriptive resolutions; c) channels for expert opinion; d) decisions of organs with judicial functions; e) the practice of political organs; f) external practice of organizations, and g) internal law-making.

international organizations whose constitutions contain explicit provisions which provide for the capacity to conclude treaties, it is possible to single out primarily the United Nations and the European Union, as well as some specialized agencies of the United Nations – *Food and Agriculture Organization (*FAO), *International Civil Aviation Organization (*ICAO), United Nations Educational, Scientific and Cultural Organization (UNESCO), United Nations Industrial Development Organization (UNIDO), and *World Health Organization (*WHO). On the other hand, in addition to the direct conclusion of treaties, international organizations participate in the international legislative process indirectly through states that conclude multilateral treaties (Runjić, 2019). Namely, until the appearance of the first international organizations in the 19th century, concluding multilateral treaties was a real rarity. The multilateral treaties concluded so far were the result of *ad hoc* international conferences convened, as a rule, on the occasion of the emergence of a particular problem. However, the aforementioned *ad hoc* international conferences showed a number of shortcomings, starting with the irregularity of the sessions, which were usually convened in response to a particular event; lack of clear criteria for inviting states to participate in conferences; using conferences as a place to pursue their own state policy rather than discussing and resolving issues, all the way to the fact that unanimity was required to make joint decisions (Amerasinghe, 2005, pp. 3-4). International organizations, which arose in part in response to the aforementioned shortcomings of *ad hoc* international conferences, have taken over one of their main functions – becoming "fora for the adoption of multilateral conventions" *(Sands, Klein, 2001, p. 281).* Moreover, international organizations have become one of the main initiators of the process of concluding multilateral treaties. One can single out the United Nations, i.e., the General Assembly of the United Nations, which initiated the procedure for concluding numerous multilateral treaties, as well as the International Law Commission, which also often initiated the procedure for concluding multilateral treaties. The process of concluding multilateral treaties by states within international organizations takes place in two ways. First, it is the international organizations that adopt the conventions and submit them to the member states, which in turn must give their consent to be bound by the conventions. After states' consent, the conventions become treaties, and thus part of positive international law. This way of concluding multilateral treaties was also recognized by the Vienna Convention on the Law of Treaties of 1969, which in Article 5 determines its applicability to treaties concluded within the framework of international organizations (Vienna Convention on the Law of Treaties, 2005). The constitutions of many

international organizations contain provisions that explicitly place the adoption of conventions under the jurisdiction of international organizations, i.e., their bodies. Article 62 paragraph 2 of the Charter of the United Nations thus provides that the Economic and Social Council may prepare draft conventions on matters falling within its competence for submission to the General Assembly (Charter of the United Nations, United Nations, 1945). On the basis of draft conventions prepared by the Economic and Social Council, the General Assembly adopted, *inter alia*, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights (General Assembly Resolution 2200(XXI), 1966). Furthermore, the General Assembly has independently adopted many important conventions, such as: the Convention on the Privileges and Immunities of the United Nations (General Assembly Resolution 22(I), 1946), the Convention on the Prevention and Punishment of the Crime of Genocide (General Assembly Resolution 260(III), 1948), the International Convention on the Suppression and Punishment of the Crime of Apartheid (General Assembly Resolution 3068(XXVIII), 1973), and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (General Assembly Resolution 39(46), 1984). Article XIV (1) of the FAO Constitution provides that the Conference (the FAO plenary body) may, by a two-thirds majority, approve and submit to the member states conventions and agreements on matters relating to food and agriculture (Food and Agriculture Organization, 2017). Pursuant to Article XIV of the FAO Constitution, the Conference has so far approved a total of eighteen conventions and agreements (FAO Treaties Database, 2022). A similar procedure is envisaged in Article 19 of the WHO Constitution, which stipulates that the World Health Assembly has the authority to conclude conventions or agreements in relation to any matter within the competence of the organization, whereby two-thirds of the votes of the World Health Assembly are required for the adoption of such conventions or agreements, which in turn shall enter into force for each member state when it accepts them in accordance with its constitutional procedure (World Health Organization, 2020). The constitutions of certain regional international organizations also contain provisions that place the adoption of conventions under the jurisdiction of those organizations. The Statute of the Council of Europe thus stipulates in Article 1(2) that the aim of the Council shall be pursued through its organs, *inter alia* by concluding agreements and adopting joint action in the economic, social, cultural, scientific, legal, and administrative fields (Statute of the Council of Europe, 1949). The Council of Europe has so far adopted

210 conventions, the most famous of which is certainly the Convention for the Protection of Human Rights and Fundamental Freedoms (Council of Europe, 2022). The constitutions of some international organizations contain additional provisions that oblige the member states to submit the adopted convention to their ratification bodies within a certain period, regardless of whether they voted for or against it during the adoption of the convention in the international organization, and report to the organization on the measures taken. Article 19 of the Constitution of the International Labour Organization (ILO) first provides that the convention, adopted by a two-thirds majority of the votes cast by the General Conference, shall be transmitted to the member states for ratification (International Labour Office, 2010). The member states are required to submit the convention to their legislatures within one year and, exceptionally, within eighteen months. Finally, the member state is obliged to inform the organization (Director-General of the International Labour Office) of the measures taken in relation to the Convention. A similar solution is provided by Article IV of the UNESCO Constitution, which stipulates in paragraph 4 that conventions adopted by a two-thirds majority of the General Conference must be submitted to the competent bodies of the member states within one year of the end of the session at which they were adopted, while paragraph 6 stipulates the obligation of states to inform on the measures taken (United Nations Educational, Scientific and Cultural Organization, 2020). Alternatively, multilateral treaties are concluded at international (diplomatic) conferences convened by international organizations. As a rule, convening an international conference is preceded by the exhaustive, and often lengthy, work of the international organization, i.e., its bodies and expert bodies, on studying the matter, drafting, and adopting the draft convention, which is then submitted to the international conference for discussion and final adoption. The United Nations is a classic example of an international organization under whose auspice international conferences of states are convened to adopt prepared drafts of conventions. The legal basis is Article 13 of the Charter of the United Nations, which stipulates that the functions of the General Assembly include initiating studies and making recommendations for the progressive development of international law and its codification. To achieve this goal, the General Assembly established the International Law Commission (ILC) in 1947 and approved its Statute (General Assembly Resolution 174(II), 1947). Pursuant to Article 1(1) of the Statute, the main goal of the Commission is to promote the progressive development of international law and its codification. "Progressive development of international law" is defined as the preparation of draft

conventions on matters which have not yet been regulated by international law or in respect of which the law has not yet been sufficiently developed in the practice of states, while "codification of international law" is defined as more precise formulation and systematization of rules of international law in fields where there is already extensive state practice, precedents, and doctrine (Article 15 of the Statute). The ILC, after receiving a mandate from the General Assembly or on the basis of its own decision, begins work on a specific issue. In doing so, a special reporter is appointed for each issue, who drafts a proposal for a draft convention. During his work, the Special Reporter shall report to the Commission on the results achieved, which shall discuss this at its meetings and give instructions to the Special Reporter on further work. At the same time, the Commission shall consult the member states to which it sends proposals for draft articles, inviting them to submit any comments. Once a year, the Commission shall send a report, including draft articles with accompanying comments to the General Assembly. The report is first discussed in the Sixth Committee (Legal) of the General Assembly and only then in the plenum of the General Assembly, which, as a rule, following the instructions of the Sixth Committee, gives the Commission further instructions for its work. After the Special Reporter has completed his work, the Commission adopts the final draft of the articles with a recommendation to the General Assembly to convene an international (diplomatic) conference of the member states to discuss the draft and adopt the convention. Thanks to the work of the ILC, the General Assembly has convened many international conferences to date, which has resulted in the adoption of significant conventions in various fields of international law. One can single out just some of the conventions adopted at international conferences under the auspices of the United Nations: the Convention on the Territorial Sea and the Contiguous Zone (1958), the Vienna Convention on Diplomatic Relations (1961), the Vienna Convention on Consular Relations (1963), the Vienna Convention on the Law of Treaties (1969), the Vienna Convention on Succession of States in Respect of Treaties (1978), the United Nations Convention on the Law of the Sea (1982), the United Nations Framework Convention on Climate Change (1992) and finally, the Rome Statute of the International Criminal Court (1998). Apart from the auspices of the United Nations, multilateral treaties have been concluded under the auspices of other international organizations. These are primarily United Nations specialized agencies that have convened international conferences to adopt conventions governing important issues in their field. The ICAO has convened several international conferences to adopt conventions governing international civil aviation issues (e.g., the

Multilateral Agreement on Commercial Rights of Non-Scheduled Air Services in Europe (1956), the Tokyo Convention on Offences and Certain Other Acts Committed on Board Aircraft (1963), the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (1971), the Convention for the Unification of Certain Rules to International Carriage by Air (1999) etc.). The International Maritime Organization (IMO) has also convened several international conferences to adopt conventions governing issues within the scope of the IMO. One can thus single out just some of the most important conventions adopted at international conferences under the auspices of the IMO – the International Convention for the Prevention of Pollution from Ships – (MARPOL) (1973), the International Convention for the Safety of Life at Sea (SOLAS) (1974), and the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW) (1978). *It can be concluded that international organizations have significantly contributed to the international legislative process. First, thanks to the acquired capacity to conclude treaties, international organizations have become parties to many treaties, thus participating directly in the building of the international legal order. An even more significant role of international organizations in the international legislative process is reflected in the fact that they have become the main place for concluding multilateral treaties. This fact has been recognized by many writers who consider the emergence of international organizations crucial to the development of concluding multilateral treaties. Under the auspices of international organizations, primarily the United Nations and its specialized agencies, many conventions in the form of multilateral treaties have been adopted. The result is an expansion in the number of multilateral treaties concluded after the Second World War, so Szasz (1997, p. 30) points out the number of 1,500 multilateral treaties concluded until 1993 with a tendency to grow. For some of these treaties, primarily those concluded under the auspices of international organizations, the goal was the progressive development and codification of international law. Also, thanks to the rich practice of concluding multilateral treaties, international organizations have improved the technique of concluding multilateral treaties under their auspices, which has resulted in, among other things, the intensification of concluding multilateral treaties. In addition, international organizations, by becoming the main place for concluding multilateral treaties, have contributed to the "*democratization" of the international legislative process (Alvarez, p. 283). While the original ad hoc international conferences at which multilateral treaties were concluded were gathering places for a privileged number of states, primarily great powers, international organizations, as a venue for concluding multilateral treaties, enabled the inclusion of more states, including those "small", who thus gained the opportunity to protect their own interests by directly*

participating in the international legislative process (Alvarez, p. 283). In addition to small states, international organizations have opened the door to participation in the international legislative process and other international legal entities (e.g. international non-governmental organizations) (Ibid., p. 284). Despite the significant role that international organizations play in the international legislative process today, it is still too early to speak of international organizations as "international law-makers". They play this role indirectly through states that are still the most important international legislators at the current stage of the development of international law. Bowett has a similar opinion, believing that the participation of international organizations in the international legislative process is not real legislation, but rather the preparation of interstate legislation within international organizations (Sands, Klein, 2001, p. 282). On the other hand, there are writers, like Alvarez (2006, p. 274), who do not agree with this statement, believing that international organizations have achieved the role of an international legislator. However, it is difficult to adhere to this view, given that states can only commit themselves to the acceptance of a convention concluded under the auspices of an international organization with their own consent.

INTERNATIONAL ORGANIZATIONS AND CUSTOMARY INTERNATIONAL LAW

In addition to treaties, international organizations participate in the creation of international law by creating customary international law. There are two fundamental differences between these two ways of creating international legal norms. The first is manifested in the fact that customary rules are binding on all members of the international community, so they are the main source of general international law with the exception of regional or local customary rules, while treaties are binding only on their parties, thus representing the main source of particular international law (Cassese, 2001, p. 119). Another difference is the fact that customary rules are created in a way that is completely different from the way treaties are created (Ibid., p. 119). The Statute of the International Court of Justice*, determining in Article 38(1)(b),* "international custom, as evidence of a general practice accepted as law" *refers to the two main elements necessary for the emergence of a rule of customary international law. The first element is objective – general practice (repeated and uninterrupted practice; the second element is subjective – legal consciousness (opinio iuris) that this practice is mandatory due to the existence of an appropriate rule of international law (Andrassy, Bakotić, Seršić, Vukas, 2010, pp. 17-18). International organizations have exercised the right to participate in the creation of new customary rules of international law with both elements necessary for their emergence – practice and legal consciousness. First of*

*all, the United Nations General Assembly should be singled out, whose resolutions, adopted in the form of recommendations or declarations, have significantly contributed to the customary process and the emergence of new customary rules of international law. It should be noted that in certain cases, some writers attribute to the resolutions of the General Assembly, which are formally non-binding acts, the significance of the so-called soft law (droit mou). In addition to resolutions, soft law includes other international acts, such as final acts of international conferences, declarations of principles, guidelines, and codes of conduct – whose content is intended to influence the actions of subjects of international law, but in respect of which there is no clear will of states to be the source their rights and obligations (Andrassy, Bakotić, Seršić, Vukas, 2010, p. 31). Cassese (2001, pp. 160-161) singles out three main features that share the aforementioned acts. The first feature is that they are an indicator of new trends in the international community, while another feature is that they address issues that pose new problems to the international community to which the community has not previously paid sufficient attention. The third feature is that, for political, economic, or other reasons, states cannot fully approximate their positions on these issues, and therefore it is not possible to reach an agreement on the legally binding character of these acts. Although soft law does not create rights and obligations, i.e., it is not a law; it still influences the behavior of participants in international relations, so it is given the significance of "quasi-law" (*Shaw, 2014, pp. 83-84; Blutman, 2010, p. 623). *Moreover, soft law can become part of the customary process and thus become part of customary international law, or it can become part of treaties and thus also become part of international law. A look at some of the resolutions of the United Nations General Assembly, which at the time of their adoption were soft laws, reveals that, for example, the Universal Declaration of Human Rights (*General Assembly Resolution 217(III), 1948), *became part of customary international law, while the Declaration of Legal Principles* Governing the Activities of States in the Exploration and Use of Outer Space (General Assembly Resolution 1962(XVIII), 1963) *was incorporated into the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies (*United Nations Treaty Series, *1967). Apart from the United Nations, soft law is also found in other intergovernmental organizations. The Guidelines for Multinational Enterprises adopted by the Organization for Economic Co-operation and Development (OECD) are thus an example of a document containing soft law (Harris, 1991, p. 65). Alvarez, on the other hand, cites the FAO International Code of Conduct on the Distribution and Use of Pesticides (1985) and the WTO Doha Declaration (2001) as examples of soft law documents (Alvarez, 2006, pp. 232-233). Given that soft law can become part of the customary process and move into customary international law, on the example of*

*resolutions of the United Nations General Assembly, it is possible to show the transition of their content into customary international law. To make it happen, two main elements necessary for the emergence of a customary rule need to be met: general practice and the legal consciousness that this practice is mandatory due to the existence of an appropriate rule of international law. The content of the resolution must therefore be accepted by repeated practice primarily in the practice of states, but also by other subjects of international law, while the exercise itself must be accompanied by legal consciousness, i.e., the consciousness that the content of the resolution in practice is a mandatory legal rule (*Andrassy, Bakotić, Vukas, 2010, p. 28). *The very transition of the content of the resolution into international customary law, i.e., the "crystallization" of international practice into the international legal rule, which in turn arises as a consequence of the legal consciousness that this practice is a legal obligation, is quite difficult to determine (Degan, 2011, p. 77). First of all, it is necessary to establish the existence of general practice that precedes the emergence of legal consciousness of its obligation. This is primarily the practice of states, which is the most common and most important, but also the practice of other subjects of international law, including international organizations, in terms of implementing the content of the resolution. In addition to the existence of the general practice, it is necessary to establish the existence of legal consciousness that the mentioned exercise or practice is mandatory due to the existence of an appropriate rule of international law. Some writers, therefore, point out the way in which resolutions were adopted as proof of the existence of legal consciousness. Degan (2011, p. 83) thus considers that the declarations adopted unanimously or by consensus by the United Nations General Assembly constitute proof of the existence of legal consciousness of their legal obligation. Shaw (2014, p. 82) thinks similarly, pointing out that the vast majority of states that consistently vote for resolutions on a particular issue provide evidence of the existence of legal consciousness. For Brownlie (2008, p. 15), on the other hand, the adoption of resolutions by a majority vote is evidence of the opinion of governments, while the resolutions adopted in this way provide the basis for the progressive development of international law and "speedy consolidation" of customary rules. However, some writers, like Arangio-Ruiz (1972, p. 431), think that the majority by which resolutions are adopted in the General Assembly often has nothing to do with the intentions of the states that voted for their adoption. Thus, states often do not vote for a resolution out of a belief that it is a legal obligation, but vote for their own opportunistic reasons (e.g., not to remain politically isolated, to satisfy their allies, etc.) (Degan, 2011, p. 84). In order to determine whether the states really believe what they voted for, it is necessary to look at the practice of those states after the adoption of the resolution. Degan (Ibid.) also believes that the final proof of legal conviction of the existence of a legal obligation arises only from the behavior of states*

after the adoption of the declaration, so only the existence of the vast majority of states that adhere to the declaration in practice or invoke it, is confirmation of legal conviction. From the point of view of the International Court of Justice in the Case Concerning Military and Paramilitary *Activities* in and *against Nicaragua we see that the Court took the position that the behavior of states regarding the adoption of General Assembly resolutions can be evidence of legal consciousness* (I.C.J. Reports, 1986, pp. 99-100).[3] *The adoption of the text of the resolutions, in the Court's view, is thus an indicator of legal consciousness of the legally binding nature of the rules contained in the resolutions. The International Court of Justice resonated similarly in a 1996 advisory opinion on the Legality of the Threat or Use of Nuclear Weapons, stating, inter alia, that United Nations General Assembly resolutions, even when not binding, may have normative value because in certain cases they may provide evidence relevant to establishing the existence of rules or the emergence of legal consciousness (*I.C.J. Reports, 1996, pp. 226, 254-255).[4] In order to determine the emergence of legal *consciousness,* it is necessary, in the Court's view, to look at the content of the resolution and the circumstances of its adoption. The Court pointed out that a series of resolutions could show the gradual evolution of legal *consciousness* needed for the emergence of a new customary rule. *We can thus single out some of the resolutions of the General Assembly that served as the basis for the creation of a new customary international law: Declaration* on the Granting of *Independence* to *Colonial Countries* and Peoples (General Assembly Resolution 1514(XV),

[3] 'This *opinio iuris* may, though with all due caution, be deduced from, *inter alia*, the attitude of the Parties and the attitude of States towards certain General Assembly resolutions, and particularly resolution 2625 (XXV) entitled "Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations". The effect of consent to the text of such resolutions cannot be understood as merely that of a "reiteration or elucidation" of the treaty commitment undertaken in the Charter. On the contrary, it may be understood as an acceptance of the validity of the rule or set of rules declared by the resolution by themselves". (Merits, Judgment, 1986).

[4] "General Assembly resolutions, even if they are not binding, may sometimes have normative value. They can, in certain circumstances, provide evidence important for establishing the existence of a rule or the emergence of an *opinio iuris*. To establish whether this is true of a given General Assembly resolution, it is necessary to look at its content and the conditions of its adoption; it also necessary to see whether an *opinio iuris* exists as to its normative character. Or a series of resolutions may show the gradual evolution of the *opinio iuris* required for the establishment of a new rule". (Advisory Opinion, 1996).

1960); *Declaration* on the *Prohibition* of the *Use* of *Nuclear* and *Thermonuclear Weapons (*General Assembly Resolution 1653(XVI), *1961); Declaration on Permanent Sovereignty over Natural Resources (*General Assembly Resolution 1803(XVII), *1962); Declaration of Legal Principles Governing the Activities of States in the Exploration and Use of Outer Space (*General Assembly Resolution 1962(XVIII), *1963); Declaration of Principles Governing the Sea-Bed* and the *Ocean Floor* and the Subsoil Thereof, *beyond* the Limits *of National Jurisdiction (*General Assembly Resolution 2749(XXV), *1970), etc. In addition to resolutions, international organizations have achieved their participation in the creation of new customary rules of international law through treaties concluded by them or multilateral treaties (conventions) concluded under the auspices of certain international organizations. Treaties concluded by international organizations can thus play an important role in the development of a rule of customary international law, as they can serve as proof of practice or as proof of the existence of legal consciousness of the legal obligation of that practice. However, multilateral treaties concluded under the auspices of international organizations play a much more important role in creating new customary rules. These are, above all, conventions concluded under the auspices of the United Nations, which have one of the key roles in the customary process. Namely, one of the main goals of the mentioned conventions, along with the codification of international law, is the progressive development of international law. The progressive development of international law regulates matters that are not yet regulated by international law or in respect of which law is still not sufficiently developed in the practice of states, and thus directly affects the creation of legal awareness of the legal obligation of that practice.* Finally, international organizations can achieve their participation in the creation of international law by adopting formally or, at least in terms of effects, binding acts for their member states. Given that the binding nature of these acts derives from the constitutions of international organizations, i.e., treaties that are the main sources of particular international law, Cassese (2001, pp. 154-155) treats binding decisions of international organizations as a "secondary" source of international law. *However, he believes that the emergence of this category of sources of international law is a characteristic feature of modern international law. In international practice, only a few constitutions of international organizations contain provisions that provide organizations with the power to adopt binding acts for the member states. Article 25 of the Charter of the United Nations therefore provides for the binding nature of Security Council resolutions for all member states. Article 288 of the Treaty on the Functioning of the European Union also provides that the institutions of the Union may, in the exercise of their powers, adopt regulations, directives and decisions which, in turn, shall be binding on the member states (*Official Journal of the European Union,

2010). Although the constitutions of most international organizations do not contain explicit provisions on the power to make binding decisions for the member states, the decisions of these organizations, although formally non-binding, can also be binding. The binding nature of these decisions derives from their nature, i.e., from the nature of their function, which is necessary for the functioning of international organizations (the doctrine of functional necessity). We can thus single out an example of the so-called technical recommendations of certain international organizations by which international organizations establish international standards (the so-called *standard-setting*), i.e., perform international legal regulation in matters within their scope (Alvarez, 2006, pp. 217-257; Lapaš, 2008, pp. 78-81). Thus, in 1962, the FAO and the WHO jointly adopted the Codex Alimentarius to protect consumer health and promote fair practices in the food trade (Codex Alimentarius Commission, 2022). This document contains about 200 standards governing issues such as pesticide use, food hygiene, use of additives, contamination, food labeling, etc. The development and maintenance of Codex standards is the responsibility of the Codex Alimentarius Commission, which includes 186 countries and one international organization – the European Union. *Members of the Commission have the option of complying with Codex standards or may at any time inform the Commission that they will not apply a particular standard. Articles 37 and 38 of the constitution of ICAO provide that the ICAO Council may adopt international standards and recommended practices (SARPs) relating to civil aviation, making them binding on the member states, except if they do not notify ICAO of rejection or reservation* (International Civil Aviation Organization, 2006). *Similar provisions are found in the WHO Constitution, whose Article 21 stipulates that the World Health Assembly may adopt regulations regarding the implementation of quarantine; nomenclatures with respect to diseases, causes of death and public health practices; standards regarding diagnostic procedures for international use; advertising and labeling of biological and pharmaceutical products in international commerce, while Article 22 of the Constitution stipulates that the said regulations shall come into force for all member states unless they notify the Director-General of the Organization of rejection or reservations within the prescribed period*. The ILO Constitution also obliges the member states to submit recommendations made by the General Conference to the competent authorities for implementation and to report to the organization on the measures taken. Similar provisions obliging members to report on the measures taken with regard to recommendations adopted by international organizations can be found in the constitutions of other international organizations such as the FAO and UNESCO.

CONCLUSION

Although for a long time they were considered a "second-class" subject of international law, international organizations have managed to become indispensable actors in the international legislative process. Moreover, the institutionalization of international cooperation has currently created the most appropriate framework for further improvement of the international legislative process and, consequently, for the faster development of international law. In addition to "technical" advantages, institutionalized multilateral cooperation has enabled a greater number of states, but also other actors such as intergovernmental organizations, international non-governmental organizations and transgovernmental organizations, to be involved in the creation of international law (Runjić, 2014). It is, therefore, not surprising that participation in the creation of international law, i.e., the regulation of relations between the subjects of that law, is for most international organizations one of their main functions assigned to them by their creators – the states. The analysis of the participation of international organizations in the international legislative process has definitely confirmed the capacity of international organizations to create international law – directly and indirectly. International organizations thus directly create international law by concluding treaties, but also indirectly through the states that conclude treaties. Participation in the creation of customary rules of international law "*with both elements necessary for their emergence – practice and legal consciousness",* represents further evidence of the capacity of international organizations to create international law. Finally, binding international decisions based on treaties – the constitutions of international organizations – can be considered a secondary source of international law. However, it should be emphasized that the creation of international law is still primarily the prerogative of states. Namely, despite the phenomenon of international organizations, but also the emergence of other, non-state actors (e.g., international non-governmental organizations, multinational corporations), as well as the pessimistic announcements of some writers from the end of the last century that they are nearing their end (Gu*éhenno, 1995;* Ohmae, 1993), states have remained the main actors on the international stage, and the international legal order is still state-centric conceived.

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SOME REMARKS ON THE LEGAL PERSONALITY OF INTERNATIONAL ORGANIZATIONS: WHAT IF A CREATION OUTLIVES ITS CREATOR?

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Abstract: Although it could be said that international law of the 21st century is a relatively well-regulated and comprehensive system of legal rules, many issues that are subject to controversy can still be identified today. The question of the legal personality, as the fundamental issue of international public law, is both current and classical. Determination of the status of an international organization depends on the identification of the compulsory elements of the notion of subjectivity, those elements that are generally accepted in legal theory and practice. The task is further compounded by the fact that no norm determines the notion of a subject in positive international law, so the major understanding is based on the jurisprudence according to which subjectivity is a relative phenomenon that changes in accordance with the needs of the community. It is beyond dispute that an international organization possesses a legal personality derived from the will of member states. After its establishment, the organization begins to live independently of the member states in the international community. It is not a mere tool in the hands of a state, serving a specific political goal. Once created, an international organization becomes a distinct subject of general international law and creates a specific public order within the field of its competencies.

Keywords: Legal personality, International organization, Reparations case, ILC.

INTRODUCTION

"Le sujet est au coeur du droit international" (Cosnard, 2005a, Cosnard, 2005b). Subjectivity is a concept inherent in all branches of law, whether we

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are talking about domestic or international, private or public law. To grasp its essence is a riddle that many theorists of domestic and international law have pondered. It is impressive that centuries of legal thought have been devoted to this very problem, without a solid foundation for its analysis to date. Numerous authors have dealt with the analysis of the subjects of international law, skillfully avoiding entering the unregulated field of subjectivity as a concept. The first trap a writer encounters when embarking on writing about international law and subjectivity is a tautological definition that is hard to escape. It is widely accepted that the basic characteristic of international law is its horizontal dimension. This means that international law is created by the subjects of the same law. Thus, the definition of a term is necessarily based on the notion of a subject. And that is where we have already fallen into the trap. *Obscurum per obscurius*. The initial question, therefore, must be related to the definition of the concept of the subjectivity (Krešťalica, 2019; 2020).

SUBJECTIVITY OR LEGAL PERSONALITY? TERMINOLOGICAL CONTROVERSY

It could not be reliably established who has introduced the concept of international legal personality into the theory for the first time, but it might be presumed that it was Leibniz in his famous work *Codex Juris Gentium diplomaticus* (Verzijl, 1969, p. 2). Translated into English, his words would read: "He possesses a personality in international law who represents the public liberty, such that he is not subject to the tutelage or the power of anyone else, but has in himself the power of war and of alliances; although he may perhaps be limited by the bonds of obligation towards a superior and owe him homage, fidelity and obedience. (...). Those are counted among sovereign powers, then, and are held to possess sovereignty, who can count on sufficient freedom and power to exercise some influence in international affairs, with armies or by treaties (...)" (Nijmann, 2004, p. 59).[1] Since the notion of subjectivity in international law is one of those issues on which consensus is difficult to reach, and as such is a prerequisite for all further

[1] Leibniz quotation is given in the translation of P. Riley, from 1989. While analyzing Leibniz's work, the author notes that the English term "personality in international law" stands instead the Latin term *persona jure gentium*, which might be unusual since Leibniz himself had used the linguistic construction *iuris inter gentes* or "law between nations".

considerations on the position of an entity in the international legal order, it is necessary to explore the core of the problem of determining the subject. Already at the first step, we encounter terminological inconsistency, which results in the conceptual divergence of very important theoretical issues. The problem of terminological inconsistency is inherent in international law as a specific legal order that does not yet have its own fully developed linguistic corpus. In practice, all the languages of the world contain terms that describe its most important terms, and translations are not always consistent since the chosen linguistic expressions by the nature of things derive from internal legal orders. Apparently, in the works of Francophone authors, the terms *subjecitivité internationale* and *personalité* were used as synonyms (Cosnard, 2005a, pp. 14-15, fn. 9). On the other hand, works written in the English language show divergence and a lack of uniformity in the understanding of these terms. In the works of classics, such as Oppenheim, the term "subjects" had a narrower meaning, referring only to full members of the international community, holders of rights and obligations, since not all states at the time of classical international law were accepted as such. The term "international persons", on the other hand, had been used to denote a wider range of entities whose rights in the international community could be significantly limited (Oppenheim, 1955, pp. 117-118; The American Law Institute, 1986, p. 70).[2] It would be safe to conclude that the dilemma about the notion of subjectivity was finally removed after the Second World War. The International Court of Justice (hereinafter: the ICJ, the Court) put an end to the discussion on the terminology acceptable for the designation of subjects in international law in the Advisory Opinion concerning the Reparations for Injuries Suffered in the Service of the United Nations *(Reparations case),* where it stated, *inter alia*, that the subjects of law do not necessarily possess the identical nature or characteristics". The subjects of law in any legal system are not necessarily identical in their nature or in the extent of their rights, and their nature depends upon the needs of the community. Throughout its history, the development of international law has been influenced by the requirements

[2] In Oppenheim's understanding, the difference among "international person" and "subject" is conceptual rather than terminological. "Every state that belongs to the civilised States, and is therefore a member of the Family of Nations, is an International Person. (...) Full sovereign States are perfect, not-full sovereign States are imperfect, International Persons, for not-full sovereign States are only in some respect subjects of International Law". The same line of reasoning was followed in the official document (Restatement of the Law Third), of the Americal Law Institute.

of international life, and the progressive increase in the collective activities of States has already given rise to instances of action upon the international plane by certain entities which are not States. This development culminated in the establishment in June 1945 of an international organization whose purposes and principles are specified in the Charter of the United Nations. But to achieve these ends the attribution of international personality is indispensable" (ICJ Reports 1949, p. 178). At first glance, we note that the Court has equated the terms denoting subjectivity. Therefore, the English terms *subject of law* and *international personality*, as well as the French *sujet de droit* and *personnalité internationale* have the same meaning and are synonymous. Then, the Court shed light on another controversy. In the Court's view, the answer to the question of who are the subjects of international law depends on the moment when the question was considered. The needs of the international community dictate changes in the understanding of this concept, and it is up to the theory to dress up the term in the appropriate attire. This is where we find confirmation for our position that international legal subjectivity is not a unique category, but a set of characteristics that could be represented in one way or another. For instance, Kunz resonates similarly, denying the state *a priori* possession of subjectivity. According to this author, it is up to each legal order to determine the circle of subjects. The traditional dogma of state subjectivity cannot be considered valid. Only an analysis of positive law can lead to the conclusion of who are the entities that possess subjectivity. "Every juridical order determines for itself the entities which are subjects of this order, so does international law. The question, which entities are subjects of international law, cannot be answered by the traditional dogmatic statement, states alone, but only by an analysis of the positive law" (Kunz, 1933, p. 405). Law is not constant, and the international legal order is not static. Therefore, the very concept of subjectivity in international law inevitably accompanies changes in the basic concept to which it is related. And any change in the understanding of subjectivity may mean a different understanding of the entities that aspire to be recognized as subjects of international law.

INTERNATIONAL ORGANIZATIONS AS SUBJECTS OF INTERNATIONAL LAW

Centuries of legal thought have been devoted to reflections on the notion of international legal personality, its constitutive elements, and extreme ranges in legal practice. The analysis of the rich theoretical basis of this topic

points to a fairly uniform systematization of the constituent elements of the notion of subjectivity. The only important difference is that these elements are, for some authors, a prerequisite and for others, the consequences of legal subjectivity. Based on the previously identified constituent elements of the notion of subjectivity, and their representation in each of the entities subject to scientific analysis, it is possible to find out whether an entity could be regarded as a subject of international law or not. In this way, it becomes obvious that all ideas of an exclusive state subjectivity are legally unsustainable today, although it is irrefutable that the deliberations on the constitutive elements of subjectivity arise, in fact, from the understanding of the state's position in international law. The question of the legal status of international organizations in international law has evolved with a change in the perception of the state and its role. Depending on how authors perceive subjectivity, as a static or dynamic category, a substantive preliminary question, or subsequent confirmation, one can evaluate their understanding of the issue at hand. For those authors who comprehend subjectivity as the basic category, conditioned by several elements that need to be represented cumulatively, the only subject is the state. For others, who take subjectivity as a dynamic category that is necessarily followed by the constant development of international law, subjectivity extends even to an individual. On the line between those two entities lies an international organization with all its particularities.

INTERNATIONAL ORGANIZATIONS BEFORE THE WWII

It is most likely that the first interstate organization was founded in 1804 by an agreement (*Administration general de l octroi de navigation du Rihn*), concluded between France and the Holy Roman Empire (Amerasinghe, 2010, p. 240). Although by its nature a closed organization, without the possibility of subsequent accession, the intention of the states concerned to entrust the resolution of a specific issue to an independent body is still worth mentioning. Later, at the end of the 19th century, states began the practice of establishing open interstate, today we would say international organizations. River commissions, such as those established by the Treaty of Paris in 1856, or various health committees, such as the Constantinople High Health Council in 1839, as well as commissions responsible for overseeing foreign loans and debts, such as the Egyptian Treaty of 1880, serve as an example of the extensive activities of states in that field (Barberis, 1983, pp. 215-216). Administrative unions (unions administratives), such as the Universal Postal Union, founded in 1874, or the International Bureau of

Weights and Measures from 1875, also prove the point. We find particularly interesting the case of the founding of an essentially unique organization, called the Cape Spartel Commission. It was founded in 1865 and closed almost a century later, in 1958. Apart from the fact that it was the first international organization to be joined by the United States, the Commission was, in fact, unique in that it exercised jurisdiction over a lone lighthouse in Morocco and had a "life separate from its raison d'être" (Bederman, 1996, pp. 275-378). However, although they played a more or less active role in the international community, the question of the subjectivity of the mentioned organizations was not explicitly raised. In that period, the traditional idea of the exclusive subjectivity of states continued to dominate. Only after the foundation of the League of Nations, the world met the first universal organization, which, even though politically failed to achieve its basic task of maintaining international peace and security, in a formal sense, has left an indelible mark. According to Oppenheim, the League of Nations, while not a state, was still a subject of international law *sui generis*. Side by side with several states, the League of Nations entered the closed circle of subjects of international law and achieved an international personality. "(...) not being a State and neither owning territory nor ruling over citizens, the League does not possess sovereignty in the sense of state sovereignty. However, being an international person sui generis, the League is the subject of many rights which, as a rule, can only be exercised by sovereign States" (Oppenheim, 1928, pp. 321-322). The question of the international legal personality of the mentioned organizations was not raised in practice until 1927, when the Permanent Court of International Justice *(the Permanent Court)* issued an Advisory Opinion concerning the jurisdiction of the already mentioned European Commission on the Danube. On that occasion, the Court found that the Commission does not have a general competence but a special purpose according to the provisions of the Paris Peace Treaty, which established it. The Court, *inter alia*, alleges: "(...), it only has the functions bestowed upon it by the Definitive Statute with a view to the fulfillment of that purpose, but it has power to exercise these functions to their full extent, in so far as the Statute does not impose restrictions upon it" (Permanent Court of International Justice, 1927, p. 64). It could not be reliably argued or disputed that the Court in this case had in mind the subjectivity of the Commission, which certainly does not fully correspond to the subjectivity of the state but at the same time implies the Commission's ability to act internationally on its behalf, independently of its Member States. If it could not act independently in its own capacity, the Commission would not be able to perform the function for which it was established.

Similar could be concluded from several other cases before the Permanent Court when it comes to the powers of the International Labor Organization (Amerasinghe, 2010, p. 243).

ESTABLISHMENT OF THE UN: ENTERING A NEW ERA

After the Second World War and the remarkable Advisory Opinion of the ICJ from 1949, a completely different light was shed on the question of the subjectivity of international organizations. Although the state remains at the heart of international law, international organizations have also earned a well-deserved place on the international stage. The Court, relying on a "teleological approach to the interpretation of the Charter", unequivocally concluded – international organizations are and can be subjects of international law (Bederman, 2002, p. 88). However, it is indisputable that the quality of their subjectivity differs greatly from the subjectivity of the state. After the 1949 Opinion, two more followed: *Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt* from 1980 and *Legality of the Use by a State of Nuclear Weapons in Armed Conflict* from 1996. In both cases, the Court found that international organizations are subjects of law within general international law. In the first case of 1980, the Court, *inter alia*, concluded: "International organizations are subjects of international law and, as such, are bound by any obligations incumbent upon them under general rules of international law, under their constitutions or under international agreements to which they are parties" (ICJ Reports 1980, pp. 89–90). In the latter case, the Court pointed out the difference between the subjectivity of the state and the subjectivity of the international organization, personified in the absence of general jurisdiction when it comes to organizations. "International organizations are subjects of international law which do not, unlike States, possess a general competence. International organizations are governed by the 'principle of specialty', that is to say, they are invested by the States which create them with powers, the limits of which are a function of the common interests whose promotion those States entrust to them" (ICJ Reports 1996, p. 78). As we pointed out in the previous lines, the state is a fact and it does not owe its existence to international law. On the other hand, an international organization is a creation of states, and its existence, but also its duration, depends exclusively on the will of the member states of that organization. Does this, however, mean that the legal personality of the international organization also depends on the will of its member states? Chinkin argues that: "Member

States create an organization with defined and limited functions; they intend the organization to operate within these restraints, and their acceptance of the duties of membership rests upon this assumption (...) The corollary is that the organization has no existence except through the will of its members; member States can amend the treaty creating an organization and even terminate its existence" (Chinkin, 1993, pp. 95-96). Unlike most of the traditional views of the positivistic orientation, several authors understand the notion of the international legal personality of international organizations separately from the states will. Among others, Higgins' understanding of subjectivity as an objective category is firmly based on fact, namely, the elements that the entity possesses and which are recognized as relevant, regardless of the will of existing subjects. So, if the organization was created and exists on the international scene as a fact, according to this author, the question of its subjectivity is irrelevant. "If attributes are there, personality exists. It is not a matter of recognition. It is a matter of objective reality" (Higgins, 1994, p. 47). In addition, Seyersted also left a significant mark in the consideration of this topic. This author identifies the criteria based on which the entity possesses subjectivity, while the will of the state is *in concreto* irrelevant. Once they are created, an organization or a state, it is only relevant that they were created, not how. As long as they possess objective characteristics inherent in the state or international organization, they should be considered subjects of general international law (Seyersted, 1963, p. 46). For the organization, according to the mentioned author, in the first place, it is important to have bodies that are not subject to the will of any state individually, but only to the common will of states expressed through representatives of states in the bodies of the organization, namely, "authority of the participating States acting jointly through their representatives on such organs" (Seyersted, 1963, p. 47). Then, these bodies must exercise power and take action on their behalf. "Since intergovernmental organizations are, in respect of international personality and its basis, in essentially the same legal position as States, there is no prima facie legal reason to deny the objective international personality of intergovernmental organizations – i.e., to require recognition – if one does not do so in the case of States" (Seyersted, 1963, p. 100). For this author, therefore, the source of the subjectivity of an international organization does not derive from the will of states explicitly expressed in the founding act of the organization, but from the objective fact of the organization's existence in the capacity necessary to be a subject of international law. We are not entirely convinced that a parallel can be drawn between a state and an international organization in the sense that the aforementioned author does.

Namely, one cannot ignore the fact that the state does not owe its origin to international law, but its own law, while on the other hand, the international organization is created and operates exclusively within the framework set by international law. The subjectivity of the organization, unlike the state, is not original in its character. This fact does not affect the objectivity of the existence of an international organization, in terms of the interpretation of the Court in the Reparations case. However, if the subjectivity of an international organization is derived from the rules of general international law and based on the fact that essential elements of subjectivity are present in the being of that entity, and if it is not tied to the will of member states but an independent category, what would happen when member states decide to withdraw from the membership? Does the organization, after coming to life on the international scene, manage to get out of control of its creator, like Frankenstein's monster? (Wessel, 2011, p. 356). In other words, could the organization survive the complete withdrawal of member states, and if so, in which manner? Practically, there are almost no examples of this happening in recent history (Wessel, 2011, p. 344).[3] However, theoretically, this scenario is very possible. Not so long ago, it was unthinkable that any country would leave the European Union, and today we are witnessing Brexit and the mass flight of African countries from the Permanent International Criminal Court. For those who derive the subjectivity of the organization from the intentions of the member states expressed explicitly in the founding treaty or implicitly through their procedures, the answer to this question is clear. The organization would be deprived of a basic element and, as such, could not figure as a subject on the international stage. However, those authors who do not derive the subjectivity of organizations from the will of the member states but base it on general international law, leave us deprived of an argumentative answer. Especially because there is no specific norm in international law that regulates the issue of closing down an international organization. "The question of whether the emphasis on continuity leads to eternal life for some organizations is still difficult to answer, but it seems fair to conclude that they are increasingly in control of their own existence" (Wessel, 2011, p. 356). In fact, the answer to the question

[3] The examples given in the literature refer to the middle of the 20th century, when numerous organizations, having fulfilled the goals or purpose for which they were founded, ceased to exist. Some of the mentioned organizations are: the International Refugee Organization (IRO), the Intergovernmental Committee for European Migration, the Council for Mutual Economic Assistance (CMEA) and others.

posed earlier could be simpler than one might think. Possession of subjectivity as an objective fact should not be seen as an essential opposition to the will of states. After all, it is the state that not only creates but also changes the rules of international law. For Jenks, there would be no room for this controversy if states adopted the practice of defining the subjectivity of international organizations in the founding treaties of international organizations *expressis verbis* (Jenks, 2010, p. 230). However, the practice of states shows that this is not necessary. In the founding treaties of most international organizations, such as UNESCO, the FAO, and the IMF, there is no reference to the subjectivity of these organizations, but it is still easy to conclude that these organizations are *ipso facto* subjects of law. Otherwise, the goals and tasks entrusted to them would be meaningless (Amerasinghe, 2010, p. 248). Ultimately, we are inclined to conclude that the answer is best sought in the case law of the ICJ, in the first place in the Opinion concerning the Reparations case. The reasoning of the Court in this case is closer to those authors who derive the subjectivity of international organizations from the will of the member states, respectively from the founding treaties of the organizations. Although founding agreements do not usually contain explicit provisions on the subjectivity of the organization, the conclusion could still be drawn from the text of the agreement. The states may have failed, mostly with the intention, to decide on the personality of the organization, but the very fact that they granted it certain functions and tasks by the founding agreement, actually speaks of the need to ascertain (not recognize - sic!) their subjectivity. It would be pointless to talk about the functions of the organization if it could not act internationally. And this is, as we have seen, one of the essential attributes of subjectivity. The ICJ, in its *Reparations case*, concluded with regard to the United Nations goals stipulated in the Charter that an attribute of international subjectivity is necessary to achieve those goals (ICJ Reports 1949, p. 178). It is indisputable that after the establishment of the organization, it will begin to live independently of the member states in the international community. It will become a subject of general international law. Possession of a will independent of the will of the member states *(volonté distincte),* "is an essential element of the international legal subjectivity of an international organization" (Papić, 2011, p. 91). In that context, the Court notes, *inter alia*, that*:* "Fifty States, representing the vast majority of the members of the international community, had the power, in conformity with international law, to bring into being an entity possessing objective international personality, and not merely a personality recognized by them alone, together with the capacity to bring international cla*ims*" (ICJ Reports 1949,

p. 185). The essence of the above quote is reflected in the fact that the Court confirmed the understanding of the objective personality of an international organization (in this case, the UN). The size of an organization, in terms of the number of its members, on the other hand, is not one of the essential elements for possessing subjectivity. An excellent example of this is the case of an organization that no longer exists but which, despite its small membership, possessed subjectivity in international law (Amerasinghe, 2010, p. 248 fn. 24).[4] The issue of the relationship between the international organization and non-member states is still controversial, since the theory in that matter is deeply divided, and the practice is not clear and uniform enough. As an illustration, one should mention a case where a non-member state of an organization failed to take advantage of this fact before the court as an argument against the organization's subjectivity. The United States government's attitude toward ITC (ITC v. Amalgamet, Inc.) shows that it could be assumed that for the state in question, membership in an international organization did not figure as a decisive fact for the "objective" subjectivity of that precise organization. On the other hand, there are cases in the case law of Great Britain that point to the opposite practice, where due to the rules of internal law it is necessary either to be a member of the organization or to explicitly recognize its existence as a subject (Amerasinghe, 2010, p. 258). In this regard, the practice of states within their legal systems could be relevant only as proof of the intention of states since the issue of the subjectivity of international organizations is resolved exclusively at the international level. In the Reparations case, as we have seen, the Court supported the idea of an objective personality of the United Nations and confirmed the possibility of making claims against non-member countries of that organization. This view, however, has been sharply criticized by some theorists who insist on recognizing the state as an essential element of the legal personality. In Schwarzenberg's view, recognition or acquisance is a necessary condition of the notion of subjectivity. According to the abovementioned author, the subjectivity of the organization would have effects only on the states that have explicitly recognized the existence of that organization, first through accession to its membership or in some other way. "Even if the existence of the United Nations could be regarded at least as an objective fact – a term which, philosophically, is somewhat controversial and, in law, relevant at most for

[4] One of the examples is an organization called International Tin Council (ITC), whose subjectivity was recognized before New York and Swiss courts.

purposes of evidence – such an international institution can acquire international personality in relation to non-members in one of four ways only: recognition, consent, acquiescence or estoppel. Any other view runs counter not only to the rules underlying the principles of recognition and consent, but also to those governing the principles of sovereignty and equality of States" (Schwarzenberger, 1947, p. 129). Further consequences of this understanding, which we could not adhere to, would lead to the relativization of subjectivity and the reduction of this fundamental concept to individual relations between states based on political decisions and personal motives. At this point, it should be emphasized that the Court based its position solely on the characteristics of the United Nations and not of international organizations in general. However, although the decisions of the Court are limited to both *rationae materie* and *rationae persone*, it is an indisputable fact that, due to the authority of the Court and judges as professional decision-makers, their effect is much wider. Therefore, they are taken as an auxiliary source of rights.

THE ESSENCE OF THE CONCEPT

Whereas humanity today knows various forms of organizing states into international organizations, it is still not possible to find a generally accepted definition of these organizations. Generally, definitions are given subsequently, based on an empirical analysis of existing organizations and their features and characteristics (Tomuschat, 1999, p. 125). The reason for this lies in the fact that organizations differ greatly from each other and are, without exception, founded to achieve certain goals. This makes it more difficult to provide a single definition that would cover all the important characteristics of international organizations. Anzilloti was probably one of the first theorists to try to shed light on the subjectivity of international organizations in his work, in a rudimentary way, from today's point of view (Amerasinghe, p. 240). The most frequently cited, comprehensive definition of an international organization was proposed by Fitzmaurice, according to which: "The term 'international organisation' means a collectivity of States established by treaty, with a constitution and common organs, having a personality distinct from that of its member-States, and being a subject of international law with treatymaking capacity" (Fitzmaurice, 1956, p. 104, as quoted in: Tomuschat, 1999, p. 125). Having in mind the timeframe in which the abovementioned definition has been developed, it is no surprise that the membership was reduced exclusively to states. Namely, in that period, in the works of the Commission for International Law, the terms

"intergovernmental" and "international" organizations were used simultaneously. It is this fine terminological diversity that indicates the circle of entities that could be part of an organization. Furthermore, it seems that Fitzmaurice did not consider the legal capacity to be a constitutive element of subjectivity, because then it would be superfluous to single out the element that is already contained in the concept itself. If the law-making ability were inherent in subjectivity, Fitzmaurice's definition would suffer from repetition and be meaningless. For decades, the United Nations Commission on International Law has adhered to concise, circular definitions of the term international organization, defining it in draft treaties as an intergovernmental organization. True, in each of the above cases, a reservation was made regarding the scope of application of the offered definition exclusively for the needs of the act of which it is a part. However, the fact is that due to the undisputed authority and influence of the Commission on the development of international law and the formation of theoretical understandings, the Commission's interpretations are often taken over in theory and practice. Finally, in 2000, at its fifty-second session, it was decided to include the notion of the responsibility of international organizations in the long-term work plan of the Commission on International Law. Two years later, at its fifty-fourth session, the Special Reporter Gaja was appointed, whose task was to draft the members' articles on the responsibilities of international organizations and present them to the Commission (Papić, 2011, pp. 80-113). Finally, in the Draft Articles on the International Responsibility of International Organizations adopted at its sixty-third session in 2011, the Commission on International Law offered a definition of an international organization much more substantial than had previously been the case. Finally, for the sake of legal certainty, it is necessary to identify as precisely as possible when or what the offered rules refer to. In Article 2 of the Draft, the Commission, emphasizing that the proposed definition aims to define an international organization in the context of the application of liability rules and not in the field of international law in general, proposes the following solution: "International organization' means an organization established by a treaty or other instrument governed by international law and possessing its own international legal personality. International organizations may include as members, in addition to States, other entities (...)" (Report of the International Law Commission, 2022). The idea behind the above definition, as stated in the comments of the proposed members, was to provide a comprehensive definition that would include diverse organizations that already exist or may emerge internationally in the future. Interestingly, the Commission has chosen to define the

international organization in relation to its legal personality. The Austrian Government has, for example, proposed that this part of the definition should be removed since, in their view, "international organizations have international subjectivity as a result of being such organizations" (Report of the International Law Commission, 2022). On the other hand, Special Reporter Gaja maintained that subjectivity is not inherent in all international organizations and that "it seems preferable to leave the question open whether all the international organizations possess legal personality" (Report of the International Law Commission, 2022). International organizations that have subjectivity in international law may be held liable for illegal acts at the international level. Subjectivity is, in the Commission's view, a precondition for accountability. If we further apply the reasoning of the Commission, we would conclude that responsibility is not necessarily a constitutive element of the concept of subjectivity, as argued in one part of the theory, but that responsibility depends on the possession of subjectivity. Here, however, we see the reverse order. The Commission itself states that this problem can be approached from different sides, and does not go deeper into the issue (Report of the International Law Commission, 2022).

CONCLUSIONS

The main question posed in this paper tackles the quality of the legal personality of international organizations. It is beyond dispute that an international organization possesses a legal personality derived from the will of member states. After its establishment, the organization begins to live independently of the member states in the international community. It is not a mere tool in the hands of a state, serving a specific political goal. Once created, an international organization becomes a distinct subject of general international law and created a specific public order within the field of its competencies. Therefore, as pointed out earlier in this paper, possession of a will independently of the will of the member states serves as an essential element of the international legal personality of an international organization. However, this does not mean that the international organization could live contrary to the will of its member states. Even though it is still difficult to answer what would happen with the specific legal order created by the organization, after its dissolution, one might conclude that the possibility of outliving its creator for the organization in the international community nowadays is more a matter of fantasy than reality.

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DIPLOMATIC LAW OF INTERNATIONAL ORGANIZATIONS: FROM LEGAL DOGMA TO LEGAL VALIDITY

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Abstract: Modern international law is eclectic in its development. International law has gone through many different stages in its development, acquiring a modern look at the present. However, this does not mean that international law has stopped its development. Speaking about the subject under study, we note that this industry is based on embassy law and the law of consulates, which only by the 20th century formed into a single diplomatic and consular law. Starting from the 60s of the twentieth century, separate institutions and sub-sectors began to form within the framework of diplomatic and consular law with the adoption of several special conventions. The diplomatic law of international organizations is the youngest in the system of diplomatic and consular law. It has an adjacent character, so this sub-sector is intersectoral. It can be stated that a new sub-branch has been formed in the system of public international law – the diplomatic law of international organizations. A new approach to the international legal regulation of international relations between states and international organizations, and between international organizations and states should be enshrined within the framework of the diplomatic law of international organizations, which will allow codifying international legal norms in this area and ultimately serve as a progressive development of norms, principles and legal relations in this area.

Keywords: Diplomatic law, international organizations, representatives of states, permanent missions, immunities and privileges, International Law Commission, UN.

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INTRODUCTION

Today, humanity is at a turning point in its development, and the nature of international relations is changing dramatically. Transnational threats to peace, security, and sustainable development are escalating, climate change is on the rise, mass migration flows are increasing, and traditional values are being lost. In these difficult conditions, the role of international organizations is also growing as a kind of forum for cooperation between states and other subjects of international law, since international organizations are one of the best means of multilateral cooperation through which states resolve complex issues of international relations. At present, the state cannot be outside of international organizations, and the need for constant contact of both international organizations with states and states with international organizations has led to the formation of a new related sub-branch: the diplomatic law of international organizations. The relations between states and international organizations that have their representations there are expanding. In this context, it should be noted that Abashidze and his colleagues note: "In the context of a globalizing world and the interconnectedness of states and peoples, it is necessary to take into account the features of modern diplomacy, which is characterized by the following features – intensive development of diplomacy at the level of international organizations strengthening the role of multilateral diplomacy within international organizations (…)" (Abashidze, et al., 2015; Hamilton, Langhorne, 1995; Sharp, 1994 pp. 609-634). However, modern international relations are also characterized by the ever-increasing role in them of so-called multilateral diplomacy. The latter covers many and very important aspects of international life related to the activities of the UN and other universal international organizations" (Guliyev, 2011, pp. 609-634). A new approach to the international legal regulation of international relations between states and international organizations and between international organizations and states should be enshrined within the framework of the diplomatic law of international organizations, which will allow codifying international legal norms in this area and ultimately serve as a progressive development of norms, principles and legal relations in this area. Thus, the relevance of the topic, first of all, lies in the increasing actualization of relations between states and international organizations due to the rapid growth in the number of international organizations.

THEORETICAL AND METHODOLOGICAL ISSUES OF THE PLACE OF THE DIPLOMATIC LAW OF INTERNATIONAL ORGANIZATIONS IN THE SYSTEM OF GENERAL INTERNATIONAL LAW

At the present stage, international organizations have become an integral part of the entire process of development of international relations and the main form of multilateral diplomacy. Modern international relations proceed within the framework of the legal field, and the main regulator in this regard is international law, while the relations and relations of states themselves are regulated by diplomatic and consular law. The effectiveness of the norms of diplomatic and consular law guarantees the stability and equal relations of states and other subjects of international law and actors of international relations and helps their balanced cooperation. In the traditional sense, the term "diplomatic law" *(ambassadorial law)* usually refers to the norms of international law governing the status and functions of diplomatic missions exchanged between sovereign states after the establishment of diplomatic relations. The term "consular law", accordingly, refers to the rules of international law governing the status and functions of consular offices (…). These concepts cannot cover all spheres of foreign relations of states and international organizations. "This new form of diplomacy extends to existing international intergovernmental organizations and is effective at conferences convened within their framework. This type of activity required the creation of new types of missions, such as permanent missions of states accredited to international intergovernmental organizations, special *ad hoc* missions, as well as representative offices of international organizations in member states or with other international organizations" (Guliyev, 2011, p. 32, 38). The science of international law pays insufficient attention to aspects related to the representation of states at international intergovernmental organizations and the delegation at international conferences, special missions, specialized missions, and representative offices of international intergovernmental organizations in states or other international intergovernmental organizations (Matveyeva, 2014, p. 5). Even though the very phenomenon of multilateral diplomacy has existed for a long time, its theoretical understanding began much later. This was primarily due to the expansion of multilateral diplomatic practice as well as the development of various forms of multilateralism, including the universal organizations of the UN system. After the creation of the United Nations and the first decade of its work, the question of delimitation of diplomatic activity was raised in

international academic circles. One of the reasons for this was the working conditions of employees of an international organization and employees of permanent missions to international organizations. The special nature of the privileges and immunities of these employees, significantly different from the conditions and privileges and immunities of diplomats accredited in a particular state, also contributed to the distinction between bilateral and multilateral diplomacy (Pinzar, 2006, p. 68). In connection with the above, we note that since the 60-80s of the 20th century, individual scientists have reasonably begun to promote the idea of the diplomatic law of international organizations (Kolasa, 1976; Ganyushkin, 1972; Colliard & Manin, 1970; Mookerjee, 1973; Blishchenko & Durdenevsky, 1976; Ganyushkin, 1972; Rafat, 1983; Sandrovsky, 1981; Sandrovsky, 1986; Ganem, 1979; Kuznetsov, 1980; Maksudov, 1984). We also note that in modern international law, the recognition of the diplomatic law of international organizations as an independent branch/sub-branch has strong position since recent research has appeared in the science of international law concerning certain aspects of the diplomatic law of international organizations aimed at revealing the legal content of diplomatic rights of international organizations as an intersectoral phenomenon in diplomatic and consular law (Chistokhodova, 2005; Kovaleva, 1999; Margiev, 1999; Abashidze & Fyodorov; Guliyev, 2011; Saidova L, 2001; Jetlir, 2014; Rakhmanov, 2019a). Consequently, it can be noted that foreign studies reflect various theoretical and practical aspects of the diplomatic law of international organizations but without systemic unity. The practical issues of the diplomatic law of international organizations have remained outside the scope of scientific research by scientists and international lawyers from foreign countries. Textbooks and study guides on international law by domestic authors reflect certain issues of the diplomatic law of international organizations within the chapters on the law of international organizations, the law of external relations, and diplomatic and consular law. So, for example, Lukashuk, in his textbook on international law, refers to the diplomatic law of international organizations in the field of foreign relations law, which includes the privileges and immunities of international organizations and their personnel, as well as the privileges and immunities of representatives of states in international organizations (Lukashuk, 2010). It should be noted that the literature has already emphasized that the changes and expansion of the scope of diplomacy "(...) led to the formation of new sub-branches of this branch of international law" (Timchenko, 2007). For example, under such sub-sectors, Guliyev considers a) diplomatic law; b) consular law; c) the right of special missions; d) diplomatic law of international organizations (Guliyev, 2011,

p. 61). The diplomatic law of international organizations has a pronounced related character, i.e., is intersectoral and refers both to the law of international organizations and to diplomatic and consular law, because this sub-branch covers the issues of representation of international organizations on the territory of the member states, as well as diplomatic and consular law since it also covers the representation of states in international organizations. Regarding this issue, Kuznetsov notes that "the activities of permanent missions of states to international organizations have much in common with the activities of diplomatic missions. The basis of their legal status is common: both of them represent their states in the international arena. The difference between them - if we talk about the main thing - is as follows. The head of a diplomatic mission represents his state, as a rule, with one state (in some cases, concurrently with two states), i.e., its activities are primarily and mainly aimed at maintaining and developing bilateral relations between sovereign states. A permanent representative to an international organization acts as a state representative to a special international entity that is a derivative, specific subject of international law - an international intergovernmental organization. Its activity is aimed primarily at ensuring the interests of its state in this international organization and promoting the implementation of the goals and principles of this organization, determined by its charter. In other words, the permanent representative in this way acts mainly within the framework of multilateral diplomacy" (Kuznetsov, 1980, p. 13). Based on the foregoing, it is safe to note the intersectoral nature of the diplomatic law of international organizations in its application to relations between states and international organizations, and international organizations and states, which is an integral part of the law of international organizations and diplomatic and consular law. Thus, we note that intersectoral functional institutions belong to adjacent, heterogeneous branches of law. From this point of view, the diplomatic law of international organizations can be classified as intersectoral functional institutions. Based on the foregoing, we note that the diplomatic law of international organizations refers to the law of international organizations because this sub-branch covers issues of legal and legal status, internal and external law of representative offices of international organizations on the territory of member states and representative offices of states in international organizations, as well as diplomatic and consular law because it also covers issues of diplomatic status, immunities, and privileges of representative offices of international organizations on the territory of member states and representative offices of states in international organizations. Thus, it is safe to note the cross-sectoral nature of the diplomatic law of international

organizations in its application to relations between states and international organizations and between international organizations and states, which is an integral part of the law of international organizations and diplomatic and consular law. At the same time, we also note that in the science of international law, including diplomatic and consular law, there is a widespread opinion that there is only a "dual branch" of diplomatic and consular law (Yuldasheva, 2007, p. 3; Pustavalova, 2003). But we cannot agree with the arguments of a number of other international lawyers, since the system of diplomatic and consular law includes four sub-sectors: Diplomatic law, Consular law, Law of special missions, and Diplomatic law of international organizations. Our opinion is fully consistent with the doctrine of diplomatic and consular law and is also supported by the words of Rakhmankulov (Rakhmonkulov, 2005, p. 3) that "relations of an international public law nature can be established between states, and between states and international organizations". Thus, the legitimacy of the functioning of the diplomatic law of international organizations is proved. His position was shared by several prominent Western jurists. So, for example, Nefyodov wrote: "International law is represented by one independent legal system. The main subject of its regulation is relations between states, nations, international intergovernmental organizations, and state-like entities, which, despite the existence of certain differences in the main approaches between these entities, can generally be qualified as interstate relations (Nefyodov, 2018). From all this, it follows that the diplomatic law of international organizations is a young and dynamically developing branch of international law, which has a connection with both diplomatic and consular law, and the law of international organizations. The formation of the diplomatic law of international organizations takes place within the framework of the process of codification and progressive development carried out by the UN. Thus, paragraph 1(a) of Article 13 of the UN Charter provides that the Assembly "organizes studies and makes recommendations for the purpose of (...), encouraging the progressive development of international law and its codification." The General Assembly promptly set about putting this provision into practice. At its first session in 1946, it established the Committee for the Progressive Development of International Law and its Codification (known as the "Committee of Seventeen"), which met from May to June 1947 and recommended the establishment of an International Law Commission. Conceptually, we note that in all stages of codification and progressive development, both diplomatic and consular law, and the diplomatic law of international organizations, the UN International Law Commission took an

active part, and almost all convention acts were developed by it. From our point of view, the doctrine of modern international law, with its fundamental norms and principles, the inalienable right of states to participate in the activities of international organizations and to be represented in the work of their bodies, should become the methodological basis for the formation of the diplomatic law of international organizations. The features of the diplomatic law of international organizations can be determined as follows: acts as a sub-branch of diplomatic and consular law; has an intersectoral character – refers to both diplomatic and consular law, and the law of international organizations; has its own structure, consisting of certain institutions that combine certain norms – the institution of representation of states in international organizations, the institution of representation of international organizations in member states, the institution of privileges and immunities of missions and representatives of states in international organizations, the institution of privileges and immunities of missions and representatives of international organizations under member states and a number of others; has its own normative consolidation expressed in the UN Conventions of 1946 and 1947, the Vienna Convention of 1975, and the Convention of 1994; has a mechanism of dual legal regulation – on the one hand, the norms of international law, on the other – the norms of the national legislation of the host states.

FORMATION AND STRUCTURING OF INSTITUTIONS OF DIPLOMATIC LAW OF INTERNATIONAL ORGANIZATIONS

With the development of embassy (diplomatic) and consular relations, the intensification of the activities of special missions, and the implementation of external relations in the course of activities for the representation of states in their relations with international organizations, they began to talk about diplomatic law as a concept that covers all these areas, i.e., about the totality of international legal norms that regulate not only the actual diplomatic activity of states but also the activities of all bodies of external relations of states. This concept also includes the activities of international organizations on external issues (Ganyushkin, 1972, pp. 11–15). To cover all these forms of external relations, some propose the term "the right of external relations of subjects of international law" (Blishchenko, Durdenevsky, 1962, p. 65). However, none of the above names for this industry can now be considered adequately reflecting all types of activities of foreign relations bodies. Accordingly, the legal regulation of relations between subjects of international law arising in connection with this activity

and the representations of states at international organizations do not, for example, perform the functions of diplomatic and consular protection of the rights and legitimate interests of citizens of their country – this is the business of embassies and consulates. So the name "diplomatic and consular law" is hardly suitable for designating this branch of international law (Guliyev, 2011, pp. 60-61). The diplomatic law of international organizations, being an intersectoral sub-branch of the law of international organizations and diplomatic and consular law, is currently already incorporating its specific institutions, in particular: international legal status, internal and external law, privileges and immunities of state representations at international organizations; international legal status, internal and external law, privileges and immunities of representative offices of international organizations in member states; international legal status, internal and external law, privileges and immunities of international intergovernmental organizations; international legal status, internal and external law, privileges and immunities of international non-governmental organizations; international legal status, privileges, and immunities of officials of an international organization (international officials); international legal status, privileges, and immunities of personnel of international organizations; international legal status, privileges, and immunities of personnel associated with international organizations; international legal status, privileges, and immunities of international security forces (blue helmets, etc.). At the same time, we also note that the diplomatic law of international organizations was formed precisely based on the institution of state representation, which is still the central institution of this sub-branch. Today, there are a significant number of representative offices of international organizations in member states and with other international organizations. Until now, they have never been considered together with diplomatic missions. Although their functions are somewhat different from the functions of diplomatic missions, both are the missions of the main subjects of international law, sent to other subjects, and both enjoy, albeit to a different extent, diplomatic immunities and privileges. At present, permanent missions of states to international organizations have become an extremely important (and for many developing states, the main) link in diplomatic activity abroad" (Guliyev, 2011, p. 32). In connection with the strengthening of the role of international organizations in the establishment and development of multi-vector international relations, most member states have permanent representations in international organizations, and states that are not members of this organization (non-member states) have permanent observers with them. Representation is one of the important foreign bodies in the foreign relations

of states. Such a permanent mission is one of the important foreign bodies in the foreign relations of states. Representation of states at international organizations and representatives of international organizations on the territory of member states is a relatively new institution of international law. Its appearance is explained by the development of international organizations, their transformation into significant centers of international life, and the concentration of the most important international problems of our time in international organizations (Shibaeva & Potochny, 1988, p. 63). From the above, it can be concluded that "at present permanent missions of states to international organizations have become an extremely important link in diplomatic activity abroad" (Sandrovsky, 1986, p. 246). A practical example can be given to prove this. Thus, for example, with the advent of the League of Nations, states began to establish permanent representations at international intergovernmental organizations. The first six permanent missions to the League of Nations were established as early as 1920. In 1936, there were already 46 in Geneva, with 58 League members.

INTERGOVERNMENTAL ORGANIZATIONS AND INDEPENDENT STATES

By April 1948, 45 out of 57 UN member states had their own missions, or, as they were called then, permanent delegations (Kuznetsov, 1980). By the end of 1970, 125 of the 127 UN members had permanent missions in New York; only the Gambia and Fiji did not create representative offices (Ganyushkin, 1972, p. 23). Today, almost all UN member states – 193 states – have their own representations at the United Nations (Member States on the Record, 2022). It can be stated that the institution of representation, having a diplomatic character, differs from the actual diplomatic missions in its functionality (Rakhmanov, 2019b). The permanent representation of states in an international organization is a diplomatic mission, with features determined by the nature of the functions of this body (Blishchenko & Durdenevsky, 1962, p. 198). Permanent missions of members and permanent observers or representatives of non-members of an international organization are very similar to the diplomatic missions of states. Both are made up of diplomats and have diplomatic ranks and functions. The host states grant privileges and immunities to all permanent missions, very reminiscent of diplomatic ones (Hamilton & Langhorne, 1995). The representation of states in the framework of the diplomatic activities of international organizations and conferences, the UN International Law Commission noted, has its characteristics. A representative of a state to an

international organization is not the representative of his state in the host state, as is the case with a diplomat accredited to that state (...). A representative of a state to an international organization represents his state in that organization (Sharp, 1994). Conceptually, we note that the interaction of an international organization and its member states, as well as other entities, is carried out within the framework of an international organization and representative offices – representative offices of member states in an international organization and representative offices of international organizations in member states. Such complex activity, in turn, gives rise to the operation of several legal systems at once. In the case of an international intergovernmental organization, the mission is subject to its internal legal order while the members of the mission, with the exception of those employed of local nationalities, have the legal status of international employees. In addition, each representation is subject to international law, which determines its status, rights, and obligations. And, finally, each representative office and its staff are subject to the internal legal order of the host country within its territorial jurisdiction (Chistokhodova, 2005, p. 22). Thus, representative offices of international organizations are subject to several legal systems at once – the diplomatic law of international organizations, the internal law of an international organization, and the legislation of the host state, i.e., the "triangle" – founding documents and special acts on the immunities and privileges of an international organization, agreements on the seat of an international organization, and, finally, the national legislation of the host state. Speaking about the institutions of diplomatic law of international organizations, we note an important detail. The institution of representation, having a diplomatic character, differs from the actual diplomatic missions in its functionality. The permanent representation of states in an international organization is "a diplomatic representation, with features determined by the nature of the functions of this body" (Blishchenko & Durdenevsky, 1962). Shermers is of the same opinion, noting: "Permanent missions of members and permanent observers or representatives non-members of an international organization are very reminiscent of the diplomatic missions of states. Both are made up of diplomats and have diplomatic ranks and functions. The host states grant to all permanent missions privileges and immunities very reminiscent of diplomatic ones" (Schermers, 1972). With regard to the differences in the privileges and immunities of these representations, Shibaeva noted: "By their nature, the activities of both permanent representatives and observers are diplomatic in nature (...). Their status in terms of privileges and immunities was equated to the status of diplomatic representatives and

missions" (Shibaeva, 1975). In addition, the 1975 Vienna Convention on the Representation of States in their Relations with International Organizations of a Universal Character (Vienna Convention of 1975) proceeds from the fact that members of permanent missions to international organizations represent their state to the international organization and not in the state in whose territory the organization is located. Consequently, on the one hand, the Vienna Convention of 1975 extends to representatives of states in international organizations the traditional norms of diplomatic law enshrined in the Vienna Convention on Diplomatic Relations of 1961. On the other hand, it takes into account the specifics of the subject of regulation, which consists of relations with the international organization and not with the host state. Concerning the same question, Kuznetsov notes that "the activities of permanent missions of states to international organizations have much in common with the activities of diplomatic missions. The basis of their legal status is common: both of them represent their states in the international arena. The difference between them – if we talk about the main thing – is as follows. The head of a diplomatic mission represents his state, as a rule, with one state (in some cases, concurrently with two states), i.e., its activities are primarily and primarily aimed at maintaining and developing bilateral relations between sovereign states. A permanent representative to an international organization acts as a representative of the state in a special international entity, which is a derivative, specific subject of international law – an international intergovernmental organization. Its activity is aimed primarily at ensuring the interests of its state in this international organization and promoting the implementation of the goals and principles of this organization, determined by its charter. In other words, permanent representative acts mainly within the framework of multilateral diplomacy" (Kuznetsov, 1980, p. 13).

LEGAL ASPECTS OF THE STATUS OF PERMANENT REPRESENTATIVES AT INTERNATIONAL ORGANIZATIONS

The legal nature of representation is characterized by the following aspects: the institution of representation is a kind of implementation of the principle of sovereign equality of states, in that part where states have an absolute right to equal participation in interstate relations and to be represented in international relations; the institution of representation fully implements the principle of representation and participation of states in the activities and functioning of international organizations; the institute of representation is the key link between the international organization and

the country represented, without which, ultimately, international organizations cannot exist; a representative office is an organ of foreign policy activity of a sovereign state; representation by its status is diplomatic; due to the fact that the representation is the foreign policy body of a sovereign state, any other state, even the state on whose territory the headquarters of an international organization is located, has no right to interfere in its activities; representations of states in international organizations, although they are diplomatic missions in their spirit, however, they cannot fully enjoy the status enjoyed by embassies, because their diplomatic character is peculiar to them due to the fact that they are foreign policy departments. By their very nature, representative offices are accredited to an international organization, i.e., with a derivative subject of international law, and embassies – with states – primary subjects of international law. The above may explain some of the limited nature of the status of state representations in international organizations. The international legal nature of representative offices is determined by the status of missions, which is primarily determined by international law, namely the conventions of 1946 (Convention on the Privileges and Immunities of the United Nations of October 13, 1946), 1947 (Convention on the Privileges and Immunities of Specialized Institutions of 21 November 1947), 1969 (Convention on Special Missions of December 16, 1969) and 1975 (Vienna Convention on the Representation of States in their Relations with International Organizations of a Universal Character of 14 March 1975). However, this rule is fully implemented only in relation to the representations of states in international organizations. The status of representative offices of international organizations on the territory of the Member States is determined by a bilateral agreement between the international organization and the host country; Missions enjoy a quasi-diplomatic status. Although in spirit their status is diplomatic, however, in scope, it is much narrower than the status of diplomatic missions proper - embassies; diplomatic law of international organizations, although it is a sub-branch of international law, however, the regulation of the status, in particular the issue of ensuring the security and status of representative offices and their personnel, is more dependent on national law and national institutions and mechanisms, because, in the diplomatic law of international organizations, there is no dispute resolution mechanism as provided for in the Optional Protocol to the Vienna Convention on Diplomatic Relations, concerning the Compulsory Settlement of Disputes (Adopted April 18, 1961). Representations of states accredited to international organizations, as a rule, are located on the territory under the sovereignty of a third state, and

not the host entity. Thus, a system of tripartite relations is created, in which the state sending the mission, the receiving organization and the host state of this organization participate. The basis for this tripartiteness is an agreement between an international organization and its host state, called the headquarters agreement (Guliyev, 2011, pp. 283-284). For example, the UN signed agreements with the United States on June 27, 1947, and Switzerland on December 14, 1946, and UNESCO with France on July 2, 1954. The Headquarters Agreement, which is a bilateral agreement, stipulates, among other things, that the host state provides free access to its territory to delegations and permanent missions of the member states of the organization and provides them with a status identical or at least similar to that of diplomatic missions. Thus, we note that the representation of a state to an international organization acts on behalf of the accrediting state, ensures the participation of its country in the activities of an international organization and its bodies, represents and protects the national interests of its country within the framework of an international organization, implements the foreign policy line and concept of its country within the framework of an international organization, and most importantly, it provides operational and permanent communication between the sending state and the international organization, which is the basis of the status of the institution of representation. Speaking about other institutions of the diplomatic law of international organizations, we note that the UN Conventions of 1946 (Convention on the Privileges and Immunities of the United Nations of October 13, 1946) and 1947 (Convention on the Privileges and Immunities of Specialized Institutions of 21 November 1947**)** established and consolidated the international legal status, privileges, and immunities of both the organizations themselves and their members, as well as international officials. Thus, the 1946 Convention on the Privileges and Immunities of the United Nations established the inviolability of the property, funds and assets, and means of communication of the Organization. Under the Convention, Representatives of the Members of the Organization in the principal and subsidiary organs of the United Nations and at conferences convened by the United Nations, in the performance of their official duties and while traveling to and from the place of meeting, shall be accorded the following privileges and immunities: immunity from personal arrest or detention and from seizure of their personal baggage, and, in respect of words spoken or written and all acts done by them in their capacity as representatives, immunity from legal process of every kind; inviolability for all papers and documents; the right to use codes and to receive papers or correspondence by courier or in sealed

bags (d) exemption in respect of themselves and their spouses from immigration restrictions, alien registration or national service obligations in the state they are visiting or through which they are passing in the exercise of their functions; the same facilities in respect of currency or exchange restrictions as are accorded to representatives of foreign governments on temporary official missions; the same immunities and facilities in respect of their personal baggage as are accorded to diplomatic envoys, and also; such other privileges, immunities and facilities not inconsistent with the foregoing as diplomatic envoys enjoy, except that they shall have no right to claim exemption from customs duties on goods imported (otherwise than as part of their personal baggage) or from excise duties or sales taxes. In order to ensure complete freedom of speech and independence in the performance of their duties, representatives of the Members of the United Nations in the principal and subsidiary organs of the United Nations and at conferences convened by the United Nations continue to be accorded immunity from legal process in respect of words spoken or written by them and in respect of all acts, committed by them in the performance of official duties; this immunity continues to be granted even after the persons concerned are no longer representatives of Members of the Organization. Officials of the United Nations shall be immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity; exempt from taxation on the salaries and emoluments paid to them by the United Nations; immune from national service obligations; immune, together with their spouses and relatives dependent on them, from immigration restrictions and alien registration; accorded the same privileges in respect of exchange facilities as are accorded to the officials of comparable ranks forming part of diplomatic missions to the Government concerned; given, together with their spouses and relatives dependent on them, the same repatriation facilities in time of international crisis as diplomatic envoys; have though right to import free of duty their furniture and effects at the time of first taking up their post in the country in question. The Secretary-General and all Assistant Secretary Generals shall enjoy, in respect of themselves, their wives, and minor children, the privileges and immunities, exemptions, and facilities accorded, under international law, to diplomatic representatives. Similar provisions were enshrined in the Convention on the Privileges and Immunities of Specialized institutions of 21 November 1947, which consolidated the international legal status, privileges, and immunities of the specialized agencies themselves and their members, as well as international officials. The Convention on the Safety of United Nations and Associated Personnel (New York, 9 December 1994)

and the Optional Protocol to the Convention on the Safety of United Nations and Associated Personnel (New York, 8 December 2005) strengthened the international legal status, privileges, and immunities of personnel of international organizations associated with international organizations personnel, as well as international security forces (blue helmets, etc.). The Convention on the Safety of United Nations and Associated Personnel (New York, 9 December 1994), clearly outlined the conceptual foundations of such persons, according to which "personnel of the United Nations" means persons recruited or deployed by the Secretary-General of the United Nations as members of the military, police, or civilian components of a United Nations operation; other officials and experts seconded by the United Nations or its specialized agencies or the International Atomic Energy Agency who are in the area of a United Nations operation in an official capacity. Further, "associated personnel" means persons appointed by a government or an intergovernmental organization with the consent of the competent organ of the United Nations; persons engaged by the Secretary-General of the United Nations or a specialized agency or, persons sent by a humanitarian non-governmental organization or a humanitarian agency pursuant to an agreement with the Secretary-General of the United Nations or with a specialized agency or the International Atomic Energy Agency. Thus, the analysis showed that the diplomatic law of international organizations is currently a branched sub-sector.

INSTITUTIONAL ASPECTS OF DIPLOMATIC LAW OF INTERNATIONAL ORGANIZATIONS

The diplomatic law of international organizations, being an intersectoral sub-branch of the law of international organizations and diplomatic and consular law, currently includes the following specific institutions: international legal status, internal and external law, privileges and immunities of state representations at international organizations; international legal status, internal and external law, privileges and immunities of representative offices of international organizations in member states; international legal status, internal and external law, privileges and immunities of international intergovernmental organizations; international legal status, internal and external law, privileges and immunities of international non-governmental organizations; international legal status, privileges, and immunities of officials of an international organization (international officials); international legal status, privileges, and immunities of personnel of international organizations; international

legal status, privileges, and immunities of personnel associated with international organizations and international legal status, privileges, and immunities of international security forces (blue helmets, etc.).

CONCLUSIONS

Today diplomatic and consular law includes four institutions or sub-sectors: diplomatic law, consular law, the law of special missions, and the diplomatic law of international organizations.

The diplomatic law of international organizations has a pronounced related character, i.e., it is intersectoral and refers both to the law of international organizations and to diplomatic and consular law because this sub-branch covers the issues of representation of international organizations on the territory of the member states, as well as diplomatic and consular law, since it also covers the representation of states in international organizations. The diplomatic law of international organizations is treated as the law of international organizations because this sub-branch covers issues of legal and legal status, internal and external law of representative offices of international organizations on the territory of member states, and representative offices of states at international organizations, as well as diplomatic and consular law because it also covers issues of diplomatic status, immunities, and privileges of representative offices of international organizations on the territory of member states and representative offices of states in international organizations. The diplomatic law of international organizations is a young and dynamically developing branch of international law, which is connected with both diplomatic and consular law and the law of international organizations. The formation of the diplomatic law of international organizations takes place within the framework of the process of codification and progressive development carried out by the United Nations. In all stages of codification and progressive development of both diplomatic and consular law, and the diplomatic law of international organizations, the UN International Law Commission took an active part, and almost all convention acts were developed by the Commission. In the era of globalization, a new sub-branch has been formed in the system of diplomatic and consular law - the diplomatic law of international organizations for the international legal regulation of international relations between states and international organizations and between international organizations and states. The formation of the diplomatic law of international organizations as a sub-

branch of diplomatic and consular law will make it possible to codify international legal norms in this area and ultimately serve as a progressive development of norms, principles, and legal relations in this area. The existence and effectiveness of the diplomatic law of international organizations are determined by the presence of an independent subject of regulation, sources, subjects, norms, and methods of regulation. Thus, all this predetermines the independence of the diplomatic law of international organizations as an adjacent (intersectoral) sub-sector of diplomatic and consular law and the law of international organizations.

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NON-GOVERNMENTAL ORGANIZATIONS (NGOS) – NEW WORLD ACTORS OF CONTEMPORARY INTERNATIONAL RELATIONS

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Abstract: The paper examines the status and influence of NGOs on international relations. It analyses major dilemmas regarding the position of NGOs. It examines their historical development, consultative status within the United Nations and possibilities of formal interaction with the UN Security Council. NGOs have had a noticeable impact on the development of international law, particularly in the areas of human rights and environmental law. They have influenced resolutions of the UN Security Council regarding the rights of women and the rights of children during conflicts. Lately, their growing influence has been characterized as problematic by some states. NGOs have been considered non-state actors. The author concludes that NGOs have developed some characteristics of legal subjectivity. The state is gradually losing its exclusivity in international relations. Without NGOs, international law and international politics would not be the same. Having in mind their growing role and influence, the author concludes that NGOs might be considered actors in the future of international relations.

Keywords: NGOs, international relations, international law, United Nations, Security Council, legal subjectivity.

INTRODUCTION

The Peace of Westphalia, signed in 1648, established a framework for contemporary international law whose primary participants are states.

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States enjoy entitlements and have obligations under international law. As such, they are subjects of international law. The possibility of recognizing subjects other than states was acknowledged by the International Court of Justice (ICJ) in the Reparation for Injuries Suffered in the Service of the United Nations case (ICJ Reports, 1949). The ICJ stated that the "subjects of the law in any legal system are not necessarily identical in their nature or in the extent of their rights, and their nature may depend upon the needs of the community. Throughout its history, the development of international law has been influenced by the requirements of international life, and the progressive increase in the collective activities of States has already given rise to instances of action upon the international plane by certain entities which are not States". Those "certain entities" have become known as non-state actors — individuals, multinational companies, private financial institutions, private military organizations, NGOs, etc. As non-state actors, NGOs are often considered controversial, especially in transition countries. NGOs are playing a very active role in international relations. Their actions influence numerous areas: democracy building, conflict resolution, disarmament and military surveillance, human rights, environmental activism, politics, etc. It is actually very hard to find an area in which NGOs are not included. They have become indicators of changes in international relations. NGOs have made a long journey from the 18th-century missionary associations to actors with a consultative status within the UN and an emerging goal of establishing formal cooperation with the UN Security Council. This paper poses the question of whether NGOs are old or new actors in contemporary international relations. With the aim of answering this question, the author analyzes the development of NGOs, their status within the UN, their contribution to international law development, as well as their growing influence.

DEFINING NGOs

Due to the variety of NGOs, it is not easy to make a clear definition. Some theorists use the term "NGO" to describe many different types of organizations that are not governmental, such as multinational companies, national liberation groups, etc. For others, the term "NGO" is used for private non-profit organizations encouraging higher values within the legal scope of their society (Martens, 2003, p. 2). Generally, despite the lack of a definition, there is agreement about the major characteristics of NGOs. An organization is an NGO if it is independent

of the direct control of any government. Also, an NGO is not constituted as a political party; it is non-profit-making, and its actions must be non-violent. Of course, in practice, some NGOs might be close to political parties or they might have an income from commercial activities (Willets, 2002). The term "international non-governmental organization" was used for the first time in United Nations Economic and Social Council Resolution 288B (X) from 1950 regarding cooperation between the ECOSOC and international NGOs. For the purpose of this arrangement, "any international organization which is not established by inter-governmental agreement shall be considered as a non-governmental organization". The agreement requires NGOs to have "an established headquarters, with an executive officer (…), as well as "conference, convention or other policy making body". Besides international NGOs, there are national NGOs whose activities take place under the law of the state in which territory they have been established. NGOs are not subjects of international law. They enjoy legal personality under national law, whether they are national or international NGOs. The lack of status in international law has been used by NGOs as an opportunity to contribute to political and legal issues when they would otherwise be excluded (Martens, 2003, p. 2). Along with the term NGO, there are also other terms used for this type of organizations, such as "non-state", "third sector", "voluntary", "non-profit" or "civil society organizations".

HISTORICAL DEVELOPMENT OF NGOs

Contrary to popular belief, NGOs are not a product of the 20th century. They originate from the 18th century. The roots of NGOs come from various forms of religious institutions, missionary associations, scientific societies, fraternities, or humanitarian organizations. The technical and social development of the 18th century created an environment suitable for the establishment and development of international non-governmental organizations. NGOs have been established in Europe, as well as in Asia and America. Their scope has been related to medical and humanitarian issues. The period of the 19th century was characterized by the expansion of transnational NGOs. The activities of NGOs were focused on the rights of women, sports, the protection of animals and medical issues. Three NGOs established during this period are still active: the Organization of the Red Cross, the International Olympic Committee, and the International Council of Women (Davies, 2018, pp. 16-19). In the 20th century, NGOs reached a whole new level and had a more active and

visible role. NGOs have made a significant contribution to decolonization and the development of anti-colonial norms. Along with the development of transnational companies, NGOs have been highlighting and drawing attention to some of the bad practices of multinational corporations. The emergence of regional organizations has been followed by the incensement of the establishment of regional-based NGOs and the possibilities of their cooperation (Davies, 2018, pp. 25-26). NGOs additionally established themselves as aspiring actors in international relations through cooperation with two universal organizations — the League of Nations and the United Nations. The Covenant of the League of Nations in Article 25 stated that "the Members of the League agree to encourage and promote the establishment and co-operation of duly authorized voluntary national Red Cross organizations having as purposes the improvement of health, the prevention of disease and the mitigation of suffering throughout the world." During its short existence, the League of Nations has successfully cooperated with national Red Cross organizations.

NGOs AND THE UNITED NATIONS

The next universal organization, the United Nations, continued the League of Nations' cooperation with NGOs. According to Article 71 of the UN Charter, "the Economic and Social Council may make suitable arrangements for consultation with nongovernmental organizations which are concerned with matters within its competence. Such arrangements may be made with international organizations and, where appropriate, with national organizations after consultation with the Member of the United Nations concerned". In the absence of international NGO law, the UN Charter and Article 71 have served "de facto as a charter for NGO activities". (Charnoviz, 2006, p. 357). The UN Committee on Non-Governmental Organizations is in charge of considering the applications of NGOs for consultative status with the UN and makes recommendations to the ECOSOC. In the meantime, formal arrangements for consultations with NGOs have changed several times: in 1950, 1968, and 1996. These have become the so-called "NGO rules". The NGO Rule from 1950 required that an NGO be of "recognized standing" and that it "represent a substantial proportion of the organized persons within the particular field in which it operates" (UN Economic and Social Council, 27 February 1950). The NGO Rule from 1968 is less strict compared to the NGO Rule from 1950. It requires that an NGO must "be of recognized

standing within the particular field of its competence or of a representative character". This rule also requires an NGO to "have a democratically adopted constitution" and to "have a representative structure and possess appropriate mechanisms of accountability to its members who shall exercise effective control over its policies and actions through the exercise of voting rights or other appropriate democratic and transparent decision-making process" (UN Economic and Social Council, 23 May 1968). The NGO Rule from 1996 regulates the suspension or withdrawal of the consultative status of NGOs with the Economic and Social Council. This might happen if an organization, either directly or through its affiliates or representatives acting on its behalf, "clearly abuses its status by engaging in a pattern of acts contrary to the purposes and principles of the Charter of the United Nations", "if there exists substantiated evidence of influence from proceeds resulting from internationally recognized criminal activities", or "if, within the preceding three years, an organization did not make any positive or effective contribution to the work of the United Nations and, in particular, of the Council or its commissions or other subsidiary organs" (UN Economic and Social Council, 25 July 1996). Some theorists consider that the Cold War influenced the UN's actions until the fall of the Berlin Wall in 1989. During the period from 1948 to 1989, the development process of the UN objectives was frozen and not very much open to the participation of non-governmental organizations in the governance process (Giorgi, 2019). On the other hand, consultative status makes a difference between NGOs and other non-state actors. It is some kind of recognition for NGOs. As consultative partners of the ECOSOC, NGOs perform numerous functions: they gather information, educate member states, help draft treaties, mobilize governmental and citizen support for the goals and politics of the UN, provide valuable information about on-the-ground conditions relevant to the UN, offer advice, etc. Even from the outside, NGOs are playing an important role in the UN. They are educating UN personnel, representatives of states, and the general public about emerging crises or issues that might cause international concern. NGOs pressure the UN and states to pay attention to such issues through lobbying, protests, naming and shaming, or media campaigns. Former president of Brazil, Fernando Cardozo, once stated: "The rise of civil society is indeed one of the landmark events of our times. Global governance is no longer the sole domain of Governments. The growing participation and influence of non-state actors is enhancing democracy and reshaping multilateralism" (Wapner, 2007, pp. 257-258).

POSSIBILITIES OF FORMAL COOPERATION WITH THE UN SECURITY COUNCIL

One of the NGOs' challenges for the future is the establishment of formal cooperation with the UN Security Council (SC). The SC is one of the most important global bodies, with a very specific structure and functions. It is often characterized as an elite or oligarchic club. How do NGOs see cooperation with the SC and what might they expect from it? NGOs were included in the negotiations on the reform of the Security Council in the 1990s. NGOs based in New York and Geneva established the NGO Working Group on the Security Council in early 1995, with the aim of influencing the reform debate. The working group organized two public meetings on reform topics as well as several private meetings with delegates of the SC. Relatively soon, it was clear that the reform of the SC was a never-ending story. The NGO Working Group decided to change course, and it started to organize a public dialogue between the SC members and the NGO community in 1996 to establish formal interaction. The NGO Working Group was not able to take common positions on the most important security issues, so members formed separate *ad hoc* groups to work jointly on advocacy topics (Paul, 2010). Theorists consider that, with time, the Security Council members "have increasingly turned to NGOs as partners and service contractors in emergency and post-emergency situations under the Council's authority" (Hill, 2002, p. 27). This cooperation between the SC and NGOs "has been satisfactory", having in mind the reputation and structure of the SC (Gordanić, 2021, p. 61). So far, cooperation between NGOs and the Security Council has been informal. NGOs are using multiple methods to interact with the Security Council: the Arria formula, bilateral meetings, naming and shaming, and lobbying. The Arria Formula is an informal forum used by the SC members to enhance their contact with NGOs, including local NGOs suggested by United Nations field offices. It is an important source of expertise and testimony on certain thematic issues, especially humanitarian ones. It might be considered an additional source of information for the SC. The regular meeting process implies informal briefings between individual members of the Security Council and NGOs, outside the chambers of the Council. This kind of interaction has been promoted primarily by the elected members of the Security Council, who have had the most to gain by working with NGOs. Most of the elected members, because of their limited resources, are not able to deal with the workload of the Security Council. They often turn to NGOs in order to

obtain information and expertise. This kind of interaction has become quite common since the early 2000s. Naming and shaming is a method of pressure on the Security Council for its activities or lack of activities regarding certain topics. This method has been successful in the areas of terrorism, human rights, humanitarian crises, etc. Through lobbying, NGOs seek contact with the SC representatives in order to convince them to address the issues of concern. Lobbying is often used in cases of human rights violations in a particular country (Binder, 2008, pp. 12-16).

NGOS' INFLUENCE ON THE RESOLUTIONS OF THE SECURITY COUNCIL

Even if informal, the interaction between NGOs is very important for the improvement of transparency of the SC. But the success of NGOs is limited in three ways. Firstly, their influence on the SC is the strongest in the so-called soft policy areas. Secondly, NGOs cannot access issues important to the permanent members of the Security Council. Thirdly, on the issues of international peace and security, it is a necessity to take appropriate measures in a timely manner. Only formal cooperation between NGOs and the SC can provide this request (Gordanić, 2021, p. 61). Having in mind the structure and tradition of the SC, any kind of NGO influence is a good influence. So far, NGOs have had the most influence on the position of women in conflicts and the rights of children during conflicts. Influence on women's rights started in October 2000, when a group of women's NGOs from Sierra Leone, Tanzania, Guatemala, and Somalia addressed the Council in an Arria Formula meeting, revealing the gender-specific conditions that women experience during conflicts. Under the presidency of Namibia, the Security Council held an open session during which speakers addressed issues of women, peace and security. As a result, the SC unanimously passed Resolution 1325 on Women, Peace and Security on October 31, 2000. The Resolution urges all parties to an armed conflict to take special measures to protect women and girls from gender-based violence, particularly rape and other forms of sexual abuse, and all other forms of violence in situations of armed conflict. The resolution provides a number of important operational mandates with implications for member states and the entities of the United Nations system. It might sound unbelievable, but Resolution 1325 was the first formal document from the Security Council dedicated to the protection of women in conflicts, especially the protection of women and girls from wartime sexual violence. Thus, in Resolution 2122, which

refers to women, peace and security, adopted by the Security Council on October 18, 2003, "the importance of civil society interactions is recognized". This kind of NGOs' acknowledgment by the Security Council is very motivational for further activities and efforts of NGOs. This resolution was not the last regarding the NGOs' acknowledgment by the Security Council. In this context, it is necessary to mention Resolution 2171 on the Maintenance of International Peace and Security, adopted by the SC on August 21, 2014. In this resolution, the SC "reaffirms its willingness to strengthen its relationship with civil society, including, as appropriate, though inter alia, meetings in an informal and flexible manner with civil society, to exchange analyses and perspectives on the issue of the prevention of armed conflict". Cooperation with NGOs might be a good opportunity for enhancement of the SC's transparency. Besides influencing the rights of women in conflicts, NGOs also make an important contribution to the rights of children during conflicts. Their lobbying on this issue resulted in the establishment of the United Nations' Special Representative of the Secretary-General on Violence against Children. As a result of NGOs' lobbying, the UN General Assembly adopted the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (OPAC) in 2000. This document became legally binding in February 2002. At the same time, the Security Council adopted a series of resolutions on the rights of children in armed conflicts, especially regarding the sexual abuse of children by combatants and the issue of child soldiers. Some of the most important SC Resolutions regarding children in armed conflicts are 1261 (1999), 1308 (2000), 1314 (2000), 1379 (2001), 1460 (2003), 1539 (2004), 1612 (2005) (Gordanić, 2021, p. 55).

NGOS AND INTERNATIONAL LAW

NGOs "bring expertise, commitment, and grassroots perceptions that should be mobilized in the interests of better governance" (Jacob Sending and B. Neumann, 2006, p. 663). They have been active participants in the process of the creation and development of international law. States, as subjects of international law, often consider NGOs as a periphery of international law-making. On the other hand, theorists point out that NGOs "have an important role in edging forward the boundaries of international law, by lobbying nationally, regionally and internationally, by attending and being witness to negotiations, by making written submissions and (…) by drafting alternative treaties" (Taylor, 1998, p.

325). NGOs have made a significant contribution to the development of human rights, environmental law, international humanitarian law, international criminal law, human security law and, to some extent, even economic law. Without the influence of NGOs, these areas of law would probably be less developed or differently shaped and structured. Treaties are immediate sources in international law. From the moment that states put themselves as signatories, they have duties. In the case of non-compliance, states will face some kind of sanctions that can harm their relations within the framework of international relations. The participation of NGOs in negotiations and the drafting of treaties is not insignificant, NGOs are increasingly "gaining space in the international scenario, because they also act as a bridge between society and states" (Giorgi, 2019). For example, NGOs have played important roles in developing proposals, promoting and building government support for a number of international agreements, including the UN Convention on the Rights of the Child, the Mine-Ban Convention (Ottawa Treaty) and the Rome Statute of the International Criminal Court. The Campaign for the Abolition of Torture by Amnesty International prompted governmental and non-governmental actors to embark upon an elaborate program of standard-setting aimed at the abolition and prevention of torture and related practices. To achieve this goal, Amnesty International has been mobilizing public opinion and exercising public pressure, which sometimes involves parliaments, political parties, churches and other religious bodies, trade unions, professional groups, and other organs of national and international society. NGOs also influence governments and parliaments in order to obtain the acceptance of international treaties through ratification or accession (Van Boven, 2015, p. 11). NGOs might have the status of observers. For example, Article 11 of the OSPAR Convention states, "The Commission may, by unanimous vote of the Contracting Parties, decide to admit as an observer (…) any international governmental or any non-governmental organization the activities of which are related to the Convention". As observers, NGOs can present to the Commission any information or reports relevant to the objectives of the Convention. The role of NGOs is important in the implementation of treaties, especially in the case of human rights treaties. For example, Article 45 of the Convention on the Rights of the Child states, "the Committee may invite the specialized agencies, the United Nations Children's Fund and other competent bodies as it may consider appropriate to provide expert advice on the implementation of the Convention in areas falling within the scope of their respective mandates.

The Committee may invite the specialized agencies, the United Nations Children's Fund, and other United Nations organs to submit reports on the implementation of the Convention in areas falling within the scope of their activities". NGOs have the status of *amicus curiae*. Some of the most relevant international courts, such as the European Court of Human Rights, the International Criminal Court for the former Yugoslavia, the International Tribunal for Rwanda, etc., have developed procedures to enable NGOs to attain the status of *amicus curiae*. This status is important for at least two reasons. NGOs have knowledge and expertise on certain issues. On the other hand, they are independent from the state. Courts can take their views and considerations as neutral, relevant and reliable (Gordanić, 2020, p. 210). For two reasons, critics claim that the influence of NGOs on international law is illegitimate. Firstly, NGOs often advocate for very special interests and very limited agendas. Secondly, in the sense of democratic representation, NGOs do not represent anyone. They are not elected or managed by citizens; their inner structure is often not democratic, and they are frequently asked questions about their finances and transparency. These critics are not very well-based because NGOs "do not have to prove any legitimacy" (Zengerling, 2013, p. 37). Legitimacy is a category related to state authority and the exercise of power by state organs in democratic societies.

THE POWER OF NGOs

Besides their power to influence international law, NGOs have the power to prevent the adoption of international treaties. A good example of this was the Multilateral Agreement on Investment (MAI), which was negotiated by the Organization for Economic Cooperation and Development (OECD) during the 1990s. The Agreement caused a lot of opposition and disagreement from various NGOs, which pointed to secret negotiations over the treaty to protect the rights of foreign investors and restrict the ability of governments to legislate in the public interest with respect to environmental and labor rights. NGOs started a campaign against the MUI. The campaign was focused on governments and citizens, and raised awareness regarding the treaty. NGOs' pressure and the campaign had been successful and the negotiations on MAI were abandoned (Carter, Weiner, Hollis, 2018, p. 151). How powerful and influential NGOs might be, proves the assertive legal strategies of some states. For example, China has made serious efforts through regulations to control and limit human rights organizations. In 2016, China enacted a

new law subjecting foreign NGOs to the prohibition of any activities that might endanger its national unity and security. Russia has a similar regulation. In 2021, Russia enacted new laws requiring NGOs that receive foreign funds to register with the Russian Ministry of Justice as foreign agents. A similar law, passed in 2015, allows Russian government officials to determine if a foreign organization is "undesirable" (essentially, a threat to national interests), subjecting it to administrative and criminal penalties and effectively banning its operation if it is found to be so (Plantan, 2017).

CONCLUSIONS

NGOs are unique actors in international relations. Unlike nation-states, they have no territory or sovereignty. Unlike multinational corporations, they have no economic power. Despite all this, NGOs have proven to be very influential actors, and sometimes very powerful ones as well. They have shown influence on international law. They have received international recognition due to their cooperation with the UN ECOSOC. They have shown influence on resolutions of the UNSC. Some states are afraid of their growing influence. Most NGOs' shortcomings arise from their lack of legal personality. NGOs are objects of international law. Despite some optimistic opinions from theorists on recognizing NGOs as international legal subjects, it is not realistic to expect that any time soon. Having in mind the contribution of NGOs and their place in international relations, their status is closer to the subject than the object of international law. In the case of NGOs, there is a discrepancy between their *de jure* conception of non-state actors and their *de facto* global socio-political role (Nijman, 2010, p. 95). Their status makes them more similar to international organizations than to other non-state actors (Gordanić, 2020, p. 216). NGOs should continue to use their unregulated status as they used to do. In the absence of international NGO law, everything that is not forbidden is allowed for NGOs. The 21st century is an age of technological development. Perhaps NGOs might find some new areas to develop or discover some new mechanisms to influence the actions of states and international organizations. The Covid-19 pandemic "had shown the lack of international cooperation and deepened rivalry between the major global actors" (Gordanić, 2022, p. 244). The current crisis in Ukraine might influence the possibilities of UN reform. If that happens, NGOs should use all possibilities to upgrade their status within the UN and establish formal cooperation with the SC. Also, many states and international organizations should be more open toward NGOs and

their knowledge and resources. Having in mind their tradition from the 18th century, NGOs are not, for sure, new actors in contemporary international relations. Their development, influence, and perspectives make them the actors of the future in international relations.

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GLOBAL ORGANIZATIONS

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UNIVERSAL ORGANIZATION OF THE UNITED NATIONS AND THE WORLD ORDER

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Abstract: The development of the universal international organization of the United Nations in the previous period was not at all easy due to the fact that since its foundation in 1945, the world order changed drastically and experienced several ups and downs. The polymorphic power structure that the United Nations gradually built after the end of the Second World War was reflected in the multiplication of the number of member states, but also in the strengthening of its main bodies, whose diverse competences were adapted to the requirements of the time. After the end of the Cold War, the United Nations began reaffirming the concept of preserving world peace and security, as well as building on the existing institutional system. The aforementioned efforts were a consequence of the democratization of international relations, as well as the increased determination of the international community to devote itself more actively to solving new international political crises. In this sense, the Charter of the United Nations represented the only relevant international legal base on which modern international relations should be built. The interdependence that exists between the development of international law and international relations is, therefore, best manifested through the application of the goals and principles of the Charter, which has remained a key determinant in the regulation of all important international problems and in preserving the universal value of the largest part of the international community.

Keywords: United Nations, General Assembly, Security Council, Economic and Social Council, Trusteeship Council, International Court of Justice, General Secretariat, Charter, international order.

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INTRODUCTION

The development of contemporary international relations shows that the universal organization of the United Nations has no alternative. The ideas for its creation derive from the program objectives and principles contained in the joint Declaration of the Presidents of the US and the United Kingdom of Great Britain dated August 14, 1941, known as the "Atlantic Charter" and the Declaration of the United Nations adopted on January 1, 1942, by representatives of the anti-fascist coalition in which the will was expressed for a joint fight against the Axis Powers and their other allies, but peace was also guaranteed to all freedom-loving peoples after the end of the Second World War. In the Declaration on General Security, representatives of the four major allied powers at the Moscow Conference held in October 1943 (the United States of America, the United Kingdom of Great Britain, the Soviet Union and the People's Republic of China) saw the need to create a general international organization based on the principle of sovereign equality of all peace-loving states and open for membership to all such states, large and small, in order to preserve international peace and security. Since the maintenance of international peace and security presupposed the re-establishment of law and order and the inauguration of a system of general security, this idea had to be further elaborated through the formulation of concrete principles and goals of the world organization, its membership and organization. This was first done at the expert conference held in Dumbarton Oaks from August 21 to October 7, 1944, where the draft of the Charter of the future world organization was discussed, but also other important issues such as the method of voting and the composition of the Security Council in which the great powers would have their special place and role, on which it was not possible to reach a compromise at that time. Therefore, at the Crimean Conference held in Yalta from February 4 to 11, 1945, the presidents of the US, the United Kingdom of Great Britain and the Soviet Union expressed their readiness to resolve this issue, and invited the governments of China and France to join the invitation for holding the founding Conference of the United Nations. The founding conference of the United Nations was held from April 25 to June 26, 1945, in San Francisco, and the Charter was adopted as the constitutive act of the international organization, which entered into force on October 24 of the same year (Nešović, Petranović, 1985).

In order not to repeat the mistakes of its predecessor – the League of Nations that operated in the period between the two world wars – the United Nations established a more perfect collective security system that

prohibited the use of force between states except in self-defense (Guggenheim, 1944, pp. 173, etc.; Russell, 1958, p. 648; Hilderbrand, 1990, p. 93). Namely, it was considered that such a normative approach would prevent any future aggression and ensure peace between nations. The international legal subjectivity of the United Nations, which, according to Article 104 of the Charter, is defined as the ability necessary to perform the main functions and achieve the established goals on the territory of each member state, should also have contributed to this. However, despite this great legal achievement, the collective security system of the United Nations has not fully demonstrated its superiority and effectiveness in international practice. Namely, this state of affairs arises from a paradoxical situation that is directly related to the structure and functional powers of the main bodies of the United Nations, primarily to the oligarchic composition of the Security Council, in which the great powers have a privileged position. With the adoption of the Charter, this organ of the United Nations with an "exclusive club" of permanent members gained the ability to concentrate power and centralize the monopoly of force. In the political reality after the end of the Second World War, this paradox led to certain deviations that had serious repercussions on international politics in which the main competitors in the East-West direction were military-political blocks led by the great powers. The Cold War environment was certainly not conducive to the development of peaceful international relations, which is why demands for the adaptation of the collective security system of the United Nations grew over time. As the achievement of optimal solutions on this level was directly related to the organizational structure of the world organization, these demands increasingly concentrated on the systemic reform of the United Nations, which could not be achieved without revision of the Charter and serious conflicts on the international political scene. Due to the disunity of large and small, developed and underdeveloped countries, due to the ideological division between countries of different socio-political systems, and first of all, due to the ever-present desire of the great powers to preserve their privileged position in the world organization that emerged from the ruins of the Second World War, it was not possible to achieve any serious progress on the reform plan (Dimitrijević, 2021, pp. 429, etc.).

The contemporary period of activity of the United Nations is fraught with various political processes and phenomena. The development of the world organization has been slowed down by current international events and tensions in the East-West and North-South directions. Until this situation is improved, it will be difficult to strengthen the institutional capacities of the United Nations. It is now quite clear that any change in the

organizational and functional structure of the United Nations presupposes respect for previously achieved solutions that followed the spirit of the times. Solving current international problems, primarily between the great powers, has a strong influence on the further development of the United Nations and its positioning in contemporary international relations. However, given the continuity of the world organization's activities, it is not excluded that it will have to approach the reaffirmation of the concept of preserving peace and security, as well as the expansion of the existing international legal and institutional order, the fundamental legal basis of which will continue to be the Charter. Without its presence, it would be difficult to imagine the development of contemporary international law and, subsequently, the regulation of contemporary international relations (Dupuy, 1997, pp. 1, etc.). The interdependence that exists between the Charter and the evolution of international law has long been confirmed in international practice (Šahović, 1998, pp. 239, etc.). Hence, any essential reforms of the United Nations presuppose a previous change in the positive legal basis of the existing international order, which largely functions through the system established in the United Nations Charter, whose universality remains significant for the future of the world.[1]

THE CHARTER OF THE UNITED NATIONS

The Charter of the United Nations is the constitutive legal instrument of the United Nations, setting out the rights and obligations of the member states and establishing its principal organs and procedures. From a legal point of view, the Charter is an international treaty that was concluded at the United Nations Conference in San Francisco on June 26, 1945, and came into force on October 24, 1945. The Charter consists of a Preamble and 111 articles grouped into 19 chapters. In Chapter 1, the goals and principles of the world organization are established. In Chapter 2, the criteria for admission to membership are established. Chapter 3 regulates the status of the main organs of the United Nations. Chapters 4 to 15 define their functions and powers, while Chapters 16 and 17 relate the UN to extant

[1] The initiated reforms of the United Nations are concentrated on the composition and functioning of its main bodies. Given the very limited results of these reforms so far and the difference that essentially exists between amending and revising the Charter, it is clear in advance why some major progress in the adoption of the "reform package" has not been achieved.

international law. The last two chapters, 18 and 19, define the rules for amending and ratifying the Charter. Article 1 of the Charter codifies the goals of the universal international organization related to the maintenance of international peace and security. Those goals include taking effective collective measures to prevent and eliminate threats to peace and suppress acts of aggression or other breaches of the peace. Above all, this means the use of peaceful means in accordance with the principles of justice and international law, which should lead to the adjustment or resolution of international disputes or situations that may lead to a breach of peace. Then, this also means the development of friendly relations between peoples based on respect for the principle of equal rights and self-determination, as well as taking other relevant measures to strengthen general peace. Solving international problems of an economic, social, cultural, or humanitarian nature implies the development of international cooperation. Promoting and encouraging respect for human rights and fundamental freedoms for all without distinction as to race, sex, language or religion is also one of the proclaimed objectives of the Charter. The United Nations should become the main instrument of the international community by achieving the stated goals. Along with the objectives, the Charter also codifies the principles of contemporary international relations. According to Article 2, these relations should be based on respect for the principle of sovereign equality of states, then on the fulfillment of international obligations in good faith, the resolution of international disputes by peaceful means that will not jeopardize international peace, security, and justice, and refraining from threats or the use of force against the territorial integrity and political independence of any State or in any other manner inconsistent with the purposes of the United Nations. In this regard, member states are obliged in principle to provide all assistance in any action undertaken by the world organization under the Charter, and to refrain from providing assistance to any state against which it takes preventive or coercive measures. The United Nations, on the other hand, according to the Charter, should ensure that non-member states also act in accordance with the aforementioned principles to the extent necessary to maintain international peace and security. At the same time, the Charter clearly states that its provisions do not authorize the United Nations to intervene in matters that essentially fall under the domestic jurisdiction of any states, nor can the world organization require member states to submit such matters for Resolution in accordance with the provisions of the Charter, which *in finem* does not prejudice the taking of actions in case of threat to the peace, violation of the peace and acts of aggression (Chapter VII). The interpretation of the goals and

principles as well as the rules of the United Nations Charter has never been irrelevant even for the states called to implement them in practice, and even less for the doctrine of international law, whose primary task has always been this. In this sense, one would have to accept the point of view that interpretation is a delicate legal endeavor that requires not only knowledge of the rules of legal interpretation, but also knowledge of the continuity of the United Nations and its bodies, as well as the evolution of the application of the Charter in practice (Pollux, 1946, p. 54). As a living instrument, the Charter represents the framework of the world organization, which is fulfilled daily by the practice of its bodies, whose functional powers have contributed to the inclusion and extension of the existing principles and rules framed by the Charter as the constitutive legal basis on which general international law rests *(Corpus juris gentium)* (Knight, 1999, p. 67). The interpretation of the Charter, therefore, requires a preliminary analysis of the structure of the United Nations. According to Article 7 of the Charter, the main organs of the United Nations that make up its structure are the General Assembly, the Security Council, the Economic and Social Council, the Trusteeship Council, the International Court of Justice, and the Secretariat (Conforti & Focarelli, 2016, pp. 75-155). However, the system of this universal international organization is much more broadly structured because it also includes 15 specialized agencies with their own constitutive acts (statutes) and legal personality, whose relations with the United Nations are regulated by special agreements (Dimitrijević & Račić, 2011, p. 227; Lapaš, 2008, p. 193).[2] Also, the United Nations system is complemented by a large number of programs and funds, as well as various specialized organs and bodies.

GENERAL ASSEMBLY

The General Assembly is the most democratic, political, deliberative, and representative body of the universal world organization. It is composed of all members of the United Nations and, in this respect, no distinction is made between original and subsequently admitted member states. The

[2] In accordance with the provisions of Articles 57 and 63 of the Charter, as well as the provisions of the Statute of each of the specialized agencies, agreements were concluded that regulate their mutual relations in detail and which, in principle, enable the United Nations to harmonize the policies and activities of the specialized agencies.

General Assembly meets in regular annual sessions or special sessions, as the occasion dictates.[3] The Assembly acts in accordance with its Rules of Procedure, which are an integral part of the Charter. Each member state has one vote. Decisions are made in accordance with the provisions of Article 18 of the Charter (qualified or simple majority).[4] Due to the fact that it gathers delegations from all member states of the United Nations, which have equal voting rights in the decision-making process, the General Assembly has contributed to the democratization of international relations.[5] Its sessions, which over time took on the appearance of a continuous diplomatic conference, were the institutional framework for the adoption of the most significant international legal and political acts (international conventions, resolutions, declarations, and recommendations). Beginning with the first session held in London on January 10, 1946, and up to the present day, the General Assembly has adapted its structure to the requirements of the times, gradually taking on greater responsibility in

[3] The regular session of the General Assembly, which represents the general debates of high state representatives, is held every year in the third week of September. In addition, the General Assembly can meet in extraordinary sessions convened by the Secretary General at the request of the Security Council or a majority of member states when certain issues need to be discussed. Also, an "urgent special session" is convened by the Secretary-General within 24 hours of the request of the Security Council based on the vote of any nine members of the Council or a majority of the members of the United Nations.

[4] The General Assembly, therefore, has the right to decide on important issues by a two-thirds majority of the members present and voting (for example, on the maintenance of international peace and security, on the election of non-permanent members of the Security Council, on the election of members of the Economic-Social and Trusteeship Council, on admission, suspension, and exclusion from membership, on the amendment and revision of the Charter, etc.), while on other issues, decisions are made by the majority of members present and voting. Since all important issues are not exhaustively listed in the Charter, the General Assembly can decide by a majority of the members present and vote that such issues should also be voted on by a two-thirds majority. In exceptional situations, the General Assembly also decides by consensus, i.e., without carrying out a formal procedure.

[5] Among other things, the democratization of international relations was contributed by fair geographical representation and the rotating system of the presidency of the General Assembly between five groups of countries: African, Asian, Eastern European, Latin American and Caribbean, and Western European and other countries.

performing the functions and powers stipulated in the Charter. This was especially noticeable after the fall of the *Iron Curtain* when, as part of the general development of international relations, the positions of the great powers changed and, even more sensitively, the status of a large number of states and other subjects of international law changed. The new situation directly affected the work and functioning of the General Assembly (Šahović, 2005; Dimitrijević, 2005–2006). In order to get rid of the enormous burden acquired during the Cold War conflict, the General Assembly proceeded to reaffirm the concept of preserving peace and security but also to the extension of the existing international order, the binding factor of which is the Charter, as a fundamental legal act and a living constitutional framework necessary for the implementation of the basic goals and principles of a universal international organization. With the determination to deal in a new way with the solution of the issue of human progress, which is connected with the solution of crucial problems in the economic, social, and political sphere, the General Assembly accepted the wishes and intentions of the member states directed in that direction, as well as the broadly coherent action of subjects inside and outside of the world system (governmental and non-governmental organizations, international financial institutions, transnational companies, private individuals, and civil society as a whole), in order to expand cooperation and coordination of actions. The ability to coordinate discussions on a wide range of world issues with the dispersion of authority at several organizational levels led over time to the situation that the General Assembly was transformed into a multidimensional body of the world organization in charge of solving the most diverse international problems.

In principle, the General Assembly of the United Nations has the right to discuss not only issues related to its exclusive powers prescribed by the Charter, but also subjects and tasks within the scope of powers of other bodies of the world organization. In this sense, the Charter of the United Nations speaks of the general competence of the General Assembly, distinguishing it from the so-called subsidiary jurisdiction of this body, which was not foreseen by the creators of the Charter, but which arose from the practice of the United Nations.[6] Thus, in relation to the maintenance of

[6] The general competence of the General Assembly includes functions and powers that, *inter alia,* refer to considering and making recommendations on the principles of cooperation in the maintenance of international peace and security, including the principles of regulating disarmament and regulating weapons, then discussing and making recommendations on any issue related to international

international peace and security, the General Assembly could not make recommendations regarding a dispute or situation decided by the Council until it was asked to do so. However, the General Assembly did so in practice, but only in situations where the Security Council, due to the absence of the consent of the permanent members, was not able to meet, discuss, and make meritorious decisions, i.e., when he was unable to meet his primary obligations arising from the Charter. We are therefore talking about cases when, due to the blocking of the work of the Security Council (most often due to the use of the veto), the General Assembly was authorized to, at the request of two-thirds of the member states or on the basis of a procedural decision of the Security Council, make recommendations on undertaking collective measures due to the existence of serious threats to peace, breaches of the peace, or acts of aggression.[7] The scope of competence of the General Assembly includes the possibility of starting a discussion on issues of maintenance of international peace and security brought before it by any member of the world organization or the Security Council or a non-member state of the United Nations in accordance with Article 35, paragraph 2 of the Charter (which stipulates the acceptance of the obligation of peaceful settlement dispute in accordance with the Charter). In addition to the above, according to the Charter, the General Assembly has the right to decide on admission, suspension of membership rights, and exclusion of countries from the world organization (Articles 4-6 of the Charter). That authority, as well as the authority to elect judges of the International Court of Justice and review the Charter, is shared with the Security Council. As part of the exclusive powers related to the expansion of international cooperation, the General Assembly has in the past sent recommendations

peace and security (except when the dispute or situation is being discussed by the Security Council), considering and exceptionally giving and recommending any matter within the Charter or affecting the powers and functions of any body of the United Nations, making recommendations for promoting international cooperation in the political, economic, social, cultural, educational, and health fields, etc.

[7] The aforementioned procedural rule was adopted on the occasion of the Korean crisis in 1950, when the General Assembly adopted the well-known Resolution 377(V) – *Uniting for Peace*. Based on this Resolution, a rule was established that the General Assembly can convene an "urgent special session" within 24 hours of receiving a request sent to the Secretary-General. The Resolution did not affect the powers of the Security Council, which remained primarily responsible for the preservation of international peace and security.

and given guidelines to the Economic and Social Council, member states, specialized institutions, and other bodies. The Assembly also approved treaties between the United Nations and specialized agencies and gave specialized agencies and other bodies the authority to request advisory opinions from the International Court of Justice. Although the General Assembly does not have legislative powers *stricto sensu*, its role in the codification and progressive development of international law has been manifested through the work of the International Law Commission.[8] As part of the administrative work, the General Assembly was competent to review and supervise the reports of the Secretary-General, the Economic and Social

[8] The Commission for International Law was established by General Assembly Resolution 174/II from 1947. The Statute of the Commission establishes the obligations of work on the preparation of draft contracts for cases that are not yet regulated by international law, or in relation to which the law has not yet been sufficiently developed in the practice of states. Also, the Statute prescribes the obligation to work on codification in terms of more precise formulation and systematization of the rules of international law in areas where there is already a wide practice of states and doctrines. The systematization and change of customary rules into written conventional rules therefore included the systematic development of new, so-called *development rules* from which modern international law emerged in various fields, which includes a large number of important international legal instruments, *inter alia*, the four Geneva Conventions on the Law of the Sea from 1958, the Convention on the Reduction of the Stateless from 1961, the Vienna Convention on Diplomatic Relations from in the same year, the Vienna Convention on Consular Relations from 1963, the Convention on Special Missions from 1969, the Vienna Convention on the Law of Treaties from 1969, the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents from 1973 of 1978, the Vienna Convention on State Succession in Respect to Treaties from 1978, the Vienna Convention on State Succession in respect to State Property, Archives and Debts from 1983. Although it contributed to the progressive development and codification of significant areas of international law, the International Law Commission was not always successful in terms of the legal incorporation of prepared international legal acts into the internal legal order of states (for example, the Vienna Convention on the Representation of States in their Relations with International Organizations of a Universal Character from 1975 and Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations from 1986, were not accepted even though their text was accepted at diplomatic conferences of the United Nations convened for that purpose).

Council, the Trusteeship Council, and subsidiary bodies, and also to review and approve the budget of the world organization. Also, according to the Charter, the General Assembly was authorized to receive and consider reports from the Security Council. It was exclusively responsible for the selection of non-permanent members of the Security Council and all members of the Economic and Social Council. Until 1969, the General Assembly was responsible for electing members of the Trusteeship Council who were not permanent members of the Security Council or did not exercise trusteeship over strategically important territories. According to current practice, at least 3 months before the holding of the regular annual session, the General Assembly elects the President and Vice Presidents of the Assembly as well as the chairpersons of its six main committees.

Considering the numerous and complex issues that over time came under the jurisdiction of the General Assembly (areas of international peace, security, political, economic, social, cultural and educational cooperation, codification of international law, human rights and freedoms, etc.), this body had to form a wide network of organs and bodies that helped in decision-making. That's how the General Assembly formed a network of six main committees that assisted it in dealing with disarmament and international security issues (First Committee), economic and financial issues (Second Committee), social, humanitarian, and cultural issues (Third Committee), political issues that included the issue of decolonization (Fourth Committee), administrative and budgetary issues (Fifth Committee), as well as legal issues (Sixth Committee). In addition to the main ones, the General Assembly also formed permanent committees for administrative and budgetary issues and for issues of member states' contributions, then committees for procedural issues, which include the presidency or the general committee and the verification committee. In addition to the committees, the General Assembly established other auxiliary *ad hoc* bodies and special bodies based on concluded multilateral international agreements. The ability to conduct discussions on a wide range of issues with the dispersion of authority on several organizational levels, over time led to the impression that the General Assembly has grown into a bulky and dysfunctional body that is unable to focus on the most serious problems of today's world. The adoption of a huge number of legally non-binding Resolutions and declarations contributed to the aforementioned impression, which largely led to the decline of the authority of the General Assembly. In the previous period, the reputation of the General Assembly was seriously damaged by an overloaded agenda, lengthy and convoluted debates, and slow procedures that often led to the

adoption of already seen and recycled Resolutions, without adequate mechanisms for their implementation (Račić, 2010, p. 95).

Demands for the reform of the General Assembly were therefore linked to the issue of the loss of legitimacy of the world organization. The question itself is not new and dates back to 1949. Even then, the world organization unsuccessfully tried to rationalize the procedure and organization of the General Assembly. In 1952, the Special Committee of Measures was formed, which had the task of assessing the possibility of time limits for regular sessions of the General Assembly. In November 1970, the General Assembly formed a number of committees, inter alia, the Special Committee for the rationalization of the procedure and the organization of its work. In order to provide a coherent vision that could contribute to the reform of the United Nations in the post-Cold War period, the General Assembly established five working groups in 1992. In August of the following year, it founded an informal Open-ended Working Group on the Revitalization of the Work of the General Assembly. At its 1995 session, the General Assembly established a High-Level Working Group to reach a consensus for strengthening the capacity of the world organization. In 1997, under the auspices of the General Assembly, an initiative was launched to involve civil society in the discussion on the reform of the world organization. When, during the 55th jubilee summit in 2000, the issue of reforms of the world organization was highlighted as one of the millennium goals, the Secretary-General, in order to restore the prestige and vitality of the General Assembly, recommended the establishment of the *National Millennium Assembly* as a non-governmental forum that should act in cooperation with the General Assembly to overcome all future international challenges. In the subsequent sessions, the need to strengthen the role and authority of the General Assembly in order to improve the efficiency and methods of its work was continuously repeated. In the report: *In Larger Freedom: Towards Development, Security and Human Rights for All,* dated March 21, 2005, Secretary-General Kofi Annan proposed steps towards the adoption of a reform package that would lead to the strengthening and revitalization of the General Assembly (Report of Secretary-General, 2005, p. 60). He underlined the importance of harmonizing the work of the General Assembly in order to increase its authority. Annan recommended structural and functional changes to the General Assembly's committees, strengthening the authority of the president, strengthening the role of civil society and changing the agenda. Although the report on the reform of the Secretary-General was far from comprehensive, the report represented an important step towards reaffirming the role and place of the General

Assembly in the United Nations system.[9] At the 60th session, the General Assembly adopted the text of Resolution 60/286 of September 8, 2006, which encouraged the holding of informal interactive discussions on current issues of importance to the international community. In 2008, an *Ad Hoc* Working Group on the Revitalization of the General Assembly was established, with a mandate to identify additional ways to improve the role, authority, effectiveness, and efficiency of the General Assembly. The *Ad Hoc* Working Group recommended that the President of the General Assembly be involved in an interactive debate on the revitalization of this body. In September 2010, the General Assembly adopted a Resolution reaffirming all its previous decisions related to the revitalization of its work. It was also decided to form a new ad hoc Working Group that would be open to all member states. From April to June 2012, the Working Group held several thematic sessions where they discussed issues related to the relationship of the General Assembly to other main bodies of the United Nations and groups outside the world organization system, working methods, implementation of resolutions and agendas, selection and election of the Secretary-General, in order to improve the capacity of the office of the President of the General Assembly, including the strengthening of its institutional memory and relationship with the Secretariat. The group also discussed many other technical and operational issues related to the revitalization of the work of the General Assembly. During the 67th session in 2012, several interesting interactive debates were held on a wide range of issues such as the role of international criminal justice in the reconciliation process, the global economy, peaceful conflict resolution in Africa, sustainable development and climate change, culture and development, entrepreneurship, and inequality in the world. In August 2013, on the eve of the 68th session, the President of the General Assembly reminded the member states of the world organization that the complex challenges facing the world today cannot be solved in isolation and that each state has a responsibility to implement United Nations reforms.

[9] In the mentioned Report of Kofi Annan, it is suggested to adopt the integrated proposal of the High Level Panel on Threats, Challenges and Change, which, a little earlier, in the report "A More Secure World: Our Shared Responsibility", dated December 2, 2004, as part of the implementation of institutional reforms of the world organization, among other things, proposed the establishment of a Human Rights Council that would replace the often criticized Human Rights Commission. That proposal was later adopted by the Resolution of the General Assembly no. 60/251 of March 15, 2006.

Insisting on the greater powers of the General Assembly, at the Working Group meeting, the Secretary-General reminded that the General Assembly was formed in 1945 to serve as the moral conscience of the international community. The General Assembly was created as a democratic set of rights for all nations — large and small, developed and developing — to live in peace, security and progress. However, in the past decades, the great promises of the founders of the United Nations, according to the Secretary-General, have not been fully fulfilled, and more and more countries consider that a more efficient, transparent, and comprehensive General Assembly is an imperative of the 21st century. Simultaneously with the presented position of the President of the General Assembly, it was decided to re-form an ad hoc Working Group at the 68th session to continue the work related to the reform of this body. As proposed, the new Working Group will continue to work on four groups of issues related to the role and responsibility of the General Assembly, its relationship with other main organs of the United Nations and regional organizations, and technical and operational issues such as the working methods of the General Assembly, issues of resolution implementation and rationalization of the agenda, issues related to the role of the General Assembly in the election of the Secretary-General and other administrative bodies in the system of the world organization, as well as issues of the functioning of the office of the President of the General Assembly, his relationship with the Secretariat, and ways of improving the institutional memory of the office. At the following 69th session, the General Assembly adopted Resolution 69/321, which reaffirmed the issues in four key clusters. At the same time, it established the basic criteria for the selection of the Secretary-General, while at the same time inviting the Presidents of the Security Council and the General Assembly to issue a joint statement for the purpose of conducting the selection and appointment procedure. The aforementioned Resolution suggests that the General Assembly conduct informal interviews with all registered candidates. However, the Resolution did not include the request that the Security Council present more than one candidate for the General Assembly, which was the proposal of several member states. Also, the Resolution did not deal with the issues of the appointment methodology for the Secretary-General nor with the duration of his mandate (since the proposal was made that he be elected for a single mandate of seven years instead of a renewable five-year mandate). The continuation of the debate on the revitalization of the General Assembly continued at its subsequent annual sessions (from 2016 onwards). However, an essential step forward in the realization of the foreseen solutions has not been made because there

is a deep division between the member states to bring the reforms to an end. Changes in international relations led to a new geopolitical division, which reflected on the position and work of the General Assembly. Instead of the former political coalitions of the countries of the West and the East, today the United Nations is divided into different interest groups within the global North and South, consisting of interest groups of developed countries on the one hand and interest groups of underdeveloped countries, i.e., developing countries on the other (Group G77, which also includes members of the Non-Aligned Movement, then a number of countries in transition to which the European Union countries from Eastern Europe belong, but also other countries from profiled subregional groups). The absence of consensus on the directions and ways of reforming the United Nations (primarily between the permanent members of the Security Council – P5) prevents the effective resolution of the issue of the revitalization of the General Assembly as its main representative body, which further entails repercussions in terms of preserving the dignity and increasing the authority of the world organization (Dimitrijević, 2016, pp. 169, etc).

SECURITY COUNCIL

The Security Council is the most important political body of the United Nations in which the great powers (the US, Russia, China, France, and the United Kingdom of Great Britain), as permanent members of this body, have their own special place and role (Mangovski, 1962, p. 417). This exclusive club (colloquially often referred to as the Power of 5 or P5) has an extremely privileged status compared to ten non-permanent members who are elected for a 2-year term by a qualified (two-thirds) majority of the states present and voting in the General Assembly (Jessup: 1956, p. 286; Avramov, 1965, p. 185; Jovanović, 1989, p. 217; Mikhailtchenko. 2004, p. 2).[10] The difference

[10] With the realization of the process of decolonization, the newly emancipated states on the African, Asian, and American continents began to exert more serious pressure in the United Nations, demanding the reform of the Security Council. The request was not supported for opportunistic reasons and due to the fact that its effect on the special rights of the great powers was not interpreted. A new proposal originated from 44 countries of Asia and Africa in 1963, based on which the General Assembly adopted Resolution 1991 (XVIII), December 17, 1963, on changing the number of non-permanent members of the Security Council from six to ten. With this change, the nomination system was confirmed, so that ten non-permanent members are elected according to the regional formula. Five non-permanent

in status was established *a priori* due to the different balance of power in the world. This led to a departure from the principle of equality of members of the world organization in favor of the principle of preserving international peace and security (Kelsen, 1945/1946, p. 1087). As a result, special criteria were established for the selection of non-permanent members of the Security Council. Namely, according to these criteria, states can be elected to the Security Council on the basis of their contribution to maintaining peace and security in the world, as well as on the basis of their contribution to the achievement of other important goals of the United Nations. Another authoritative criterion for the selection of non-permanent members is the assessment of their fair geographical representation (Article 23, paragraph 1 of the Charter) (Russell, 1958, pp. 648-649). Since in the practice of the United Nations, the evaluation of the criteria of contribution to peace and security (Chapter VII of the Charter) remained without concrete effects, the second criterion gained importance. However, this criterion was never completely clear and precise enough and was interpreted in different ways, so that it could represent the equal right of the states of the region to have their own representative in the Security Council, or it could represent the authorization of the states of different regions to participate proportionally in the work of the Security Council, considering the size of the region and the territorial proximity of the state of the region to the place of the outbreak of the political crisis. *In concreto,* the geographical criterion assumed that the role of the elected state was reduced to representing the political interests of the states of the region, which reinforced its voluntarist dimension (Bailey, 1975, p. 135).

The Security Council acts in accordance with procedural rules that correspond to its organizational structure. Thus, it can intervene *proprio moto,* anytime and anywhere, regardless of the fact that all its members have a permanent seat in New York. The presidency of the Security Council is held by each of the members in turn for one month, following alphabetical order. The convening of sessions can be on its own initiative, at the request of any

members are elected from Asia and Africa, two members are elected from Latin America, while one member is elected from Eastern Europe and two from Western Europe and other countries (meaning the countries of the British Commonwealth, Canada, New Zealand, and Australia, which do not belong to the mentioned groups). Every year, five new members are elected according to the rotation system, which enables a greater fluctuation in the composition of this body. A member whose mandate has expired is not in a position to be automatically re-elected.

member of the United Nations, regardless of whether it is a member of the Security Council or not, and then also at the request of the General Assembly or the Secretary-General. Although it is stipulated that the Council of Ministers meets at least every two weeks, in reality, its sessions are convened almost daily, and informal consultations regarding the adoption of the most important decisions and resolutions are ongoing almost continuously. As a selective representative body, the Security Council acts on behalf of the member states of the United Nations. When voting, each country in the Security Council has one vote. Decisions on procedural issues are made by a qualified majority, i.e., with the affirmative vote of 9 members (Article 27, paragraph 2). Decisions on essential issues are made by the Council with the affirmative vote of 9 members, including the affirmative votes of permanent members (Article 27, paragraph 3). There is not even an exception for the peaceful settlement of disputes from Chapter VI of the Charter, nor for the settlement of disputes through regional organizations and agreements (Article 52, paragraph 3), unless it is a member that is a party to the dispute when there is an obligation to abstain from voting. Permanent members in such cases often decide on the qualification of the dispute or situation (Elarby, 2003).[11] In accordance with the nature of the collective security system of the United Nations, the Security Council has the function to investigate any situation and dispute that may threaten peace and security, and then to help find appropriate solutions, as well as to take all necessary measures in the field of prevention and coercion. If he were to propose the introduction of coercive measures, then the prior determination of endangering or disturbing the peace would require the unanimity of all its permanent members. Although the Charter does not explicitly mention the right of veto (Article 27, paragraph 3), the provisions on voting allow the permanent members to prevent the adoption of a decision by their vote, even on procedural issues. This so-called *double veto* allows each member of the Security Council to have the right to request a preliminary declaration, whether the matter is procedural or substantive in nature, where such a decision is a substantive issue, *per se*. An exception is possible according to the Provisional Rules of Procedure, if the President of the Security Council puts this issue on the agenda, in which case any nine members can make a

[11] According to Art. 27, paragraph 3 of the Charter, a member of the Security Council participating in the dispute is obliged to abstain from voting. In practice, there were quite the opposite cases when the permanent members of the Council were both parties to the dispute and parties that decided on the merits of its existence.

positive decision (Bowet, 1982, p. 30). With the increase in the number of members of the Security Council, the importance of the mentioned decision also increased, because it was much more difficult for the permanent members of the Security Council (P5) to impose their individual or collective will more or less on the visible majority (Dedering, 2000, p. 75). Likewise, when deciding on the election of judges of the International Court of Justice, an exception is made by providing for an absolute majority of the votes of the members of the Security Council (Article 8 and Article 10 of the Statute). The same is the case when convening a General Conference for the revision of the Charter (Article 109), where the deviation is contained in the decision adopted by the qualified system of nine affirmative votes of any member of the Security Council.[12] The abstention of one of the permanent members of the Security Council in the voting procedure does not mean the use of the veto (Stavropoulos, 1967, p. 737).

Based on the provisions of the Charter, the Security Council was assigned specific powers and competences regarding the peaceful settlement of disputes (Chapter VI), taking actions in the event of a threat to the peace, violation of the peace and acts of aggression (Chapter VII), the use of regional agreements and organizations for coercive action (Chapter VIII), management and supervision of trusteeship territories (Chapter XII). Based on Article 24 of the Charter, states have entrusted the Council with a central role in maintaining international peace and security. In this respect, the

[12] In the abovementioned context, it is necessary to notice the difference contained in the Charter. Namely, according to Article 108 of the Charter, amendments to the Charter enter into force when they are adopted by two-thirds of the states in the Security Council, i.e., when, in accordance with the procedures prescribed by the Constitution, two-thirds of the members in the General Assembly, including permanent members of the Security Council, ratify the accepted amendments. The same procedure is prescribed by Article 109, paragraph 2 of the Charter in the context of convening the General Conference of United Nations members on the revision of the Charter (Article 109, paragraph 1). In the first case, it is obviously about partial changes to the Charter, while in the second case, it is about its essential changes that led to its revision. The adoption of amendments and the Charter revision procedure presupposes a majority voting system, since a qualified two-thirds majority of the members present and participating in the vote is not required, but a two-thirds majority of all states represented in the General Assembly, which concretely means securing two-thirds of the affirmative votes of the United Nations member states as affirmative votes of all permanent members of the Security Council, for which the principle of unanimity applies.

Charter clearly deprived states of the right to war *(ius ad bellum).* On the other hand, the Charter did not precisely formulate objective criteria to assess whether a threat to peace, a breach of peace, or an act of aggression really exists or not (Šahović, 1995, p. 29). It is up to the Security Council to determine in advance whether in a specific situation there are these violations that lead to a violation of the general peremptory obligation to renounce them (Article 2 point 4). When it finds that it exists, the Council makes recommendations or decides what measures to take in order to maintain or establish international peace and security (Article 39). It is understandable that for crisis political situations, the Council is asked to recommend some usual means of peaceful settlement of disputes, from negotiation, the use of investigative commissions, mediation, conciliation, and arbitration, to judicial settlement of disputes, resorting to regional institutions or agreements, but also other mutually accepted means (Article 33). In the event of a worsening of the situation, the Security Council has the right to call on the interested parties to comply with the temporary measures it deems necessary (Article 40). If there is further escalation, according to Article 41 of the Charter, the Council can decide on non-violent measures that the members of the United Nations should apply to implement its decisions. Practically speaking, these are different types of sanctions that directly or indirectly affect economic, traffic, diplomatic, and other relations with the offending state. If it turns out that the sanctions are not adequate, that is, they are insufficient, the Council can take military measures with air, sea, or land forces (Article 42). In that case, plans for the use of armed force should be drawn up with the help of the Military Staff Committee (Article 46). The preventive role of the Council can be performed on its own initiative, following a warning from the General Assembly, the Secretary-General, or even a country that is not a member of the United Nations but that is a party to the dispute. In the latter case, the non-member state would not have the right to participate in the decision (Article 32). In the exercise of the repressive function, member states that are not represented in this body may participate in making decisions related to the use of their contingents of the armed forces (Article 44). The motives for transferring the basic function of the organization to a smaller body such as the Security Council are contained in the opinion that through the Council as an operational-political body, it is possible to achieve a higher level of efficiency of collective security. Starting from the assumption that the great powers have greater political responsibility in decision-making than other members of the United Nations, the creators of the Charter, *a priori,* created a situation that enabled the concentration of authority and the centralization of the

monopoly of power in the hands of a narrow circle of elected states. This is most evident in the right to individual or collective self-defense, which is expressly recognized only until the moment of taking action by the Security Council (Article 51). In other words, it is confirmed that the member states of the United Nations are obliged to implement the decisions of the Security Council in accordance with the Charter (Article 25), and at the same time, the right is left to the permanent members to decide discretionally on the competences in the event of a possible violation of their vital interests (International Court of Justice Reports, 1971, p. 54; 1992, p. 126; Bedjaoui, 1994, p. 11). The ubiquitous antinomy between the political and legal forms of collective security in the Charter is supported by the free consent of the other members of the Security Council to act on their behalf and then by the synthetic option that the Security Council performs its duties in accordance with the goals and principles of the United Nations (Article 24), which has proved to be timeless and universal. Therefore, the political character of the Security Council does not exempt it from the obligation to respect the provisions of the Charter (International Court of Justice Reports, 1948, p. 64; Bowet, 1994, p. 92).

The functional organization of the Security Council as an executive-political body of the United Nations does not reflect the equality of its institutional and normative aspects. The division of competences, in which the powers in the area of peace and security are primarily concentrated within its framework, did not stand the test of time as a whole. The reasons are, inter alia, that the Charter does not provide for the possibility of replacing the permanent members of the Security Council and does not contain any provisions on expanding their number. Likewise, the Charter does not prescribe criteria to determine which countries in the world are eligible to become members of the exclusive club. In order to eliminate contradictions, it is necessary to provide certain mechanisms by means of which this situation can be resolved.[13] Flows of communication between

[13] The development tendencies of the collective security system of the United Nations led to the formation of the Peace Building Commission. The establishment of the Commission was encouraged by the High Panel of Experts. Due to the shared competence in matters of peace and security, the initiative was first supported by the Security Council based on Resolution 1645 of December 20, 2005, and then that proposal was supported by the General Assembly in Resolution 60/180 of December 30, 2005. The main task of the Peacebuilding Commission is to undertake actions in countries that have emerged from conflict and whose governments seek the help of the international community to regulate the difficult

opportunities and responsibilities require solving the problem of reforming the collective security system beforehand. Considering the real geopolitical changes that have taken place in the world after the post-Cold War era, we should not miss the historic opportunity to redirect the process of collective security reforms in the direction of real training of the United Nations to deal with the challenges of the new era (Report of Secretary-General, 21 March 2005).

In the aforementioned sense, it is first necessary to note that the use of force in new circumstances requires new and more precise rules. In recent years, states have often violated the general rule against the use of force and threats. The expansion of the scope of activities of the Security Council was therefore inevitable. The ideas of a new world order and global governance in the fields of peace and security had significant political implications, especially in the international community where conflicts were mitigated during the Cold War. At the same time, looking from the perspective of the Charter, three situations arose in practice. The first one referred to the use of force for the purpose of warning, based on the right to self-defense when the threat was not imminent *(pre-emptive use of force).* The second situation referred to the preventive use of force in conditions when the threat potentially or actually existed, but outside the borders of the state space *(preventive use of force).* And the third situation involved the use of force in the event of a threat, within the borders of the national territory. All three situations were covered by Security Council Resolutions. In a wide range of objectives, the Resolutions were the basis for the liberation of countries from occupation (Kuwait), the re-establishment of a legitimate government (Haiti), the restoration of international peace and security (East Timor), the supervision of economic sanctions (FR Yugoslavia), the establishment of international criminal tribunals for the former Yugoslavia and Rwanda (ICTY and ICTR), the formation of a court for the sanctioning of serious violations of international humanitarian law (Special Court for Sierra Leone) and the establishment of special chambers for the prosecution of war crimes and crimes of genocide (Extraordinary Chambers in the Courts of Cambodia). In some earlier cases, the authorization was given by the current authorities in the country (Albania), or by the government in exile (Haiti).

post-conflict situation. With the establishment of the Peacebuilding Commission, the United Nations, for the first time in its history, established a body whose mission in the field of collective security relies on the professional capacities of the world organization.

Observing the above examples *in extenso,* the actions of the Security Council were the *ultimum remedium* for the promotion, establishment, preservation or restoration of world peace and security. Hence, the Resolutions became the main instruments through which the Security Council acted in cases where it was determined that it would be politically justified (Blokker, 2000, pp. 541-563). Although it is a generally accepted rule that the main organs of the United Nations have at least the right to determine the limits of their prima facie competence, it would be realistic to ask whether all the actions of the Security Council were in accordance with general international law, that is, whether actions were quasi-legislative or quasi-legal in nature? In other words, has the practice of the United Nations become a sufficient tool for interpreting the existing international law? (Račić, 1997, pp. 39–64; Đorđević, 2000, pp. 371–387; International Court of Justice Reports, 1962, p. 168; Franck, 1993, pp. 196. etc.).

Taking into account that the objectives and principles of the United Nations are formally connected with the competence of the Security Council based on Articles 1, 2, 24(1) and 39 of the Charter, it is assumed that its action is in accordance with justice and international law. Since the goals and principles are no less indefinite than the concept of threat or breach of peace, it is clear that this action in practice does not have to be like that. Based on the solutions present in the positive legal system of collective security from Article 42 of the Charter and solutions that were proposed during the drafting of the Charter in the *travaux préparatoires,* the only and exclusive right to use force is given to the Security Council through the armed forces of the member states (Article 43) (Kelsen, 1950, p. 756). The new model of delegated empowerment of collective actions objectively originated from international practice and was nowhere explicitly mentioned as a possibility that members could use within the powers prescribed by the Charter (unless the hypothetical empowerment of actions is excluded based on Article 53, paragraph 1 of the Charter, could be enforced by regional agencies or agreements in relation to former World War II enemy states) (Pindić, 1978, p. 216). The legal interpretation of the Charter in such situations would be simply impossible. Therefore, it is necessary to interpret the problem much more extensively in light of the evolution of the rules and principles of the Charter and general international law. Their progressive development was foreshadowed in June 1992, when the Agenda for Peace was published, followed by an addendum dated January 3, 1995 (Reports of the Secretary-General, 17 June 1992; 3 January 1995). The traditional framework on collective security contained in Chapter VII of the Charter is significantly complemented by

this document with a broader concept of security which, in addition to the establishment and preservation of peace, foresees its construction and imposition. The agenda, in fact, in the interpretation of peace starts exclusively with the presence of the United Nations in the field. It emphasizes that in the new circumstances for which the world organization was not fully prepared, the suspension of the principles of consent of the parties, impartiality and non-use of force, except in the case of self-defense, can be fully justified. The experiences of the previous decade clearly show this. Namely, the mandates of the peacekeeping forces of the United Nations in peacekeeping operations are mainly related to the containment of conflicts within states. Covering themselves with much broader tasks than usual, the United Nations troops protected the civilian population in certain security zones and provided so-called *humanitarian aid*, but they also undertook actions of mediation and measures of concrete pressure on the parties to the conflict to achieve national reconciliation (for example, in Somalia, Bosnia and Herzegovina, and Rwanda) (Caron, 1993, pp. 552. etc.). Difficulties arose when the Security Council failed to fulfill its basic role in a timely manner and when it subsequently entrusted the tasks of coercion to groups of member states that demanded their international legal recognition for violent actions already undertaken (Rostow, 1991, pp. 506–516). The changed character of the conflict in the international community led to the mutation of the legal basis on which the previously known system of collective security rested. The political character of the decisions of the Security Council and the ability to decide on its own competence *(Kompetenz-Kompetenz)* led to more pragmatic positions that justified the possibility that the order of preserving world peace would be essentially completed, if not already, and formally replaced. Discussions about the justification of taking action, however, remained on the agenda of lawyers (Koskenniemi, 1995, pp. 348. etc.). Since the nature of the world organization was and always remained the same, ie. ideological, they will also represent part of a wider discussion about the future of global society (Bertrand, 1995, pp. 359. etc.). Finally, changes in the physiognomy of the membership of the Security Council do not cease to be one of the central themes of all proposals on the reform of the United Nations. The ideas presented so far within the Working Group of the General Assembly on issues of fair representation and the expansion of membership in the Security Council support the reaffirmation of the place and role of the United Nations in the new international order. In essence, the ideas have remained related to the structural reorganization of the Security Council until today (Winkelmann, 1997, pp. 35–90; Müller, 1997, p. 88; Dimitrijević,

2007, pp. 935-958).[14] On the other hand, the proposals submitted in connection with the functional reform of the Security Council, which includes issues of legal adaptation of its basic functions and changes in the system of collective security, remain extremely uncertain since they depend on a compromise that would be reached at the level of the overwhelming majority of states (Dimitrijević, 2008a, pp. 251-272; 2009, p. 400; Reports of Secretary-General, 2 December 2004; 21 March 2005, pp. 42–43). The direction of further developments was determined at the summit of heads of state and government held in September 2005. In the final document entitled: *Results of the World Summit in 2005,* the existing role of the Security Council in preserving world peace and security was reaffirmed. In the text of the mentioned document, the need to reform the Security Council is emphasized in order to achieve broad representativeness, efficiency and transparency, which could contribute to the effectiveness and legitimacy of its decisions. The adoption of the mentioned document showed the existence of a great disagreement among the member states of the United Nations regarding the direction of further reforms of the Security Council. The disagreement led to a new regrouping and division in the world organization. In order to untangle this political knot, in the future it will be necessary to find new methods of work in order to make the activity of the Security Council available to countries that are not its members, which could contribute to the democratization of this body and its increased responsibility in modern international relations (World Summit Outcome Document, 16 September 2005).

[14] The program of activities of the Working Group was divided into two sets of reform issues, namely, in relation to issues related to the expansion of the Security Council, decision-making, periodic reviews, and then in relation to issues related to the improvement of the publicity of the work, the participation of non-permanent members in its work, and relations between the Security Council, the General Assembly and other organs of the United Nations, including the issues of supporting, limiting and revoking the right of veto, as well as the possibility of amending the Charter. The debates conducted within the Working Group and the proposal group, which *inter alia* refer to immutability in relation to the existing permanent membership (the so-called *status quo model*), the possibility of expanding both permanent and non-permanent membership (the so-called *model of parallelism*), as well as the combination of these solutions (the so-called *regional model*), represent significant sources for a clearer understanding of the political and legal viewpoints of individual states, regional groups, and international organizations on the reform of the Security Council.

ECONOMIC AND SOCIAL COUNCIL

The Economic and Social Council (ECOSOC) is one of the main organs of the UN established by its Charter. ECOSOC was established to create the conditions of stability and prosperity necessary for peaceful and friendly relations among states. This specifically implies the implementation of the goals of the world organization, which are established in Chapter IX of the Charter and which, *inter alia,* refer to the improvement of international economic and social cooperation through increasing the standard of living, full employment and conditions for economic and social progress, solving international economic, social, health and related problems, improvement of international cultural and educational cooperation and respect and appreciation of human rights and fundamental freedoms.[15] Although the implementation of the aforementioned goals is primarily entrusted to the General Assembly, under its auspices, ECOSOC also has the necessary powers that are more closely prescribed in Chapter X of the Charter. As ECOSOC serves as a central forum for the discussion of important international issues related to economic and social development, it has within its mandate the ability to study and prepare reports on international economic, social, cultural, educational, health, environmental and related issues. It has the possibility, in addition to studying the mentioned areas and preparing reports, to make certain recommendations to the General Assembly, member states, and interested specialized agencies. According to Article 62, point 2 of the Charter, this possibility also extends to the area of respect for human rights. On issues within its jurisdiction, ECOSOC makes decisions by a simple majority. In practice, it is usual for ECOSOC to convene international conferences and prepare draft conventions for submission to the General Assembly. It can conclude agreements with specialized agencies that more closely regulate the issues of connecting the agencies with the world organization. Such agreements, according to the letter of the Charter, are subject to the approval of the General Assembly. In carrying out the prescribed tasks, ECOSOC can make certain recommendations to countries and specialized organizations with which it enters into agreements on the submission of reports on the implementation of those recommendations.

[15] Its activities in the field of human rights have been important and led to the adoption by the General Assembly of the Universal Declaration of Human Rights in 1948, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, both in 1966.

With the approval of the General Assembly, ECOSOC may provide services to the Member States and specialized agencies. It can conclude consulting agreements with interested international organizations, non-governmental organizations, and national organizations. In the last mentioned case, the conclusion of the agreement is preceded by consultations with the interested member state of the United Nations (Article 71 of the Charter). Article 65 of the Charter stipulates the possibility for ECOSOC to provide information and assistance to the Security Council at its request. In carrying out its work, the Economic and Social Council is assisted by nine functional commissions for different areas (statistics, forestry, prevention and criminal justice, fight against narcotics, social development, science and technology, sustainable development, women's rights, population, etc.). On the regional level, ECOSOC is assisted by five commissions: *the Economic Commission for Africa* (headquartered in Addis Ababa), *the Economic and Social Commission for Asia and the Pacific* (headquartered in Bangkok), *the Economic Commission for Europe* (headquartered in Geneva), *the Economic Commission for Latin America and the Caribbean* (based in Santiago de Chile), and *the Economic and Social Commission for Western Asia* (based in Beirut). In cases where the need arises, ECOSOC is assisted by other bodies such as standing committees (Committee for Program and Coordination, Committee on Non-Governmental Organizations and Committee on Negotiations with Intergovernmental Agencies) and expert bodies (for issues of geographical names, public administration, international fiscal cooperation, transportation of dangerous goods, economic, social and cultural rights, for indigenous issues, etc.) (Basic Facts about the United Nations, 2011, pp. 14-16).

Since the beginning of the work of this United Nations body, there have been several proposals for its structural reform. Thus, with the entry into force of the Charter on October 24, 1945, ECOSOC had 18 members elected by the General Assembly. With the increase in the number of members of the world organization, a proposal was made to reform the composition of this body. By Resolution of the General Assembly 1991B (18) of December 17, 1963, this proposal was adopted by amending Article 61 of the Charter and increasing the number of members of ECOSOC to 27. The next reform amendment to Article 61 of the Charter was based on the Resolution of the General Assembly 2847 (XXVI) of December 20, 1971, when the number of members was increased to 54. Given that each member of ECOSOC had one representative in the Council, and that each of them had one vote, according to the reform decision that entered into force on September 24, 1973, the representation of the states was supposed to be somewhat fairer because 14 members represented Africa, 11 member – Asia, 10 members – America and

the Caribbean, 13 members – Western Europe and other countries, and 6 members – Eastern Europe (Kreća, 2007, p. 507). However, although the members of the ECOSOC were elected on the basis of geographical representation, and decisions in ECOSOC were made by the majority of votes of the members present and voting, the adopted reform proposals, due to the present political opportunity, did not prove to be fair enough in everything. Therefore, the General Assembly soon adopted Resolution 32/197 of December 20, 1975, in order to make the functioning of ECOSOC somewhat more effective and efficient. Namely, referring to the previously voted Resolutions on the establishment of the New Economic Order and on the Charter on the Economic Rights and Duties of States, the General Assembly, on the proposal of the *ad hoc* Committee for the Restructuring of the Economic and Social Sector of the United Nations, proposed strategic priorities for the functioning of ECOSOC in the economic and social sphere in the coming period. Priorities included coordinating the work of the General Assembly and ECOSOC, as well as improving the efficiency of the entire United Nations system in the field of international economic cooperation (Luck, 2003). At the end of the eighties of the 20th century, there was a new split between the group of developed and developing countries. Thus, the Group of 77 submitted several draft Resolutions to the General Assembly proposing the introduction of universal membership in ECOSOC. Due to the opposition of a group of developed countries (especially P5), the draft Resolutions did not pass the voting procedure. At the 50th session of the General Assembly in 1996, Resolution 50/227 was presented with the new requests for strengthening ECOSOC. For the sake of further restructuring and revitalization of the United Nations system, the General Assembly recommended that ECOSOC continue to strengthen its role as a central mechanism for coordinating the activities of the world organization and its specialized agencies (such as the FAO, ILO, WHO, and UNESCO), and as a body responsible for supervising subsidiary bodies and functional bodies. It also recommended that ECOSOC continue coordinating activities related to the realization of the results achieved at the most important international conferences in the economic and social fields. In the latter period, these recommendations were joined by another one related to assuming a role in the field of managing the global economy. The second round of important reforms of ECOSOC was initiated during the 57th session of the General Assembly in 2003, when the ad hoc Working Group submitted a proposal for a Resolution on coordinated and integrated implementation and monitoring of United Nations conferences. The General Assembly adopted the proposal and passed Resolution 57/270B of 3 July

2003, under the title "Integrated and Coordinated Implementation of and Followup to the Outcomes of the major United Nations Conferences and Summits in the Economic and Social Fields", by which the Economic and Social Council and its subsidiary bodies (first of all, functional-technical and regional commissions), and the bodies, funds, and programs it founded, were entrusted with the role of implementing and monitoring the achieved results in managing the development process of the world organization. Despite the progress achieved in the nineties of the 20th century, the efficiency and effectiveness of ECOSOC were not satisfactory, so in the conclusions of the final document of the jubilee summit of the General Assembly from 2005, paragraphs 155 and 156 mention the need for its further strengthening as well as the adaptation of its functional competences for the purpose of fulfilling the planned development goals. This, in fact, meant that ECOSOC should take on the role of promoter of global dialogue in the economic, social and humanitarian spheres, as well as in the field of environmental protection. In this sense, it should also serve as a qualitative platform at a high level that would enable greater engagement by member states, financial institutions, the private sector, and civil society in advancing development goals. Within the framework of their implementation, ECOSOC should be the organizer of high-level forums for cooperation and development, which would clearly bridge the gap between the normative and operational functioning of the United Nations system. Also, ECOSOC should monitor the achieved results from international conferences, then review reports at annual ministerial consultations and improve the work of functional-technical commissions, regional commissions and other bodies, funds, and programs of the United Nations (World Summit Outcome Document, 16 September 2005).

At the summit, the General Assembly adopted several important resolutions, among which Resolution 61/16 of November 20, 2006, confirming the need to strengthen ECOSOC through the mechanism of reviewing reports on the implementation of the Development Agenda, including the Millennium Development Goals of the United Nations (Annual Ministerial substantive Review) (Strengthening of the Economic and Social Council, GA Res. 61/16, 20 November 2006). The Resolution also instructs ECOSOC to hold a Development Cooperation Forum every other year and to monitor trends and progress in the development of international cooperation, i.e., to monitor the regulation of issues of quality and quantity of aid and to provide guidelines on practical measures and political options on how to improve the coherence and effectiveness of its work. The Resolution also planned that the first annual ministerial review of progress

reports, as well as a forum for cooperation and development, would be held in July 2007 in Geneva (after which the forums would be held in New York). Immediately after the adoption of the aforementioned Resolution, ECOSOC adopted decision E/2006/274 of December 15, 2006, which provided additional modalities for its inclusion in the preparation of the aforementioned meetings. On that occasion, ECOSOC specifically referred to "the role of the United Nations system in promoting full and productive employment and decent work for all". After the mentioned period, ECOSOC was the subject of consultations on the comprehensive reform of the United Nations system. In particular, those consultations considered the possibility of adopting a new Resolution that would elaborate on earlier progress (ECOSOC Decision, 10 February 2006).

With the outbreak of the world economic crisis, the center of gravity of economic problems was transferred to the jurisdiction of the G-20 group. This situation was also contributed to by the attitude of some developing countries that global economic problems should be solved outside the United Nations system in the future, which additionally raised questions about the role of the world organization in the globalized system of managing the world. At the conference of the United Nations General Assembly held in July 2009, which was dedicated to financial and economic crises, the role of ECOSOC was elaborated. The member states agreed that it is necessary to support the coordinated responsibility for the development of the United Nations system by implementing the adopted documents in order to help the consensus regarding the implementation of policies related to the world economic and financial crisis and their impact on development. At the conference, ECOSOC was asked to send recommendations to the General Assembly in accordance with the provisions of the Doha Declaration, adopted on December 2, 2008, regarding the strengthening of the development financing process. Also, ECOSOC was required to examine the possibility of strengthening institutional arrangements in order to promote international cooperation in the field of fiscal policy, as well as in the field of cooperation with international financial institutions. After that, the General Assembly adopted Resolution 63/303 of July 13, 2009, which recommended the establishment of an ad hoc Panel of Experts to analyze and provide technical expertise on overcoming the world economic and financial crisis. As a result of the above, it is clear that significant progress was made in the reform of ECOSOC in the earlier period. However, it seems that in recent years, due to the negative impact of the global economic and financial crisis, this organ of the United Nations has remained quite marginalized. Certain limitations arising from the structure of the world

economy, changing interests of developing countries and still-present ideological conflicts between the member states of the world organization contributed to this. ECOSOC, one of the main organs of the United Nations, therefore became more and more a forum for the discussion of the Agenda for Sustainable Development and the Millennium Development Goals between the countries of the South, which did not share the interests of the developed countries of the North and which advocated solving the world's most important economic issues outside the institutional framework of the United Nations. In order for ECOSOC to regain its authority, i.e., to revitalize its role and place in the world economic and social system, it will most likely be necessary to develop cooperation with the most important international financial organizations and the World Trade Organization, but also to consolidate the mechanism for reviewing reports on the implementation of development goals and biennial forums for cooperation (Chimni, 2011, pp. 48-54). In this regard, the General Assembly also contributed with Resolutions 68/1, 72/305 and 75/290A, which strengthened the role of organization in identifying new global challenges, promoting innovation, and achieving a balanced integration of the three pillars of sustainable development — economic, social, and ecological. This was of great importance for the cooperation established between ECOSOC and the High-Level Political Forum on Sustainable Development (HLPF), whose formation was envisaged in the final document of the United Nations Conference on Sustainable Development (Rio+20), "The Future We Want", in 2012.

TRUSTEESHIP COUNCIL

After the Second World War, the Charter of the United Nations recognized the rights of colonial peoples to emancipation and self-determination. These rights were gradually realized in practice through the process of decolonization, whose legal foundations are established by Chapter XI and Chapter XII of the Charter regulating the status of Non-Self-Governing and Trust Territories. The decolonization of Non-Self-Governing Territories included colonial areas with a status separate from the territories of administrative states responsible for providing assistance in the political, economic, social and educational progress of the colonial population and in the gradual development of their political institutions. On the other hand, the trusteeship system was established for former colonial mandates, territories seized from enemy states after the Second World War, and territories voluntarily placed under the system of trusteeship by states

responsible for their administration. The system had the task of providing assistance not only in the political, economic, social, and educational development of the population but also in acquiring a greater scope of self-government and independence.[16] In a functional sense, the member states of the United Nations have undertaken to regularly submit reports to the Secretary-General of the United Nations, as well as statistical and other technical data concerning the economic, social, and educational conditions of Non-Self-Governing Territories. The obligation to report prescribed by the Charter was part of the mechanism by which the General Assembly controlled the implementation of the decolonization process in these areas. In relation to the exercise of trusteeship functions, Chapter XIII of the Charter prescribed the special responsibility of the Trusteeship Council, as one of the main bodies of the United Nations responsible for all Trust Territories, except for strategic ones, which remained under the jurisdiction of the Security Council. The Trusteeship Council had the ability to consider reports, receive and examine petitions, and compile questionnaires on the progress of the population of the Trust Territory, as well as to perform other functions in accordance with the provisions of the Trusteeship Treaty concluded by the Trustees and the United Nations for five or ten years. After the expiration of the term, the General Assembly had the possibility to take into consideration the newly created situation (the level of development of the people and their capacity for self-government, the possibility of raising a higher degree of independence and declaring independence). Through the work of the Special Committee on Decolonization, which was established by the General Assembly in 1961 with the task of fulfilling the goals set out in the Declaration on Granting Independence to Colonial Countries and Peoples adopted the previous year, in 1960, the decolonization process was accelerated, which led to a drastic decrease in the number of Non-Self-Governing Territories at the beginning of the 21st century. Based on the freely expressed will embodied in the right to self-determination, most of the 72 Non-Self-Governing Territories gradually gained self-government by

[16] The trusteeship system was established over eleven areas, namely Togo and Cameroon, which were divided into French and British parts; over Tanganyika, which belonged to Great Britain; over Somalia, which belonged to Italy; over Western Samoa, which belonged to New Zealand; over Rwanda-Urundi, for which responsibility was assumed by Belgium; over New Guinea and Nauru, administered by Australia; and over strategic islands in the Pacific that were claimed by the United States of America.

free association and integration with already independent states or by gaining complete independence through various forms of political struggle (from violent rebellions, waging liberation wars and revolutions, to organizing peaceful plebiscite declarations). On the other hand, the Trust Territories gained more or less self-government after a plebiscite (for example, Togo in 1958, Cameroon in 1960, Tanganyika in 1961, Rwanda, Burundi, and Samoa in 1962, Nauru in 1968, and Papua New Guinea in 1975). That is, the trusteeship was definitively ended over Namibia, the Marshall Islands, and the Federated States of Micronesia in 1990, as well as over the Pacific Islands of Palau in 1994, which led to the suspension of the work of the Trusteeship Council (Dimitrijević, 2008b, pp. 107-114).

INTERNATIONAL COURT OF JUSTICE

The International Court of Justice is the main judicial body of the United Nations, whose seat is in The Hague (Netherlands). It is also the most authoritative judicial body in the world, competent to judge only states. Since 1946, the International Court, as a legal successor of the Permanent International Court of Justice, which existed between the two world wars within the framework of the League of Nations (whose body it was not otherwise), acts as an independent judicial body of the United Nations. Its composition consists of fifteen judges elected by the General Assembly and the Security Council on the basis of their qualifications, taking into account geographical representation and the representation of all major legal systems in the world. The International Court of Justice otherwise acts in accordance with the Statute as an integral part of the UN Charter and Rules of Court. With specific competences within the universal international legal order established by the Charter of the United Nations, the International Court of Justice has a decisive role in resolving legal disputes and providing advisory opinions on legal issues (Račić, 1995, pp. 110-128). According to the prescribed procedural rules, the International Court of Justice in all presented disputes first examines the existence of its own "mainline jurisdiction", and when it determines that this jurisdiction exists, it takes over the resolution of the case or the substance of the dispute (makes a decision *in meritum*) (Gill, 2003, pp. 67, etc.). The assessment of the fulfillment of the conditions necessary for the establishment of jurisdiction is all the greater if the Court, in its decisions, considers all aspects of judicial jurisdiction related to personal, real and temporal jurisdiction *(jurisdictio ratione personae, jurisdictio ratione materiae,* and *jurisdictio ratione temporis).* In assessing the existence of personal jurisdiction, the International Court of

Justice acts according to the rule established in the provision of Article 34, paragraph 1 of the Statute, which stipulates that only states can be parties to disputes brought before it *(jus standi in judicio).* (Janković & Radivojević, 2011, p. 403).[17] In this sense, the Court examines the conditions prescribed in Article 93 of the Charter of the United Nations and Article 35 of the Statute, according to which the Court is available to member states of the United Nations that are *ipso facto* parties to the Statute, but also to non-member states that can become parties to the Statute under the conditions that are determined in each individual case by the General Assembly on the recommendation of the Security Council.[18] Given that the principle of sovereign equality allows states the freedom to choose peaceful ways of resolving disputes, and states that are not members of the world organization, that is, that are not parties to the Statute, can bring their disputes before the Court under the conditions determined in each case by the Security Council, adhering to the special provisions contained in the contracts in force and taking into account the equality of the parties to the dispute.[19] The aforementioned rule derives from the general jurisdiction of

[17] International organizations cannot be parties to proceedings before the International Court of Justice. Litigation parties cannot be their bodies either. However, international organizations can request advisory opinions from the Court through the General Assembly, which confirms that international organizations have procedural capacity. In certain cases, the Court is authorized to request information from public international organizations regarding disputes before it, as well as to receive information from organizations that submit them on their own initiative. The Statute and Rulebook do not mention the possibility of an individual appearing before the Court. However, the countries of which they are nationals can protect their interests before the Court. From the moment a state appears before the Court on behalf of its citizens, the Court recognizes only the state as a litigant.

[18] For states that are not members of the United Nations, but are parties to the Statute, those conditions are formulated in the General Assembly Resolution 91 of December 11, 1946, and refer to the declaration of acceptance of the provisions of the Statute, obligations prescribed in Art. 94 of the Charter, along with obligations from Articles 25 and 103, as well as the financing of the International Court of Justice. Such was the case with Switzerland, Liechtenstein, Japan, San Marino, and Nauru before joining the world organization.

[19] For states that are not members of the United Nations, nor parties to the Statute, the rule established by Security Council Resolution 9 of October 15, 1946, which requires a declaration to the Court Secretariat on acceptance of jurisdiction in relation to a specific case or in general. In the latter case, there is a possibility of accepting compulsory jurisdiction.

the International Court of Justice, which is covered by the Charter of the United Nations or valid international treaties (Article 36, Paragraph 1 of the Statute). In principle, the Court's jurisdiction extends to all disputes brought before it by the parties. Since the states are the only ones that can appear before the Court, it follows that the Court is ex officio obliged to determine whether the states have given their consent, as well as whether that consent is conditioned by certain reservations.[20] It clearly follows from this that the jurisdiction of the Court is conditioned by the principle of consent of the parties (The International Court of Justice, Questions and Answers, 2000, pp. 25-46). Generally speaking, the Court's jurisdiction is constituted by an agreement, either in advance, to resolve all or certain disputes that may arise in the future, or by concluding international agreements or conventions that stimulate a special compromissory clause, which leaves disputes regarding their interpretation or application to judicial decision-making. (so-called *ante hoc* jurisdiction). The agreement can stipulate the jurisdiction of the Court on a case-by-case basis (the so-called *ad hoc* jurisdiction), or the agreement can be reached in the event of unilateral declarations of will to accept the compulsory jurisdiction of the Court on any issue of international law (when states accept the so-called facultative or optional clause from Article 36, Paragraph 2 of the Statute) (Hambro, 1948, pp. 133-137; Merrills, 1979, p. 87; Shaw, " 1997. pp. 219. etc.).[21] Only in exceptional cases (the Mavrommatis

[20] Reservations can be essential and concern the exclusion of disputes with certain states *(ratione personae),* then the exclusion of disputes regarding issues that are considered to fall within the domain of the internal competence of states *(ratione materiae),* or they can refer to the exclusion of disputes whose factual basis is created before a certain date that is not covered by the optional statement *(ratione temporis*).

[21] According to the provisions of Article 36, paragraph 2, the Statute stipulates that states can at any time declare that they recognize *ipso facto,* and without a special agreement towards any other state that receives the same obligation - the jurisdiction of the Court in all legal disputes that have as their subject: a) the interpretation of a contract; b) any issue of international law; c) the existence of any fact that, if established, would represent a violation of an international obligation; d) the nature or size of the due compensation due to the violation of an international obligation. The majority of the United Nations members did not accept the compulsory jurisdiction of the International Court of Justice, which shows the discrepancy between the positions expressed on the general plan and the readiness of the states to accept the compulsory jurisdiction of the Court. At the same time, it should be noted that four of the five permanent members of the Security Council are among them. The optional clause binds only Great Britain as a permanent member of the Security Council.

Jerusalem Concessions Case and the Case of German settlers in Upper Silesia before the Permanent Court of International Justice), tacit establishment of Court jurisdiction is possible *(forum prorogatum)* (Publications of Permanent Court of International Justice, 1923; 1925).[22] According to Article 36, paragraph 6 of the Statute, the International Court of Justice decides on its own jurisdiction in any case in which there is a dispute on that issue *(compétence de la compétence)* (Shihata, 1965, pp. 27-30). As for the method of determining substantive jurisdiction, the International Court of Justice, as a rule, determines its existence *ex officio*, whose domain includes resolving disputes in inter-state proceedings and giving advisory opinions. The subject matter of the dispute should concern the rights or interests based on the legal basis of the party filing the claim. The right or interest must be established by a valid rule binding the parties to the dispute. All presented disputes are resolved by the International Court of Justice in accordance with international law, according to the rule from Art. 38 of the Statute, where the following sources are at his disposal: a) conventions, whether general or special, establishing rules expressly recognized by the states in dispute; b) international customs as evidence of general practice accepted as law; c) general legal principles recognized by civilized nations; d) auxiliary sources contained in court decisions and doctrines of the most renowned public law experts of various nations. The application of the aforementioned legal sources does not prejudice the right of the Court to apply and resolve the dispute *ex equo et bono*, if the parties to the dispute agree to it (Article 38, Paragraph 2 of the Statute). In the context of a fair trial, every Court decision would have to be fair, which in principle does not go beyond the framework of positive international law (International Court of Justice Reports, 1969, p. 48).[23] In the case of accepting the settlement of the

[22] The fact that one party did not accept the jurisdiction of the Court at the beginning of the proceedings does not automatically lead to the situation that the Court declares itself incompetent. Namely, in the further course of the proceedings, the other party can recognize and accept the jurisdiction of the Court. In the case of minority schools in Upper Silesia, the Court pointed out that the consent of the state to resolve the dispute before the Court does not necessarily have to be expressed explicitly, but can be achieved tacitly through conclusive actions. The establishment of judicial jurisdiction tacitly during the proceedings *(forum prorogatum)* is an institution taken over from classical Roman law.

[23] In the context of the dispute regarding the delimitation of the continental shelf in the North Sea between Denmark and FR Germany, and then FR Germany and the Netherlands, the International Court of Justice determined that the establishment

dispute *ex equo et bono*, these frameworks would certainly be moved by the subjective perception of the fairness of the members of the judicial panel, which, considering the mistrust that exists between the parties in the dispute, has not been practically possible until now. After finding that it has personal and substantive jurisdiction in the case in question, the International Court of Justice proceeds to determine the limits of temporal jurisdiction. In this respect, the Court's temporal jurisdiction is a reflection of these two jurisdictions (International Court of Justice Reports, 1960, p. 34). As a matter of principle, the International Court of Justice starts from an extensive interpretation of temporal jurisdiction because it accepts a rebuttable presumption of retroactive validity of the legal basis on which its personal and substantive jurisdiction is based (International Court of Justice Reports, 1999, pp. 552, etc.).[24] Extensive interpretation of provisions from international treaties and agreements regarding the establishment of temporal jurisdiction does not formally affect legal certainty. This is all the more so because contracts and agreements do not subsequently constitute responsibility that did not exist at the time when certain acts were committed, but procedurally determine the existence of material

of rights represents the establishment of justice in the objective sense, which specifically means that decisions must not be outside the law but in accordance with it, and that in that context, when deciding, the Court refers to fair principles.

[24] In a case before the International Court of Justice that concerned the legality of the use of force for states that accepted jurisdiction within the optional clause (Belgium, the Netherlands, Portugal, and Canada), the Court found that the declaration of the FR Yugoslavia of April 25, 1999 could constitute a basis for establishing compulsory jurisdiction only for disputes that have already arisen and disputes that could arise after its signing. Consequently, the Court concluded that it could exclusively refer to situations or facts that occurred after April 25, 1999. Considering the issue of *prima facie* jurisdiction, the Court stated the following: "Given that, on the one hand, FR Yugoslavia expected the Court to accept jurisdiction *ratione temporis* for already existing disputes or disputes that may arise after the signing of the declaration, on the other hand, and in relation to the facts and situations arising after this signing, in order to assess whether the Court has jurisdiction in the case in question, it would be sufficient to determine in the context of its content whether the presented dispute arose before or after April 25, 1999, as the date when the declaration was signed". Hence, the Court concluded that the bombing began on March 24, 1999 and continued continuously until and after April 25, 1999, and since there is no mutual consent, the declarative statements of the parties do not constitute a legal basis for the constitution of *prima facie* jurisdiction.

responsibility on the basis of legal rules that were in force at that time frame, but were not applied (Kreća, 2007, 530).

The procedure before the International Court of Justice, as part of the universal legal system of the United Nations, begins with the announcement of the agreement on the establishment of the jurisdiction of the Court and the filing of a lawsuit. According to the provisions of Article 43 of the Rules of Court and Article 63, paragraph 1 of the Statute, the announcement is sent to all states that are not parties to the dispute. As a rule, the announcement is accompanied by a cover letter from the Minister of Foreign Affairs or the ambassador of the country that is a party to the proceedings and that is accredited in The Hague. The lawsuit is signed by the representative or diplomatic representative of the party in the proceedings who is accredited in The Hague. It is entered into the General List, which officially starts the litigation. Pursuant to Article 40, paragraph 2 and paragraph 3 of the Statute of the International Court of Justice, the Secretary of the Court forwards the statement or lawsuit to the defendant party, so that the information will then be forwarded through the Secretary-General of the United Nations to all other states that are authorized to appear before the Court of appeal. The parties in the proceedings before the Court are represented by legal agents, advisers, and lawyers. In the course of the proceedings, it often happens that the Court decides on the so-called *previous issues, provisional measures,* and *interventions*. As a rule, this stage of the procedure is shortened and, in the practice of the Court, it means an *incidental proceeding* in relation to a *contentious proceeding* in which the Court discusses the subject of the dispute. The Court decides on the previous questions based on the objections of the parties. As a rule, in such cases, the Court can end the dispute by accepting the previous objection, or it can reject the objection and continue with the procedure. In certain cases when objections do not have a previous nature, the Court can decide on them when making a decision on the subject of the dispute. Based on Article 41, paragraph 1 of the Statute, the International Court of Justice is authorized to indicate, if it considers that the circumstances require it, all provisional measures that should be taken in order to secure the rights of one or the other party to the dispute. The procedural and legal elaboration of this possibility is contained in the provisions of Article 73 to Article 78 of the Rules of Court, according to which the Court is obliged to act urgently in this incident phase of the procedure when passing orders on provisional measures at the request of one of the parties to the dispute or *proprio motu,* if the situation so dictates, before deciding on other claims of the parties. The ultimate goal of this option is to preserve the existing situation without worsening the disputed situation, or to eliminate the real

danger to the rights and interests of the parties to the dispute. In the course of the proceedings conducted before the International Court of Justice, it is possible for states to intervene when they consider that their legal interests are also being resolved in the subject matter of the dispute. A state that has a legal interest in intervening in an ongoing dispute under Article 62 of the Statute must submit a submission to the Court with a request for intervention. In addition to this case, based on Article 63 of the Statute, the intervention of a state that is a party to a multilateral agreement or convention that is the basis of the Court's jurisdiction is also possible. In such a case, the Court allows the state to intervene by depositing a declaration with the Registry of the Court. For all intervening states that will intervene in the current dispute before the International Court of Justice, the decision of the Court is legally binding. After this phase of the proceedings, the International Court of Justice continues the main proceedings through the written and oral phases. In the written phase, which is generally confidential in nature, there are systems for simultaneous and consecutive submissions. The simultaneous system is applied in the case when the jurisdiction of the Court is established on the basis of the announcement of the agreement on the establishment of its jurisdiction. In such cases, the parties submit written documents according to the order established in the agreement itself. In the consecutive system that is initiated by a claim, the Court, by its orders, determines the deadlines for submitting written submissions. Thus, the plaintiff submits a Memorial, a written submission with an explanation of the claim, and the defendant submits a Counter-Memorial, a submission with a written explanation of the response to the claim. In the continuation of the procedure, the Court can instruct the plaintiff to submit a Reply. That is, when it deems necessary, it can instruct the defendant to submit a reply to the reply, i.e., a Rejoinder. In the oral phase of the proceedings, the Court hears the parties to the proceedings, their legal agents, advisers, lawyers, witnesses, and experts. The court determines the order of the hearing if it is not determined by the agreement of the parties. At the end of the hearing, the Court issues a verdict that is final and legally binding for the parties to the proceedings.[25] In principle, the International Court of Justice makes a

[25] In the event that a party to the dispute does not respect the verdict, the other party reserves the right to address the Security Council, which, if deemed necessary, may, in accordance with Article 94 of the Charter, make recommendations or decide on the measures to be taken to implement the verdict. In practice, however, there may be deviations regarding the delivery of court decisions. It is a well-known example

judgment regarding the subject matter of the dispute and, in some cases, also regarding the previous issue. In certain cases, the Court issues judgments in absentia. When there are different interpretations of the scope and meaning of judgments, the Court is authorized to make the so-called *interpretative judgments.* In such cases, however, the International Court of Justice is bound by its provisions, the limits of which are limited *ad infinitum* by compromise. In practice, the judgments of the Court may or may not express a single view of the panel of judges. If the judgments do not express a unified position, the judges can either separate their individual opinions in relation to the explanation of the judgment or they can also give their dissenting opinions if they do not agree with the sentence and the explanation of the judgment. When, after the pronouncement of the judgment, new facts are discovered that are of such a nature that they would have been decisive when the judgment was pronounced but were unknown to the Court, it is possible to initiate a revision procedure (International Court of Justice Press Release, 24 April 2001).

In certain cases where there are disagreements between member states or certain organs of the United Nations regarding certain issues that can paralyze the work of the world organization, solutions are sought in the advisory opinions of the International Court of Justice (International Court of Justice Reports, 2010; 2004). Based on Article 96 of the Charter and Article 65 of the Statute, the General Assembly and the Security Council are authorized to request an advisory opinion on any legal issue. This can be done by other organs of the United Nations and specialized agencies if they are authorized to do so by the General Assembly. In the procedure of giving advisory opinions, the rules prescribed for the main procedure apply *mutatis mutandis.* However, unlike the main proceedings in which the subject of the dispute is discussed and where there are parties to the proceedings, in the proceedings of providing advisory opinions, litigants *stricto sensu* do not exist. The role of states, international organizations, and organs of the United Nations is reduced to that of *amicus curiae.* In the procedure, there are no

that the United States of America refused to implement the judgment of the International Court of Justice of June 27, 1986, in the case of military and paramilitary activities in and against Nicaragua. Because of this fact, Nicaragua invoked Article 94, paragraph 2 of the Charter, as well as the practice of supporting permanent members of the Security Council (France and Great Britain), which does not prohibit the adoption of a Security Council Resolution. The final decision of the Security Council was not adopted due to the veto of the United States of America.

strict procedural actions that are unique to the contentious procedure. In a procedural sense, this procedure ends with the issuance of an advisory opinion at a public meeting, the holding of which has been previously notified to the competent bodies of the world organization, as well as representatives of the states and international organizations to which the opinion refers. Advisory opinions are not binding unless there is an agreement between the parties accepting their binding force.[26] Considering that the International Court of Justice enjoys a high degree of authority as the supreme judicial body of the United Nations, states, international organizations, and bodies of the world organization principally strive not to act contrary to the views expressed in its advisory opinions.[27] Finally, like judgments, advisory opinions should contribute to the improvement and completion of the international legal order. The task of the Court does not end when a dispute or disputed situation is resolved by a verdict, i.e., when an advisory opinion is given on a certain legal issue, but when the execution of court decisions has led to the more efficient and effective functioning of the international legal order. Trust in the settlement of disputes before the International Court of Justice is undoubtedly related to the nature of international law. Given that international law has constantly evolved in the past period, its adaptation to current situations has been correlated with the increased needs of states in their mutual relations. By interpreting international legal rules and principles in certain cases, the Court has contributed to their clarification and application in practice. In this sense, Court decisions related to the examination of various aspects of international public and private law, internal legal systems, and the law of international organizations, contributed to the codification and progressive development

[26] Article 8 of the Convention on the Privileges and Immunities of the United Nations stipulates, among other things, that "if differences arise between the United Nations, on the one hand, and a member, on the other hand, an advisory opinion shall be sought on any legal question in accordance with Article 96 of the Charter and Article 65 of the Statute of the International Court of Justice. The opinion will be accepted as instructive for the parties to the dispute". Hence, the obligation to respect the advisory opinion does not derive from the legal nature of the opinion, but from the contractual provision.

[27] The extensive interpretation of the Charter led to the situation where the International Court of Justice is perceived in practice as an appellate court. Thus, the Committee for the Review of Judgments of the United Nations Administrative Court can ask the International Court of Justice for an advisory opinion that is legally binding on the parties.

of international law. Thus, for example, in the matter of the prohibition of the use of force and the threat of force in international relations, immediately after the adoption of the Charter in the dispute between Great Britain and Albania over the Corfu Channel, the Court confirmed that the policy of force as such had been the cause of numerous abuses in the past, and that in the current circumstances, regardless of the present deviation in the international organization, it cannot find a place in international law (International Court of Justice Reports, 1949). In a case concerning military and paramilitary activities in and against Nicaragua, the Court confirmed the customary nature of this rule, while at the same time giving explanations regarding the possibility of applying the right to self-defense (International Court of Justice Reports, 1986). Regarding the case of Israel's construction of a wall in the occupied Palestinian territory, the Court issued an opinion in which it confirmed its previously expressed position on the right to self-defense (International Court of Justice Reports, 2004). In the famous case concerning decolonization, related to the emancipation of Southwest Africa and Namibia, the International Court of Justice underlined the importance of the principle of self-determination in the context of the protection of basic human rights, which had wider political implications in the development of international relations (International Court of Justice Reports, 1966; 1971). This was evident both in the case of East Timor and in the case of the legal consequences of building a wall in the occupied Palestinian territory, where the Court recognized that "the right of peoples to self-determination derives from the Charter and practice of the United Nations and that it has an erga omnes character", i.e., that "one of the possible principles of contemporary international law" (International Court of Justice Reports, 1995; 2004). In the largest number of cases that were submitted for judicial settlement, the International Court of Justice decided on territorial disputes. Specifically, the Court ruled on the existence of sovereignty over a certain area, on establishing the existence of certain international obligations regarding territories (non-violation of airspace, respect for the right of passage, etc.), the status of territories under international administration (trusteeship and Non-Self-Governing Territories and internationalized territories), and on establishing and delimiting international borders. In addition to the above, the Court also dealt with other issues in its practice, as indicated by the rich judicial jurisprudence in the area of determining state responsibility for international illegal acts, in the area of diplomatic and consular relations, in the matter of respecting the rights of citizenship, asylum, the rights of international treaties, the rights of international organizations, environmental protection rights, etc.

SECRETARIAT

The Secretariat is the most important administrative body of the United Nations, with headquarters in New York and representative offices in Geneva, Vienna, and Nairobi.[28] Structurally, the Secretariat is organized into a wide network of offices and departments around the world (e.g., in Addis Ababa, Bangkok, Beirut, Santiago de Chile, etc.), in which staff are recruited according to the highest standards of efficiency, expertise and diligence, with due attention to equitable geographical distribution in accordance with Article 101 of the Charter. The staff of the Secretariat enjoy the status of international officials and are responsible only to the United Nations for their activities. Staff members enjoy operational independence and cannot take instructions from any government or external authority. In return, under the Charter, each member state undertakes to respect the exclusively international character of the responsibilities of the staff members of the Secretariat and to refrain from attempting to influence them in an inappropriate manner. The functions of the Secretariat include various activities within the competences of the main bodies of the United Nations. The Secretariat participates in activities ranging from managing peace operations, mediating international disputes, and organizing humanitarian aid programs to researching economic and social trends, preparing studies on human rights and sustainable development, and laying the foundations for international agreements. The staff of the Secretariat have outreach duties to inform the world media, governments, non-governmental organizations, research and academic networks, and the general public about the activities

[28] The legal status of the headquarters of the UN in the City of New York was regulated by the Agreement between the United Nations and the United States regarding the Headquarters of the United Nations. The Headquarters District is inviolable and is put under the control and authority of the United Nations as provided in this Agreement. Although US federal, state, and local law remain applicable in the District, it may be superseded by UN regulations. United States officers and officials may not enter the District to perform official functions except with the consent of the Secretary-General. The United Nations Office at Geneva (UNOG) is a centre for conference diplomacy and a forum for disarmament and human rights. The United Nations Office at Vienna (UNOV) is the headquarters for activities in the fields of international drug abuse control, crime prevention and criminal justice, the peaceful uses of outer space and international trade law. The United Nations Office at Nairobi (UNON) is the headquarters for activities in the fields of the environment and human settlements.

of the world organization. Their duties also include organizing international conferences on issues of global importance; interpreting speeches and translating documents into the official languages of the world organization; the establishment of a clearing house for information and development of international cultural, scientific, and technological cooperation.

The Secretariat is headed by the Secretary-General as "chief administrative officer" of the United Nations. The Secretary-General is also a symbol of the ideals of the world organization and a spokesperson for the interests of the people of the world. The Secretary-General is elected every five years by the General Assembly on the recommendation of the Security Council. He enjoys formal independence in the performance of his functions in relation to the states from which they come. The Secretariat with the Secretary-General has administrative powers that consist of coordinating the work of the main bodies of the world organization for whose needs it prepares information and reports, as well as the biennial budget plan necessary for financing their activities. This body is responsible for representing the world organization in international relations, which, in addition to administrative functions, also performs certain political functions. Political powers derive from Article 12, according to which the Secretary-General informs the General Assembly of all matters concerning the maintenance of international peace and security dealt with by the Security Council. Based on Article 99 of the Charter, the Secretary-General "may draw the attention of the Security Council to any issue that, in his opinion, may threaten the preservation of international peace and security". According to the Charter, the Secretary-General therefore has very limited powers to perform those political duties that are formulated in specific situations by the bodies responsible for maintaining world peace and security. Thus, the Charter does not give the Secretary-General the right to undertake specific actions regarding the peaceful resolution of disputes and preventive diplomacy. However, this situation changed over time, and especially after the end of the Cold War, the role of the Secretary-General became much more sensitive and complex due to the ever-widening involvement of the administrative apparatus in solving a wide range of issues (from regulating international crises by providing good offices directly or through its special representatives and emissaries around the world, organizing and managing numerous peace operations, to collecting information and reports and consultations with representatives of the governments of member states regarding the implementation of adopted decisions). In the doctrine of international law, it is considered that his extended powers implicitly derive from the provision of Article 98 of the

Charter, according to which the main organs of the United Nations can entrust the Secretary-General with the performance of functions within their competences (Frowein, 2000, p. 1031). The transfer of competence to the Secretary-General as the highest administrative officer of the United Nations in practice meant assuming the authority of the moderator and, at the same time, the catalyst of world politics. Many departments and offices were formed precisely on that occasion to enable the Secretary-General to perform these new tasks and functions, such as the Department of Economic and Social Affairs (DESA), Department of Field Support (DFS), Department for General Assembly and Conference Management (DGACM), Department of Management (DM), Department of Political Affairs (DPA), Department of Public Information (DPI), Department of Peacekeeping Operations (DPKO), Department of Safety and Security (DSS), Office for the Coordination of Humanitarian Affairs (OCHA), Office of Internal Oversight Services (OIOS), and Office of Legal Affairs (OLA), etc. The mentioned tendencies towards the expansion of the powers of the Secretary-General took place in accordance with the reform tendencies and the strengthening of the capacities of the United Nations as a whole.

The first significant reform proposals to ensure greater authority, flexibility, and discretionary powers of the Secretariat were presented by the Secretary-General of the World Organization, Kofi Annan, in the well-known documents, Agenda for Peace from 1992 and Agenda for Development from 1994 (Reports of the Secretary-General, 17 June 1992; 3 January 1995; 6 May 1994). In elaborating the presented proposals, the Secretary-General formulated priority areas for the reform of the world organization (peace and security, economic and social issues, humanitarian issues and tasks, development and human rights). In 1997, the Secretary-General tasked the executive committees with their implementation, while also presenting the United Nations reform program, which, considering certain far-reaching changes, was revolutionary compared to all other initiatives presented up to that time. The program included a two-track reform program: first of all, the reduction of budget costs through the merger of several smaller departments into the Department of Economic and Social Affairs; and second, the appointment of the Deputy Secretary-General (Renewing the United Nations, 14 July 1997). In 2002, the Secretary-General presented several other proposals, *inter alia,* for the reorganization of the budget system, for the improvement of the United Nations program, for the improvement of the protection of human rights, for the improvement of the information service and cooperation with civil society (Strengthening the United Nations, 9 September 2002). After that, in 2005, the Secretary-

General specified several reform proposals concerning the formation of an office to support peace building, the establishment of cabinet decision-making, and the strengthening of the intermediary role of the Secretariat. As part of the comprehensive reform package, the Secretary-General requested that within the Fifth Committee of the General Assembly for administrative and budgetary issues, an agreement be reached regarding the financing of the improvement of the institutional and management mechanisms of the Secretariat. Insisting on greater powers and flexibility, the Secretary-General sought to strengthen the role of the home office. He particularly advocated that the final decision be adopted by consensus at the next summit. At the anniversary Millennium + 5 Summit held in September 2005, the General Assembly addressed problems related to the implementation of the Millennium Development Goals, which included, among others, the goal of strengthening management and coordinating the operational activities of the world organization. The following issues were on the agenda of the General Assembly: human resources management; improvement of information technology infrastructure; introduction of more effective and efficient practices of the Secretariat; a reaffirmation of the role of the Secretary-General; protection of personnel, and formation of an ethics service and an independent office for internal supervision (Martinetti, 2008). In the World Summit Outcome Document, certain conclusions were made that required the strengthening of management and monitoring programs. Special emphasis was placed on issues relating to mandates older than five years (in the General Assembly, the Security Council, and the Economic and Social Council). Since the last mandate check was carried out in 1953, when the Secretary-General was Dag Hammarskjöld, it was necessary to leave that work to a specialized body, so a decision was made to form an ad hoc Working Group of the General Assembly for mandate issues. The task of verifying the mandate later turned out to be much more complicated than it appeared at first glance. In March 2006, the Secretariat published a report proposing a review of around 7,000 mandates older than five years. Moreover, in the assessment, it is stated that this figure goes up to 9,000 mandates if mandates issued in the last five years were included in the existing number! There was no agreement on this issue because the countries from the Group of 77 and China took the position that only mandates older than five years that have not been renewed by a new Resolution of the General Assembly can be subject to examination. On the other hand, developed countries such as Japan, the United States of America and members of the European Union insisted on reviewing all mandates older than five years, regardless of whether these mandates were renewed

or not. In order to speed up the process, the ad hoc Working Group began its session in June 2006. In the first phase, it examined only mandates that had not been renewed and were older than five years (a total of 399 mandates). Considering the numerous reservations about the findings of the Working Group expressed by the members of the Group of 77, the beginning of the process was quite difficult. Namely, the Group of 77 and China, convinced that this review hides the intention to manipulate politically sensitive mandates, insisted that the funds of the world organization be redirected to the field of development. On the other hand, the United States of America insisted that the funds be used exclusively for real needs in order to speed up the implementation of the reform of the Secretariat. A certain number of member states also proposed austerity measures for the purpose of strengthening certain mandates. Finally, in October 2006, the first phase of the mandate review concluded with the finding that only 74 allocated mandates met the required criteria. In November 2006, the ad hoc Working Group began reviewing mandates older than five years that were renewed by one of the Resolutions of the General Assembly. Although the work in the second phase was divided into thematic areas (for example, the areas of crime prevention, the fight against terrorism, and control of drug trafficking), no greater success was achieved. Taking into account the demands of the world summit in 2005, and starting from the fact that the administrative apparatus of the United Nations has become largely fragmented and ineffective, the Secretary-General formed the Redesign Panel on the UN Internal Justice System in January 2006, which in July of the same year submitted a report with specific recommendations on achieving a more independent, efficient, and effective internal judicial system in the following medium-term period. In February 2006, the Secretary-General formed the High-level Panel on United Nations System-wide Coherence in the Areas of Development, Humanitarian Assistance, and the Environment. The panel was tasked with making a comprehensive analysis necessary for the improvement of the mentioned areas, as well as providing recommendations for further reform of the administrative apparatus of the United Nations. After examining the current situation, the High Panel, composed of 15 high-ranking representatives of states and governments, as well as experts from member states, made certain recommendations that were submitted to the General Assembly in November 2006 in the form of a report by the Secretary-General. The report suggests that countries should continue to work together to further unify the system of management, financing, and administration of the United Nations in such a way that the world organization acts more efficiently and

responsibly in order to implement a unified strategy and realize the agreed development goals (Report of the Secretary-General's High-Level Panel, 9 November 2006). Before the aforementioned report, in March 2006, the Secretary-General submitted to the General Assembly a report entitled "Investing in the UN: For a Stronger Organization Worldwide". The Report underlines the need to implement reforms of the Secretariat in the next three to five years. In order to improve the efficiency, effectiveness, and responsibility of this and other administrative bodies of the world organization, in December 2006 the Secretary-General submitted another significant report to the General Assembly entitled "Comprehensive Review of Governance and Oversight within the United Nations and its Funds, Programs and Specialized Agencies" (Report of the Secretary-General, 22. December 2006). In 2007, taking over the duties of the Secretary-General, Ban Ki-moon relied on the earlier reports and reform proposals of Kofi Annan, while presenting at the same time his personal suggestions and observations in his speech at the 62nd session of the General Assembly entitled: "Stronger United Nations for a Better World" (Ban Ki-moon, 2007). Starting from the capacities available to the world organization, Ban Ki-moon emphasized the necessity of strengthening the United Nations, expanding the responsibility of the Secretariat, and the entire administrative infrastructure, in order to achieve a greater reputation for the entire United Nations system (Blanchfield, 2011, p. 10).[29] Due to the existence of differences between the countries of the North and the South, that is, between developed and underdeveloped countries regarding the improvement of the work of the Secretariat, it was not possible to reach a consensus. For the countries of the North, the basis for deciding on the above-mentioned issues was the remaining amount of contributions to the budget of the world organization, while for the countries of the South, the basis was the size of the influence exercised in the General Assembly through "the supremacy of the majority". Considering that certain reform moves were made, the absence of agreement on the reorganization of the administrative apparatus of the world organization did not lead to a permanent suspension of that process, but eventually to a slowing down of its progress. In relation to the

[29] In implementing reforms of the administrative apparatus, the Secretary-General is assisted by the Change Management Team, headed by the Deputy and Assistant Secretary-General of the UN. These persons coordinate the reform processes through the structure of the Secretariat (departments and offices, as well as other administrative bodies), and regularly report on the achieved results to the Secretary-General.

issue of reaffirming the role of the Secretary-General, that issue remained extremely delicate. Its function is subjected to continuous pressure from various countries and interest groups. Considering the very flexible interpretations of the powers of the Secretary-General established in the Charter, as well as the generally defined duties entrusted to him by the Resolutions of the main organs of the United Nations, it is clear that the Secretary-General with all his infrastructure will remain on very uncertain ground with limited possibilities of realization in the future of all the set goals and tasks of the world organization.

CONCLUSIONS

In the research flowchart of the United Nations, the author first gave an account of its origin as a universal international organization, then presented a brief analysis of the content of the Charter as its constitutive legal act that establishes the rights and obligations of the member states, which establishes its main bodies and prescribes the procedures for their action. The work includes a detailed examination of the institutional structure and powers of the world organization, i.e., its organization composed of the main bodies — the General Assembly, the Security Council, the Economic and Social Council, the Trusteeship Council, the International Court of Justice, the Secretary-General, and the Secretariat. Along with this analysis, the paper presents more detailed explanations about the functioning of the main organs of the United Nations, their mutual relations, connections with specialized agencies and other international organizations and bodies in the world organization system. From the overall analysis of the organizational and functional properties of the world organization, the conclusion emerges that the United Nations gradually built its polymorphic power structure in parallel with the increase in the number of its members, and the expansion of the functions of the main bodies, whose diverse competences were adapted to the requirements of the time. In order to solve the enormous burden acquired during the period of the Cold War conflict, after its end, the United Nations tried to reaffirm the concept of preserving international peace and security, as well as to improve the existing international legal order through the application of the Charter, which remained the only binding legal factor in the regulation of all important international problems. Increased demands for changing the power structure of the world organization required additional efforts in terms of the democratization of international relations. In the international community, the determination to reform and complete the institutional mechanisms of the world

organization, which has its basis in international law, has strengthened. Today, international law is "more or less" shaped by a comprehensive system of norms that relies on the Charter or is derived from the Charter. Since any reform of the world organization entails changes to the Charter, these changes can be of fundamental importance for the future of the world, because the revision of the Charter would also change the legal basis of the existing world order.

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BRETTON WOODS INTERNATIONAL FINANCIAL INSTITUTIONS AND COOPERATION WITH SERBIA

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Abstract: Yugoslavia participated in the Bretton Woods Conference in July 1944, becoming a founding member of the World Bank (WB) and the International Monetary Fund (IMF). Throughout the post-war period, the World Bank was the most important foreign creditor of development projects in the country, while the IMF was an important factor in maintaining external liquidity, especially during the 1980s. After settling relations with the IMF at the end of 2000, our country returned to the World Bank in May 2001, inheriting the membership of the SFRY. After the Emergency Post-Conflict Aid in December 2000, Serbia had five stand-by arrangements with the IMF. This was followed by two non-lending cooperation programs: the Policy Coordination Instrument, the last of which began in June 2021 and will continue until the end of 2023. The $ 30 million World Bank donation in 2001 was followed by a three-year $540 million loan to the FRY, primarily to pay off previous debts. At the end of 2021, the WB has 17 active projects in Serbia worth $865 million, while 78 projects worth $4.4 billion have been finalized in the last two decades. With the development of a multi-polar financial order, which implies a reduced role of the West, both globally and in those organizations, a trend of decreasing relative importance of the Bretton Woods institutions for Serbia is expected, especially in the context of increasing reliance on bilateral loans, especially from China.

Keywords: Bretton-Woods Institutions, World Bank, IMF, Serbia, cooperation, international monetary order.

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INTRODUCTION

The Bretton Woods institutions are the International Monetary Fund, the World Bank, and, in part, the World Trade Organization. Both the World Bank (WB) and the International Monetary Fund (IMF) were established in July 1944 at a conference in Bretton Woods (New Hampshire, US), with the participation of 44 countries, to begin operations two years later. The World Bank, or more precisely the International Bank for Reconstruction and Development (IBRD, founded in 1944), broadly includes the following financial institutions: the International Finance Corporation (IFC), the International Development Association (IDA), the Multilateral Investment Guarantee Agency (MIGA), and the International Centre for Settlement of Investment Disputes (ICSID), all known as the World Bank Group (although the term "World Bank" refers primarily to the IBRD and the IDA). The key role of the IMF and the World Bank is to facilitate the functioning of the global financial system, with the two institutions complementing each other. Namely, the World Bank should serve as a financier of development, primarily for developing countries, while the IMF should be preoccupied with urgently needed short-term liquidity supply to countries with balance of payments problems (e.g., financial support to states with current account deficits or exchange rate depreciation).

COOPERATION OF SOCIALIST YUGOSLAVIA WITH THE WORLD BANK AND THE IMF

Post-war Yugoslavia participated in the International Monetary and Financial Conference in July 1944 in Bretton Woods, becoming a founding member of the World Bank and the IMF. Intensified cooperation with the World Bank began when, in order to support the distancing of Yugoslavia from the Soviet Union, the US government encouraged the World Bank to approve a loan to Yugoslavia in the late 1940s. The first WB mission arrived in Belgrade as early as 1949, and President Eugene Black personally negotiated with Broz (Kapoor, 1997, p. 103). Namely, Eugene Black saw in the given situation an opportunity to connect the political interests of the countries of Western Europe in supporting Broz with their economic interests for the continuation of trade relations. The decisions of the World Bank were also influenced by the fact that, at that time, the capital market in New York was not willing to lend to Yugoslavia (Mason & Asher, 1973, p. 112). Namely, the World Bank refused to organize credit mechanisms, asking Yugoslavia to resolve the issue of debts on pre-war bonds, which

was done only in 1961/62, when the country began to use larger funds from this institution. Throughout the post-war period, the World Bank was the most important foreign creditor of development projects in the country. In addition, by participating in international tenders for developing countries, Yugoslavia also used the funds of this bank to finance numerous projects. One of the larger loans that the SFRY received from the World Bank, worth 70 million dollars, was intended for the railways in 1964 (New York Times, 1964). In 1983, the SFRY received the first (so-called SAL) loan for structural adjustment (financing development projects in the country). The largest number of loans was used in traffic and agro-complexes, which also received the largest amounts of loans from the World Bank, followed by energy and industry. In the period from 1947 to 1991, Yugoslavia received 90 loans from the World Bank in the amount of about six billion dollars, which was a comparatively large amount and a direct consequence of the American Cold War logic to keep Yugoslavia as far away from the USSR as possible. During the period of socialist Yugoslavia, the IMF was occasionally an important factor in maintaining the country's external liquidity, especially during the 1980s. Namely, as the Yugoslav economy entered a period of continuous crisis since 1981, the country increasingly relied on IMF loans. The need for loans was caused by balance of payments deficits and consequently high external debt, which reached a very high $18.9 billion at the time. In May 1982, the IMF, together with the Paris Club (an organization of major creditor countries which try to find coordinated and sustainable solutions to the payment difficulties encountered by debtor countries), approved increased supervision of Yugoslavia. The economic crisis, accompanied by very pronounced inflation, high unemployment, and stagnation of GDP per capita, lasted throughout the ninth decade of the 20th century. The last attempt to significantly improve the economic and political situation was in late 1989, when the Stabilization Program (Economic Reform Program) was adopted, which included, among other things, negotiations with the IMF, the World Bank, and Paris Club on debt restructuring, and a loan to stabilize the economy. Although the program gave certain results, the disintegration of the SFRY led to a complete economic and political collapse and the expulsion of Yugoslavia from the Bretton Woods institutions.

RENEWAL OF COOPERATION WITH THE IMF

Although it was among the founders of the IMF and the World Bank, the decision of the Board of Executive Directors of the IMF on December 14th, 1992, stated that the SFRY ceased to exist, thus terminating its

membership in the IMF, while determining the conditions under which successor countries could inherit SFRY membership in the IMF. Of the assets and liabilities of socialist Yugoslavia in the IMF, the FR Yugoslavia accounted for 36.52%. Following the change of government in October 2000, the IMF's Board of Executive Directors decided on December 20th, 2000 (retroactively on December 14th, 1992) that the FRY had met the conditions for membership in that institution. In July 2006, after the independence of Montenegro, the IMF confirmed the continuity of Serbia and the consequent quota of 467.7 million Special Drawing Rights - SDR (SDR is an IMF unit of account created in the late 1960s). Serbia settled its obligations based on the increase of its quota with the IMF (from 468 to 655 million SDR) on February 10th, 2016, and in this way, the volume of possible financial support within future arrangements with the IMF was proportionally increased. Regular cooperation with the IMF takes place within the annual consultations under Article IV of the IMF Statute, which is a statutory obligation of member countries (based on which the IMF makes an assessment of the economic situation in the country and the adequacy of economic policy measures). Since the end of 2000, cooperation with the IMF has taken place under a number of arrangements, beginning on December 20th, 2000, when the Executive Board of the IMF approved Emergency Post-Conflict Assistance in the amount of 117 million SDR, or about 167 million Euros (25% of Serbia's IMF quota), in support of the program of economic stabilization and reconstruction of institutions and administration of the country (International Monetary Fund, 2020). From these funds, the country repaid "bridge loans" in the amount of 101 million SDRs to eliminate arrears with the IMF. Subsequently, a stand-by credit arrangement of SDR 200 million (€294 million, or 42.76% of the quota) was concluded in June 2001, as financial support for further macroeconomic and structural reforms (International Monetary Fund, 2001). After that, in May 2002, a three-year Extended Arrangement was approved, totaling approximately €909 million (139% of the quota), supporting the FRY's economic program in the period 2002-2005 (International Monetary Fund, 2002). The arrangement enabled the realization of the first phase of debt reduction to the Paris Club in the amount of 51% (i.e., by about $2 billion), and the successful completion of the arrangement meant the remaining 15% write-off of rescheduled debt to the Paris Club (counter-value of about $700 million). As early as January 2009, a Stand-By Arrangement of around €400 million (75% of the quota) was concluded, which Belgrade intends to treat as precautionary (International Monetary Fund, 2009). However, it was increased to €2,942 million in May 2009 — representing 560% of the

quota — due to an unexpected deterioration in the external financial environment (International Monetary Fund, 2009). This arrangement was successfully completed in April 2011, and at the end of September of the same year, an eighteen-month stand-by precautionary arrangement was approved, accounting for 1,077 million Euros (200% of the quota) (International Monetary Fund, 2011). The arrangement was concluded in order to preserve macroeconomic and financial stability in the country and improve the investment climate, but the first revision of the arrangement in February 2012 was not completed positively due to deviations from the agreed fiscal program. Consequently, approved funds were not used. Then, in February 2015, a 36-month Stand-By Arrangement was approved in the amount of about 1,168 million Euros in support of the agreed economic program for the period 2015-2017 (International Monetary Fund, 2015). The arrangement was concluded as a precaution, except in the case of balance of payments problems. The available funds were not used, and this arrangement was successfully completed in February 2018, as the implementation of the agreed economic program scored the goals. Namely, Serbia has achieved macroeconomic balance, successfully implemented fiscal consolidation, improved the financial sector, and strengthened competitiveness (International Monetary Fund, 2021). In July 2018, the IMF approved a new Policy Coordination Instrument for the Republic of Serbia (International Monetary Fund, 2018). This IMF program will build on the precautionary Stand-By Arrangement realized in February of the same year. This non-financial advisory arrangement, agreed to support an appropriate economic program for countries with no current or potential balance of payments problems, was approved for a period of 30 months, and the progress of the agreed economic program was monitored through five semi-annual reviews. The goal of the program was to maintain macroeconomic and financial stability and to continue structural and institutional reforms in order to foster rapid and inclusive growth, job creation, and improved living standards. These aims were mostly achieved as stated in January 2021, when the program ended. Then, in June 2021, the IMF concluded the Article IV consultation with Serbia and approved a new 30-month Policy Coordination Instrument (International Monetary Fund, 2021). The main goal of the new program is to support the country's economic recovery from the negative effects of the pandemic. It also aims at maintaining macroeconomic stability and anchoring the medium-term fiscal policy framework. Even if the program does not involve the use of IMF funds, the successful completion of arrangement reviews would signal the country's commitment to structural reforms and solid macroeconomic

policies. In March 2022, as part of the second review of the results of the agreed economic program, the IMF mission, as a guest of Serbia, discussed macroeconomic developments and the realization of established quantitative and reform goals of the economic program, whose achievements were positively assessed. The relationship between Serbia and the IMF has gone through various phases in the last twenty years: from the obvious stick and carrot policy, through the long delay in fulfilling the agreement, to the IMF's open praise for government policy and "commitment to economic reforms" after 2013. The IMF had frozen a credit arrangement with Serbia in February 2012, and the 1.1 billion-euro arrangement was delayed because of far greater guarantees for loans to public companies and higher government borrowing than allowed. The IMF also suspended negotiations with the Government of Serbia on a stand-by arrangement concluded in May 2009, when the IMF did not approve the conclusion of the second revision of the arrangement. The 2002 arrangement lasted five years instead of three due to numerous delays. This arrangement was extremely important because the IMF's assessment of the success of the negotiations affected the write-off of the debt to the Paris Club in the amount of 700 million Euros. The fourth, fifth, and sixth revisions of the arrangement were postponed several times because the Serbian government did not implement the planned reforms or passed laws contrary to the agreement with the IMF. Concerning financial obligations to the IMF, on the last day of December 2021 the foreign debt of Serbia was 36,201 million Euros, of which, based on the SDR allocation to the IMF, the debt recorded in the Serbian central bank is 776.4 million Euros, while an additional 480.4 million Euros of debt is recorded in the central government (National Bank of Serbia, 2021).

COOPERATION WITH THE WORLD BANK

After settling relations between the FRY and the IMF, the World Bank Board of Executive Directors in May 2001 determined that the country had met the necessary conditions to inherit the former Socialist Yugoslavia's membership in the WB. Thus, the FRY inherited the SFRY's membership in the WB, which ended in February 1993. An important decision of the World Bank on the same date was to grant the country "special status" so that it could use IDA funds on preferential terms. The World Bank Group approved a $30 million donation to the FRY in 2001 for various programs, followed by a three-year $540 million loan, primarily to pay off previous debts. Since re-establishing relations with the World Bank, it has financed

dozens of projects worth over two billion dollars in Serbia, in addition to providing consulting. At the end of 2021, the World Bank had 17 active projects in Serbia worth 865 million dollars, while 78 projects worth 4.4 billion dollars were finalized in the last two decades. On the last day of 2021, the debt to the World Bank, more precisely to the IBRD, amounted to 2.239 million Euros and to the IDA, 107 million Euros (National Bank of Serbia, 2021). The framework for cooperation between Serbia and the World Bank, which was valid in the period 2016-2020, provided for 13 loans worth a total of $1.6 billion, and most of them related to loans for the implementation of development policies (among other things, there were projects aimed at improving the real estate cadastre, improving e-government, facilitating regional trade and transport relief, modernizing the tax administration, and encouraging the growth of entrepreneurship).

Currently, the World Bank has 12 active projects in Serbia, while the value of loans at the end of 2021 amounted to 819 million dollars. The World Bank Group is engaged in the new Country Partnership Framework for 2022-2026, with the comprehensive goals of supporting Serbia in achieving a strong recovery from the impact of COVID-19 and encouraging faster, greener, and more inclusive growth. The World Bank Group's active portfolio reflects these priorities through 12 projects in the areas of transport (roads and railways), real estate and business environment management, competitive agriculture, health, financial sector reform, public sector efficiency and modernization, green recovery, energy efficiency, and early childhood education, as well as two regional projects aimed at facilitating trade and transport in the Western Balkans and connecting the Drina and Sava river corridors (World Bank, 2022). One of the last loans of the World Bank to Serbia was approved in March 2022 in the amount of 50 million dollars for the Clean Energy and Energy Efficiency Project for Citizens. Also in March 2022, a World Bank loan worth 100 million dollars was approved for local governments in Serbia, which should support the management of sustainable infrastructure, encourage equal growth and enable the green transition. The loan is part of the $300 million in financial support for the Local Infrastructure and Institutions Development Project, which was prepared in cooperation with the French Development Agency. In general, World Bank loans intended for Serbia are mostly directed towards infrastructure projects, which have very low rates of return (this means that the invested capital "returns" very slowly). The World Bank's interest rates are relatively favorable compared to commercial However, the problem is the complex tender procedures, which practically exclude domestic companies from the competition, because the requirements such as the

amount of the company's capital are such that most companies operating in Serbia cannot meet them. On the other hand, companies from the West easily meet the given criteria (in order to decrease costs, they hire Serbian companies as subcontractors). When comparing World Bank loans with infrastructure loans obtained from China (and Azerbaijan) in recent years, the conditions are very similar when it comes to loan costs and regarding the percentage of engagement of domestic companies. Namely, while the World Bank does not formally determine who will be the contractor, in the end, it will almost always be a company from the West. On the other side, China wants its corporations to be the bearers of the project, and Serbian companies to participate up to 50%. It seems certain that with the development of a multipolar financial order involving a reduced role of the West, both globally and in Bretton Woods institutions, we can expect a trend of the declining relative importance of these institutions for Serbia, especially in the context of increasing reliance on bilateral loans, especially from China (which with its "Silk Road" threatens to "squeeze" international and other bilateral creditors from the world market) (Nikolić, 2021).

THE NEED FOR A NEW BRETTON WOODS

The so-called Bretton Woods institutions reflect the US-dominated world economic order. Despite the softening of the so-called Washington Consensus and the fact that the IMF and World Bank are now much more influential in developing economies (e.g., almost half of IMF staff are from those states), these institutions are still mostly (justifiably) perceived as an extension of US economic and geopolitical influence, which has been analyzed by a number of authors (Foot, MacFarlane & Mastanduno, 2003; Ngaire-Woods, 2003; Gwin, 1997, p. 196; Weisbrot, 2014; Beattie, 2015). However, the demands for change are becoming more and more intense. According to Yu (2022), today's world bears an unpleasant resemblance to that of eight decades ago, which Bretton Woods's delegates hoped would disappear forever. This was caused by powerful interests that set the rules of the economic game in order to maintain the world of privileged individuals and corporations. Multilateral governance institutions are the drivers of mobile capital and the accumulation of private debt, which narrows the political space available to governments. The original principles of the Bretton Woods system: providing adequate public international finance and punishing economic aggression, have given way to short-term dictates of speculative finance. We see the results through low investments and slow productivity growth, and instability of exchange rates, which all

lead to sudden changes in the pattern of international competitiveness, trade tensions, and uneven growth. The global financial crisis of 2008-09 and the health and economic crisis caused by COVID-19 have further exposed the fragility of this system and the world seems to be moving towards a kind of neo-mercantilist system (stronger governments are trying to use international negotiations to advance their interests). Gallagher & Kozul-Wright (2022) argue that without global leaders willing to boldly prescribe rules to promote a prosperous, just, and sustainable world economic order – what they named the new Bretton Woods moment for the 21st century - the world risks climate chaos and political dysfunction. Namely, two authors believe that the system of global economic governance is drastically hampered by the challenges of the 21st century, primarily with the global economic collapse of 2008, and the COVID-19 pandemic. As the main actors of the global economic regime do not want changes in rules, norms, and policies, with the deterioration of trust in governments, the world economy today is reminiscent of the early 1930s, when the world faced unresolved debt problems, growing inequality, and political polarization. Only after realizing the dramatic costs of the Depression and War did the US, along with European allies and delegates from 44 countries, create the World Bank, the IMF, and then the Marshall Plan to rebuild destroyed western economies with the clear political goal of neutralizing power of countries of the so-called real-socialism. The system largely succeeded in achieving its goals until growing distribution struggles during the 1970s encouraged US policymakers to bail out the international dollar-based system by introducing flexible exchange rates, deregulating finances, and lowering tax rates, leading to a world we now live in, full of instability and economic irrationality. In the absence of fixed exchange rates and control of capital movements, the role of the IMF has transformed support for the liberalization of capital movements, price movements and profit motives have become priorities, and inequality, high indebtedness, and insufficient productive investment have become the new norm of the hyper-globalized economic landscape. With all this in mind, the authors believe that it is time for another moment of Bretton Woods, in order to revive international economic architecture and prepare the world for the challenges of the 21st century. Although the UN Agenda 2030 offers a transformative "action plan for people, the planet, and prosperity" for the 21st century, there are no concrete plans for concrete reforms. Namely, the renewed multilateral order must give priority to the role of global public goods needed to provide common prosperity and a healthy planet, and promote cooperation and collective action to achieve fairness and balance in market outcomes. It is

necessary to reduce speculative financial flows and increase the amount of capital to support productive investments with low carbon content, including the elimination of illegal financial flows and many hidden subsidies. In addition, when a crisis occurs, the remedy should be expansive fiscal spending and direct financial transfers to households rather than savings that further reduce incomes and cause social unrest. However, for many developing economies, the pressures of servicing their external debts hinder them from mobilizing resources for productive investment; and when disaster strikes, the UN's sustainable development goals and commitments set out in the Paris Climate Agreement are without significance. The world has a decade to drastically reduce carbon emissions and achieve a broader set of complementary development goals. The growing number of climate catastrophes, growing social unrest and right-wing populism are early warnings of what will become the new norm if this is not done. Global rules, protected from capture by the most powerful actors, need to be calibrated against the overarching goals of social and economic stability, shared prosperity, and environmental sustainability. Global regulations need to be designed both to strengthen the dynamic international division of labor and to prevent destructive unilateral economic actions that prevent other nations from achieving their goals. In addition, the reform of the international financial system is needed, primarily the regulation and directing of private capital flows towards a productive economic activity that is low-carbon and socially inclusive. In addition, the international trade and investment regimes should be harmonized, and global market monopolization and "global rent-seeking" should be reduced, all through strong rules of global competition. The abolition of privatized dispute resolution systems (disputes should be resolved by nation states and stakeholders) seems urgent (The Boston University Global Development Policy Center, January 2022). Mandeng (2022) believes that financial sanctions against Russia will serve as an important warning that the international financial system is under the direct control of the West. Namely, despite the fact that Western countries represent about half of the world's production, their currencies are used almost exclusively in international financial transactions, and the fundamental asymmetry between the real and financial spheres is a source of tension. Therefore, the probability that different economic spheres will appear in the midst of significant political and ideological differences increases. The new financial order may no longer be based on the premise of a single financial system and the close economic and financial integration that was characteristic of the Bretton Woods institutions. Namely, Western

control of the international financial system has led to excessive dependence on the US dollar, and financial decentralization can be an effective way to reduce dependence between international institutions and their clients. Instead of division, decentralization should be a new foothold in international financial relations, and the new order should be based on more currencies, more equal relations and loose ties to reduce dependencies (which should encourage most countries to join without bearing the potential negative effects). That such changes may be in the interest of the West, believes Byrne (2022), who suggests that the US make a plan to equip the IMF and the World Bank with tools to stabilize poorer economies. With the IMF Executive Board approving as much as $650 billion of new SDRs to IMF shareholders on April 13, 2022, by ceding allocations from western countries to those in the Third World, the West could curb the influence of China, which is becoming a growing lender to developing economies (China owns almost 40% of the debts of poor countries). Namely, the economic disturbance caused by the COVID-19 pandemic has pushed as many as 124 million people worldwide into extreme poverty, while a dozen developing economies may not be able to service their debts in the coming months. The situation is urgent, given the rising prices of wheat, corn, and energy due to the war in Ukraine (wheat and corn rose by over 80% and 40% of their average for January 2022, while the price of oil has doubled since last year). In the article "It's Time for a New Bretton Woods", Rana Foroohar (2022) emphasizes the words of Janet Yellen, the US Secretary of the Treasury, who believes that the war in Ukraine and China's refusal to join the US and the West in sanctions against Russia are key points for the global economy. According to Yellen, free and fair global markets require common values, and therefore a new Bretton Woods framework is needed, i.e., new roles for the IMF and the World Bank. US trade policy, which is reportedly no longer focused on free markets, should uphold certain principles — from national sovereignty and "rule-based order" to security and labor rights. Emphasizing "secure and only free trade", Yellen says states should not be allowed to use their market position in key raw materials, technologies, or products to have the power to disrupt other economies or use it as a geopolitical lever (apparently referring to Russian petro politics, Taiwanese chip production, or China's accumulation of "rare earth" minerals or personal protective equipment during a pandemic). In this post-neoliberal era of "keeping friends", the US would favor "friendship with a large number of trusted countries in supply chains" (similar alliances in digital services and technology regulation are proposed). According to Yellen, free trade can only be truly free if countries operate with common values and

"at a level playing field". Yellen hopes that the world will not end in the bipolar system, emphasizing China, which relies on state-owned companies to the detriment of US national security interests. Multinational supply chains, while highly effective in reducing operating costs, appear to be becoming an unbearable potential risk to America due to their dependence on them. Similar thoughts are shared by Petro (2022), who points out that the catastrophe caused in part by Germany's high reparations of 1919 led allies, including the Soviet Union, to devise a global financial order based on a neutral reserve instrument — gold — which everyone believed would provide a balance of power. However, after 1971, the US abandoned the gold standard, strengthening its influence as the dollar became the world's reserve currency replacing gold, with the financial order becoming increasingly globalized, which encouraged the growth of wealth inequality. The war in Ukraine ended any hope of an orderly consensus among the conflicting states on a new financial order, as the current US-centric global financial order has done irreparable damage to Russia and its allies, including China. The West is now again trying to redefine global finances in line with its geopolitical goals. This is evident in the G7 agreement on the attempt to expel Russia from the IMF and the World Bank. Equally important is the formulation of a new doctrine for global finance embodied in the US President's March 2022 executive order which aims to establish a US digital asset policy construct that underscores significant benefits for economic and national security due to the central role of the dollar and Washington-controlled financial institutions in the global financial system. The same document emphasizes that the US will cooperate in global efforts to redefine money and the payment system, but only if it preserves "basic democratic values". In this new framework, global finance would provide a new form of transnational, responsible and far-reaching measurable investment in the public good that transcends environmental programs (promoting vital needs such as accelerating biomedical treatments, improving infrastructure, reforming agriculture, building localized production and improving child and geriatric care). The key idea of Washington is to give strengthened political credibility to the reformed "Bretton Woods", allegedly based on values, of course with the goal of maintaining the existing American-centric order.

CONCLUSIONS

In the last two decades, Serbia has had intensive cooperation with the IMF and the World Bank, and it is expected that arrangements with these

two Bretton Woods institutions will continue. Regarding the IMF, the "Policy Coordination Instrument" began to be implemented in June 2021 and will last until the end of 2023. The World Bank currently has 17 active projects in Serbia worth 865 million dollars. It is expected that a new arrangement with the IMF will be established after 2023, while the cooperation with the World Bank will continue, given that the existing projects are being implemented relatively well. However, with the development of multilateralism in the global financial order, which leads to the increased importance of non-Western countries, especially China (from which Serbia intensively withdraws loans) and consequently implies a reduced relative role of Bretton Woods organizations, the trend of decreasing the relative importance of these institutions for Serbia is expected. Of course, such a development is not certain, especially if efforts are made to ensure that non-Western countries are proportionally represented in the work of the Bretton Woods institutions, naturally according to their growing economic strength.

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THE WORLD TRADE ORGANIZATION AND SERBIA'S LONG PATH TOWARDS ACCESSION

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Abstract: The World Trade Organization (WTO) is a crucial factor in the rules-based functioning and development of multilateral international trade relations. The WTO is an international organization that represents the institutional and legal framework of the multilateral trading system. The WTO is an international trade organization based on rules and adopted agreements that comprehensively regulate trade in goods, services, and trade aspects of intellectual property rights. In addition, a dispute settlement system has been established within the organization, which provides for sanctions against non-compliance with international obligations, as well as a system for monitoring the national foreign trade policies of member states, and a system of technical assistance and training for developing and transition countries. The challenges in the institutional and normative dimensions the WTO is facing in the modern world economic order are fundamental. In the paper, we would like to point out the existing way of working and organization of the WTO and a wide range of issues related to modern trade that it needs to address. The existing way of working and organization at the WTO is very complex and demanding, so this organization was late in responding in a timely manner to the economic shocks of recent years, especially the trade war and the corona crisis. There were problems with the work of several bodies, and the negotiation process stalled. The problems that this international organization is facing are not small and they are undermining the essential order as well as the rules on which it is based and operates. Serbia, as a part of Yugoslavia, has been a member of the

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General Agreement on Customs and Trade, but after the disintegration of the country, found itself on a difficult multi-year path to WTO membership, which is still ongoing and its inclusion is currently completely uncertain.

Keywords: WTO, Serbia, multilateral trade negotiations, WTO legal framework, WTO accession.

INTRODUCTION

Facilitation and liberalization of international trade were the main goals of the creation of the General Agreement on Customs and Trade (GATT) and later of the World Trade Organization (WTO). The principles established by the GATT form the basis of the multilateral trading system. The regulation of international trade implies the participation of a large number of countries in the world in this process. With the accession of most countries to the WTO membership (currently 164 members), multilateral trade relations within this organization, have become the dominant way of regulating trade relations in the world. Multilateral trade relations did not, of course, repeal bilateral or regional agreements, but they provided a basis and principles for most of the trade negotiations between the countries. The structure and functioning of the multilateral trading system embodied in the WTO are no longer nearly as simple as they used to be. There is no way that international trade relations can be regulated by a few general rules. The WTO as an organization shows great comprehensiveness and intention to regulate all forms of international trade relations with general principles and rules. The wide range of trade rules that have emerged within the WTO includes various forms of trade (products, services, intellectual property) and the territory of almost all countries of the world. For instance, agreements within the WTO provide member countries preferential access to the world market in all areas of international trade. Multilateral trade negotiations and their regulation are a very complex area of economic relations between countries. For them to be successful, it is necessary to agree on these rules, adopt them, and successfully apply a large number of rules for conducting negotiations. Rules or regulations have changed over time, in accordance with the needs of the negotiating parties or current circumstances, depending on the strength and economic power of the negotiators themselves, etc. The WTO was formed as the only international organization that institutionally deals with the regulation of international trade relations and thus took on a major task. Today, the WTO operates a global system

of trade rules, acts as a forum for negotiating trade agreements, settles trade disputes between its members, and supports the needs of developing countries. There are fundamental principles that run throughout all of the WTO agreements. The principles of non-discrimination, the opening of trade, predictability and transparency of trade, fair competition, support for less developed countries and protection of the environment are represented in WTO documents. In addition, the WTO seeks to build a more inclusive trading system that will allow more women and small businesses to participate in trade and maintains regular dialogue with civil society, labor unions, universities and the business community to enhance cooperation and build partnerships. For instance, the latest area of regulation discussed in the WTO forum is aimed at developing global digital trade rules and addressing challenges posed by the digital divide (WTO, 2022a). The World Trade Organization is a legal entity. The WTO encompasses many things and performs many functions and tasks. The WTO is a forum for conducting multilateral trade negotiations which cover goods, services and intellectual property. The WTO oversees the international trade system, which includes bilateral trade negotiations between countries and multilateral negotiations. All WTO member states must undergo periodic scrutiny of their trade policies and practices. The WTO set procedures for settling trade disputes. Building trade capacity and special provisions for developing countries are also one of the WTO tasks. With its wide scope of work, the WTO form the foundations of the multilateral trading system. But this foundation has been in crisis for some time. At a time when there was a growing trade conflict between the United States and China and the introduction of trade restrictions, the WTO did not play a significant role in calming trade conflicts and as a mediator between the parties to the dispute, which is one of its important functions. The imposition of unilateral United States is a breach of United States domestic legislation and case laws, as well as the country's obligations under the GATT 1994, and represents a clear danger to the WTO and international trade in general (Nwoke, 2020, p. 81). In the meantime, trade tensions have risen as a result of rapid growth in exports and foreign investment by Chinese companies. Also, during the COVID-19 pandemic, many members resorted to unilaterally imposing export restrictions on medical supplies and personal protective equipment, and this organization did not adequately respond and provide support to the vulnerable, nor did it act in defense of a liberal system of trade without prohibitions and quantitative restrictions, which has been greatly disrupted by these

unilateral moves. Also, the WTO has not been used as a platform for cooperation in strengthening the global production and distribution of medical devices. In this paper, we will focus on the analysis of the institutional and normative dimensions of the WTO as a very important organization in the field of international trade. We will also give a critical framework of the WTO system. Considering that the Republic of Serbia, although it has been in negotiations for many years now, is not a member of the WTO, in the second part of the paper, we will explain the way of joining the WTO as well as the current status of our country in negotiations. In the concluding comments, we will offer our view of the WTO's work so far, as well as the current problems with the functioning of the WTO and Serbia's accession.

INSTITUTIONAL DIMENSION OF THE WTO

The WTO is a "member-driven" international organization. Decisions in the WTO are taken by consensus. One of the characteristics of this organization is that the WTO is run by its member states, and all major decisions are made by the membership as a whole. In practice, this happens in two ways: by ministers (who usually meet at least once every two years) and by their ambassadors or delegates (who meet regularly in Geneva). The way of making decisions, that is, the management of this organization, is exactly what sets this organization apart from others and makes it special. In other international organizations, such as the International Monetary Fund and the World Bank, usually, the power is delegated to a board of directors or the organization's head. But the WTO is different from most international organizations because decisions are made by member states by consensus. A majority vote is also possible, but it has never been used in the WTO and was extremely rare under the GATT. The WTO's agreements have been ratified in all members' parliaments. In the institutional structure of the WTO, the Ministerial Conference is the highest-level decision-making body. The Ministerial Conference usually meets every two years. Below the Ministerial Conference is the General Council, which is usually composed of ambassadors and heads of delegation based in Geneva, but sometimes officials from the member countries are sent to meetings. The General Council meets several times a year in the Geneva headquarters and also meets as the Trade Policy Review Body and the Dispute Settlement Body. At the next level are the Goods Council, Services Council, and Intellectual Property (TRIPS) Council, and all three report to the General Council. To

help with the complex work, there have been established numerous specialized committees, working groups, and working parties dealing with the individual agreements and other areas, such as membership applications, development, regional trade agreements, and the environment (WTO, 2022b). As we mentioned, the General Council meets as the Trade Policy Review Body and the Dispute Settlement Body. The Trade Policy Review Body undertakes trade policy reviews of member countries under the trade policy review mechanism and considers the Director-General's regular reports on trade policy development. It is open to all WTO members (WTO, 2022c). On the other hand, the Dispute Settlement Body deals with disputes between WTO members. Such disputes may arise with respect to any agreement contained in the Final Act of the Uruguay Round that is subject to the Understanding on Rules and Procedures Governing the Settlement of Disputes. The Dispute Settlement Body has the authority to establish dispute settlement panels, refer matters to arbitration, adopt a panel, an Appellate Body, and arbitration reports, maintain surveillance over the implementation of recommendations and rulings contained in such reports, and authorize the suspension of concessions in the event of non-compliance with those recommendations and rulings (WTO, 2022d). Even if the Appellate Body is completely lost within the WTO system, we must not return to resolving disputes before the WTO, where the results of the panel are not automatically binding and power relations play a much bigger role (Pauwelyn, 2019, p. 306). The main WTO functions are: administering trade agreements; acting as a forum for trade negotiations; settling trade disputes; reviewing national trade policies; building the trade capacity of developing economies, and cooperating with other international organizations (WTO, 2022e). The main goal of the WTO is the liberalization and facilitation of international trade in order to achieve sustainable economic growth and overall prosperity of member countries. The WTO achieves these goals by reducing tariff and non-tariff barriers to international trade in goods, facilitating trade in services, protecting trade aspects of intellectual property rights, harmonizing trade rules, and strengthening the rule of law. This means that barriers to free trade are removed, and therefore the rules are transparent and the consequences for all participating countries are predictable. The establishment of such an international trade regime and an international institution such as the WTO reduces the instability and volatility of international trade (Braumoeller, 2006, p. 271). The WTO negotiates global rules of international trade. These rules must be followed by all member countries

of this organization. All members of the WTO have joined this international organization as a result of negotiation, so membership means a balance of rights and obligations. The WTO is an organization that has many functions and a number of bodies that deal individually with issues of importance to trade. During the many years of work of the WTO, it has become increasingly clear that there are problems in the functioning and performance of certain bodies. Hoekman highlights four reforms that would bolster the effectiveness of the WTO as a forum for trade cooperation: improving the collection and reporting of information on trade-related policies; supporting analysis-informed deliberation to establish a common understanding of the need and scope for cooperation in specific policy areas; putting in place a stronger multilateral governance framework for plurilateral cooperation between groups of WTO members; and reestablishing an effective dispute settlement system (Hoekman, 2020, p. 341). There is also growing dissatisfaction with what some consider unfair practices of their trade partners, primarily the US and the EU against China (Mavroidis, Sapir, 2021, p. 48). As a result of the inability to make significant progress in multilateral trade negotiations, bilateral and regional trade agreements began to be created and expanded rapidly, making it easier for states to directly advance their trade interests. As a result, there is an increase in bilateral or regional preferential trade agreements in which countries negotiate disciplines on matters not covered by the WTO that go beyond what has been agreed in the WTO. But the preferential trade agreements cannot address key sources of trade tension at the global level, such as investment incentives, the competitive effects of subsidies and industrial policies on third markets, or the use of trade policy as an element of programs to combat climate change. There has been a positive shift lately towards plurilateral engagement in the WTO, which illustrates a willingness to engage in dialogue and negotiations to identify good practices in areas of common interest. An internationally agreed mechanism for resolving trade disputes within the WTO is available to all member states. The country uses it to protect its own trade interests. This system gives hope to smaller countries that they will protect their interests and their trade rights even when there is a powerful and developed country on the other side. The system for resolving disputes within the WTO has been a great advance and has provided an additional dose of security in compliance with the rules by both small countries and large and powerful countries (Jelisavac Trošić, Todić, Stamenović, 2018, p. 241). However, the WTO has found itself in a stalemate because the impossibility of reaching an agreement from the

Doha Round of negotiations increases the number of cases that go into the dispute resolution system, which causes an overload of this system. The result is a blockade of the WTO itself and its most important functions in regulating international trade — negotiating and resolving trade disputes (Jelisavac Trošić, Tošović-Stevanović, Ristanović, 2021, p. 84). Fortunately, more and more WTO structures within this organization are recognizing the need to reform their work, so, for example, at a meeting of the Dispute Settlement Body on April 27, 2022, the members expressed their commitment to engage in discussions on the reform of the WTO's dispute settlement system.

NORMATIVE DIMENSION OF THE WTO

The WTO agreements are complex and lengthy. The WTO agreements are legal texts covering a wide range of activities. The WTO is often described as a rules-based system, but it should be borne in mind that these rules are in fact agreements created by the member states during negotiations. The results of the Uruguay Round of multilateral trade negotiations represent a list of about 60 agreements, annexes, decisions, and understandings. In fact, all these agreements can be divided into six main parts: the Agreement Establishing the WTO (the WTO Agreement), the agreements for each of the three areas of trade (goods, services, and intellectual property), the area of dispute resolution, and the area of foreign trade policy reviews (WTO, 2022f). The Agreement establishing the WTO, together with the first three annexes, is a multilateral trade agreement that binds all members. Annex 4 of the Agreement contains multiple trade agreements binding only the members that have acceded to these WTO agreements (e.g., the Agreement on Public Procurement and the Agreement on Civil Aviation). Annex 1a contains the General Agreement on Tariffs and Trade (GATT 1994), 12 international agreements on specific aspects of trade in goods, and an appendix to the list of customs concessions of the WTO members.

Table 1: The basic structure of the WTO agreements

Umbrella	AGREEMENT ESTABLISHING WTO		
	Goods	Services	Intellectual property
Basic principles	GATT	GATS	TRIPS
Additional details	Other goods agreements and annexes	Services annexes	
Market access commitments	Countries' schedules of commitments	Countries' schedules of commitments (and MFN exemptions)	
Dispute settlement	DISPUTE SETTLEMENT		
Transparency	TRADE POLICY REVIEWS		

Source: WTO, Internet, https://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm1_e.htm

Through all agreements that are an integral part of the WTO, the member countries operate a non-discriminatory trading system. The disputes specify the rights and obligations of the WTO member countries. Each member country receives guarantees that its exports will be treated fairly and consistently in the markets of other member countries. Each country undertakes to do the same for imports into its own market. The WTO system is designed to give developing economies some flexibility in carrying out their obligations. It is important to note that these agreements are not static, but that they have been renegotiated from time to time, and new agreements can be added to the package. Many are now being negotiated under the Doha Development Agenda. While progress was achieved across a broad range of issues, the WTO members missed several official and unofficial deadlines for concluding the Doha Round, and later they agreed to pursue negotiations on trade facilitation separately. At their Ninth Ministerial Conference in 2013 in Bali, the WTO members concluded the Trade Facilitation Agreement (TFA). The TFA entered into force on February 22, 2017, and is binding on all WTO members. At the Tenth Ministerial Conference in 2015 in Nairobi, some WTO members believed new approaches were necessary to achieve meaningful outcomes on the remaining Doha issues. During the COVID-

19 pandemic, there was uncoordinated use of trade policy instruments among the member countries of the WTO. About 100 countries have export restrictions or bans on goods, including PPE, pharmaceutical ingredients, COVID-19 vaccines, diagnostic kits, and medicines, according to the International Trade Centre. The problem with implementing trade-related measures as a response to COVID-19 is that they increase in numbers very fast and can disrupt trade flows, supply chains, and even the whole system of world trade (Jelisavac Trošić, 2021, p. 131). These extraordinary circumstances call for extraordinary action. According to some experts, it is time for trade ministers to leverage the WTO to help it recover from the pandemic. There are valuable lessons from the COVID-19 experience that could inform the development of a framework for strengthening the role of the WTO during systemic economic crises (Low, Wolfe, 2020, p. 85).

WORLD TRADE ORGANIZATION MEMBERSHIP AND THE ACCESSION PROCESS

The goal of the WTO is to become a universal organization — in scope and coverage. Currently, the WTO has 164 members, accounting for 98% of world trade. Until now, WTO membership has been acquired in two ways: original membership under Article XI (123 members), and accession, primarily under Article XII of the WTO Agreement (41 members).

A prerequisite for both original and acceding WTO members is having goods and services schedules formally annexed to the General Agreement on Tariffs and Trade 1994 (GATT 1994) and the General Agreement on Trade in Services (GATS), respectively.[1] The original WTO membership was available to contracting parties of the GATT 1947, as well as to the European Communities.[2] By accepting the WTO Agreement, 122 contracting parties to the GATT 1947, and the European Communities, became original WTO members upon the entry into force of the WTO Agreement, as of 1 January 1995, or within the subsequent two-year

[1] Article XI:1 of the WTO Agreement and the Decision on the Acceptance of and Accession to the Agreement Establishing the World Trade Organization.

[2] On 1 December 2009, the European Union succeeded the European Community (WT/Let/679). The European Communities as well as each of its member States have also individually become WTO Members pursuant to Article XI or XII of the WTO Agreement.

period.[3] While these accounted for an extremely large percentage of world trade, many economies remained outside the multilateral system regulated by the WTO. Five WTO members acceded through a special procedure between 1995 and 1996: Qatar; Saint Kitts and Nevis; Grenada; Papua New Guinea; and the United Arab Emirates. Although they were GATT 1947 contracting parties, they only finalized their WTO schedules in 1995 and therefore acceded to the WTO instead of becoming original WTO members, pursuant to the General Council Decision on "Finalization of Negotiations on Schedules on Goods and Services" of 31 January 1995 (WT/L/30). According to Article XII (1) of the WTO Agreement, the terms of accession are contained in individual accession protocols agreed by the acceding government and WTO members. So far, 36 members have negotiated terms of accession to the Marrakesh Agreement Establishing the World Trade Organization (WTO Agreement). Within the WTO, a number of countries have formed coalitions in the WTO, and here it is interesting to mention the Group of Article XII, which is composed of member countries that joined the WTO after 1995. The Group seeks to close the gap between the commitments of the original WTO members and the greater level of commitments undertaken by the members of the group as part of their WTO accessions, thus achieving a level playing field and a fairer multilateral trading system (WTO, 2022g). Although the new members of the WTO represent a significantly lower percentage of world trade and weaker economies, they have still made a significant contribution to the WTO's goal of becoming a truly universal body. The effects of WTO (and the GATT before) membership on international trade between the member countries are positive and statistically significant (Larch, Monteiro, Piermartini, Yotov, 2019, p. 17). The WTO membership includes not only all the wealthiest countries in the world but also 32 of the 50 least-developed countries. The percentage of world trade accounted for by the WTO member countries has increased from 86.8% to 96.4% and the percentage of GDP from 89.4% to 96.7%. The great degree of difference that exists within WTO membership can be illustrated by the fact that the five WTO member countries are the largest in trade terms (EC, US, China, Japan and Canada) and account for as much as 68 percent of the trade of

[3] Article XIV:1 of the WTO Agreement. Exceptionally, Congo became an original WTO Member following expiry of the two-year period by depositing an instrument of acceptance in early 1997 in accordance with the extension of this period by the General Council (WT/L/208).

all WTO Members and the five smallest account for less than 0.01 percent of that trade (LDCs). Population figures are even more relevant and important in the goal of becoming a universal organization since the original members accounted for only 66.0% of the world's population; the accession of the new members has brought this figure up to 90.1% (WTO, 2022h). According to these data, it can be seen that the countries that joined this organization are very fragmented in terms of economic strength, size, trade potential, economic growth, population size, and more. And yet, in a way, all these countries have found enough motivation and benefits to join the WTO. Each state or each customs territory, under the condition that it has full autonomy in the conduct of its trade policies, can begin the accession process to the WTO. The condition for the accession process to be completed successfully is that all WTO members must agree on the terms. This is done through the establishment of a Working Party of WTO members and through the negotiation process between that country and the WTO member countries that have joined the Working Party. The process of joining the WTO is essentially a negotiation process, which is very different from the process of joining other international organizations. The Working Party process is divided into three distinct phases, the main features of which are:

Phase 1 – the collection of factual information on the trade regime of the applicant. The applicant submits a Memorandum containing a detailed description of its foreign trade regime. The Working Party members then submit written questions to the applicant asking for clarifications or additional data. Only when written answers have been received from the applicant and an adequate factual basis obtained, the Working Party hold its first meeting.

Phase 2 – the negotiation of the terms of accession. Negotiations on the general rules relating to goods, TRIPS, and services take place multilaterally in a Working Party. Consultations and negotiations with the applicant on the level of agricultural support and export subsidies take place plurilaterally in a group consisting of the members of the Working Party interested in these issues. In addition to the above, the applicant negotiates bilaterally with interested Working Party members on conditions of access to its market for goods and services.

Phase 3 – the Working Party draft Report is finalized. This includes the commitments on the general rules to be accepted by the acceding country and a draft Protocol of Accession. The results of the bilateral negotiations on goods and services and of the plurilateral consultations and

negotiations on agricultural support are consolidated in draft multilateral Goods and Services Schedules, reviewed by the Working Party and annexed to the text of the draft Report. The Working Party then agrees on the draft Report as a whole and forwards it to the General Council/Ministerial Conference for adoption (WTO, 2022i).

The General Council/Ministerial Conference then approves the text of the draft Protocol of Accession and the text of the draft Decision on the Accession; and, in accordance with the Decision-Making Procedures under Articles IX and XII of the WTO Agreement agreed in November 1995 (WTO document WT/L/93, 15 November 1995.), adopts the draft Decision on the Accession and adopts the Report of the Working Party as a whole, including the Schedule on Goods in its Addendum 1 and the Schedule on Services in its Addendum 2 (WTO, 2022j). Since 1995, these decisions have been taken by consensus, in accordance with Article IX (1) of the Agreement Establishing the WTO. In adopting the Decision, the WTO members offer terms of accession to the applicant, which accepts those terms by accepting the Protocol of Accession. Depending on the constitutional law of the applicant, acceptance may be effective through signature or subsequent ratification. The applicant becomes a member of the WTO thirty days after accepting the Protocol of Accession (WTO, 2022k). At present, there are, including the Republic of Serbia, 32 governments which have applied to accede to the WTO. They account for 4 percent of world trade, 3.3 percent of world GDP but as much as 8.4 percent of the world population. Their membership in the WTO would bring the coverage of the organization to 99.95 percent of world trade, 99.98 percent of world GDP and 99.35 percent of the world population. Thirteen of these applicants are LDCs (WTO, 2022l). To date, only 13 member States of the United Nations have not applied to accede to the WTO. They are Eritrea (LDC), Palau, Kiribati (LDC), San Marino, the People's Democratic Republic of Korea, Somalia (LDC), the Marshall Islands, Timor-Leste (LDC), Micronesia, Turkmenistan, Monaco, Tuvalu (LDC), and Nauru. Together, these states account for 0.05 percent of total world trade, 0.03 percent of world GDP and 0.70 percent of the world population (*Ibidem*). We can say with great certainty that membership in the WTO is important for all countries of the world.

SERBIA'S PATH TO WTO MEMBERSHIP

The Federal People's Republic of Yugoslavia (FPRY) was not initially the GATT Contracting Party. The FPRY was a socialist country and had a planned economy, which was not in line with the market economy and trade liberalization, which were at the core of the GATT. Because of that, when the GATT was formed, the FPRY was not ready to take on all the obligations required by the full status of a Contracting Party. However, our country noticed the impact that this agreement has on international trade, so it was decided to follow the GATT and eventually join this agreement. The relations between the FPRY and the GATT began from the observation stage, which lasted from 1950 to 1958. With the implementation of economic reform in the 1950s, the economy was directed from central planning to market structures and instruments. Relations were formalized when the Declaration on the Regulation of Relations between the FPRY and the GATT was signed on May 25, 1959, so they moved on to the next stage of associate membership. This stage lasted from 1959 to 1965 and implied an even distribution (equivalence) of the rights and obligations of the FPRY in relation to the GATT. With the implementation of economic reform, the adoption of a permanent customs tariff, the determination of the official exchange rate, and reaching a certain level of economic development, the conditions were created for the SFR Yugoslavia to fully join the GATT on August 25, 1966. The list of customs concessions of the SFR Yugoslavia became a GATT Contracting Party (Jelisavac Trošić, 2015, pp. 259-260). Yugoslavia has been a GATT Contracting Party since 1966, and it has been a signatory to a series of accompanying agreements during successive rounds of multilateral trade negotiations conducted under the auspices of the GATT. By joining the GATT, Yugoslavia has benefited from the multilateral treaty of the most favored nation and the principle of non-discrimination, as well as a range of rights, based on GATT provisions, aimed at liberalizing, developing, and growing world trade. As a foreign party to the GATT, Yugoslavia has been very active and has several times participated in the work of the "green room". Upon accession, Yugoslavia participated in all rounds of negotiations and was a member of most committees, commissions, and working groups. Yugoslavia also actively participated in the Uruguay Round of multilateral trade negotiations, the successful conclusion of which established the World Trade Organization. But, after the dissolution of the state, at the GATT Council meeting of June 16, 1993, a decision was adopted which, referring to UN General Council

Resolution 47/1, definitively challenges the "automatic continuity" of the former SFRY's membership in the GATT; at the same time, it is concluded that the Federal Republic of Yugoslavia (FRY) must apply in the GATT if it wants to be a signatory. In addition, the foreign trade system of the FRY underwent a significant change during the international sanctions, which distanced it from the rules of the GATT and the WTO systems. The suspension of sanctions in 1995 created the conditions for Yugoslavia to address the WTO with a request to regulate its status. In the meantime, the period of the parallel existence of the WTO and the GATT expired when it was possible to acquire the status of an original WTO member on the basis of the 1947 GATT membership. The application for membership, submitted by the Government of the FRY on September 30, 1996, and re-submitted in an amended form on November 13, 1996, did not initiate the procedure for admission to the WTO since recognition of continuity with the SFRY was requested. It was proposed to conclude an agreement with a retroactive clause that would enable the FRY to become a member of the WTO under a shortened procedure (Jelisavac, 2006, p. 48). Given that the 1947 GATT ceased to solely exist, as well as bearing in mind the fact that the GATT Council no longer exists and that our country was not the only successor to the former common state, the FR Yugoslavia had to apply to the WTO for admission according to the procedure provided for new members. The new request, which was submitted to the WTO in the form of a Statement in January 2001, requested admission to the WTO under Article XII of the WTO Agreement as a new state. At the session of the General Council on February 8, 2001, a decision was made to start the process of accession of the FRY to the WTO by establishing a Working Party for the accession. But the country was in the process of transition after the 2000s, and was frequently and rapidly changing political and economic environment (Jelisavac Trošić, 2018, p. 265). The country's constitutional reconstruction and negotiations on harmonizing economic systems between Serbia and Montenegro have stalled the WTO accession process. According to Article XII of the Agreement on the Establishment of the WTO, it specifies that only a state or a separate customs territory that has full autonomy in conducting its foreign trade affairs can become a member of the WTO. The State Union of Serbia and Montenegro (4 February 2003–5 June 2006) did not meet this requirement. As Serbia and Montenegro had two different foreign trade systems, there were attempts to harmonize them, but these attempts failed. The main problem was that neither Serbia nor Montenegro was ready to leave the competencies for the implementation of obligations towards the WTO, primarily the

conduct of foreign trade policy, to the Ministry of Economic Relations with Foreign Countries of the state union. When the Republic of Serbia became an independent state on June 5, 2006, it started independent negotiations on WTO accession. The Republic of Serbia's request for admission to the WTO, under which ongoing negotiations are underway, was officially submitted on December 10, 2004. On February 15, 2005, the General Council of the World Trade Organization decided to establish a Working Party for Serbia and to start the process of Serbia's accession to the WTO. The request originally submitted by the FRY in 2001 is considered withdrawn (Jelisavac Trošić, 2015, p. 267). After the Working Party for the Admission of Serbia to the WTO was established, negotiations on WTO rules and previously described phases began. Serbia, after 17 years, has still not completed negotiations on joining the WTO. Serbia is one of 24 countries currently negotiating accession to the WTO. The Working Party for Serbia met a total of 13 times, the last time on June 13, 2013. Until then, when the stalemate arose, the meetings of the Working Party for Serbia were usually held twice a year, and the negotiations progressed. In the negotiations, Serbia was marked as a transitional economy and a landlocked country. It would have been easier for the negotiations if Serbia had received the status of a developing country, but like other countries in Europe, has neither the status of a developing country nor the status of the least developed country, so all regulations must be in accordance with WTO rules on the date of joining the organization, without any transition period of adjustment. The last draft Working Party Report for Serbia was made in October 2012. The next Working Party meeting is expected when Serbia completes the procedure of adopting the remaining legal solutions in accordance with WTO rules (primarily regarding the trade of GMO products), when the work on the new draft report of the Working Party is completed and when significant progress is made in the remaining bilateral negotiations on market access, i.e., when a new bilateral protocol on access to the goods and services market is signed. But, since 2013, there has been no progress on the adoption of the Genetically Modified Organism (GMO) law, and Serbia has sustained contacts with several members to advance bilateral market access negotiations. So far, Serbia has completed negotiations and signed and deposited in the WTO Secretariat bilateral protocols on market access for goods and services with 14 WTO members: the European Union (EU), the Dominican Republic, Ecuador, Honduras, Japan, Canada, China, Korea, Norway, El Salvador, Panama, India, Mexico, and Switzerland. Currently, within the WTO, Serbia is conducting bilateral negotiations

with four other countries: the United States, Ukraine, Brazil, and Russia (Jelisavac Trošić, Todić, Stamenović, 2018, p. 184). Documents related to the Working Group for Serbia are limited to the public and will be available only after the adoption of the report at the Ministerial Conference and the WTO General Council, in the final phase of negotiations (WTO, 2002).

CONCLUSIONS

The rules that are an integral part of the WTO agreements and which regulate international trade have been established for decades. These rules were harmonized by the WTO member countries through negotiations. It is a large system that includes negotiations, control of the application of agreed rules, control of trade systems of member countries, resolution of mutual trade disputes and more. The fact is that the WTO is a universal organization in the field of international trade and that it has no alternative. Despite the parallel existence of bilateral and regional trade agreements, the scope and importance of the WTO far exceeds them. The growth of international trade has undoubtedly stemmed from the multilateral framework developed under the auspices of the WTO. However, over the years, the WTO has accumulated significant problems awaiting resolution, making it increasingly difficult to reach agreements between member countries or advance trade negotiations. The trade war and the corona crisis have further shaken confidence in the functioning of this organization, as it has failed to impose itself as the supreme body capable of coping with such shocks. The sluggishness of the negotiations and the insufficient speed and strength of the reaction to the individual introduction of restrictive measures on trade by the member states have somewhat undermined the integrity of this organization. Due to all that, the WTO is about to reform and modernize in accordance with the needs of the modern world. This organization and its functioning have been re-examined, but still, countries are conducting trade according to WTO rules which make the fundamental principles for multilateral trade. Serbia is outside of the WTO in long-standing membership negotiations. After 17 years, Serbia has still not completed negotiations on joining the WTO. The negotiations have been de facto frozen since 2013. The reasons are the failure to pass a new GMO law and the incompleteness of several bilateral market access negotiations. WTO rules in these fields remain unchanged, so it depends on our country whether this process will continue. Of course, despite the advantages that WTO membership would bring, it will

not in itself increase the competitiveness of the Serbian economy, but will enable it easier and non-discriminatory access to foreign markets.

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THE ROLE OF THE UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT (UNCTAD) IN GLOBAL DEVELOPMENT AND THE POSITION OF SERBIA

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Abstract: In the contemporary global economy, the majority of international institutions are actively engaged in analyses, assessments, and recommendations for the improvement of economic development in developing countries. The United Nations Conference on Trade and Development (UNCTAD) is one of the most important international organizations dedicated to the problems of trade and development in developing countries aiming to improve trade and investment and help them integrate faster into the global economy. The organization aims to provide assistance to developing countries and enable them to cope with potential shortcomings and problems during economic integration. In this paper, we are going to give a brief overview of the institutional and regulatory activities of the organization, with specific examples of the activities, effects, and guidelines of the United Nations Conference on Trade and Development, using rather useful and cited reports of the organization such as *Trade and Development Report* and *World Investment Report*, along with presenting the position of Serbia.

Keywords: Trade and development, UNCTAD, economic integration, investment, regulatory activities.

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INTRODUCTION

There are various international economic and financial institutions in the global economy that directly or indirectly affect the acceleration of national economic development. These international institutions are immensely important for developing countries. The UNCTAD is one of these important international organizations dedicated to the problems of trade and development, i.e., its goal is to increase trade and investment in developing countries and help them integrate faster into the global economy, as well as to strengthen the capacity of these countries in negotiation processes on all significant international issues. Therefore, we can say that the main goal of the UNCTAD is to improve the position of developing countries in the global economy and, ultimately, define the rules that apply to all aspects of development, including trade, aid, transport, finance, technology, etc. The UN General Assembly held the first United Nations Conference on Trade and Development in 1964. The UN institutionalized the conference and gave it the mandate to meet every four years, with intergovernmental bodies meeting between sessions and a permanent secretariat providing the necessary substantive and logistics support. There have been 15 quadrennial conferences since 1964. Its mandate, reaffirmed at its thirteenth quadrennial conference in Doha in 2012, is to be "the focal point in the UN system for trade and development, together with related issues in the areas of investment, finance, technology, enterprise development and sustainable development" (the UNCTAD.org). The UNCTAD was created at the time of decolonization in the 1960s, when the UN engaged, through its Special Committee on Decolonization, in the monitoring of the implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, adopted by the UN General Assembly on 14 December 1960 (McWhinney, 2008, p. 1). According to Barone (2016, p. 1), the origin of this organization is linked to the desire of developing countries to discuss their economic development problems in a global forum other than that of existing international organizations such as the GATT, the International Monetary Fund (IMF) or the World Bank (WB). The established group was a group of developing countries pledging to promote equality in the international economic and social order and promote the interests of the developing world. Based on that, the strong role that the UNCTAD played during the early stages of the G77 group has decreased over time as the group has become increasingly more heterogeneous.

What the UNCTAD stands for are 12 key things: address macro-level development challenges, achieve integration into the global trading system,

diversify their economies to make them less dependent on commodities, limit their exposure to financial volatility and debt, attract development-friendly investment, increase access to digital technologies, promote entrepreneurship and innovation, help local firms move up value chains, speed up the flow of goods across borders, protect consumers from abuse, curb regulations that stifle competition, adapt to climate change and use natural resources more effectively (Tošovoć-Stevanović, 2009). By supporting the process of globalization and the expansion of trade, the UNCTAD aims to help developing countries cope with potential shortcomings and problems during their economic integration and enable them to start using trade, investment, finance, and technology as the tools for inclusive and sustainable development. In this paper, we are going to give a brief overview of the institutional and regulatory activities of this organization, with specific examples of UNCTAD activities, effects, and guidelines for trade and development, using the UNCTAD's rather useful and cited publications (such as *Trade and Development Report* and *World Investment Report*), with an overview of Serbia's position in the UNCTAD, as well as the prospects for further improvement of these relations.

THE ROLE, IMPACT AND EFFECTIVENESS OF THE UNCTAD

Analyzing the role and importance of UNCTAD, we can list some of the key reasons and goals for its establishment and operation. One of the main aims is certainly the improvement of international trade, especially in terms of accelerating trade between developing countries, and, ultimately, their own individual economic development. Moreover, the role of the organization is to develop the principles and the policy of international trade, proposing concrete measures to operationalize the global development strategy adopted in international forums, as well as to establish the mechanisms and institutions of mutual cooperation of the UNCTAD member countries. Moreover, its aim is to improve the negotiating positions in the organizations of the UN system regarding trade and development, along with harmonizing the policies of the member governments and the regional economic groups in the field of international trade and development. All the members of the United Nations are also members of the UNCTAD. The highest bodies of the UNCTAD are the Conference and the Trade and Development Board. The decisions of the UNCTAD bodies are made in the form of non-binding resolutions. Although not legally binding, they "should be guided by the activities that benefit international trade". That is why the UNCTAD documents are

formally less binding than those of the World Trade Organization (WTO). Such documents include, for example, the Principles on International Trade and Trade Policy for the Promotion of Development and the Charter of Economic Rights and Duties of States. The executive body of the UNCTAD is the Trade and Development Board, which facilitates the work between the sessions of the Conference. The Board reports annually on its activities to the Conference and the General Assembly through ECOSOC. Accession to the Board is open to all UNCTAD member countries. The work performed by the UNCTAD can be divided into six groups (Kotlica, Knežević, 2002, p. 381):

1. Globalization of development strategy – researching the globalization of world economic flows, as well as the impact of this phenomenon on development processes; analysing the processes occurring in countries in transition; studying the problems of finance and over-indebtedness, as well as the methods of resolving the debt crisis of developing countries; and forming databases and providing a statistical database of information related to trade and development;
2. International trade in goods and services – the activities that help developing countries maximize the effects of globalization. Consequently, the UNCTAD has participated in numerous projects related to the development of underdeveloped regions all over the world.
3. Investment, technology and enterprise development – the UNCTAD explores the global trends in direct investment, as well as the links between trade, technology, and development. The organization analyses the development policy of small and medium-sized enterprises, helps developing countries, and encourages the development of entrepreneurship and innovation in developing countries;
4. Services, infrastructure and trade efficiency – the UNCTAD assists countries in transition to improve the efficiency of trade services, encourages the development of electronic commerce and electronic correspondence using Internet resources, assists landlocked countries by creating special transport rules that replace many different transport regimes and provide the universal regime for private transport contracts;
5. Interdepartmental issues;
6. Underdeveloped countries and landlocked countries – the UNCTAD coordinates the activities of various organizations and specialized agencies aimed at helping landlocked countries, underdeveloped countries, and island countries.

Since its creation up to now, the UNCTAD has been an organization that consistently addresses the challenges of all developing countries regarding international economic and trade flows, recognizing the various challenges of rapidly changing international trade due to major technological and innovative changes, as well as the serious consequences of the global crises (the global economic crisis and the ongoing pandemic crisis). According to Beslać (2022, p. 223), until the early 1990s, the UNCTAD activities were conducted in accordance with the Principles Governing International Trade Relations and Trade Policies adopted at the first conference in 1967 in Geneva. The principles of international trade relations and trade policy foresaw the creation of global trade relations on the basis of the equality of sovereign states, the right of people to self-determination, and non-interference in the internal affairs of other states. Moreover, these principles advocated the idea of the inadmissibility of discrimination of any kind in international relations when it comes to differences in the social, political, and economic systems of states. Special efforts were made to overcome the consequences of colonialism and neocolonialism and to achieve the freedom of movement of goods and services, capital, and people according to the principles of mutual benefit. During the 1990s, political and economic relations on the Old Continent and in a part of Asia changed significantly (the breakup of the USSR, the breakup of the SFRY, and the breakup of Czechoslovakia...). At the same time, the power of multinational companies grew to unprecedented proportions, globalization processes were expanding and accelerating, and the United States played a dominant role in the world political and economic scene. Therefore, developed countries, especially the United States, believed that the UNCTAD was too focused on developing countries. Since the World Trade Organization was formed and international trade problems were resolved in that organization, the existence of the UNCTAD was questioned.

At the conference held in 1996 in the Republic of South Africa, it was concluded that the UNCTAD was useful even in those conditions and that it should continue to work. Under the new conditions, the UNCTAD deals with issues such as: consideration of development strategy, international trade in products, services, technology, foreign direct investments, entrepreneurship development, etc. (Beslać, 2022, p. 223). Taking into account the abovementioned changes and dilemmas about the existence of the UNCTAD, it is believed that improving the institutional efficiency of the UNCTAD is a continuous process. Essentially, the organization continues to give its maximum contribution to the multilateral system of the development and promotion of economic progress of developing countries,

with three key pillars now focused on research and development, intergovernmental work and engagement, and technical cooperation. Based on the Report of the Panel of Eminent Persons in 2006, the people known to be early advocates of political democracy and expansion of economic incentives, the view on the role of foreign policy and environment towards developing countries changed, from reducing threats to new emerging opportunities. The UNCTAD was established to promote development among so-called newly undeveloped and underdeveloped countries. Its purpose was to facilitate the integration of these economies into the global economy with a balanced approach. When the UNCTAD was created, the world was at the height of the East-West conflict, and the South emerged as an economic group consisting of poor countries vis-à-vis the rich countries in the North. The UNCTAD member states were divided into groups that reflected these divisions: Group 77 (developing countries, further divided into regional groups), Group B (developed countries), Group D (Central and Eastern European countries) and China. With the end of the Cold War, the former communist countries of Central and Eastern Europe were looking for a way to adapt and make a successful transition from their previous political regimes and economic systems. Some countries joined the European Union, while others continue to manage certain problems, and their troubles and aspirations are now almost the same as in the developing countries in the south. The South itself is not the monolithic political and economic bloc it was in the 1960s. Some developing countries have made a successful transition to the increased prosperity of the North, others are on the way, and some have been stagnating and are even further marginalized. Developing countries on different continents and within each continent have had differing experiences and have diverse interests in issues related to international trade and investment. Asian countries generally have integrated themselves better into the world economy. Africa has generally done worse (Report of the Panel of Eminent Persons, 2006, p. 18). While the needs, interests, and development strategies of developing countries may be different, these countries are still linked by a common goal, which is to accelerate their development. The world has evolved when it comes to considering appropriate development strategies. At the time when the UNCTAD was established, development thinking was strongly influenced by two attitudes. One was focused on domestic policy, and the other considered the external environment as the factor that could facilitate or limit development. As for the first attitude from the Report of the Panel of Eminent Persons (2006, p. 18), policymaking was focused on the need to raise domestic savings and to supplement that effort with the attraction of

foreign official funds in order to accelerate and sustain growth. These higher growth rates, in turn, were supposed to draw the poor into gainful employment and out of poverty; this was an active "pull-up" strategy, as opposed to a passive "trickle-down" strategy for development. Countries with explicit development plans were therefore focused on poverty and "people" from the outset.

Apart from the abovementioned things, the focus was also on the analysis of authoritarian regimes and their direct impact on the development of democracy, which could pursue wrongheaded policies without correctives at the ballot box; that incentives to grow would be greater when political freedom was available alongside the judicious use of economic freedom, and that democracies were good simply in themselves. In terms of cautious attitudes and dilemmas regarding the process of integration of developing countries into the global economy, they no longer exist; nowadays, some developed countries are not in favor of integration with the countries in the south. The South seeks to increase foreign trade and investment, and gain greater access to foreign markets and capital, which are all opportunities to be seized. Reflection on the basic principles of appropriate development strategies is an ever-present topic. The issues related to life expectancy and literacy rates, health, education, human rights, democracy, the environment, and gender equality are always present, and all these development strategies and directions are part of the Millennium Development Goals (MDGs). The complexity of solving such problems requires high-quality international cooperation, which is why today it is believed that consensus, international cooperation, and multilateral solutions regarding solving common problems are inevitable, perhaps even more necessary than ever, which confirms the importance of international organizations such as the UNCTAD.

EFFECTS AND GUIDELINES OF THE RESEARCH CONDUCTED BY THE UNCTAD

Although the UNCTAD is at a crossroads due to the growing conflict between the reality of its success and the perception of its redundancy, the reality is that the UNCTAD has had achievements that support the fulfillment of its mandate as a major international trade and development organization. In this part of the paper, we will give a brief overview of the activities of this organization, with specific examples of the activities, effects, and guidelines from extremely useful and cited UNCTAD publications

(such as the *Trade and Development Report, World Investment Report,* the UNCTAD *Handbook of Statistics*, etc.), and with an overview of our position in the UNCTAD, as well as the prospects for further improvement of these relations. The publications that we will present and which are most often analyzed and cited for the needs of economic analysis are certainly the *Trade and Development Report* and the *World Investment Report*.

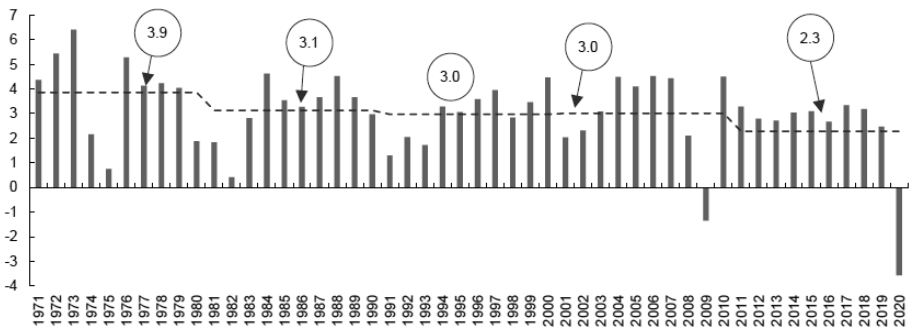
Trade and Development Report

The first UNCTAD Trade and Development Report was published in 1981. The report warns that the global conditions for improving long-term cooperation with developing countries are beginning to fade and disappear due to the deteriorating situation in many countries since a "development crisis" is anticipated. Therefore, the main message of this report is the importance of faster growth in developing countries, which is also beneficial for developed countries. However, it requires intensive international cooperation and the joint efforts of all governments to achieve the most demanding transformations and structural reforms. According to the report (TDR, 2022), the break-up of the Soviet Union as the new decade got underway opened a wider front for market-based reforms and at a faster pace described as "shock therapy". The 1993 Report warned that transition economies had seen more shock than therapy. Still, a new world order was promised, which would, according to the United States President George H. W. Bush, offer "new ways of working with other nations (…), peaceful settlement of disputes, solidarity against aggression, reduced and controlled arsenals, and just treatment of all peoples" (Nye, 1992). In the musings of one enthusiastic observer, this signaled "an end to history" (Fukuyama, 1992). Foreign capital has been returning to Latin America since the early 1990s, but many developing countries, especially in sub-Saharan Africa, continue to struggle with inherited long-term crises.

The moment the Highly Indebted Poor Countries Initiative (HIPC) was launched by the IMF and the World Bank in 1996, the situation began to change. Only with the Highly Indebted Poor Countries initiative (HIPC), launched by the IMF and the World Bank in 1996, did their situation begin to change. In the following period, special attention was given to how trade and capital account liberalization combined with pro-cyclical fiscal and monetary policies could disrupt growth and development. The mismatch between macroeconomic prices and reduced investment flows led to a reduction in the number of employees, job losses, and rising poverty, which

was confirmed in the Report of 1995. According to the report *The Troubled History of Building Back Better: From the 1980s Debt Crisis to Covid-19* (TDR, 2022, p. 48), in 2000, the Report concluded that the initial policy response to the East Asian crisis, marshaled in large part by the international financial institutions, had been unnecessarily severe, with the burden carried by wage earners, small and medium-sized enterprises, and the poor. Recovery only began once austerity measures were reversed and governments were allowed to play a more positive role.

Figure 1: The slowdown in global economic growth, 1971–2020
(annual and decadal geometric average, percent)



Source: The UNCTAD secretariat based on the UNCTADStat;
and World Output series for TDR production, TDR, 2022.

Moreover, the Report discussed the consequences of two global crises. The first is, as expected, the global financial crisis, and the second one is the ongoing pandemic crisis. Both of them are also presented in Figure 1, which depicts the period from 1971 to 2020. From the last Report 2021, the following conclusions can be drawn: Developing countries, in particular, encountered great difficulties due to the global closure, which brought economic activity to a halt. This triggered a series of interconnected shocks that generated vicious economic cycles, i.e., further aggravating the existing high debts, which plunged most regions into a deep recession, and some countries even became unable to settle their debts. Despite the fiscal pressure and rising debts, developing countries were left to manage the crisis on their own, causing a great deal of redundancies in the public sector and a large number of services. As was the case with the first Report 1981, the last Report coincides again with the G7 countries, speaking of the need to revitalize Western democracy and

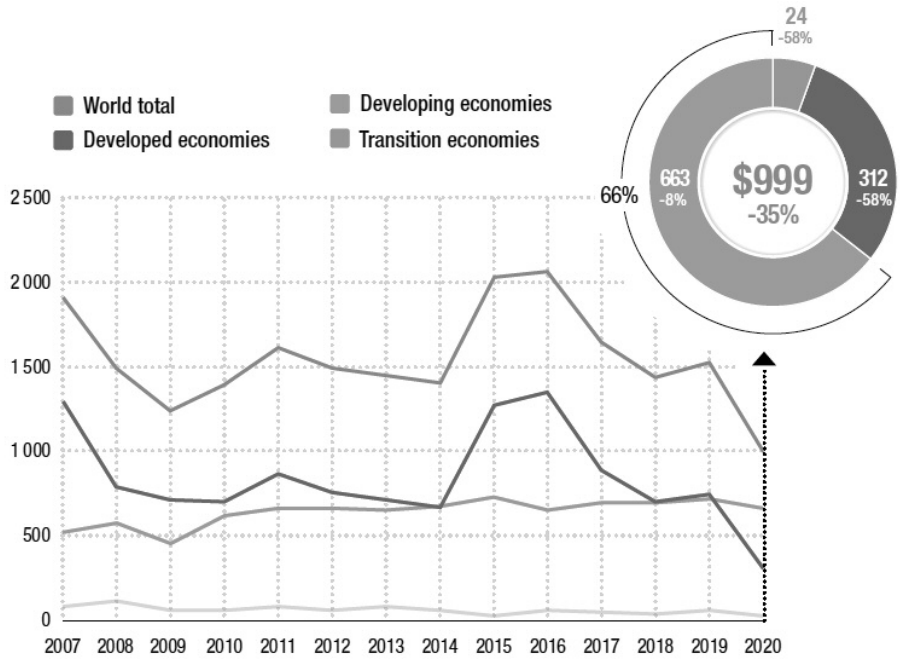
build a new partnership with developing countries on infrastructure investment, including the Clean Green Initiative. The idea of "building a better world" implies that health and education should be treated as global public goods and that there should be more funding and reallocation of resources for the Green Revolution project. After decades of rising inequality, increasing polarization and the pandemic that has led to high unemployment, the economic recovery provides an opportunity to rebalance the income distribution in and between countries. As for the encouragement by the G7 leaders to "rebuild a better world", a better world will emerge from the pandemic only if the strong economic recovery is promoted and supported in all regions of the global economy if the recovery gains reach medium and low-income households, if health insurance, including easy access to vaccines, is treated as a truly global public good, and if there is coordinated high investment pressure in carbon-free sources in all countries.

World Investment Report

The World Investment Report encourages policymakers to monitor global and regional investment trends and national and international policy developments. The UNCTAD defines FDI as investment involving a long-term relationship, lasting interest, and control by a resident entity in one economy. FDI implies that the investor exerts a significant degree of influence on the management of a resident entity in another economy. Such investments include both the initial transaction between two entities and all subsequent transactions between them and between foreign-affiliated companies, either incorporated or unincorporated. FDI can be performed both by individuals and business entities (Kapor, Tošović-Stevanović, 2017, p. 184). Many empirical studies and analyses have shown that FDI is a significant source of capital, especially for developing countries (Jelisavac, Trošić, et al, 2021, p. 191). There is a fundamental difference between the member states of the European Union and countries that are not (Borychowski et al., p. 4). Global flows of foreign direct investments have been severely affected by the COVID-19 pandemic. This is a major problem, as international investment flows are immensely important for sustainable development in poor regions. Increasing investment and, thus, supporting a sustainable and inclusive recovery from the pandemic is now a global policy priority. This entails promoting investment in infrastructure and the energy transition, resilience and health care. At the end of October, the UN report on global investment trends was published, emphasizing that foreign direct investments (FDI) in the first half of 2020 due to the closure of economies all

over the world were reduced by 49% compared to the same period last year, and the ongoing investment projects are being implemented slowly while less important projects are postponed so that the companies can preserve the necessary liquidity (Nikolić, 2020, p. 18). In this respect, FDI trends varied significantly across regions. Developing regions and transition economies were relatively more affected by the impact of the pandemic on investment in GVC-intensive and resource-based activities. Asymmetries in fiscal space for the roll-out of economic support measures also drove regional differences (WIR, 2021, p. 12). Among developed countries, FDI flows to Europe fell by 80%. The fall was magnified by large swings in conduit flows, but most large economies in the region saw sizeable declines. Flows to North America fell by 42%; those to other developed economies by about 20% on average. In the United States, the decline was mostly caused by a fall in reinvested earnings. FDI flows to Africa fell by 16% to $40 billion – a level last seen 15 years ago. Greenfield project announcements, the key to industrialization prospects in the region, fell by 62%. Commodity exporting economies were the worst affected. Flows to developing Asia were resilient. Inflows into China actually increased by 6%, to $149 billion. South-East Asia saw a 25% decline, with its reliance on GVC-intensive FDI an important factor. FDI flows to India increased, driven in part by M&A activity. FDI in Latin America and the Caribbean plummeted, falling by 45% to $88 billion. Many economies on the continent, among the worst affected by the pandemic, are dependent on investment in natural resources and tourism, both of which collapsed. FDI flows to economies in transition fell by 58% to just $24 billion, the steepest decline of all regions outside Europe. Greenfield project announcements fell at the same rate. The fall was less severe in South-East Europe at 14%, than in the Commonwealth of Independent States (CIS), where a significant part of the investment is linked to extractive industries.

Figure 2: FDI inflows, global and by group of economies, 2007–2020
(Billions of dollars and per cent)



Source: THE UNCTAD, 2021.

The study conducted by the UNCTAD in early 2017, involving the executive managers of the leading global corporations, stated the following as the most significant factors affecting FDI flows (Dugalić, 2017, p. 9): the economic situation in developing Asia, the state of the US economy, the economic situation in the European Union, oil prices, changes in tax regimes, FX rates volatility, and rising interest rates.

SERBIA'S POSITION ACCORDING TO THE UNCTAD RESEARCH

When it comes to the economies in transition, according to the UNCTAD report *World Investment Report 2021*, the pandemic in 2020 led to a decline in FDI inflows, which for that year was approximately 50% less than the previous year. Among the economies in transition, Serbia is the third in terms of foreign direct investment inflows in 2020, behind Russia and

Kazakhstan. The activities related to the supply of global value chains have been under pressure in almost all countries, which largely explains the decline in FDI in Southeast Europe. The report states that the delays in implementing export-oriented investment projects linked to the global value chains have impeded the inflows into Southeast European countries, and that even though the region is closely linked to the EU, at the beginning of the pandemic, there was a slight delay in the realization of new projects. According to the data from the UNCTAD statistics for 2020, the economic indicators of Serbia can be seen in Tables 1 and 2 (international merchandise trade and FDI and external financial resources).

Table 1: International merchandise trade

Total merchandise trade

(millions of US$)	2005	2010	2015	2020
Merchandise exports	_	9 795	13 376	19 498
Merchandise imports	_	16 735	17 876	26 233
Merchandise trade balance	_	-6 940	-4 499	-6 735

Source: The UNCTADstat, 2022. (http:// UNCTADstat.the UNCTAD.org).

Table 2: FDI and external financial resources

Financial flows

(millions of US$ unless otherwise specified)	2005	2010	2015	2020
FDI inflows	_	2 174.17	2 690.23	3 830.03
FDI outflows	_	234.57	387.40	192.22
Personal remittances, % of GDP	_	10.75	9.42	8.78

Source: The UNCTADstat, 2022. (http://UNCTADstat.the UNCTAD.org).

According to Kastratović (2016, p. 72), the largest inflow of foreign direct investment in Serbia during the 1990s was realized in 1997, when the Italian company STET - Societa Finanziaria Telefonica acquired 29% and the Greek company Organismos Tilepikinonion Ellados - OTE 20% shares of Telekom Serbia, and until 2001, the inflow of foreign direct investments in Serbia was at a very modest level. Since that year, the inflow of foreign direct investments in the country began to grow, which lasted until the outbreak of the global economic crisis. After a period of stagnation, which was present all over the world, and the recovery from the consequences of the global economic crisis, there was another period of growth of foreign direct investments in Serbia. According to the UNCTAD report, before the

pandemic crisis in 2018, Serbia was the second largest recipient of foreign direct investments among transition countries, including the countries of the former Soviet Union, with the growth of share capital. It is also pointed out that the Serbian economy is the largest one in the sub-region, relatively diversified, and also with a strategic position that facilitates logistics infrastructure. Furthermore, its mineral resources, especially copper, attract companies that explore resources. Among the foreign direct investments, the Report states the share of the French Vanci Airports in Nikola Tesla Airport and the Chinese Zidjin in the Bor mine. Additionally, the investments in the Serbian automotive cluster with the projects of the British Essex Europe and the Japanese Yazaki stand out as significant investments, as does the research center in Novi Sad of the German tire manufacturer Continental.

CONCLUSIONS

From its creation until now, the international organization UNCTAD has been considered vital for the global community because it covers almost all relevant economic and legal aspects of modern international trade and other issues related to economic development. Even though the World Trade Organization has overtaken the role of dealing with important trade issues, the UNCTAD plays a key role in the UN system when addressing not only international trade but also finance, investment, and technology, with a special focus on helping developing countries promote businesses and develop and encourage entrepreneurship. A systematic approach in the analysis and the reports from various UNCTAD publications provides many developing countries with an overview of all the aforementioned areas and engagements of this institution, as well as the opportunity to objectively analyze the economic situation and the progress of developing countries, the measures and the incentives which should be even more supported and implemented in the forthcoming period.

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INTERNATIONAL LABOR ORGANIZATION (ILO) – SPECIALIZED UNITED NATIONS AGENCY FOR SOCIAL JUSTICE, HUMAN AND LABOR RIGHTS

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Abstract: The relevance of the study is due to the important historical role of one of the specialized agencies of the United Nations — the International Labor Organization (ILO) — in regulating social and labor relations on a global scale. The purpose of the study is to examine, using the latest sources and literature, the history, goals, objectives, structure, and mechanism of functioning of the ILO as an international organization advocating for social justice and decent work. The article presents the results of research on the nature, activities, and importance of the ILO in the system of international relations. The main achievements of the ILO, modern challenges and problems in the field of labor, new opportunities and guidelines for cooperation between states and social partners in their pursuit of social justice, as well as measures to further improve the activities of the ILO, are indicated. Attention is paid to the Declaration of the 100th anniversary of the ILO on the future of the world of work "To work for a better future", adopted in 2019. The characteristics of the ILO's social and labor strategy in the context of globalization at the present stage are given. In the context of globalization with increasing income differentiation between and within countries, there is a need for mutually beneficial cooperation of the ILO with the IMF, the World Bank, and the WTO to help develop poor countries. The ILO aims at developing an International Labor Code.

Keywords: International Labor Organization (ILO), International Labor Conference (ILC), International Labor Office (ILO), tripartism, social and labor relations, decent work, social justice

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INTRODUCTION

The basis of human existence is work. In the process of work, a person realizes the meaning of its existence, transforming the world and itself. "Each thing is made by labor," says folk wisdom. Modern social and labor relations and rights are the result of their long historical formation and development. An important stage in the development of human rights and labor rights, in particular, were the European bourgeois-democratic revolutions of the 17th–18th centuries. One manifestation of human economic freedom was the freedom of labor, which was developed in the 18th century by the classics of economic thought such as A. Smith, R. Cantillon, D. Ricardo, F. Quesnay, etc. At the end of the same century, the French socialists G. Babeuf and S. Fourier raised the question of the human right to work. In 1819, the social reformist S. Sismondi, in his work "New Beginnings of Political Economy", argued that the right to work and the right to exist should be ensured by social legislation and should propose a ban on child labor, a limitation of working hours, payment by an entrepreneur of sick leave, unemployment, pensions and retirement, etc. The problems of the right to work and to exist in a concentrated form were raised by the Austrian lawyer and philosopher A. Menger (1841-1907). The natural law theory served as the basis for scientists to allocate three interrelated rights of an employee: freedom of labor, the product produced by him, and the free exchange of labor products. K. Marx relied on these provisions in the construction of his teaching (Kostin, 2002). In the last third of the 19th and the early 21st centuries, public law regulation of social and labor relations has developed significantly. The legalization of labor rights, in most countries, was adopted in the following sequence: regulation of labor protection for children and women, the formation of some minimum requirements under the terms of an individual labor contract (the maximum working day first for some, and then for all categories of workers; in some cases, the minimum wage and the frequency of its payment, and sanitary and hygienic requirements for working conditions). The legislative regulation of labor rights was reduced to the protection of an employee from excessive exploitation, thereby legalizing those labor rights of an employee that primarily ensured the physical survival of an employee in the era of initial capital accumulation. Without improving the situation of workers, whose numbers were steadily growing under the conditions of industrialization, there was a danger of social upheavals and revolutions. In conditions when economic growth was achieved due to unrestrained exploitation of workers, work in factories was exhausting and low-paid,

social protection was practically absent, and the idea of creating an international organization for social and labor problems arose. The main reasons for the creation of the ILO were the political, socio-humanitarian, and economic problems of that time: the socialist revolution that was won in Russia in 1917 and the threat of the expansion of the revolutionary movement in other European countries. The difficult and unacceptable working and living conditions of workers from a humanistic standpoint, the appeals of advanced humanist thinkers, and the desire of individual states to improve the situation of workers — all these have required solving social and labor problems simultaneously in many countries.

BACKGROUND AND CONDITIONS FOR THE CREATION OF THE ILO

The ILO emerged on the basis of the European social reformism of the 19th century and the strengthened labor movement. In 1818, at the Congress of the Holy Alliance in Aachen (Germany), the English industrialist and Utopian socialist R. Owen (1771-1858) proposed to adopt a Regulation on the protection of workers and create a special commission on social and labor issues. In 1855, the French industrialist D. Legrand, in the development of R. Owen's ideas, pointed out that "only social reform" could prevent possible social upheavals in the future (Kostin, 2002). The congresses of the I and II Internationals played an important role in the development of the labor movement and international labor law, at which the most important documents in the field of labor and social guarantees for workers were adopted: the 8-hour working day for workers; the protection of women's labor; the organization of children's labor; the development of trade unions, etc. The result of the development of the Social Democratic Movement and a number of working conferences in Europe in the 1890s was the foundation of the International Association of Labor Legislation in 1900, which was a predecessor of the ILO and collected and published labor laws of different countries. At the end of the 19th century, trade unions and organizations of workers began to arise in industrialized countries, demanding democratic rights and decent working and living conditions. The first revolutionary democratic organizations and parties were also created, including in Russia (in 1898, the RSDLP, which split into Bolsheviks and Mensheviks in 1903). In 1905, the first trade unions appeared in Russia. The First World War, which began in 1914, exacerbated socio-political and labor contradictions in the world. In 1917, a revolution took place in Russia, and the ghost of the revolution wandered through Europe (revolutionary actions began in

Germany and Hungary). In order to prevent revolutions through the peaceful and evolutionary resolution of conflicts, the governments, employers, and workers (the reformist wing of workers' trade unions) of France, England, and the US came up with the idea of creating an international organization for the regulation of social and labor relations. In 1919, the International Labor Organization (ILO) was established in Paris by the 13th part (Articles 387-427) of the Versailles Peace Treaty under the League of Nations. On April 11, 1919, the ILO Charter was adopted, beginning with the words: "universal and lasting peace can be established only on the basis of social justice" (these words remain the ideological foundation of the ILO to this day). And on October 29, 1919, in Washington (US), with the participation of representatives from 45 countries, the First International Labor Conference (the highest body of the ILO) began its work, where the first six Conventions were adopted: on working hours, on unemployment, on maternity protection, on restricting women's work at night, on the minimum age for hiring children in industry, and on the restriction of the work of adolescents in industry. The First Convention established an 8-hour working day and a 48-hour working week in the industry. The opening date of the conference became the Founding Day of the ILO, although the conference continued its work until January 27, 1920. Alber Thomas, a politician and minister in the French government during the First World War, became the Director of the International Labor Office (the governing body of the ILO) for the period from 1919 to 1932. When the League of Nations and the ILO were created, the so-called "American paradox" arose. US President W. Nelson advocated the creation of the League of Nations, and the Chairman of the American Federation of Labor, S. Gompers, headed the commission for the creation of the ILO. But on November 20, 1919, the US Senate refused to ratify the Versailles Agreement and the treaty establishing the League of Nations, thereby removing American representatives from this process. In fact, the United States did not officially participate in the creation of the League of Nations and the ILO, and the main work was carried out by Anglo-French representatives. The structure of the established ILO was as follows:

The General Conference is the highest body of the ILO that determines its main goals and ways to achieve them and has broad powers: adopts the norms of international law, accepts new members, reviews and approves the budget, approves a two–year program of activities every two years, elects the Administrative Council, committees and conference groups, monitors the application of Conventions and Recommendations at the national level, etc. The General Conference is a global forum for discussing

global social and labor issues. Each participating State has the right to send four delegates to the conference: two from the Government and one from representatives of workers and employers. At the same time, each delegate has the right to speak independently and vote independently.

The Administrative Council is the highest executive body of the ILO, elected at the session of the General Conference for 3 years. He elects the Director-General, directs the activities of the International Labor Office and the Director-General, determines and develops the agenda of the Conference, etc. The Administrative Council consists of a Chairman, 56 permanent members (28 of whom represent the Governments of the ILO member States), and 66 deputies.

The International Labor Office is a permanent secretariat that performs the functions of an operational headquarters, research and publishing center. Its main tasks are the preparation of documents and reports for conferences and meetings of the ILO, and the management of cooperation programs. The Office is headed by the Director-General, who is elected for a 5-year term. The International Labor Office has more than 40 offices around the world.

According to the adopted Statute, the objectives of the ILO are: achieving universal peace on the basis of social justice; improving working conditions, which entail injustice, need, and deprivation for more people and generate discontent, endangering peace and harmony throughout the world; and the achievement of a universal understanding that the failure of any country to provide workers with humane working conditions is an obstacle for other peoples who want to improve the situation of workers in their countries. The strategic objectives of the ILO are: development and implementation of norms and fundamental principles and rights in the field of labor; creating more opportunities for women and men to ensure decent employment; expanding the coverage and improving the effectiveness of social protection for all; and strengthening the tripartite structure and maintaining social dialogue.

ACTIVITIES OF THE ILO IN THE PERIOD FROM 1919 TO 1945

From 1919 to1945, the Ministry of Labor focused on organizational construction, rule-making, and control over the implementation of the statutory goals of the ILO: ensuring decent work, achieving social justice, protecting social and labor human rights, etc. Basic ILO documents are: Conventions, which are subject to ratification by the member countries of the ILO and are international treaties binding upon ratification;

Recommendations and Declarations, which are not legally binding acts but must be taken into account in their activities by the members of the organization. The headquarters of the ILO and its governing body, the International Labor Office, have been located in Geneva since 1920. In 1921, at the 3rd session of the General Conference, close attention was paid to social and labor issues in agriculture. At the same time, the ILO adopted Recommendations No. 19, "On Migration Statistics", on collecting information on emigration, immigration, and repatriation. From the very beginning, the ILO was characterized by tripartism, i.e., activities based on tripartite representation: state governments, entrepreneurs, and workers. The purpose of the ILO is to promote social justice and decent work. In 1926, the ILO headquarters moved to a new building on the shores of Lake Geneva, and a Latin saying was written on the first stone laid in its foundation: "Si vis pacem, cole justitiam" (*If you want peace, seek justice*). The uniqueness of the ILO is reflected in the design of the front gates of the building: to open them, you need to use three keys, symbolizing tripartism — the equal importance of all three groups of tripartite participants of the organization (representatives of governments, employers, and employees). In 1926, the General Conference of Labor decided to create a mechanism for monitoring the implementation of Conventions and Recommendations. For this purpose, a Committee of Experts was created, including independent lawyers from different countries. The activities of the ILO in the 1930s were aimed at developing Conventions on compensation for Workers and on Sickness Insurance in Industry and Agriculture, as well as on the procedure for setting the minimum wage. In 1934, the USSR and the US joined the ILO, which significantly increased the influence of this organization. By 1939, the ILO had adopted 63 Conventions, the number of member countries had reached 57, and the number of ratifications averaged 15 Conventions per country. In 1939, the Soviet-Finnish war began. The League of Nations accused the USSR of belligerence and expelled it from its ranks, including from the ILO. In 1940, due to the outbreak of World War II, the ILO headquarters were temporarily moved to Montreal (Canada). During the war, the meetings of the ICT were not held (Manwaring, 1986). In 1944, the 26th session of the ILO was held in Philadelphia (US), where the Declaration on the Goals and Objectives of the ILO was adopted (included in the Charter) and Recommendation No. 71 "On the settlement of employment issues during the transition from war to peace". The Philadelphia Declaration enshrined the following principles: labor is not a commodity; freedom of speech and freedom of association are a prerequisite for continuous progress; poverty in any place is a threat to the general well-

being; all people, regardless of race, faith, or gender, have the right to realize their well-being and spiritual development in conditions of freedom and dignity, economic stability and equal opportunities. The 1944 Declaration defines the ILO's programmatic objectives, covering most of the areas of social progress: full employment and improvement of living standards; job satisfaction; provision of training opportunities and movement of workers for the purpose of employment and settlement; policy in the field of wages, working hours, and other working conditions; recognition of the right to collective bargaining; expansion of social security; necessary protection of the life and health of workers in all jobs; protection of the welfare of children and mothers; provision of necessary food, housing, and opportunities for recreation and culture; and ensuring equal opportunities in the field of general and compulsory education (Kostin, 2002). In 1945, the ILO returned to Geneva and has been headquartered in Switzerland ever since.

ILO ACTIVITIES IN THE POST-WAR PERIOD FROM 1945 TO 1991

From 1945 to 1991, the activities of the ILO acquired a universal character; by 1990, it had united representatives of 150 states in its ranks. Such ILO functions as research (the International Institute of Social and Labor Relations was established in 1960), technical cooperation (the Turin Training Center was opened in 1965), and information and educational work were developed. In 1946, the ILO became one of the largest specialized organizations associated with the UN, established in 1945. From 1946 to 1948, sectoral committees were established in the ILO, which determined the guidelines of sectoral social and labor policy. In 1948, the ILO adopted Convention No. 87 "On Freedom of Association and Protection of the Right to Organize", which pointed out the need to provide freedom and protection of workers' and entrepreneurs' rights. In 1949, Convention No. 98 "On the Application of the Principles of the Right to Organize and Conduct Collective Bargaining" was adopted. Regional offices of the ILO began to be established, and regional ILO conferences were held. In 1954, the USSR resumed its membership in the ILO and, two years later, ratified 17 Conventions at once. The ILO also includes Ukraine and Belarus as independent members. In 1964, the second ILO Declaration was adopted, which was dedicated to actions against apartheid in South Africa. With the end of apartheid, it was declared obsolete and abolished in 1994 (Kostin, 2002). In 1966, on the recommendation of the ILO, the UN General Assembly adopted the International Act on Economic, Social and Cultural Rights,

which provides for the right to work and includes the right of every person to be able to earn a living through work that they freely choose or freely agree to. In 1969, the ILO received the Nobel Peace Prize for strengthening fraternity and peace among peoples, ensuring decent work and justice for workers and providing technical assistance to other developing countries. In the 1970s, the concept of "basic needs" became widespread in the ILO, i.e., the establishment of a minimum standard of living that the state should give to the poorest groups of its population in terms of personal consumption: access to safe drinking water; sanitation; transport; healthcare; education, etc. At the same time, a person who can and wants to work must have a paid job. To achieve these goals, the ILO proposed rapid economic growth and a significant redistribution of income between the rich and poor segments of the population in favor of the latter. In 1977, under the Director-General of the ILO, Frenchman F. Blanchard, the United States withdrew from the ILO, accusing its leadership of unnecessarily discussing the conflict in the Arab territories occupied by Israel, of "erosion of tripartism" and of "pro-Soviet orientation". But in 1980, the US returned to the ILO. In 1984, the ILO adopted Recommendation No. 169 "On Employment Policy". It was noted that the promotion of full, productive and freely chosen employment, provided for by the Convention and the 1964 Recommendation on Employment Policy, should be considered a means of ensuring in practice the exercise of the right to work. In 1986, Convention No. 160 "On Labor Statistics" was adopted, obliging each member of the ILO to publish statistical indicators on labor. The issues of agricultural development, underemployment of urban workers, problems of women's labor, migration of workers, etc., were of great concern to the ILO during these years.

SOCIAL AND LABOR STRATEGY OF THE ILO IN THE CONTEXT OF GLOBALIZATION AT THE PRESENT STAGE

Today, the ILO unites 187 states (out of 193 UN members), in which more than 98% of the world's population lives, so international social and labor standards have become universal. Over the 103 years of its activity, the ILO has adopted 5 Declarations, 190 Conventions, 206 Recommendations, 5 protocols of a conventional nature, a significant number of resolutions and statements, guidelines and other acts on various areas of activity in the field of labor and social security. 108 general conferences of the ILO — International Labor Conferences (ILC) were held, at which the most pressing issues of development and regulation in the sphere of labor were discussed. The 109th

session of the International Labor Conference was postponed from 2020 to May 2021 and was held online due to the COVID-19 pandemic. The first meeting was held on May 20, 2021, in Geneva to elect its officers. On March 25, 2022, Gilbert Hunbo (Republic of Togo) was elected the new Director-General of the ILO instead of J. Ryder; his term of office will begin on October 1, 2022. In 1998, the ILO adopted the Declaration on Fundamental Principles and Rights at Work and the Mechanism for its Implementation, which enshrines four principles: freedom of association and the right to collective bargaining; prohibition of discrimination in labor relations; elimination of forced labor; and prohibition of child labor. Eight adopted ILO Conventions (Conventions No. 87 and 98, 100 and 111, 29 and 105, 138 and 182, respectively), which are called fundamental, were devoted to these four principles. It was decided to prepare the annual reports of the ILO member States and the global report of the Director-General of the International Labor Office on one of these four fundamental principles. In 1999, the report of the Director-General of the International Labor Office at the 87th session of the International Labor Conference formulated the Concept of Decent Work, where the main objective of the ILO was called the expansion of opportunities for women and men to find decent and productive work in conditions of freedom, justice, security, and human dignity. The concept of decent work includes four components: employment, social protection, workers' rights, and social dialogue. Decent work is recognized as an important step towards greater social integration, creating conditions for the comprehensive development of the human personality (Krainov, Rudneva, Fedyakin, 2021). In 2000, a report was prepared on freedom of association and the effective recognition of the right to collective bargaining. The 2001 report was devoted to the abolition of all forms of forced or compulsory labor. The 2002 report was devoted to the effective prohibition of child labor, and in 2003, to non-discrimination in work and occupation. The beginning of a new cycle was initiated by the 2004 report "Uniting in organizations for Social Justice". The second report of the second cycle, "Global Alliance against Forced Labor", was discussed in 2005, and the third, "Ending child labor: goals are close", in 2006. The concept of decent work was institutionalized in 2008 when the ILO adopted the declaration "On Social Justice for a Fair Globalization". It defines the principles binding on all ILO member states: freedom of association and effective recognition of the right to collective bargaining; abolition of all forms of forced or compulsory labor; the effective prohibition of child labor; and non-discrimination in the field of labor and employment. In 2008, with the onset of the global economic crisis, representatives of some countries called for a revision of the traditional values of the ILO: the rejection of direct labor

contracts with employees, "flexible employment", and the curtailment of social guarantees to workers. But the majority of the organization's members, including Russia, supported the preservation of the ILO's traditional values. In September 2015, the UN Member States adopted the 2030 Agenda for Sustainable Development. It contains 17 global goals and 169 targets aimed at eradicating poverty, preserving the planet's resources, and ensuring well-being for all. The ILO initiative on the Future of the World of Work received institutional confirmation in the "Declaration of the Century on the Future of the World of Work" at the 108th International Labor Conference in June 2019. It testifies to the relevance and significance of the ILO's mandate in the changing world of work and calls for a human-centered approach to shaping the future of the world of work: effective provision of gender equality of opportunities and treatment, effective universal access to lifelong learning opportunities and quality education; universal access to comprehensive and stable social protection, respect for the fundamental rights of workers, an adequate minimum wage, maximum limitation of working hours, occupational safety and health, programs to promote decent work and increase productivity, programs and measures to ensure proper confidentiality and protection of personal data in accordance with the problems and opportunities arising in the field of work in connection with the introduction of digital technologies and platforms (Krainov, Rudneva, Fedyakin, 2021). In the year of the 100th anniversary of the ILO, the report of the ILO Director-General G. Ryder noted that the ILO should unite the efforts of governments, employers, and workers around the world to create new prospects for future generations of workers: universal guarantees in the field of labor and employment; guaranteed social protection from birth to old age; universal right to continuous management training technological changes in connection with the development of automation, digitalization, artificial intelligence, robotics; increased investment in the household, green economy, and agricultural economy, etc. After the collapse of the USSR, Russia, as the successor to the international obligations of the Soviet Union, became a member of the ILO. To date, the Russian Federation has ratified 77 ILO Conventions. The ILO Sub-Regional Office for Eastern Europe and Central Asia has been operating in Moscow since 1959. The Bureau coordinates The ILO operates in ten countries – Russia, Azerbaijan, Armenia, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, and Uzbekistan. The Moscow Bureau of the ILO also celebrated its 50th anniversary in 2019. In 2018, Russia became the 56th member of the ILO to ratify Convention No. 102 "On Minimum Standards of Social Security", which defines the responsibility of the state for social security, whether it is the payment of sick leave,

maternity leave, or pensions. This is a basic document of the norms of social security of the population, which still needs to be implemented in real life (Krainov, 2019). In its work, the International Labor Organization uses four main methods: the development of social partnership between governments, workers' organizations, and entrepreneurs (tripartism); the development and adoption of international labor standards (conventions and recommendations) and control over their use (normative activity); assistance to countries in solving social and labor problems (in the ILO this is called technical cooperation); conducting research and publishing on social and labor problems. There are many contradictory things in the modern world of work. For example, the problem of automation and digitalization of production and their impact on humans is acute. The introduction of artificial intelligence and the development of robotics have led to the loss of outdated jobs. At the same time, under the conditions of socialization and greening of the economy, new technological shifts can lead to the creation of new jobs. The ILO strategy puts forward the task of interstate regulation of globalization in order to reduce its negative consequences. In this regard, it is necessary to strengthen the social protection of workers through social partnership - tripartism. In the context of globalization with the growth of income differentiation between and within countries, the mutually beneficial cooperation of the ILO with the IMF, the World Bank, and the WTO is necessary to help developing countries and the poor. The ILO aims to develop an International Labor Code.

CONCLUSIONS

The role and importance of the ILO are determined by the place of work in the life of society since there is not a single sphere of human activity in which it would be possible to achieve significant results without labor. The problem of labor is one of the most urgent problems of human life. The ILO is the only international organization operating on the principle of tripartism when a compromise solution is worked out and adopted with the participation of three parties – trade unions, entrepreneurs, and representatives of the state. The ILO has gone through a difficult evolutionary path, despite objective difficulties, has stood the test of time and is now the world center of social and labor legislation and social partnership. It acts with the aim of establishing and preserving social justice and harmony, protecting workers' rights, developing the principles of tripartism, and social progress throughout the world.

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THE UNIQUE MISSION OF THE FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS (FAO) IN CREATING A WORLD WITHOUT HUNGER AND POVERTY – ITS ACHIEVEMENTS IN SERBIA

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Abstract: The aim of this paper is to determine the means and the most significant accomplishments that the Food and Agriculture Organization (FAO) has achieved in the development of agriculture in the world and the Republic of Serbia. The methods used are text analysis, formal-legal method, comparative method, and statistical method. The FAO is one of the most important organizations of the United Nations, both because of the strategically important area it covers and because of the large number of members (245 countries and territories). Founded 77 years ago and headquartered in Rome, it has 130 offices at regional, sub-regional and national levels. The task of this international organization is to prevent world hunger and improve nutrition and food safety. Therefore, the current FAO strategy is based on better food production, better nutrition, and better environmental protection, which in total should lead to a better life for people. Since its founding, this organization has accomplished many significant achievements in its field: first of all, the adoption of the *Codex Alimentarius* collection, which established international standards in food production, rules of good practice in food trade, and rules of food consumer protection, and stands out for its far-reaching influence. Also, of great global importance are the preparation of the International Plant Protection Convention and the international agreement on plant genetic resources, as well as the establishment of the Committee on World Food Security and the Agricultural Market Information System. In addition, the FAO participates in organizing the fight against plant and animal pests. At the regional level,

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the fight against river blindness disease in Africa and Rinderpest can be highlighted. In Serbia, the FAO participated in the remediation of the consequences of the 2014 flood with direct assistance to farmers who suffered damage, as well as with subsequent training on disaster risk management. In addition, this organization supports Serbia on different rural development issues (including gender equality, irrigation, etc.), as well as on sustainable management of natural resources and climate resilience.

Keywords: FAO, agriculture, food, *Codex Alimentarius,* UN

INTRODUCTION

The FAO is a specialized agency of the United Nations in charge of leading international activities to prevent world hunger. It was founded on October 16, 1945, in Quebec (Canada) and is based in Rome. Its main purpose is to provide all people with regular access to a sufficient amount of safe and quality food in order to lead an active and healthy life. With its 195 members (194 countries and the European Union), the FAO operates in over 130 countries by helping governments and authorities improve and develop their agriculture, forestry, and fisheries. In doing so, the FAO provides research, technical assistance, and support projects and processes national agricultural data. This organization is governed by a conference of representatives of all members, which is held every other year at its headquarters, when the executive board of 49 members is elected, as well as the general director. In addition, numerous working bodies (committees) have been organized for certain issues, such as finance, programs, agriculture, fisheries, etc. In its work, the FAO has set the following priorities: helping to eliminate hunger and unsafe and poor quality food, with the availability of information on hunger in high-risk areas being of paramount importance; achieving greater productivity and sustainability in agriculture, forestry and fisheries, all the while ensuring that natural resources are not compromised; reducing rural poverty by providing the rural population with increased access to resources and services in order to establish a sustainable system for combating hunger; enabling advanced and sustainable agricultural systems suitable for efficient agriculture; improving the resilience of this sector to crises by creating conditions for overcoming regular and extraordinary risks.

THE FAO'S GLOBAL MISSION AND ITS OUTSTANDING ACHIEVEMENTS

From the previous activities of the FAO, it can be seen that this specialized agency of the United Nations worked to alleviate poverty and hunger by promoting the development of agriculture, improving nutrition, and striving for food security. Well-known FAO programs in this area have achieved enviable results. Achievements were manifested in the areas of food, agriculture, forestry, fisheries, disease eradication, and information dissemination.

Achievements related to food

In the group of programs, i.e., achievements related to food, one can point out, first of all, participation in the creation of a database of standards, guidelines, guides, and rules of good practice, which relate mainly to food production, labeling, and safety – the so-called *Codex Alimentarius*. In addition, notable achievements in this area include the establishment of the Committee on World Food Security (CFS) and the adoption of the Right to Food Guidelines (2004). Namely, the FAO established the *Codex Alimentarius* Commission in November 1961, which was joined a year later by the World Health Organization (WHO), with the task of establishing consumer protection standards, as well as facilitating and ensuring international food trade. In 2021, the commission had 189 members and about 50 observers. According to its own documents, the *Codex Alimentarius* (CA) consists primarily of international standards for permitted levels of food additives, as well as maximum permitted levels of toxins and contaminants in food, maximum permitted levels of pesticide residues in food and veterinary medicines in food of animal origin; and the rules about hygiene and good technological practices. In doing so, these standards are adopted in the form of recommendations, i.e., they are not binding international rules, but other legally binding international legal instruments, such as the World Trade Organization agreements, refer to these rules as reference values (Dabović, 2007). The CA collection currently consists of 238 standards, 81 guides, 55 collections of practices, and prescribed levels of residues in food for pesticides and veterinary drugs, as well as collections of professional texts, etc. (Nishida & Martinez, 2007). The FAO established the CFS in 1974 as an intergovernmental body to serve as a forum for the review and follow-up of food security policies. In 2009, the CFS went through a reform process to ensure that the voices of other stakeholders were heard in the global debate

on food security and nutrition. The vision of the reformed Committee is to be the most inclusive international and intergovernmental platform for all stakeholders to work together in a coordinated way to ensure food security and nutrition for all. The CFS was reformed to address short-term crises but also long-term structural issues. The Committee reports annually to the Economic and Social Council of the United Nations. The Right to Food Guidelines on a voluntary basis supports the progressive realization of the right to food in the context of national food security, and is a practical tool to help implement the right to adequate food, which are founded on human rights principles. They were endorsed by the Committee on World Food Security (CFS) at its 30th Session and adopted by the FAO Council in November 2004, after two years of intergovernmental negotiations that included the relevant participation of civil society. While they are not legally binding, they provide policy recommendations to states and other stakeholders on relevant issues, including access to natural resources, education, legislation and markets. The political legitimacy of a right to food strategy is strengthened when all relevant stakeholders are involved in the design, implementation and monitoring phases. Thus, the Guidelines are a valuable document for any individual or institution that works on food security and nutrition.

Achievements in agriculture

The adoption of the International Plant Protection Convention (IPPC), as well as the adoption of the Agreement on Plant Genetic Resources for Food and Agriculture, are likely to be the greatest achievements of the FAO in the field of agriculture. Also, in this field, a distinctive achievement is the adoption of the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries, and Forests in the Context of National Food Security, which were adopted in May 2012. Access to the International Plant Protection Convention was offered in 1952 (the basic text was updated in 1997) and has so far been signed and ratified by 184 states. The purpose of the IPPC is to secure regular and effective action to prevent the spread and introduction of pests on plants and plant products and to promote appropriate measures for their control. Aside from the main text, the IPPC has several mechanisms for fostering cooperation among its contracting parties. These include: developing International Standards for Phytosanitary Measures (ISPMs); fostering the exchange of plant health information – for example, through national reporting obligations; developing capacity; and providing legal and policy guidelines (FAO, 1997; Pimentel, 2001). The

International Treaty on Plant Genetic Resources for Food and Agriculture was adopted by the Thirty-First Session of the Conference of the Food and Agriculture Organization of the United Nations in November 2001. The Treaty's objectives are as follows: recognizing the enormous contribution of farmers to the diversity of crops that feed the world; establishing a global system to provide farmers, plant breeders and scientists with access to plant genetic materials; ensuring that recipients share benefits they derive from the use of these genetic materials with the countries where they have been originated. The Treaty puts 64 of the world's most important crops, which account together for 80 percent of the food the world's population derives from plants, into an easily accessible global pool of genetic resources that is available to potential users in the Treaty's ratifying nations for some uses. Namely, those users who access the materials must be from the Treaty's ratifying nations, and they must agree to use the materials solely for research, breeding, and training for food and agriculture (FAO, 2001). Concerning the adoption of the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security, it had been important that the FAO had started to support member countries in addressing structural problems with land fragmentation and small farm sizes through the development of land consolidation instruments shortly after its foundation in 1945. In the late 1990s, land fragmentation and land consolidation re-appeared on the agenda, this time in the context of Central and Eastern Europe where land reforms from the beginning of a transition in 1990 had led to excessive land fragmentation and small farm sizes in most of the countries. The FAO began to document and address problems in this area around 2000. Since 2012, the Guidelines have served as a reference to improve governance of tenure, including through land consolidation based on international best practices (Hartvigsen, September 2018; Barry, Molero & Muhsen, May 2013).

The FAO Forestry Program

Through its Forestry Program, the FAO seeks to have transformational impacts that benefit forests and forest-dependent people and help achieve the 2030 Agenda for Sustainable Development and the Sustainable Development Goals. The FAO's approach balances economic, social, and environmental objectives to enable the present generation to benefit from the Earth's forest resources while conserving those resources to meet the needs of future generations. The Forestry Program oversees more than 230 projects in 82 countries. The FAO is guided in its technical forestry work by

the Committee on Forestry (COFO) and six regional forestry commissions. The FAO's work in forestry is centered on the following priorities: halting deforestation and forest degradation; forest restoration, reforestation, and forestation; conservation and sustainable use of forests to enhance forest-based livelihoods; improving forest-related data and information and capacities (FAO, 2020). One of these projects is the Great Green Wall. Namely, the Great Green Wall is Africa's flagship initiative to combat climate change and desertification and address food insecurity and poverty. Creating a great mosaic of green and productive landscapes across North Africa, the Sahel and the Horn could be a game changer for Africa, transforming the lives of millions of people. Endorsed by the African Union in 2007 as the "Great Green Wall for the Sahara and the Sahel Initiative" (GGWSSI), it brings together more than 20 African countries with international organizations, research institutes, and civil society and grassroots organizations. The Great Green Wall must not be seen as a wall of trees to hold back the desert. This idea that originally inspired the initiative has given way to the vision of a mosaic of sustainable land use practices. At the same time, the wall is a metaphor to express the solidarity between African countries and their supporters from around the world (FAO, 2007; Pausata, March 20, 2020).

The FAO's unique achievements in the area of fisheries

When it comes to the unique achievements in the area of fisheries, we can mention the 1995 Code of Conduct for Responsible Fisheries and the Port State Measures Agreement (FAO, 1995). Namely, the purpose of the Code was to set international standards of behavior for responsible practices with a view to ensuring the effective conservation, management, and development of living aquatic resources with due respect for the ecosystem and biodiversity. These standards may be implemented, as appropriate, at the national, sub-regional, and regional levels and in the promotion of more responsible behavior in the fisheries sector. It is anticipated that these standards and norms will lead to the achievement of long-term sustainable outcomes (FAO, 1995; Caddy, 2000). The 2016 Agreement on Port State Measures (PSMA) was the first binding international agreement to specifically target illegal fishing (including unreported and unregulated fishing) (FAO, 2016). Its objective was to prevent, deter, and eliminate illegal fishing by preventing vessels engaged in illegal fishing from using ports and landing their catches. In this way, the agreement reduces the incentive for such vessels to continue operating while it also blocks fishery products

derived from illegal fishing from reaching national and international markets. The effective implementation of the agreement ultimately contributes to the long-term conservation and sustainable use of living marine resources and marine ecosystems (Ibidem).

The FAO eradication of diseases

According to the FAO press release from 1989, "River Blindness" disease has virtually been eliminated as a public health problem, and people in the West African region were able to return to the land in great numbers. The "River Blindness" disease control program was launched in 1974. As a result of the intensive effort, about 25 million hectares of fertile land have been freed from the disease, which was both a major public health problem and an impediment to socio-economic development. Namely, the rehabilitation of West African land freed from the disease provided food and improved living conditions for around 17 million habitants (FAO, 12 May 1989, Kevin et. al., 2011). The FAO's Global Rinderpest Eradication Program, a key element within the Emergency Prevention System for Transboundary Animal and Plant Pests and Diseases (EMPRES), was formed in 1994 as an international coordination mechanism to promote the global eradication of rinderpest and verification of freedom from the disease, while providing technical guidance to achieve these goals. The GREP has worked in close association with other organizations and communities worldwide. Since the late 1960s, the European Union has funded national and regional projects focused directly on, or incorporating, rinderpest control. A declaration of global freedom from rinderpest was issued in 2011, making rinderpest the first animal disease to be eradicated globally thanks to human efforts and only the second disease ever, after smallpox (FAO, 2011; 2020a). The Agricultural Market Information System (AMIS) is an inter-agency platform meant to enhance food market transparency and policy response for food security. It was launched in 2011 by the G20 Ministers of Agriculture following the global economic crises in 2007/08 and 2010. Bringing together the principal trading countries of agricultural commodities, the system assesses global food supplies (focusing on wheat, maize, rice, and soybeans) and provides a platform to coordinate policy action in times of market uncertainty. The AMIS is composed of G20 members plus Spain and seven additional countries with major exports and imports of agricultural commodities. Together, participants of the system represent a large share of global production, consumption and trade volumes of the targeted crops, typically in the range of 80-90 percent. By enhancing transparency and

policy coordination in international food markets, the AMIS has helped to prevent unexpected price hikes and strengthen global food security (AMIS, 2022; Umar et al., 2020).

SOME SIGNIFICANT ACHIEVEMENTS OF THE FAO IN SERBIA

In September 2019, the FAO and the Government of Serbia agreed on the continuation of their joint work, which has been ongoing since 2001, through the FAO Country Office in Serbia, on advancing the Serbian agricultural sector. The Country Programming Framework that was signed in Belgrade was set to lead to accomplishing three goals: rural development, the sustainable management of natural resources, and climate resilience. These goals, which were the joint priorities of the two partners, were aligned with national strategies and policy documents, the accession process to the European Union, the United Nations development framework, and the globally accepted Sustainable Development Goals. It was mentioned that in Serbia, 40 percent of the population of 7.1 million lived in rural areas. The agriculture, forestry, and fisheries sectors employed about two out of every ten people. Therefore, the development of the rural economy could have a catalyzing effect for the whole country (FAO, 2019). Therefore, at first, the FAO was committed to supporting Serbia in its efforts to increase agricultural productivity, help farmers' integration into value chains, boost economic growth, and create additional income sources for rural families (Dabović, 2017). Also, the FAO aimed to make concerted efforts to pursue leveraged investments in the framework of its partnerships with the Global Environment Facility, the Green Climate Fund, and other financial institutions.

Providing support to rural development

Shortly after severe floods hit Serbia in May 2014, the Government of the Republic of Serbia declared a state of emergency. Around 32,000 people were evacuated from their homes, schools, health facilities, and agricultural lands were damaged. Agriculture was the backbone of the rural economy in Serbia, as well as an important source of income for the majority of the rural population. The damage and losses to the agriculture sector were estimated at 228 million Euros. In response to the devastating floods, the FAO partnered with the European Union, the Government of the Republic of Serbia, and other implementing partners to launch the European Union Assistance for Flood Relief Program. The program, which was funded by the European

Union, aimed to provide extensive assistance for flood relief in Serbia. The FAO has supported a total of around 34,500 flood-affected farming families from 993 communities in 41 municipalities in Serbia with assistance packages. As a result, the families were able to restart their agricultural activities and rebuild their livelihoods (FAO, 2022b; Popadić, 2021).

After the floods in Serbia in 2014, the FAO organized a training workshop in Serbia in May 2015 that was focused on disaster risk reduction and management, in order to learn from the past and prepare for the future. In the workshop, a new National Disaster Risk Management Program was introduced. About 30 participants, including professionals from Serbia's government, worked to define priority activities for disaster risk reduction and management activities in the agricultural sector. This workshop marked a need to shift to resilience-building measures related to agriculture. Namely, agriculture in Serbia made up just over 10 percent of the country's gross domestic product and accounted for almost 20 percent of exports, with two-thirds of the rural population relying on agriculture for their livelihood. Therefore, the FAO workshop had two main outcomes. It provided in-depth sessions for awareness raising and training on disaster risk reduction. It also provided Ministry staff with hands-on experience in drafting an action plan for the new National Disaster Risk Management Program (FAO, 2015). In 2021, the FAO published research titled "National gender profile of agriculture and rural livelihoods" on the country's gender assessment in Serbia. This research was aligned with the FAO's strategic commitment to close the gender gap in agriculture, thereby generating significant gains for the agricultural sector and helping to reduce hunger, malnutrition, and poverty. The key objective was to produce a comprehensive analysis of gender equality in the agricultural sector and rural development processes, identifying gender inequalities and their underlying causes and consequences, and offering recommendations for gender-responsive policies to enable the transformation of gender relations and structures in the agricultural sector and rural development in Serbia (FAO, 2021). The research findings indicated significant gender gaps in rural areas across diverse dimensions, including access to assets, economic participation, roles in and gains from agricultural production, the exercise of a range of welfare rights, political participation, access to social services, lifestyles, and resilience to climate change and emergencies. It was underlined that the latest emergency, the COVID-19 pandemic, has had a profound impact on the rural population, agriculture, and the position of women in rural areas. At the same time, it created opportunities for innovative approaches and

new practices that can improve the economic activity of rural women in the future, and consequently their overall wellbeing (*Ibidem*).

Since 2018, the FAO and the European Bank for Reconstruction and Development (EBRD) have supported Serbia to boost its agricultural production by increasing its irrigation capacity. Namely, despite being a leading agricultural producer and grain exporter in its region, Serbia was highly vulnerable to climate change and drought with less than 2 percent of its arable land being irrigated. Therefore, this project marked the beginning of drafting Serbia's irrigation development strategy, and in the following years, it identified specific policy and investment options that increased agricultural productivity, environmental sustainability, and climate change resilience via enhanced and newly developed irrigation networks. Rehabilitating and modernizing Serbia's irrigation system strengthened the resilience of the sector while diversifying the agricultural production, as irrigation enabled growing higher-value crops and increased the productivity of the existing ones. The FAO drew on its global agricultural water management expertise and vast field experience in irrigation investment schemes to provide technical assistance to support the design and implementation of the strategy and the action plan in this project (FAO, 2022c).

Providing support in natural resource management and climate resilience

In 2018 and 2020, the FAO supported Serbia in preparing a document titled "Readiness Proposal" in the framework of a program titled "Strengthening Serbia's Capacities for Strategic Engagement of the Private Sector into Climate Financing". The document states that Serbia is highly exposed and vulnerable to natural hazards as a result of climate change. Also, as stated in the Intended Nationally Determined Contributions (INDCs), the most vulnerable sectors in the Republic of Serbia are agriculture, hydrology, forestry, as well as human health and biodiversity. Accordingly, Serbia committed itself to a GHG emission reduction of 9.8% until 2030 compared to base-year emissions, which requires significant investments, especially in the energy sector that is still state-owned. Thus, in order to reduce risks, losses, and damage caused by extreme climate and weather events and reduce GHG emissions, targeted investments, especially from the private sector, will be needed. Strategic engagement of all actors, including the private sector, is a precondition in order to ensure

sustainability. In this context, the Republic of Serbia has identified in its Country Work Program (until 2025) energy, agriculture, water resources and hydrology, and forestry as the priority sectors for cooperation with the Green Climate Fund. The conclusion is that in order to implement priority investments and achieve the goals of raising awareness in the general public, engaging with the private sector and facilitating direct access to the Green Climate Fund (GCF) under a second Readiness proposal is necessary (Ministry of Agriculture, Forestry and Water Management of the Republic of Serbia & FAO, 2018, 2020).

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THE SIGNIFICANCE OF THE INTERNATIONAL ATOMIC ENERGY AGENCY (IAEA) FOR INTERNATIONAL NUCLEAR SAFETY AND THE POSITIONING OF SERBIA

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Abstract: The International Atomic Energy Agency (IAEA) was created in 1957 in response to the fear created by the different uses of nuclear technology, with the aim of promoting the safe, secure, and peaceful use of nuclear technology. The safety standards of the IAEA, although not legally binding, are developed to ensure that the peaceful uses of nuclear energy and of radioactive materials enable States to meet their obligations under generally accepted principles of international law. The IAEA does not control all nuclear facilities in the world, but only those that the Member States have subjected to such supervision. The IAEA works in close partnership with the Member States (173 according to data from April 2021) in order to maximize the contribution of nuclear science and technology to development. In October 2001, our country re-joined the membership of the IAEA, the world's leading organization for solving problems related to nuclear energy. What role nuclear energy will play in the future depends on what goals we intend to use it for. The Law on Radiation and Nuclear Safety and Security from 2018 establishes the Serbian Radiation and Nuclear Safety and Security Directorate for performing regulatory control of activities regulated by this law.

Keywords: Nuclear safety, IAEA, Serbia, law, world

INTRODUCTION

A long time ago, Seneca wrote that no life is safer than another and that no one is safe for tomorrow. Now, we are more than 24 months into the pandemic, and more than 270 million people worldwide have been infected

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with the coronavirus. There are many challenges in the post-COVID-19 period, and environmental matters are high on the agenda. When we talk about the most serious risks that threaten the environment from activities in the field of energy, we have in mind the consequences of human activities that affect climate change, on the one hand, and possible disasters caused by the failure of ultra-risky installations (primarily nuclear) or in other ways (Tomić-Petrović, 2003). We live in a time of general uncertainty. There is a war in Ukraine, and the rapid development of the use of nuclear energy for peaceful purposes and the danger of its use in war have created numerous problems that require legal regulation of everything directly related to the use of nuclear energy. Technology is the one that always escapes the law, at least one step. The world's top experts in nuclear law are meeting at the IAEA headquarters this week to examine the current nuclear law framework in the changing landscape of technology, opportunities, and challenges – and chart a vision for the future. Although nuclear power plants, when in good condition, do not pollute the atmosphere, they are potentially ultra-risky plants in the event of an accident. Another problem is the disposal of radioactive waste from these plants. (Vukasović, 2005, p. 643). The probability that a radiation accident will happen is small, but still, during the period from 1940-1984, approximately 250 radiation accidents were reported, involving over 600 exposed persons. (Conklin J, 1987, p. 348). After the nuclear accident that happened in 2011, six young Japanese filed a lawsuit against the owner of the Fukushima nuclear plant after they got cancer[1]. The plaintiffs were between 6 and 16 years old when the worst nuclear disaster in Japan occurred, which happened after the strong earthquake on March 11, 2011, which caused a tsunami. In March 2022, an earthquake struck again near Fukushima. When it comes to nuclear energy, environmental disasters spread beyond states' borders, and any pollution of the environment of a country or a region would endanger the population in much wider areas. Have you ever wondered how safe and reliable nuclear power plants are in the environment of our country? Our country, although without nuclear power plants, is in a nuclear ring. Regarding the legal norms that should regulate and prevent the danger of environmental pollution, the question arises whether modern technology can be controlled by law, which, on the one hand, provides great benefits to man, but on the other hand, threatens his survival.

[1] All of them have been diagnosed with thyroid cancer. The lawsuit is seeking $ 5.4 million in damages from the Tokyo Electric Power Company (TEPCO).

THE ROLE OF THE INTERNATIONAL ATOMIC ENERGY AGENCY

The International Atomic Energy Agency (IAEA) is the world's center for cooperation in the nuclear field and was established with the aim of promoting the safe, secure, and peaceful use of nuclear technology. The IAEA was created in 1957 in response to the fears and expectations generated by the discoveries and different uses of nuclear technology. The Agency was set up as the world's "Atoms for Peace" Organization within the United Nations family. In the same year, Queen Elizabeth II inaugurated the world's first commercial nuclear plant in England, and 81 member states of the United Nations accepted the Statute of the International Atomic Energy Agency. The objectives of the IAEA's dual mission – to promote and control the Atom – are defined in Article II of the IAEA Statute. The IAEA's headquarters were established in Vienna, Austria in October 1957. The IAEA also has two regional offices located in Toronto, Canada (since 1979) and Tokyo, Japan (since 1984), as well as two liaison offices in New York City, the United States of America (since 1957) and Geneva, Switzerland (since 1965). The Agency runs laboratories specializing in nuclear technology in Vienna and Seibersdorf, Austria, which was opened in 1961; and since 1961, in Monaco. Total membership of the organization represents 173 members (as of April 7, 2021), and eighteen ratifications were required to bring the IAEA's Statute into force on July 29, 1957. Serbia became a member of the organization in 2001. The IAEA works in close partnership with the member states, the United Nations agencies, research organizations, and civil society to maximize the contribution of nuclear science and technology to development. The IAEA's policy-making bodies comprise the General Conference of all member states and the 35-member Board of Governors. The General Conference meets in a regular annual session to consider and approve the IAEA's budget and to decide on other issues raised by the Board of Governors, the Director General, and the member states. The Board of Governors considers applications for membership, approves safeguards agreements and approves the publication of the IAEA's safety standards. It also appoints the Director General of the IAEA, with the approval of the General Conference. The Board meets five times per year, also in Vienna. Effective detection of radioactive contaminants, prevention of environmental contamination and removal of such substances from the environment is one of the basic missions of ecology. In the case of radioactive contamination due to a nuclear accident, the limits of radioactive contamination prescribed by the IAEA are applied. Decontamination of people and the environment is also performed according to the

methodology prescribed by the IAEA. The harmonization of solutions for protection from ionizing radiation has been achieved, especially in the internal legislation of the member states of the European Union, and is based on the basic rules of Euratom (Tomić-Petrović, 2011). In different countries, the solutions to the problem of control in the field of nuclear energy use are very different and are related to the position and the level of development of each country, because some have a sufficient number of experts, while others have only a few people with the necessary specialist knowledge. For some, the development of nuclear science has become a symbol of progress and an instrument for overcoming backwardness, while for others it is still a symbol of power and strength, one of the instruments of economic domination. China alone is building 16 nuclear reactors. After the urgent suspension of work, the only Iranian nuclear power plant, "Bushehr", was put into operation again, and its work is supervised by the IAEA. In January this year, North Korea launched 6 missiles, while the announcement of the moratorium lifting on conducting nuclear tests causes concern. And during March, Iran will be negotiating with the representatives of the world powers on the renewal of the Agreement on the Iranian nuclear program in Vienna. The International Atomic Energy Agency is implementing a program intended for the general advancement of nuclear and related technologies for peaceful uses. The invisible (gamma) radiation used in archeological research in China as a scientific procedure has also been accepted during restoration in the largest museums in Europe and the United States (see: Broad, 2006, p. 8). Partnerships in education are essential and the IAEA continues to provide support to the member states, including through the IAEA research program's doctoral mechanism. By joining forces in education for cancer diagnosis and treatment with almost 30 global and national partners, the IAEA facilitates the development and sharing of the latest knowledge, data, technology, skills, and research in these specialized areas. (Dojcanova, 2022, p. 12).

NUCLEAR ENERGY CLIMATE-ACCEPTABLE INVESTMENT

This year, there is a lot of discussion about the controversial decision of the European Commission to include gas and atomic energy in the transitional climate-acceptable energy sources. "Greenpeace" called Brussels' decision to award a green label to gas and nuclear energy the biggest demonstration of eco-manipulation, while the European Commission explains that it is a transitional solution for achieving climate neutrality in the Old Continent by 2050. Although Germany, Austria, and

Spain consider nuclear energy dangerous, they probably will not be able to stop the European Commission's proposal to classify it as a climate-friendly investment. On the last day of 2021, Germany closed three of the six remaining "Brockdorf" nuclear power plants. Britain plans to build eight new nuclear reactors and expand wind energy production. The government announced that it intends to almost triple its nuclear power production capacity to 24 gigawatts by 2050. Jan Haverkamp from the World Energy Information Service believes that the future should be renewable and clean, and that there is no place for nuclear power plants in it. The main problems are: the gap in financial resources for the decomposition of radioactive waste; the lack of funds for waste management (according to the European Commission's estimate of more than 500 billion Euros); and the lack of trained people to deal with this problem. In its opinion, nuclear power plants and nuclear energy are too small, too late, and too expensive to contribute to climate policy. Many, like Austrian Chancellor Karl Nechamer, believe that nuclear energy is neither green nor sustainable. There is a possibility of a lawsuit before the European Court of Justice over a controversial regulation created as a result of a compromise to satisfy France, which is heavily dependent on nuclear energy, and Germany, which shuts down its nuclear power plants but needs gas in the period of transition to green energy sources. Despite the disasters at nuclear power plants, it seems that the global panic over climate change has reduced the fear of nuclear energy. According to the IAEA, only 10% of the world's total electricity today comes from 445 nuclear reactors located in more than 30 countries. Although 193 nuclear reactors were shut down between 2005 and 2020, the trend has begun to change. In 2021, 54 new nuclear reactors were being built in the world, mostly in China (16), India (6), and South Korea (4), while new reactors are being built in Russia, Great Britain, Turkey, and the United Arab Emirates. In 2021, five new reactors were completed in China, India, Pakistan, and the United Arab Emirates, and the construction of seven more began (China, India, Russia, and Turkey). The United States has the largest number of active nuclear reactors in the world – 93 – but it has shut down 39 nuclear reactors so far, and the construction of two new reactors in Georgia is underway. Announcements about the importance of the role of nuclear energy in reducing carbon dioxide emissions into the atmosphere are coming from many countries. According to the IAEA report, 106 nuclear reactors are operating in 13 EU member states, which provide 26% of the total electricity produced in the Union. And more than half of the electricity obtained from nuclear power plants in the EU is produced by only one country — France. That is why Paris, with the support of 9 other EU

members, asked the European Commission to assign a "green label" to nuclear energy because nuclear power plants have a carbon footprint at the level of wind farms. However, according to V. Alison, nuclear energy is not a "vaccine for climate change" but is a component in the process of reducing carbon dioxide emissions.[2]

SERBIA IN THE NUCLEAR WORLD

In October 2001, Yugoslavia, i.e., the Institute for Nuclear Sciences in Vinča, returned to the IAEA, the world's leading organization for solving problems related to nuclear energy. In 2003, the IAEA implemented projects in Serbia that were expected to last four years when a cyclotron/accelerator plant was set up at the Vinča Institute near Belgrade, and the results were expected to contribute significantly to public health services. Until today, the Vinča Institute has developed international cooperation with scientific institutions all over the world, as well as over 60 international projects classified in the following programs: EU FP7, EU H2020, COST, IAEA, Bilateral, EUREKA, and ERASMUS. In Serbia, nuclear technologies have not been studied at technical faculties for more than 25 years. The law banning the construction of nuclear power plants, i.e., the moratorium on the construction of such facilities, in Yugoslavia was passed in 1989, after the disaster that occurred in April 1986 at the Chernobyl nuclear power plant. Representatives of the Directorate for Radiation and Nuclear Safety and Security of Serbia (SRBATOM) say that the moratorium stopped the education of staff at the Faculties of Mechanical and Electrical Engineering in Belgrade, who would monitor the construction and operation of these plants, due to the low interest of students who did not have employment prospects. At the Faculty of Electrical Engineering, there is a Department of Physical Electronics, which a few decades ago dealt much more with nuclear energy. There is now one major in biomedical and environmental engineering. At the Department of Thermal Power Engineering of the Faculty of Mechanical Engineering in Belgrade, they are still educating personnel in nuclear engineering. However, *inter arma silent musa* (Neither art nor science is nurtured during the war). In December 2021, Serbia signed an agreement with the state-owned Russian corporation "Rosatom" to build a Center for Nuclear Medicine. It is planned to build a Center for Nuclear

[2] The carbon footprint represents the total quantity of energy obtained from sources that create greenhouse gases.

Medicine on the basis of a cyclotron complex in the next three years, as well as facilities for the production of radiopharmaceuticals. Thus, Serbia returns to the map of European countries that have the capacity for scientific research in the field of nuclear technology. The Radiopharmaceutical Complex and the Center for Nuclear Medicine will provide accessible, high-tech medical care for the citizens of Serbia, aimed primarily at solving problems in the fight against oncological diseases. Within a maximum of 400 kilometers from the borders of Serbia, there are the "Kozloduy" nuclear power plants in Bulgaria, where work is underway on the "Belene" power plant, the "Paks" in Hungary, the "Krško" in Slovenia, and the "Cherne Vode" in Romania. The mentioned Law on banning the construction of nuclear power plants does not prohibit the possibility for the state of Serbia to be a co-owner of some of the nuclear power plants outside our territory. In recent months, we heard about the possibility of Serbia buying 10% of the "Paks II" nuclear power plant in Hungary and becoming a minority co-owner (if Hungary agrees) and thus providing the missing megawatts to purify the air of carbon dioxide and other lignite combustion products. By signing the Declaration on the Green Agenda for the Western Balkans from November 2020, Serbia has committed itself to completely stopping the use of coal by 2050. Not so long ago, the public in Serbia was informed that, within the study on the possible localization for the construction of a nuclear power plant in our country, the place of Kostolac, on the territory of the municipality of Požarevac, was selected. The public was quite upset in 2002 and the tension is still present when it comes to this issue. *Homo quantum scit, tantum potest* (As much as a man knows, that much he can). The discussion about the levels of radioactivity here and in the European Union became relevant when the famous Fructal blueberry juice was delivered to Serbia and Montenegro, which was "enriched" with cesium, a radioactive element that was found in large quantities in nature after the Chernobyl accident. Therefore, it is necessary to act preventively and protect citizens from those who would try to import radioactive food, and the value of allowed radioactivity in food and beverages should be harmonized with the values of the World Health Organization due to its traditional objectivity. Control of illicit and illegal trade of radioactive and nuclear materials across the border of the Republic of Serbia is performed by members of the Customs Administration at border crossings in accordance with the Regulation on the Control of Radioactivity of Goods in Import, Export, and Transit with the expert support of the Agency for Protection against Ionizing Radiation and Nuclear Safety of Serbia, which was established in 2009 (Official Gazette of the Republic of Serbia, 2011, 2018, 2019). In the Republic

of Serbia, the Law on Radiation and Nuclear Safety and Security regulates measures of radiation and nuclear safety and security, conditions for performing activities with radiation sources, and acting in the situation of planned, existing, and extraordinary exposure to ionizing radiation in order to protect individuals, the population, and the environment from the harmful effects of ionizing radiation, now and in the future (Official Gazette of the Republic of Serbia, 2018, 2019a). This Law establishes the Directorate for Radiation and Nuclear Safety and Security of Serbia for the purpose of performing regulatory control of activities regulated by this Law. The Criminal Code of the Republic of Serbia regulates the criminal offense of illicit construction of nuclear facilities and imprisonment from six months to five years for anyone who approves or starts the construction of a nuclear power plant, nuclear fuel production plant, or spent nuclear fuel reprocessing plant (Official Gazette of the Republic of Serbia, 2005, 2009, 2012, 2013, 2014, 2016, and 2019b).[3] Natural resources are not evenly distributed in the world, and some countries do not have the opportunity to choose. It seems that our country has not fully used its natural resources and does not have to hurry with the construction of a nuclear power plant.

IAEA SAFETY STANDARDS – GUARANTEE FOR THE FUTURE

The IAEA safeguards are technical measures embedded in safeguards agreements, which are implemented by the IAEA to provide the international community with assurances that nuclear material remains in peaceful use. Under the terms of Article III of its Statute, the IAEA is authorized to establish standards of safety for protection against ionizing radiation and to provide for the application of these standards to peaceful nuclear activities. The IAEA's safety standards are not legally binding on the member states but may be adopted by them, at their own discretion, for use in national regulations in respect of their own activities. The standards are binding on the IAEA in relation to its own operations and on states in relation to operations assisted by the IAEA. However, it should be recalled that the final decisions and legal responsibilities in any licensing procedure belong to the states. Although the safety standards establish the basis for safety, the incorporation of more detailed requirements, in accordance with national practice, may also be necessary. Moreover, there will generally be special aspects that need to be assessed by experts on a case-by-case basis.

[3] Article 267. of the Criminal Code of the Republic of Serbia.

The development of safety standards is overseen by the Advisory Commission for Safety Standards, the Nuclear Safety Standards Advisory Committee, the Radiation Safety Standards Advisory Committee, the Transport Safety Standards Advisory Committee, and the Waste Safety Standards Advisory Committee, and the member states are widely represented in these bodies. Safety standards are also submitted for comment to all member states before approval by the IAEA in order to ensure the broadest international consensus. According to the Requirements for Legal and Governmental Infrastructure for Nuclear, Radiation, Radioactive Waste and Transport Safety, the prime responsibility for safety shall be assigned to the operator. The operator shall have the responsibility for ensuring safety in the sitting, design, construction, commissioning, operation, decommissioning, close-out or closure of its facilities, including, as appropriate, rehabilitation of contaminated areas; and for activities in which radioactive materials are used, transported or handled. Organizations which generate radioactive waste shall have responsibility for the safe management of the radioactive waste that they produce. Aware of the enormous danger posed by the transport of radioactive materials, it seems to us that the norms of the IAEA are most often respected in practice. Since during the transport of radioactive material, primary reliance for safety is put on the use of approved packaging, it is the responsibility of the consignor to ensure the appropriate selection and use of packaging. Compliance with the requirements imposed by the regulatory body shall not relieve the operator of its prime responsibility for safety. The International Commission on Radiological Protection (ICRP) is the world's leading organization for radiation protection, and the ICRP recommendations form the basis of national regulations and standards that have been accepted by a majority of countries in order to more effectively implement radiation protection measures. Based on the basic recommendations of the ICRP, the IAEA elaborates them in more detail and turns them into standards (in the form of recommendations) used in the process of regulating the work and handling of ionizing radiation sources. The radiation protection system recommended by the ICRP implies that: 1) any action must bring more benefits than harm, and the reduction of harm must be such as to justify the harm, including the social value of the achievement; 2) the manner, scope, and duration of the action must be optimized, and the benefit in order to reduce the radiation damage must be obviously greater than the damage that the action produces. (Župančič, 1993, p. 49). The fact that the International Agency did not have insight into the operation of the plant leaves open the question of whether international

safety standards were fully respected ... when the disaster (in Chernobyl) occurred because the USSR did not immediately inform the international public about the danger to not only neighbors but also much more distant countries. (Obradović, 1986, p. 229). The safety of facilities and activities is of international concern. Several international conventions relating to various aspects of safety are in force. National authorities shall establish arrangements for the exchange of safety-related information, bilaterally or regionally, with neighboring states and other interested states in order to fulfill safety obligations and promote cooperation. Under the terms of Articles III and VIII.C of its Statute, the IAEA makes available and fosters the exchange of information relating to peaceful nuclear activities and serves as an intermediary among its member states for this purpose. The IAEA Incident Reporting System (IAEA-IRS) is ratified with an annex (established in the IAEA) by the IAEA Incident Reporting System Ratification Regulation (IAEA-IRS) adopted in the Socialist Federal Republic of Yugoslavia in 1987 (Official Gazette of SFRY, 1987). This document describes the IAEA Incident Reporting System (IAEA-IRS) for the collection, assessment, and distribution of information on irregularities of importance for safety (incidents) in nuclear power plants, including the administrative procedure for the participation of member countries in this system. As soon as the IAEA receives the incident report or supplemental report, it will forward it to all IAEA-IRS participants. All participants will appoint a coordinator who will be in charge of receiving and distributing information received from the IAEA, as well as submitting information to the IAEA according to this system. All information provided to the IAEA in accordance with the IAEA-IRS system will be distributed exclusively through the coordinator. The IAEA maintains an illicit trade database, which consists of reports of theft, smuggling, or loss of control over nuclear material. In one year alone, 149 such incidents have been reported. Fortunately, none of these incidents involved a significant amount of nuclear material or a strong radioactive source. In the last two decades, the international community has made great progress in securing these materials. (El Baradei, 2007, p. 6). It is important that the efforts of the states be focused as soon as possible on the precise regulation of the peaceful use of nuclear energy. It should be borne in mind that the IAEA does not control all nuclear facilities in the world but only those that have been subjected by the member states to such supervision of the Agency. (Obradović, 1986, p. 230).

CONCLUSIONS

The COVID-19 pandemic constraints are here to stay**.** The international community was not immediately aware of the dangers nuclear technology presented. That gradually changed, thanks primarily to the negative experiences gained through the practice of using them. The result of that knowledge was the need, in the name of protecting the general interest, to set certain limits to the right of states to use modern scientific achievements in their own interests and all in order to preserve the human environment. In international law, states are responsible for failing to fulfill their environmental obligations. State responsibility for environmental damage is a necessary element of every environmental protection regime, and the territory of a state must not be used in such a way as to cause damage to another state. However, the Polynesians did not receive Macron's apology for the nuclear tests. The IAEA safety standards, although not legally binding, are created with the aim of ensuring that the peaceful use of nuclear energy and radioactive materials is done in a way that makes it possible for states to meet their obligations in accordance with generally accepted principles of international law and rules like those relating to environmental protection. The IAEA serves as the global platform for nuclear security, also helping to minimize the risk of nuclear and other radioactive material falling into the hands of terrorists or nuclear facilities being subjected to malicious acts. However, legal norms that regulate protection against ionizing radiation are not enough; the relevant state and other bodies and organizations should strictly apply the prescribed legal norms. Nuclear energy in a number of countries in the world has a large share in electricity production. Despite the obtained work permits, some plants caused accidents of smaller or larger proportions and thus endangered the lives of many people, but also the quality of the protection system that still needs to be worked on. Man must live with radiation regardless of the risk. The effectiveness of protection is associated with a good knowledge of the dangers of radiation and radiological contamination and the method of protection, as well as with impeccable discipline of persons working with radioactive substances. However, accidents are always possible. Today, we are in the middle of a geopolitical crisis, when there is a war in Ukraine. Governments are concerned about nuclear power plants in the war area. In March 2022, the idea of the first man of the IAEA, Rafael Grossi, to hold a trilateral meeting with Ukraine in order to secure the Ukrainian nuclear facilities during the armed conflict, was accepted. The problem of isolation and storage of useful radioisotopes, as well as the safe storage of dangerous

ones, is a challenge because the number of nuclear reactors and their power is growing from year to year. What role nuclear energy will play in the future depends on what goals we will use it for. The effectiveness of legal solutions to the problems posed by the peaceful uses of nuclear energy will depend to a large extent on the appropriate adaptation of relevant legal areas so that legal norms are not outdated compared to scientific facts and reality. The role of the IAEA in this noble mission is obligatory. Taking into consideration the impossibility of determining responsibility for future consequences that in many cases must be calculated over the centuries, it seems obvious that the preventive character of the normative system is the only oasis that legal technique can offer to protect the lives and safety of individuals and their descendants.

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THE GLOBAL TASKS OF THE UNITED NATIONS ENVIRONMENT PROGRAM (UNEP) AND ITS COOPERATION WITH SERBIA

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Abstract: The United Nations Environment Program (UNEP) was created as a fundamental institution for the global environment. Its *raison d'etre* was the coordination of environmental activities in the UN system. The paper will provide a comprehensive analysis of the UNEP as a subsidiary body of the United Nations in charge of environmental protection. The structure will be presented and its adequacy will be considered. Special attention in the article will be paid to the question of why the UNEP does not have the status of a specialized agency like the FAO, the WHO, etc. All the challenges, crises, successes and failures that the UNEP has faced in environmental protection will be considered throughout history. 2022 marks the fiftieth anniversary of the UNEP, and this anniversary provides an opportunity to reflect and rethink, to create a renewed identity for the United Nations Environment Program in order to adequately respond to the world's growing environmental challenges, such as climate change. Also, the paper will analyze the relationship between Serbia and the UNEP in the fight to preserve the environment. The current cooperation between the UNEP and Serbia will be reviewed and the possible improvement of that cooperation will be pointed out, bearing in mind that Serbia is facing a number of problems in the field of environmental protection and preservation.

Keywords: United Nations, UNEP, environmental protection, UN Environment Assembly, Republic of Serbia, reform.

INTRODUCTION

At the global level, international organizations began to play a more significant role when it was necessary to regulate international problems

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between states that had transnational characteristics. A typical example of such a global problem is environmental challenges. Long before the UNEP was created, environmental issues were part of the portfolio of many specialized UN agencies such as the FAO, the UNDP, and the WHO. The World Meteorological Organization was tasked with dealing with many aspects of air pollution and climate change. Given this, an additional task reflected in the harmonization of the work of specialized agencies designed with the idea of taking over the monopoly and the Piedmont's role in terms of environmental protection. Scientists pointed out that the current management system lacks coherence and suffers from the jurisdiction of overlap and emptiness, crippling its ability to respond to global problems (Septh, 2002, pp. 1-20). This year, the UNEP marks half a century since its founding, so today is the ideal moment to see the success and challenges that this body has faced throughout history. Given the growing problems in terms of environmental damage and climate change, which is a burning global problem, it is probably now a key moment to revitalize the role and importance of the UNEP. The first idea of convening a conference to address the issue of environmental protection appeared in 1967. After recognizing the effectiveness of the FAO, the WHO organized the first conference dedicated to the protection of the human environment, which analyzed several current issues related to pollution. Due to the increasing degradation of the environment, the Stockholm Conference felt the need to create a body that would coordinate environmental activities in the international community. The Stockholm Conference was characterized by wide public participation, which had to focus on the harmful impact of human activities on nature and the harmful impact on the man himself (Johanson 2012, p. 10). Although there were fears that a separate entity dealing with the environment would encroach on the competencies of specialized agencies, the creation of the United Nations Environment Program was accepted at the conference in Stockholm.[1] The basic idea was for the UNEP to be a body that will coordinate the work of the UN and play a crucial role in environmental protection at the global level. The mission of the new institution was to assess the state of the environment and to inform,

[1] The creation of the UNEP is specific in that the initiative for the formation came from the states, but the big opponents were international organizations because of their own fears. A great role in the creation of the UNEP was played by the Canadian diplomat Maurice Strong, who became the first executive director of this body.

inspire and empower states to cooperate in the field of environmental protection under the auspices of the UN. Although it has made significant achievements in the field of environmental protection throughout its history, these contributions have not been adequately recognized by the international community, so the credibility of this body has been called into question. As there are a huge number of different organizations in the world today that deal with the issue of environmental protection, the position of the UNEP as a central institution is disputed. The aim of this paper is to show why the UNEP was formed, then analyze the effectiveness of the current structure of this body and propose certain reforms. Special attention will be paid to the question of why the UNEP does not have the status of a specialized agency within the United Nations. Consequently, the question arises as to whether the current status is an advantage or a disadvantage of the UNEP, given the tasks set before this body. When talking about the importance of the UNEP, one should especially keep in mind the fact that this body is the secretariat of multilateral agreements in the field of environmental protection. Therefore, this body has a very important role. The special goal is to determine the level of cooperation and the relationship between the Republic of Serbia and the UNEP.

CREATION AND STRUCTURE OF THE UNEP

Designed to represent the international community's awareness of environmental protection, the UNEP is designed to be a flexible entity under the auspices of the UN that will not solve environmental problems alone, but rather design programs and measures to be implemented by other bodies. The need for inter-agency coordination was crucial for the formation of such a body. In designing the mandate and competencies of the UNEP, the intention was for the UNEP to be a center for making relevant scientific assessments of the state of the environment and then to be a catalyst for activities related to environmental protection within the United Nations. The UNEP should also provide assistance to the environment and states at the national level, as the UNEP is designed as a body that provides a framework for the member states to exchange information and views, develop and legitimize policies, and negotiate binding legal agreements. The UNEP was not intended to be an operational or service organization that carries out specific environmental activities on its own and provides joint or individual services. Given the enormous challenges in terms of environmental protection and

minimizing environmental damage, the creators of the UNEP did not have initial high expectations regarding the effectiveness of this body, so any progress could be characterized as epochal until failure was given importance. The fact is that some countries that were supposed to be the biggest financiers of the UNEP projects were also the biggest opponents of the creation of this body. The great powers feared its strength and independence, which implied that the UNEP would be slowed down in the realization of planned goals, which further led to environmental degradation (DeSombre, 2006, p. 8). From its establishment until today, the question remains whether the right model has been chosen for the adequate functioning of the UNEP. When creating international entities within the UN system, states have three choices. One of the variants was to form the UNEP as a specialized agency. Since specialized agencies have economic and political independence, the UNEP was not created as a specialized agency for several reasons. The entity formed in this way would have to take over many competencies that belonged to other already established specialized agencies, and the prevailing view was that such encroachment on competencies would not give the desired results (Wightman, 2012, p. 34). Another option was to form the UNEP as an office within the UN Secretariat. The establishment of such offices creates a comprehensive framework for coordinating the activities of the member states. At the time of its establishment, it was decided to form the UNEP as a subsidiary body (Ivanova, 2021, pp. 12-20).[2] One of the variants was to form UNEP as a specialized agency. Governments establish these agencies through the adoption and ratification of intergovernmental agreements, and the UN General Assembly has no direct administrative, programmatic or financial authority over them. The establishment of a specialized agency does not require the approval of the UN General Assembly or other bodies within the UN system. Given that specialized agencies have economic and political independence. The UNEP was not created as a specialized agency for several reasons. The entity formed in this way would have to take over many competencies that belonged to other already established specialized agencies, and the prevailing view was that such encroachment on competencies would not give the desired

[2] Subsidiary bodies are established by a resolution of the UN General Assembly and are an integral part of the United Nations structure. The main differences between specialized agencies and subsidiary bodies are reflected in the possibility of oversight by the General Assembly in a limited membership.

results (Wightman, 2012, p. 34). Another option was to form the UNEP as an office within the UN Secretariat. Although they do not have great responsibilities, offices can prove to be very capable of solving certain problems, especially if they have capable leadership. In the end, Subsidiary bodies are established by a resolution of the UN General Assembly and are an integral part of the United Nations structure. The UNEP was formed as a subsidiary body. An additional argument regarding the creation of a subsidiary body, rather than a specialized agency, is reflected in the fact that the complexity of environmental issues makes it impossible to link the work of this entity to only one sector (Ivanova, 2021, pp. 25-35). The establishment of the UNEP as a subsidiary body was more appropriate for *ad hoc* action, given the urgent need for the international community to respond to the identified problems. There is no evidence to suggest that the status of the new institution as a subsidiary body, rather than a specialized agency, was the product of deliberate action to disable the new body (Ivanova, 2021, p. 49). After this analysis, it is clear that the UNEP was designed as an auxiliary body precisely because it is considered that the form of action as an auxiliary body is the most suitable for dealing with environmental challenges. The UNEP is essentially designed to be an environmental conscientious creator for the UN as well. The creation of the UNEP as a subsidiary body under the direct supervision of the United Nations General Assembly indicates that the UNEP was created to achieve impossible goals. The UNEP is deliberately designed as a subsidiary body, rather than an independent specialized agency, to be in a better position to coordinate environmental activities across the UN system. The UNEP is headed by an executive director. This role is very important for the functioning of this subsidiary body as the position is similar to that of the UN Secretary-General. Hence, it is considered that the stronger the personality of the executive director, the greater the possibility for his more effective action.[3] The UNEP's normative mandate and operational demands, its inadequate (and voluntary) financial contributions, and the long distance from the rest of the UN system have made the executive director's role paramount (Ivanova, 2021, pp. 211-230). The structure of the UNEP consists of an additional 4 bodies, of which it is the most important as a universal body

[3] The Executive director of the UNEP performs an essential role in articulating a vision and carving out authority for the organization as well as mobilizing resources to support its day-to-day work and explore new opportunities.

the United Nations Environment Assembly (UNEA) (UNEA, 2022).[4] The UNEA is a forum for implementing and making concrete environmental decisions. In doing so, it has the potential to directly contribute not only to the identification and better understanding of critical emerging international environmental problems that require international cooperation, (Xaver Perrez, 2020, p. 8). In this way, the UNEA as a body significantly contributes to the development of soft law in the field of environmental protection. The significance of the existence of the UNEA is in the crystallization of the current principles of environmental law; another way of influencing is through raising the awareness of the general public. The specificity of the UNEA is reflected in the fact that it is a catalyst for environmental management policy. Negotiations on many environmental agreements have begun within the UNEA, but have not ended there. The UNEA is also the coordinator, overseeing the work of the UN Environment Program. In less than 10 years of existence, the UNEA has become a central body for identifying, prioritizing and coordinating global responses to environmental issues. Within the UNEA, new agreements are not adopted, but appropriate resolutions are passed. These resolutions outline the nature of the problem and potential solutions to the problem as proposed by the proponents. (UNEA, 2022).[5] It happens that some proposed resolutions are not adopted because there is no consensus on the proposed measures that would solve a certain environmental problem (Wagner, Allan 2022).[6]

[4] In the reform process, the UNEA replaced the Steering Committee for Environmental Programs. The UNEA was established as a result of the United Nations Conference on Sustainable Development (Rio + 20) in June 2012. The establishment of the Environment Assembly marked the culmination of decades of international efforts, launched at the 1972 UN Conference on the Environment in Stockholm. The significance of the UNEA is that it represents a political forum that meets biennially and serves for the exchange of opinions and interstate cooperation in the field of environmental protection. The UNEA has become the governing body of the UNEP with real political influence.

[5] Sometimes several countries pass a resolution on the same issue. Just before the UNEA session, the Open Committee of Permanent Representatives (OECPR) meets to discuss these resolutions. Until then, if there are more proposers, they consolidate their opinions and try to propose a single resolution. Following the OECPR, the UNEA meets. Ideally, the OECPR has forwarded a clear, harmonized text, but sometimes unresolved issues require the attention of senior UNEA delegates.

[6] Switzerland withdrew the proposed Resolution on geoengineering, following questions about which technologies are considered "geoengineering" and concerns

THE UNEP'S CHALLENGES AND SUCCESS

The global environmental management system is very complex as it is made up of many different actors. In order to achieve good coordination of all entities, which is crucial for environmental protection, it is necessary to establish authority. Since its inception, the UNEP has had the opportunity to establish a supreme role in environmental protection as it has had both a legal mandate and a financial mechanism to do so. The UNEP's authority was supposed to be based on expertise and credibility, but after the many challenges it faced, it can be concluded that the UNEP did not reach its full potential. The main difficulties in establishing coordination are reflected in the problem of capacity, i.e., a limited number of staff who cannot adequately meet the scope of obligations to which the UNEP must respond. During the 1990s, the UNEP struggled to address inconsistencies between its normative mandate, the requirements of developing countries for its operational engagement, and donor contributions to meet such requirements (Ivanova, 2021, pp. 98-103). Namely, it was considered that it was formally authorized to perform normative activities. The UNEP was constantly changing roles and could not develop a clear, consistent and convincing identity. An additional problem with the establishment of the UNEP is the fact that after the Rio Summit, several more environmental organizations were created, and the authority of the UNEP was further shaken. Although the UNEP was able to revitalize its role, however, given that the main narrative of the Rio Conference was focused on sustainable development, while the issue of environmental protection was put in the background, so the opportunity went to waste. Governments have set up separate secretariats for climate change treaties and the ozone protection protocol, which has drastically reduced the UNEP's mandate. The UNEP's limited activities are also caused by insufficient funding from the member states. With a mandate to "control the global environmental situation", the UNEP has engaged in monitoring and recording environmental data and has sought to influence policy to address environmental issues. The UNEP can initiate and accelerate actions in the UN system, as well as other international institutions (Ivanova, 2010, p. 48). One of the key problems that the UNEP has been facing since its establishment is that its headquarters are located

about turning to climate change, given the bodies and rules in place to reduce emissions and build resilience to climate change.

in Nairobi (Kenya), far from the heart of other specialized agencies. During the formation of the UNEP, the issue of the seat of this subsidiary body provoked the most heated debates, especially since an attempt was made to strike a balance between the principle of equal geographical distribution and the need for efficient functioning. Developing countries, eager to see the UN agency based in the South, did not see the location issue as a mere formality. Developing countries have advocated for equality in international environmental treaties, which would be manifested through the dislocation of headquarters. On the other hand, industrialized countries argued that the efficiency of institutions could be jeopardized by their location (Ivanova, 2010, p. 42). There are opinions that the headquarters in New York or Geneva would be more efficient for the functioning of the UNEP (Ivanova, 2010. p. 42).This claim is important if we keep in mind that all UN members have already had delegations in these places and that it is very important experts who would certainly contribute to the more successful functioning of the UNEP (Ivanova, 2010, p. 34). While some believe that the UNEP has been sacrificed in order to reach an international consensus on the most important issues that threaten the environment, on the other hand, there are interpretations that industrialized countries plan to expel the undesirable new secretariat to a place far from political centers of power. The failure of the UNEP would not be obvious, given that it was given an impossible task that was not well defined (Ivanova, 2021, p. 99). One of the biggest challenges facing the UNEP is climate change. The UNEP was the first to point out the harmful importance of climate change. Although it expressed some significant shortcomings, the UNEP has had some significant successes, especially in the fight against climate change. This subsidiary body, together with the World Meteorological Organization, is a co-founder of the Intergovernmental Panel on Climate Change (IPCC). The IPCC provides objective scientific analysis of the anthropogenic impact of climate change, and through periodic reports provides a review of relevant literature and explains possible solutions to mitigation and adaptation to climate change (IPCC, 2022.).[7] The UNEP aspires to play a crucial role in implementing the Paris Agreement by helping dozens of

[7] Despite the fact that the Conference of the Parties (COP) is leading the primary role in climate change issues, climate change significantly shapes the essential action of UNEP. The UN Environment Program is at the heart of action to combat climate change.

countries develop national plans to reduce greenhouse gas emissions and supporting the development of new financial models to accelerate the transition to a green economy (UNEP, 2022). The UNEP could play a significant role in the implementation of the Paris Agreement by cooperating with states to implement as ambitious plans as possible. The UNEP could revitalize authority by playing a key role in promoting ecocide as a new international crime. Ecocide is a great loss, damage or destruction of an ecosystem in a given territory (territories) ... such that the life of the inhabitants is seriously disturbed or it will be in the future" (Tintor, 2021, pp. 280-281). Namely, given the fact that its bodies represent centers for international discussion, this subsidiary body could significantly contribute to gaining the necessary majority to finally criminalize ecocide. Ecocide poses a significant environmental challenge that the UNEP will have to face in the future. The UNEP would certainly gain significant authority if it succeeded in implementing environmental goals from ecocides. Scientific evidence suggests that showing the effects and threats of climate emergencies, biodiversity crises and pollution that kill millions of people each year, the overuse of natural resources threatens human survival and causes serious environmental problems. By its actions, the UNEP could contribute to reaching a global consensus and recognizing the international subjectivity of nature in order to protect its existence (Tintor, 2022). To address the environmental challenges most reflected in the negative effects of climate change, biodiversity loss, nature destruction and pollution that are mostly caused by human activities and sustainable patterns of consumption and production, the UNEP has developed a Sustainable Development Strategy for the period 2022-2025. Tackling these crises is critical to improving the health of the environment, as well as social and economic health, as the COVID-19 crisis has shown. A healthy environment, healthy people and healthy economies are the foundation for achieving the Sustainable Development Goals (UNEP Strategy, 2022, pp. 22-28).[8]

[8] This UNEP Strategy is of great importance for the implementation of the 2030 Agenda for Sustainable Development, bearing in mind that more than half of the Sustainable Development Goals focus on the environment or deal with the sustainability of natural resources, and more than 86 out of 169 goals directly concern the environment.

THE NEED TO REFORM THE UNEP

Even fifty years after the founding of the UNEP, there is no consensus on the effectiveness and success of this subsidiary body. Opinions are extremely opposite, while some see "one of the most impressive entities ever created in the UN system in terms of real achievements", and "in terms of mandate, resources and authority, the UNEP's work can be a great success, while others point out that the UNEP has failed to successfully perform basic functions (Najam, 2003, pp. 367-384). Throughout its history, the UNEP has been the target of reform efforts on several occasions. Jeffrey Palmer, the former Prime Minister of New Zealand, put forward a proposal to create a new UN specialized agency for the environment, the International Organization for the Environment similar to the International Labor Organization (ILO), the first specialized agency (Palmer, 1992, pp. 259-283). Reform is also necessary due to the fact that due to economic crises organizations. Given the limited mandate and slow progress of environmental protection since the Rio Conference, over time there have been growing calls for the UNEP to be transformed into an organization capable of enacting legally binding acts. In that way, the UNEP would be transformed into the World Environmental Organization (Biermann, 2000, p. 23). In essence, proponents of the creation of this new entity point to the shortcomings of the current state of global environmental governance under the auspices of the UNEP. The first points are inadequate coordination and excessive financial costs with inadequate political results. When the UNEP was founded in 1972, it was a relatively independent player with a clearly defined mandate. Therefore, the key to reform is seen in the design of the UNEP (Ivanova, 2012. pp. 107-114). Proponents of the transformation of the UNEP into the World Environment Organization argue that it is necessary to undertake a dramatic reorganization of the existing governance system that requires extraordinary political leadership. In essence, proponents of this new entity point to shortcomings in the current state of global environmental governance under the auspices of the UNEP (Biermann, 2000, p. 25). The first points are inadequate coordination and excessive financial costs with inadequate political results. In the process of the part of the reform that was carried out at the RIO + 20 Summit by adopting the document "*The Future We Want*", the member states acknowledged the need for more operational engagement from the UNEP and stressed the importance of developing a greater regional presence as well as a stronger presence in Nairobi. They also committed, and subsequently delivered, resources

from the regular UN budget (Ivanova, 2021, p. 220). Governments did not, however, directly tackle the issues that have hobbled the UNEP from being a credible authority. Although every new political forum and decision reaffirmed the UNEP's position as the "leading global environmental authority," such authority is not granted but earned through the delivery of mandate and expectations (Ivanova, 2021, p. 208). The need for the UNEP reform is linked to the reform of the complete environmental management system. Global environmental governance is in need not just of reform but of transformation that conceptualizes and enacts a range of previously unimagined opportunities. Transformation can comprise a change in governance structures and processes, behavioral change that disrupts the status quo (Fazey et al. 2018, p. 61). The success of the UNEP's reforms so far has been manifested in its more efficient operations. The creation of the UNEA is a very important step towards the democratization of the UNEP. At the time of its establishment, it was expected that UNEA would have broad powers, but authority and a broad mandate are gained by achieving results. The future of the UNEP largely depends on the efficiency of the UNEA.

COOPERATION BETWEEN SERBIA AND THE UNEP

This body represents the secretariat for the vast majority of environmental agreements, which is why the UNEP is directing Serbia to many projects. An example of significant cooperation between the Republic of Serbia and the UNEP is the work on the implementation of the Rotterdam and Basel Conventions (UNEP, 2022b). A significant segment of cooperation between the UNEP and Serbia is reflected in the fact that the UNEP publishes annual reports on the state of life. The reports are compiled on the basis of available data obtained by the UNEP in cooperation with non-governmental organizations. Through its projects, the UNEP is trying to help the state implement the set goals in terms of environmental protection. Thus, the UNEP in its project on improved land management found that there are more than 700 potentially polluted industrial sites as a result of "decades of industrial activity, combined with inadequate waste management infrastructure" (Beta, 2019). The UNEP and Serbia are working together to implement the Sustainable Development Strategy 2022-2025 at the national and regional levels. The UNEP has identified air pollution as the biggest political problem in Serbia in terms of environmental protection. (Koprivica, 2022). According to the findings of the UNEP, the use of coal

in households as an energy source and pollution caused by traffic lead to significant global warming. According to the UNEP leaders, Serbia has good laws but has problems implementing them. They also added that environmental protection must be a key issue for the government. (Koprivica, 2022). The UNEP provides support to Serbia in the implementation of the multilateral agreement on environmental protection and the EU's obligations through improvement". The aim of the project is to monitor soil pollution in industrial zones and develop a plan for mapping and monitoring soil pollution in Serbia. Improving environmental standards is a key area for Serbia's EU accession process. Since the UNEP is the secretariat of the Convention on Biological Diversity, Serbia cooperates in the implementation of the convention and submits regular reports on challenges and achieved goals. (Secretariats and conventions UNEP50, 2022.).[9] The UNEP is making extraordinary efforts to put pressure on governments, including Serbia, to maximize their climate action plans. The form of cooperation is also reflected in the engagement of the UNEP Ambassadors for Sustainable Development and the Environment, who are working to promote the results achieved so far in the realization of the goals of the 2030 Agenda for Sustainable Development (Ambasadori održivog razvoja, 2020).

CONCLUSIONS

Over the past five decades, the United Nations Environment Programme has delivered on several of its core functions, resolved some global environmental problems, and created the conditions for collective action on others. Throughout its history, the UNEP's own voice has faltered at times as the organization has struggled to find its identity and its place in the world. In order to successfully respond to geopolitical and environmental challenges, the UNEP must study the lessons of the past well. This would help build architecture for the future since the scope of environmental problems has multiplied since the UNEP establishment. The future of the UNEP depends on using the UNEA as a political forum to help governments achieve positive results. The UNEA has huge

[9] The United Nations Environment Program hosts the secretariat of several multilateral agreements on the environment and research bodies, including the Convention on Biological Diversity, Migratory Species and International Trade in Endangered Species of Wild Fauna and Flora.

potential to create a place where governments can share experiences and see their own achievements. However, the question is whether the current level of reform is sufficient to make the UNEP a body ready to respond to all the challenges that arise in environmental protection, given that there are no systematic review mechanisms to compare national policy progress. A well-implemented UNEP reform, both structural and managerial, would contribute to an efficient environmental system. The UNEP is specifically designed to fulfill these functions as a small, highly visible body integrated closely with the rest of the UN system. The role of the UNEP will be even more important in the future, given the negative consequences of climate change, the loose consensus reached in climate agreements, and the often conflicting interests of developed and developing countries. The relationship between Serbia and the UNEP is reflected in cooperation and assistance in dealing with environmental problems. The UNEP has a significant role in training local authorities, identifying problems and providing solutions, and reviewing the annual state of the environment in Serbia. One of the main problems is the lack of transparency in the activities of this body in Serbia. Resolving persistent environmental problems will require a different approach — one that transcends the identification of issues and delves into the implementation of solutions. The UNEP must become a body that will think ahead in order to respond to key contemporary environmental challenges.

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MISSION AND VISION OF THE WORLD HEALTH ORGANIZATION OF THE UNITED NATIONS (WHO) – *ALL FOR ONE, HEALTH FOR ALL*

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Abstract: The World Health Organization was established in the aftermath of the Second World War as one of the organizations under the auspices of the United Nations. According to its constitution, it was designed to achieve the highest possible level of health for all people. In this paper, the author will present the history and the structure of the WHO, meaning its organs and its competence. Also, the power of the WHO in the previous two years has been thoroughly discussed due to the coronavirus and the global pandemic. The transformation of the existing international legal order is inevitable and, therefore, the paper will also discuss the potential for reform when it comes to this organization.

Keywords: World Health Organization, international organizations, United Nations, reform.

THE ORIGINS OF THE WHO

The World Health Organization (WHO) was established in 1948. But its history dates back to a century before or even a few more. The earliest form of cooperation was made with the goal of controlling epidemic diseases, such as the Plague of Athens in 430 BC, the Black Death or bubonic plague in the 14th century, and the exchange of several infectious diseases between the West and the East in 1492 (Lee, 2014, p. 504). During the 19th century, it

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seemed that the situation was becoming more serious. More precisely, in the middle of the 18th century, there was the first international exhibition in London dedicated to technical skills. The exhibition was made possible due to fast transport. But that fast transport also made cholera spread in Europe. It led to the first forms of international organization in Europe. The first form of organization was the Superior Counsel of Health (*Conseil Supérieur de Santé*), established in Constantinople in 1838. It was established by a decree of the Ottoman Sultan, but most of its members were delegates of foreign forces, mostly Western European ones. Cholera was the main reason the International Sanitary Conference was held in Paris in 1851. The second one was in 1859 in Paris, then in 1866 in Constantinople, 1869 in Vienna, 1885 in Rome, 1892 in Venice, 1893 in Dresden, 1894 in Paris, and 1897 in Venice. The focus was on preventing contagious diseases, primarily cholera and plague (Blešić, 2021, p. 272). In 1907, the first permanent body was established. It was called the *Office International d'Hygiène Publique* (OIHP) and its task was to collect and report epidemiological data from member states. Soon after that, and after the influenza pandemic that followed the end of the Great War, the League of Nations decided to form the League of Nations Health Organization (LNHO) in 1920. It has shown a larger, more organized, and better-coordinated organization is needed. In London in 1920, the International Health Conference was held, and it was settled that this organization would work in parallel with the OIHP. That was the case until the end of the Second World War (Chavan, Tewari, Khedkar & Bhatt, 2016, p. 585). Even though it had the will and desire to expand cooperation in this area, it was interrupted by the withdrawal of the United States of America from the League of Nations (Lee, 2014, p. 504). On the other hand, at a similar time on the American continent, the regional International Sanitary Bureau was formed in 1902 and renamed to the Pan American Sanitary Bureau in 1923. The US Public Health Service was not satisfied with the International Sanitary Conferences because they believed they had a strong European focus. In the beginning, it only focused on collecting epidemiological data and exchanging information, but, later on, it initiated a yellow fever eradication program (Lee, 2014, p. 504). The fact that the US did not participate in the League of Nations had a great influence on the results of this organization. These early forms of the organization actually had only one task – to protect the European forces from the diseases spreading from the unprivileged nations (Blešić, 2021, p. 273).

After the Second World War, states that won established the United Nations. In this organization, the delegation of Brazil was the first one to suggest including the term "health" in the UN Charter, and afterwards, the

delegations of Brazil and China suggested organizing the International Health Conference (Blešić, 2021, pp. 273-274). On February 15, 1946, the Economic and Social Council of the UN instructed the Secretary-General to convoke such a conference. A Technical Preparatory Committee met in Paris from March 18 to April 5, 1946, and that is when they made proposals for the Constitution (History of WHO). The International Health Conference was held in New York in June 1946. It was attended by all 51 members of the UN and 10 non-member states, the Allied Control Authorities for Germany, Japan, and Korea, and observers from some UN bodies. The conference lasted for four and a half weeks, from June 19 until July 22, 1946. It ended up with the agreement on a constitution, a protocol for the termination of the OIHP, and the setting up of a temporary body until the WHO is established. The preamble and Article 69 of the Constitution of the WHO provide that the WHO is a specialized agency of the UN. Even though the conference ended in 1946, it was not until 1948 that the WHO began to work. The reason for this two-year delay is that the Cold War was ongoing, along with the debates about the role of the United Nations. The preamble of the Constitution of the WHO says that the basic principles on which the WHO is founded are that "health is a state of complete physical, mental, and social well-being and not merely the absence of disease or infirmity" and that "governments have a responsibility for the health of their peoples, which can be fulfilled only by the provision of adequate health and social measures" (WHO, 1946). That precise part of the Constitution was a trigger for the view of the Western hemisphere countries that these principles were equated with the rise of Communism. The tension between a social medicine approach to health and the approach that puts its focus on surveillance and control of diseases continued to exist (Lee, 2014, p. 505). Finally, the WHO was established on April 7, 1948. Its official seat is in Geneva (Switzerland). This date is celebrated every year as World Health Day.

THE WHO TODAY

The structure of the WHO is mainly described in the Constitution. On a global level, the main bodies are the World Health Assembly, the Executive Board, and the Secretariat. The Secretariat is led by the Director-General (WHO, 1946, Article 9). Apart from that, there is a decentralized regional structure and national offices around the world (Novičić, 2021, p. 112). The World Health Assembly is composed of delegates representing the members, and they meet in regular annual sessions and, if necessary, in special sessions. Its main functions are to determine the policies of the WHO,

to name the members that are going to designate a person to serve on the Board, appoint the Director-General, monitor the work of the Board and the Director-General, review and approve the budget of the WHO, promote and conduct research in the field of health by the establishment of its own institutions or by cooperation with official or non-official institutions of any member with the consent of its government, and so on. The World Health Assembly has the authority to adopt conventions with a two-thirds vote that are under the competence of the WHO when it comes to sanitary and quarantine requirements, nomenclatures with respect to diseases, causes of death and public health practices, standards with respect to diagnostic procedures for international use, standards with respect to the safety, purity and potency of biological, pharmaceutical and similar products moving in international commerce, and advertising and labeling of biological, pharmaceutical, and similar products moving in international commerce. This organ can also make recommendations to the members with respect to any matter within the competence of the WHO (WHO, 1946, Articles 10, 13, 18, 19, 21, 23). The first Health Assembly opened in Geneva on June 24, 1948, with delegations from 53 out of 55 member states (History of WHO). The WHO more often exercises its normative authority through "soft" power, rather than through "hard" law, mostly in the form of recommendations. Even though the soft law is not legally binding, it has a great influence that is mostly political (Gostin, Sridhar & Hougendbler, 2015, p. 2). Soft law norms lack coercion. In the regulatory area, the biggest achievement of the WHO is the Framework Convention on Tobacco Control, which was adopted in 2003 and entered into force in 2005. It is one of the most widely embraced treaties in UN history. Despite that, the number of smokers still continues to rise globally. To this date, it remains the only convention brought in by the WHO. The second main organ is the Executive Board, and it acts as the executive organ of the Health Assembly. Its thirty-four members are elected by the members that the Health Assembly elects, bearing in mind an equitable geographical distribution. That chosen person must be technically qualified in the field of health. They are elected for three years, with the possibility of re-election. The Board meets at least twice a year. Its functions, among others, are to give effect to the decisions and policies that the Health Assembly creates; advise the Health Assembly; study all the questions within its competence; take emergency measures within the functions and financial recourses of the WHO; and deal with events requiring immediate action (WHO, 1946, Articles 24, 25, 26, 28). The Secretariat comprises the Director-General and technical and administrative staff. The Director-General is appointed by the Health Assembly on the

nomination of the Board and he is *ex officio* Secretary of the Health Assembly, Board and all commissions and committees of the Organization. He may have direct access to various departments of members, such as their health administrations and national health organizations. He is responsible for submitting financial statements and budget estimates to the Board. The Director-General appoints the staff of the Secretariat, when he should also pay attention to geographical equality (WHO, 1946, Articles 30, 31, 32, 34, 35). As already mentioned, the WHO has six regional offices. They are in the African region, the region of the Americas, the Southeast Asia region, the European region, the Eastern Mediterranean region, and the Western Pacific region. The offices are in Cairo, Copenhagen, Brazzaville, New Delhi, Manila, and Washington. The region of the Americas is embodied within the Pan American Health Organization. Each of the regional offices is recognized as a separate unit. They have committees that are constituted of delegates from the health ministries of that region's member states. Each committee has a regional director appointed for 5 years. Each state has a WHO representative (Chavan, Tewari, Khedkar & Bhatt, 2016, p. 586). The list of achievements of the WHO is long. Ever since 1948, the year when the WHO began its work, the WHO has made the International Classification of Diseases that has become the international standard used for clinical and epidemiological purposes. From 1952 to 1964, Jonas Salk developed the first successful polio vaccine, and in 1967, the first heart transplant was conducted. In 1970, the WHO launched the Expanded Programme of Research, Development and Research Training in Human Reproduction with a focus on fertility regulation and birth-control methods. In 1974, the resolution to create the Expanded Programme of Immunization was adopted. The goal was to make all basic vaccines possible and attainable for children around the world. In 1977, the first essential medicine list was established, and in 1978, there was the International Conference on Primary Health Care in Kazakhstan. This conference was important because it set the historic goal for the WHO – "Health for All". In 1980, the WHO was successful in the eradication of smallpox, while in 1983, the Institute Pasteur in France identified the human immunodeficiency virus (HIV), the etiological pathogen for the acquired immunodeficiency syndrome (AIDS). In 1988, the Global Polio Eradication Initiative was launched, and in 1990, the WHO launched several programs against lifestyle diseases: cancer, cardiovascular disease, and diabetes, and began promoting a healthy lifestyle. In 2003, the WHO recognized severe acute respiratory syndrome, known as SARS. The SARS epidemic was brought under control. In 2004, the Global Strategy on Diet, Physical Activity and Health was adopted, and

in 2005, the International Health Regulations were revised. It is a legally binding instrument with the goal of protecting the world from new diseases and threats to public health. In 2009, there was a pandemic with the H1N1 influenza virus, and vaccines were approved for use only three months after the pandemic had begun (Chavan, Tewari, Khedkar & Bhatt, 2016, p. 588). Also, between 1990 and 2012, the under-five mortality rate declined by 47%, which was an impressive achievement but still not enough to reach the Millennial Development Goals target of a reduction by two-thirds in the child mortality rate between 1990 and 2015. The maternal mortality ratio was almost halved between 1990 and 2010, but still did not reach the Millennial Development Goal of a reduction by three-quarters. The success is notable in malaria deaths and mortality due to tuberculosis. The number of people newly infected with HIV fell from 3.4 million to 2.3 million in the period from 2001 to 2012. The number of deaths fell from 2.3 million in 2005 to 1.6 million in 2012 (Chatham House, 2014, p. 1-2). The goal of this paper is not to discuss the coronavirus and all its implications and consequences. Still, it is not possible to write about the WHO without, even briefly, touching upon the COVID-19 pandemic. In December 2019, in Wuhan, China, a respiratory infection occurred; we later found out that it was a coronavirus. On March 11, 2020, the pandemic was officially declared by the WHO. The critics pointed to the WHO in this period were that it was late to declare the global health emergency situation and that it did not support states enough in restrictions on travelling to China until February 2020. One of the most commonly heard critics was also that the WHO was "China-centric" (Kataria & Kumari, 2020, pp. 10-13). The actions related to dealing with the pandemic were based on the International Health Regulations, a document made in 2005. These Regulations were the result of the fight against the SARS epidemic and were supposed to help with pandemics in the future. But this was not the case during the COVID-19 pandemic. As a matter of fact, many authors saw only the problems, such as the lack of using the International Health Regulations at the beginning of the pandemic, when things might have been done differently (Blešić, 2021, pp. 278-280).

THE POTENTIAL REFORMS

The COVID-19 pandemic has caused a crisis with great impact and consequences, and the question of whether the world and the international community are ready to tackle it arises (Blešić, 2021a, p. 169). Ever since the 1990s, even before this pandemic, there have been critics and talk about

potential reform of the WHO. There are many critics that appear to be attributed to the WHO, such as the fact that it is "too politicized, too bureaucratic, too dominated by medical staff seeking medical solutions to what are often social and economic problems, too timid in approaching controversial issues, too overstretched and too slow to adapt to change" (Chatham House, 2014, p. viii). The question of how the WHO does manage to tackle the problems in economic and social sectors since it is an agency where mostly health professionals work, was part of the agenda of the mentioned conference in 1978 in Kazakhstan. This was when the WHO's "Health for All" policy emerged, and later on, many conferences had this in their title or subtitle. Even though this felt like a way of dealing with social issues, it turned out to be unsuccessful since the WHO did not really commit any substantial resources to this task. The same was noticed in topics such as the environment, the impact of intellectual property rights on pharmaceutical innovation, and the relationship between trade and health (Chatham House, 2014, pp. 2-3). The potential reform may lead to facing this often-mentioned critic: medical experts do dominate the WHO. The staff are mainly doctors, epidemiologists, scientists, and managers. In order to achieve the goal of "Health for All", it might be necessary to expand the staff. This is a basis for an argument that, having only medical and technical staff, the WHO does not use or need international law. But, the medical-technical ethos, as Fidler describes them, was developed due to the scientific progress against infectious diseases, so international law only had indirect relevance in that period (Fidler, 1998, pp- 1099-1101). Fidler notices that the "Health for All in the 21st Century" indicates that the WHO should begin to develop international health law more actively. There are various fields of international health law that need to be codified and regulated, but attention should also be paid to the connection between health law and international trade law, human rights law, environmental law, intellectual property law, and so on (Fidler, 1998, pp. 1109-1110). The major problem for the WHO is funding. After the International Health Conference in New York, the Economic and Social Council suggested to the General Assembly of the UN the resolution about the WHO. During the discussion on November 26, 1946, Mr. Medvedev, a delegate of the Ukrainian Soviet Socialist Republic, said that he thought that the UN should not finance the WHO but only the governments of the member states. This was supported by Eleanor Roosevelt, the delegate of the US, and Mr. Wat, the delegate of Australia, so the suggestion was adopted (Blešić, 2021, p. 276). But the reality is different. Namely, the governments stagnated with the funding, so then the voluntary contributions were the only source of money. The Bill & Melinda Gates

Foundation has become the biggest voluntary contributor to the WHO. That is the main reason why, in 2010, the WHO Director-General, Margaret Chan, wanted a reform. The following years were filled with discussions primarily on two issues: how to align the priorities of the WHO with the available money and how to ensure better stability in financing so that the planning can be more effective. These two issues have raised a new set of questions. These included how and to what extent the WHO should address the broader social and economic determinants of health, what constitutes good partnership at the global and country levels, what constitutes effective country support, and how the WHO can be more consistent and effective in the field of technical collaboration (Chatham House, 2014, p. 4). In 2012, the World Health Assembly and Executive Board defined three reform objectives, which were the result of Margaret Chan's reform suggestions. Those objectives are improved health outcomes, greater coherence in global health, and pursuing excellence (Gostin, Sridhar & Hougendbler, 2015, p. 4). The financing of the international legal office of the WHO should come from its regular budget, with the possibility of using extra-budgetary funds from state sources. This is the proposal that Fidler gave. Private foundations should also support the WHO via direct operating funds or by funding fellowships for international lawyers to work with the WHO (Fidler, 1998, p. 1113). The WHO faces some fundamental critics, as noticed by various authors. Some of them are that it is a servant to the member states, in a sense that the member states elect the Director-General, make the work plan, approve the budget, and overall have control of the organization. If we compare the global health needs with its resources, we can see that the national health budgets are vaster. The problem of funding has already been brought up, but there is also weak governance. Some authors believe that the WHO lacks some critical institutional structures and that non-state actors should participate more. Excessive regionalization appears to be a weak spot for the WHO since it can make the WHO's ability to speak unanimously less possible (Gostin, Sridhar & Hougendbler, 2015, p. 2). The critics arise in the area of legal activity as well. The WHO Constitution provides the organization with authority that has not been used very often. More precisely, the first time that the WHO started a process under Article 19 was in 1996, when the World Health Assembly instructed the Director-General to provide an international framework convention for tobacco control, and the second time was when the International Health Regulations were adopted (Fidler, 1998, p. 1089). This criticism can be connected with the one about the experts in the WHO. If the staff were extended not only to include

medical experts but also legal experts, we might expect greater results in the legal activity.

CONCLUSIONS

Ever since the foundation of the WHO in 1948, the world and international community have drastically changed. The world went from being bipolar, and in the Cold War, to a multipolar world with many economic and technical advantages. With that, there is an uncertainty about how global institutions can adapt to a world that is different than it was at the time they were created. The mentioned "One Health for All" approach is not a new concept, but it is a concept that is still not accomplished. The fragmented policy making and financing have made it almost impossible, but COVID-19 has shown the significance of this approach (Report of the Pan-European Commission on Health and Sustainable Development, 2021, p. 2). The Pan-European Commission on Health and Sustainable Development: Rethinking Policy Priorities in the Light of Pandemics is an independent and interdisciplinary group of leaders, and it was summoned by the WHO Regional Director for Europe and with the endorsement of the Director-General of the WHO in late 2020 (Report of the Pan-European Commission on Health and Sustainable Development, 2021, p. 9). For almost two decades, governments all over the world have been committed to the principle of "Health in All Policies". The Ministries of health, economy, agriculture, employment, education, and the environment are making their decisions following this concept (Report of the Pan-European Commission on Health and Sustainable Development, 2021, p. 10). On April 7, 2022, on World Health Day, the Director-General of the WHO, Dr Tedros Adhanom Ghebreyesus, announced a new global initiative. It is called "Peace for Health and Health for Peace". Its main goal is to show a relationship between health and security, encouraged by the events occurring in Ukraine (Ghebreyesus, 2022). The Independent Panel for Pandemic Preparedness and Response began its work in September 2020 and submitted its main report, "COVID-19: Make it the Last Pandemic", to the World Health Assembly in May 2021. The World Health Assembly requested the Director-General of the WHO to initiate a review of the international health response to COVID-19 that will be impartial, independent, and comprehensive. The panel has been working on the review since September 2020. This report contained the Panel's findings and recommendations for action to fight the pandemic and to ensure that no more pandemic has such consequences. This panel saw a need for stronger leadership and better coordination at the

national, regional, and international levels; investment in preparedness; an improved system for surveillance and alert at a speed that can combat viruses; authority given to WHO to publish information and to dispatch expert missions immediately; a pre-negotiated platform able to produce vaccines, diagnostics, therapeutics, and supplies; and access to financial resources for investments in preparedness. The Panel called on the member states to request the United Nations Secretary-General to convene a special session of the United Nations General Assembly to reach agreement on the reforms (The Independent Panel for Pandemic Preparedness & Response, 2021, p. 45). On March 30, 2022, the WHO published "Strategic preparedness, readiness, and response – Plan to end the global COVID-19 emergency in 2022". It is a publication that discussed previous ways of tackling COVID-19 and there are suggestions on future steps (WHO, 2022). The seventy-fourth World Health Assembly was held between May 24 and May 31, 2021. The theme was ending the pandemic and preventing the next by building together a healthier, safer, and fairer world. The seventy-fifth will be between May 22 and May 28, 2022. The provisional agenda shows that the topics are, among other things, focused on the reform of the International Health Regulations from 2005 in order to prevent such pandemics as COVID-19 (WHO, Seventy-fifth World Health Assembly, 2022). These previous paragraphs go in favor of the argument that the WHO is already doing many things in order to change itself. The word "reform" always carries with it a strong and serious tone, so states and international organizations are often scared. The reform of the WHO seems inevitable from this point of view, just as the reform of other international organizations has become an objective necessity. We cannot accept the system functioning the same as it did in the 1940s. The new provisional agenda for the session of the World Health Assembly scheduled for May 2022 says that the WHO has plans to reform the International Health Regulations in order to prevent another pandemic of this size from happening, which is also a good thing. From a traditional point of view, I do see a future in international organizations and do not expect them to disappear. They do need to go in step with the times, and that is something I notice the WHO is lately trying to achieve. That is the only way that "*All for One, Health for All*" can be achieved.

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UNITED NATIONS CHILDREN'S FUND (UNICEF) – FROM CHARITY TO RIGHTS

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Abstract: In 2021, UNICEF marked its 75th anniversary. It was established in the aftermath of World War II in 1946 as a United Nations International Children's Emergency Fund, with the aim of providing immediate relief to children and mothers affected by the war. Soon, it became part of the United Nations System, with its mandate extended to address the long-term needs of children and women, particularly in developing countries. After the adoption of the Convention on the Rights of the Child in 1989, whilst holding on to its initial mission to support assistance and relief to children in need, UNICEF added a rights-based approach to children and entered into close cooperation with the Committee on the Rights of the Child, the monitoring body of the said Convention. This paper explores UNICEF's role and achievements in supporting the rights of the child as it works in over 190 countries and territories; its 30 years of cooperation with the Committee on the Rights of the Child; its reliance on the Convention on the Rights of the Child in its main strategies and country programs; and the way this organization communicates the rights-based approach to the States. Namely, the paper seeks to assess UNICEF's ability to shift from a charity-based to a human rights-based approach by perceiving children as right holders rather than helpless recipients of humanitarian support. It finally provides a view of UNICEF's valuable role in the implementation of the rights of the child as the organization constantly balances between politics, cultures, contexts, and the rights that 196 states have guaranteed to all children under their respective jurisdictions.

Keywords: UNICEF, Convention on the Rights of the Child, charity, protection, rights-based approach

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"Human rights are not a matter of charity (...).
Human rights are inalienable entitlements of every human being, wherever they are and whatever their status.
Navi Pillay, Former High Commissioner of Human Rights, 2011

"Fundamentally, all children and youth are people with human rights and freedoms of their own, just like anyone else. And this is not because they are 'the future' or the 'adults of tomorrow' – as they are often labeled – but because they are human beings today with human rights today.
CRIN – Child Rights Information Network

INTRODUCTION

The United Nations Children's Fund (UNICEF) was established in 1946 as the International Children's Emergency Fund (ICEF).[1] Its establishment came in the aftermath of World War II as a response to the great suffering of children and their mothers affected by the war that needed immediate relief. In late 1946, the ICEF became part of the United Nations system, with a mandate extended to address the long-term needs of children and women, particularly in developing countries. In 1953, UNICEF became a permanent United Nations (UN) Fund. The words "international" and "emergency" were dropped from the official name, but the acronym has been retained. UNICEF's initial activities were aimed at providing health support, primarily to reduce preventable childhood diseases and deaths by focusing on projects in water, sanitation, and hygiene. Campaigns to eradicate yaws, leprosy, and trachoma were highly effective. In the early 1960s, UNICEF introduced education programs. In the years and decades that followed, other programs were initiated to support family planning and services in local communities, in particular impoverished ones (UNICEF, 2022a). In 1986, UNICEF announced its new program on children in especially difficult circumstances, shifting attention to children in areas of "*armed conflicts and those affected by natural disasters, children in exploitative work situations, street children, and children subject to abuse and neglect*", which marked a shift from pure charity to protection (UNICEF, 2022b). That was the year that UNICEF got involved in the drafting of the Convention on the Rights of the Child.

[1] ICEF was created by the UN Relief Rehabilitation Administration with a view to responding to children's health needs primarily and without discrimination.

Those activities paved the way for UNICEF to add another layer to its charity and protection missions and move towards an organization that will seek to embrace a human rights approach in its future programming. While UNICEF was slowly moving along the described path, the UN had already developed and set in motion a comprehensive human rights system. The 1945 UN Charter (Article 1, Paragraph 3) proclaims as one of its main purposes "promoting and encouraging respect for human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion". The Charter acknowledges the leading role of the UN in the attainment of these "*common ends*" (Charter of the United Nations and Statute of the International Court of Justice). What followed were the Universal Declaration of Human Rights, the International Covenants, and other international human rights treaties that were adopted under the auspices of the UN (OHCHR, 2022a). In 1989, the Convention on the Rights of the Child (CRC) was adopted (OHCHR, 2022b).[2] That unique human rights treaty reserved a special role for UNICEF, reflecting the belief of the drafters that no other international organization is more qualified to take an active part in the implementation of the rights of the child. At UNICEF's initiative, the World Summit for Children was convened in September 1990, which happened to be shortly after the Convention entered into force on September 2, 1990. UNICEF did not stop there; in 1996, it introduced two additional protection issues: children without parental care and children in the face of deficient laws and abusive legal processes (UNICEF, 2022c). Together with previously listed areas, those fall under "children in especially difficult circumstances", which require "special protection measures". As some authors noted, UNICEF's language of "protecting children" rather than "protecting the rights of the child" created confusion as to the organization's understanding and willingness to embrace a rights-based approach to child protection (Cantwell, 2015, p. 39). That remains an ongoing challenge (Vučković-Šahović, 2000; 2015). Despite this protection approach, UNICEF issued a Mission Statement in 1996, which embodied a novel approach to the rights of the child: "*UNICEF is guided by the Convention on the Rights of the Child and strives to establish children's rights as enduring ethical principles and international standards of behavior towards children*" (UNICEF, 2022d). In its always politically careful language, UNICEF stated

[2] Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989; entry into force 2 September 1990, in accordance with article 49.

its determination to be guided by and to work on the implementation of the CRC, but in the rest of the document, the organization sticks to its protection-of-children attire. In 1998, UNICEF adopted a human rights-based approach to programming, placing human rights principles at the center of its work (UNICEF, 2022e). As many authors and contemporaries predicted at the time, the Mission Statement heralded a new era for UNICEF and child rights (Santos Pais, 1999, p. 3). But, did it really? One thing is certain: UNICEF is not and will never be a human rights organization, but it has made significant strides in promoting children's rights. It remains the most valuable organization for children globally. The recognition of and respect for UNICEF are very high. Not only professionals but also children around the world know about UNICEF. The organization plays a valuable role in the implementation of the rights of the child as it constantly balances politics, cultures, contexts, and the rights that 196 states have guaranteed to all children under their respective jurisdictions. But is UNICEF now in need of an in-depth assessment of its ability to shift fully from a charity and protection-based to a human rights-based approach, by perceiving children as rights holders rather than passive recipients of humanitarian support and protection? To what extent has UNICEF managed to adopt a rights-based approach to children while struggling with the overall perception that it is, first and foremost, a relief organization? This paper can only provide some glimpses into the topic by looking into UNICEF's role and achievements in supporting the rights of the child in over 190 countries and territories; its 30 years of cooperation with the Committee on the Rights of the Child; and its reliance on the Convention on the Rights of the Child. Considering that most of the literature on UNICEF in the last two decades has been produced by UNICEF, this paper relies to a great degree on the 1990s' lively debates on UNICEF's role in the protection of the rights of the child, as well as on the personal impressions of the author, who has had extensive experience and the pleasure of cooperating with this international organization.[3]

[3] As part of its commitment under the Medium Term Strategic Plan, UNICEF commissioned a Global Evaluation of the Application of a Human Rights Based Approach to UNICEF Programming (HRBAP) in 2011, with the goal of assessing "*whether there is adequate understanding of, and commitment to, HRBAP throughout the organization, by elucidating strengths and weaknesses related to the approach, and by identifying good practices and lessons learned in HRBAP to help UNICEF improve future programming*".

UNICEF, THE CONVENTION ON THE RIGHTS OF THE CHILD AND THE RIGHTS OF THE CHILD

When in 1979, the initial Polish government proposal, in the form of a draft convention on the rights of the child, was submitted to the UN Commission on Human Rights, that body requested the UN Secretary-General to obtain comments and suggestions from the UN member states and relevant bodies (Detrick, 1992, p. 21). The Secretary-General received comments from 28 member states, four from specialized agencies, and 15 from non-governmental organizations. Surprisingly, UNICEF did not submit any comments (OHCHR, 2007). The Commission set up an open-ended working group on the Question of the Convention on the Rights of the Child, and states and international organizations participated in the process. UNICEF did not show initial interest but finally sent their delegation in 1986. In 1983, a group of NGOs formed an Ad Hoc Group and took active participation in the drafting of the CRC. It is worth noting that UNICEF Geneva, despite not having been involved in the early drafting process, provided logistical assistance by convening an "NGO Consultation" in mid-1983 (*Ibid.,* p. 24). In 1986, UNICEF and the NGO Group joined forces in an effort to expedite the process, requesting the adoption of the CRC by 1989. The UN documents of the CRC drafting process were collected and published and have served as an excellent source through which to analyze the discussions and the issues, including those of controversy, and to understand how different participants fought battles over particular rights of the child as well as over the CRC's procedural arrangements (*Ibid.,* pp. 1-3). This is where one can learn about UNICEF's contribution to the drafting of the CRC as well as how that organization came to hold such an important place in the final text of the Treaty. Once UNICEF experts walked in, their participation in the drafting process was very prominent and they have impacted the CRC provisions in a most positive manner. That activity was a sign of UNICEF's openness towards a rights-based approach. The respect for UNICEF and assumptions that the organization will have a leading role in the realization of the future Convention led to discussion on the role of UNICEF and the scope of that role: from the proposals to set that organization as the CRC's monitoring body, to different formulations regarding the effective implementation and international cooperation in the implementation of the CRC (UN Doc. E/CN4/1987/25). In its final formulation, Article 45 of the CRC recognizes the important role of UNICEF by explicitly mentioning it as a specialized UN entity that "*shall be entitled to be represented at the consideration of the*

implementation of such provisions of the present Convention as fall within the scope of their mandate". Article 45 also states that the CRC Committee may invite UNICEF, specialized agencies, and other relevant UN bodies to submit reports on the implementation of the Convention in areas falling within the scope of their activities. In paragraph *b* of the same article, it is further stated that the CRC Committee shall "*transmit, as it may consider appropriate, to the specialized agencies, the United Nations Children's Fund and other competent bodies, any reports from States Parties that contain a request, or indicate a need, for technical advice or assistance, along with the Committee's observations and suggestions, if any, on these requests or indications*". This clearly reflects the consensus reached during the drafting of the CRC that UNICEF should play a leading role in the promotion of the implementation of the CRC. Now, thirty-two years into the life of the CRC, it is safe to state that UNICEF lived up to the role it was entrusted with by the drafters of the CRC. As indicated in the introduction, the nineties were marked by vivid UNICEF activity in the pursuit of the rights of the child. This was indeed the expected result of the organization's high position in the Convention on the Rights of the Child, so that UNICEF did its best to respond to that task, which is indicated by the interpretation that in the period 1989-2005, it was considered that "UNICEF gathered nations under the banner of child rights" (UNICEF, 2022f). For the period 2006-2020, the organization stated that it was "*becoming the leading voice*" and "*the world's primary voice for child survival and development*" (UNICEF, 2022g). On the occasion of the 30th anniversary of the CRC, UNICEF stated that it "*takes stock of the achievements of the past three decades and advocates for the critical work that remains*" and "*supports young petitioners to file a complaint with the Committee on the Rights of the Child to address the climate crisis*" (*Ibidem*). The rights language and the recognition of the value of the CRC are obvious and were reiterated in its 2020 statement: "*Today we continue to work to promote the rights and well-being of children everywhere*" *(Ibidem*). Practically all of UNICEF's publications analyzed for this paper contain at least some mention of the rights of the child (UNICEF, 2022h). The CRC and the rights of the child were high on the agenda of the UNICEF Office of Research – Innocenti in Florence, Italy, established in 1988. Following the ratification of the CRC, a range of research projects at Innocenti contributed significantly to shaping UNICEF's human rights-based approach to development (Himes, 2015, p 10). Its early work in the nineties was to a great extent concentrated on the implementation of the CRC (UNICEF, 2022i). It was Innocenti that initiated an assessment of the *impact of the CRC* on responses to the situation of children following the 1994 genocide in Rwanda, resulting in a review that provided space for broader

discussion on the questions of "protection of children's rights" (Cantwell a, 2015, p 40). Some years later, in relation to a report from Burundi, Innocenti hosted a discussion in which UNICEF's role in "protecting rights" vs. "protecting children" reemerged. Namely, UNICEF's Child Protection Officer in Burundi strongly advocated for a sharp shift of emphasis to the protection of rights, believing that a rights-based approach is necessary for future UNICEF operations in similar circumstances (Majekodunmi, 1999). That suggestion, unfortunately, did not see the light of the day in any subsequent discussions (Cantwell b, p. 41). It is hard to find evidence that any such discussion has been held at UNICEF since the nineties. Thus, even though UNICEF's protection role has been formally placed within the framework of the rights of the child, it seems that UNICEF still does not place "child protection" under "protection of rights". The CRC, as an international legal document, clearly lists rights and expects the states parties to protect those rights in laws and practices. However, the CRC's supposedly biggest ally among the UN – UNICEF – does make a distinction between child protection and protection of the rights of the child. Therefore, a question for UNICEF would be: how does the protection of children differ from the protection of rights? Or, what falls under the rights of the child if not protection? Why make such a distinction at all, unless human rights are to that degree a difficult issue for UNICEF that it still holds to the same old and safe terminology? What makes human rights of children so sensitive in UNICEF's work is perhaps more obvious in the organization's field work than in the legal position it holds in implementation of the CRC, its research work, and publications.

UNICEF AND THE COMMITTEE ON THE RIGHTS OF THE CHILD

The CRC, like all other core human rights treaties, established a monitoring mechanism – the Committee on the Rights of the Child (the Committee), with a mandate to examine and foster the progress of the implementation of the Convention. Examining progress is defined as follows: "the progress made by States Parties in achieving the realization of the obligations undertaken in the present Convention" (CRC, Art 43). The states parties to the CRC elected members of the Committee as soon as the CRC entered into force, and this Treaty Body met for the first time in 1991. The Committee has 18 members serving in a personal capacity and meets three times a year in Geneva. The Committee deals with monitoring the implementation, interprets the CRC through General Comments, and works on the general promotion and advocacy for the rights of the child worldwide

(OHCHR, 2022c). UNICEF provides valuable support to the Committee's work by supporting governments to implement the Convention and participating in different stages of the monitoring and reporting process. The Committee organizes regular meetings with UNICEF. In 2020, the Committee held its seventh biennial meeting with UNICEF, in which representatives from UNICEF headquarters and Deputy Regional Directors participated, to seek ways to enhance the existing cooperation between the Committee and UNICEF (OHCHR, 2022d). The most well-known monitoring work of the Committee is the review of initial State Parties' reports on the implementation of the CRC two years upon ratification and periodic reports every five years (CRC, Art. 44). To make the examination possible, states parties are required to submit reports timely to the CRC Committee and indicate factors and difficulties affecting the fulfillment of their obligations. The reports should also contain sufficient information to provide the CRC Committee with a comprehensive understanding of the implementation of the Convention in the country (OHCHR, 2022c). In that process, the state parties' reports are not the only source of information for the Committee. Rather, as stated in the previous chapter, the Committee can invite UNICEF, other specialized UN agencies, and competent bodies, including NGOs, to provide expert advice and to submit their reports on the implementation of the Convention (Vučković Šahović, Doek, and Zermatten, 2012, pp. 335-364). They can also be represented at the consideration of those reports, in line with the scope of their mandate. These provisions ensure a firm legal foundation for the strong cooperation of the CRC Committee with competent bodies, UNICEF and specialized agencies and other UN entities, such as, for example, the WHO, UNESCO, UNHCR, OHCHR, ILO, or others. It is a standing aspect of the reporting process that these stakeholders, in particular national NGOs and UNICEF, submit to the CRC Committee their country-specific reports. In practice, it means that, for each state party's report on the CRC implementation, be it initial or periodic, there will be several other stakeholders' reports. They were initially labeled as "shadow" reports, later as "alternative" and more often as "supplement" or just "stakeholder" reports.[4] One such report is almost always submitted

[4] The reports were "shadowed" in times when, in many states, it was highly unacceptable and even risky to criticize the government and to do so by addressing an international body. With the mushrooming of human rights NGOs around the world in the sixties and seventies, and with a better understanding of the values and capacities of such organizations to support societal change and contribute to human rights in a country, confrontations between governments and NGOs have slowly subsided for the most

by a UNICEF country office or a UNICEF National Committee. The Committee reviews on average fifteen to twenty state party reports per year, and there are about the same number of UNICEF supplement information in the same period. This well-established and long-standing cooperation of UNICEF with the Committee is grounded in rights. That is probably the most practical and visible rights-based work of UNICEF, both in Geneva and in the states parties to the CRC. UNICEF country offices support governments in drafting their reports on the CRC implementation while they also support the Committee by participating in the Committee's review of submitted reports. UNICEF works with governments to implement the Committee's Concluding observations, which are recommendations that the Committee provides to the States as a final step in each reporting cycle. In the process of preparation of the state report and other stakeholders' reports, UNICEF helps "to ensure that voices that too often go unheard are reflected in the information presented to the Committee" (UNICEF, 2022j). UNICEF, for example, facilitates consultations at all levels of society and encourages NGOs to submit their own reports to the Committee as a supplement to the government reports. UNICEF country offices are represented at the consideration of the state parties' reports, both in private and public meetings. They are allowed to present their view on the implementation of the CRC in a state party whose CRC review is in the process before the Committee. UNICEF alternative reports are of great value to the Committee since they highlight gaps and identify areas that are deficient in the state reports. Their representatives meet with the Committee in private sessions to present their alternative reports. However, UNICEF country offices' alternative reports are labeled confidential. They are not referred to in any information about the review process, nor do Committee members refer to the source of information during dialogues with the State party. Only the Committee members and the OHCHR staff are privy to them. UNICEF produced a guide for country offices on the submission of alternative reports, but that document has not been published. Therefore, even though it is common knowledge that a UNICEF country office will submit its own "confidential" report and that its representatives will meet with the Committee in Geneva; and even though UNICEF country offices regularly support NGOs and children in drafting and presenting their alternative

part. It is now only a few countries that do not allow human rights NGOs' activities and totally ban them and prosecute their activists. Still, the UN Human Rights Council has a Special Reporter on the Situation of Human Rights Defenders.

reports, their own alternative reports formally do not exist (OHCHR, 2022e). Why is that so? Obviously, human rights of children can have a "sensitive" dimension compared to protection of children and support for their development. Even though UNICEF is reluctant to publish information on its alternative reports, other sources reveal their existence. For example, the OHCHR in its Guide for NGOs and NHRIs describes UNICEF's role in the CRC reporting process as follows: "United Nations agencies, especially UNICEF, which have country offices in the States parties, often take part in the reporting process", and "UNICEF field offices generally prepare a confidential written report for the Committee based on what they see as the priority children's issues in the State under review. At the pre-session, UNICEF representatives, if present, make a brief presentation and respond to the Committee's questions together with the NGO and NHRI representatives. They often attend the plenary session as observers" (Fegan, R., Myers, L., Theytaz Bergman, L., 2014). However, where there is a UNICEF National Committee, the situation is different as their reports are published, even on the CRC Committee's website. The confidential nature of UNICEF's alternative reports on the CRC implementation and the fact that they come from country offices may raise questions about the organization's full commitment to a rights-based approach to children at the country level.

UNICEF COUNTRY OFFICES AND THE RIGHTS OF THE CHILD

UNICEF works in over 190 countries and territories.[5] Its work is organized into seven regional and 156 country offices.[6] In addition, there are 34 UNICEF National Committee countries. Most of the National Committees are in Europe and some are in other parts of the world. They operate as non-governmental organizations that promote children's rights, raise funds, create key corporate and civil society partnerships, and provide other types of support (UNICEF, 2022k). Country offices operate based on

[5] The headquarters are in New York City, US. The governing body of UNICEF is the Executive Board, which provides intergovernmental support and oversight to the organization, in accordance with the overall policy guidance of the United Nations General Assembly and the Economic and Social Council.

[6] East Asia and the Pacific, Eastern and Southern Africa, Europe and Central Asia, Latin America and Caribbean, Middle East and North Africa, West Asia, West and Central Africa; https://www.unicef.org/where-we-work

agreements with governments, who are UNICEF's main partners. They also cooperate with other international organizations in the country, NGOs, universities, national and international experts, and children. Even though country offices are rather independent in creating their work, they most often have similar main programs: child protection, education, health and nutrition, social policy, and communication. However, depending on the situation in a country, programs can also be more specific, like water and sanitation, or aimed at some issue, such as, for example, the Palestinian Program in Lebanon.[7] In some countries, UNICEF offices have programs that include, among other issues, monitoring of child rights; one such office is in Serbia.[8] It would be useful to assess the extent to which the rights of the child guide all those programs, but that would require a separate research based on specific indicators. One of the criteria for such an assessment could be UNICEF country offices' staff - namely to what extent are employees informed about human rights and the rights of the child, and what is their level of influence on programs and their realization. Right after the adoption of the CRC, Innocenti introduced programs aimed at raising the capacity of country offices' staff to apply the CRC and a rights-based approach to their work. As Himes notes, one early dream for Innocenti was that it might eventually become a training centre, a kind of "staff college", but that remains "an unfinished business" (Himes, 2015, p.28). Luckily, in the last three decades, the CRC and international law on children's rights entered classrooms and education systems, so there are many elementary and secondary schools around the world that offer children courses on human rights, civic education, the rights of the child, and the like. Child rights are now taught at many universities around the world, and there are numerous undergraduate and graduate courses.[9] More and more students that went

[7] For example, the UNICEF Office in Lebanon states: UNICEF started to work in Lebanon in 1948 and established its office in 1950. For more than 70 years, we've been working closely with the Government of Lebanon, other UN agencies, international and local NGOs, universities, and more than 100 partners to meet the needs of disadvantaged children in Lebanon. https://www.unicef.org/lebanon/what-we-do

[8] UNICEF supports national governmental and independent bodies, as well as local self-governments, on child rights and child-centered, evidence-based policy-making, budgeting, and monitoring. We support child rights monitoring by civil society and independent monitoring institutions, the Ministry for Human and Minority Rights and Social Dialogue, and others.

[9] There is even a children's rights academic network, now based at the University of Geneva (CREAN)

through such children's and childhood studies are now working in UNICEF country offices, contributing to their work. Still, most UNICEF staff do not rely regularly on the CRC and their work, be it in health, education, or other country offices' programs, too often does not reflect a rights-based approach. Looking into UNICEF advertisements for jobs, knowledge of the rights of the child and the CRC are rarely mentioned and even more rarely required from the applicants (UNICEF, 2022j). So, if "UNICEF works in over 190 countries and territories to save children's lives, to defend their rights (…)", how are the rights of the child defended if the staff is not expected to be acquainted with the CRC? (UNICEF, 2022k). That is certainly an area in which UNICEF should review and rethink its practice. Maybe part of the solution lies in raising child rights knowledge and awareness among country offices' leadership. For the time being, the knowledge gaps are most often filled by the engagement of external consultants, where and when the CRC knowledge is specifically needed, like in the CRC reporting process as well as in the implementation of the CRC Committee's concluding observations. A child rights approach is often highly visible through country offices' work with NGOs, especially those that primarily work in human rights or rights of the child specifically. That kind of cooperation depends on the UNICEF country office and its assessment of the government's attitude towards human rights and child rights organizations. The rights-based approach is also visible in the country offices' programs on education and in their support for the dissemination of the CRC. Child protection programs are often visibly based on rights, especially in relation to justice for children, violence against children, and state and alternative care issues. Despite the above-mentioned shortcomings in relation to the use of the CRC, there has been advancement in the UNICEF country offices' rights-based approach. Still, there is room for improvement and to get the right picture. UNICEF should undertake a thorough study of the issue. That would also fit well with the SDGs and a very clear human rights approach in that UN document, in whose implementation UNICEF has a very prominent role (UNICEF, 2022l).

CONCLUSIONS

UNICEF is an international organization, part of the UN system, and is widely perceived as a relief agency. It would be difficult to deny that hundreds of thousands of children's lives depend on the direct assistance and urgent action that UNICEF has provided since its beginnings. To many, child rights do not equal expediency and aid; some believe that focusing too

heavily on rights slows UNICEF's response in emergency situations. UNICEF is even criticized for placing emphasis on the universal rights of children at the expense of children's immediate needs for survival (Britannica). Such criticism unfortunately does not reflect the fact that any response to the immediate needs of children will always be more sustainable if based on rights and not purely on charity. In such an environment of expectations and pressures, while constantly trying to move fast to respond either to man-made or natural events that threaten the lives of millions of children around the world, UNICEF faces many challenges in holding to its commitment to a rights-based approach. It is fair to note that UNICEF is trying and slowly moving forward in making child rights the basis for all its actions. UNICEF is a one-of-a-kind organization; it has a long and fascinating history, but above all, it has lived through enormous societal and technological changes and has been trying to respond and adjust. UNICEF has been able to catch up and respond to themes that were not on any agendas seventy, sixty, or thirty years ago, such as the effects of climate change and the environment on children's lives. Besides, the area that UNICEF covers in its work is enormous. It encompasses all situations of all children of all ages. Still, there is space and a need for the organization to do more to fully embrace the rights of the child, including in its everyday vocabulary, programming, and action. Although UNICEF has formally adopted a rights-based approach, embraced the CRC and supported its implementation in all states parties, there are still doubts and uncertainties about what this approach should mean in practice, in particular in urgent situations. None of the organizations within the UN system have taken the "same level of proprietary interests in the CRC" (Oestreich, 1998, p. 191) and that makes UNICEF the CRC's best friend. At the same time, UNICEF should fully embrace the CRC as its best friend since that international treaty is the best child rights protection tool available in 196 countries worldwide. Even though a rights-based approach can weaken and sometimes threaten UNICEF's cooperation with states, especially those that often make a show of cooperating with intergovernmental organizations, in the case of the rights of the child and the CRC, nothing outweighs the potential good.

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THE HUMANITARIAN ROLE OF THE INTERNATIONAL ORGANIZATION FOR MIGRATION (IOM) AND PERSPECTIVE COOPERATION WITH SERBIA

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Abstract: The Second World War left severe consequences for humanity, such as a huge number of refugees and displaced persons, especially in Europe. However, due to the divide in Europe between two economic and ideological blocks, there was no consensus to form an international organization for migration nor a specialized UN agency for migration. The highest achievement in that regard was the creation of the Provisional Intergovernmental Committee for the Movement of Migrants from Europe (PICMME) at the end of 1951. During the first ten years of its operations, the Committee has organized the relocation of more than 11 million refugees. Thereafter, this body has changed its name several times, and in 1989 it received its current name. The International Organization for Migration (IOM) quickly expanded its activities to all the continents. Toward the end of 2016, the IOM received the status of a "member of the UN system or a UN related organization". Therefore, it has crossed the several-decade long Rubicon of separation from the UN as the head international organization. From that moment onwards, the issues of migration, refugees, asylum seekers, and displaced persons were no longer within the exclusive jurisdiction of countries but the UN as a universal world organization. Moreover, even though it has been proclaimed a non-normative organization, the IOM has succeeded in creating a number of standards in this field. At the same time, it has become the umbrella organization and the main UN instrument for solving migration issues and shaping policy in the field. Its role and competencies have significantly expanded and altered. It is increasingly becoming a norm-setter, an institution that creates norms for a specific and emerging public law

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discipline — International Migration Law. The office of the IOM in Belgrade was established in 1992, whereas Serbia became a formal member of this organization in 2001 and has been developing very comprehensive cooperation with it ever since.

Keywords: International Organization for Migration, Global Compact for Safe, UN, Serbia, International Migration Law.

INTRODUCTION

Migration as a natural phenomenon or a bugbear

The history of mankind, to a large extent, is the history of migration. Human civilization has spread and developed through migration. Since prehistoric times, people have been leaving their habitats and establishing new ones. They did it sometimes in search of food, shelter from the bad weather, or to protect themselves from the beasts. Occasionally, they would seize the habitats of other groups. There is no continent, state or nation that to a greater or lesser extent has not experienced migratory movements, migration of population, ethnic mixing, or even forced expulsions. Regardless of the causes, circumstances, and consequences of people's mobility, migrations have brought material, cultural, spiritual, and many other forms of exchange, permeation, and intertwining over a long period of time. In general, migrations contributed to the overall growth and progress of civilization. Unfortunately, in the period of wars, migration was followed by causalities, regression, and suffering. Therefore, migration should be understood as a natural phenomenon, inherent in humans and other beings. One of the distinguished legal theorists and philosophers, Immanuel Kant, wrote at the end of the 18th century that the right to visit belonged to everyone because all people jointly own the planet Earth and, hence, "no one has more right to be in one place than the others". But since the territory is limited, people have to get used to tolerating each other and living next to each other. (Kant, 1795, p. 8). Of course, at that time, the concept of migration was not yet in use, but the concept of hospitality was. "It becomes clear that the sources of international law concerning international migration…do, in large part, fall in line with the notion of migration as natural human behavior and therefore absolute natural law" (Ernst, 2016, pp. 5. 27). Contrary to the approach that considers migration as a natural process, there is a viewpoint that considers (contemporary) migration as a problem or abnormality. Despite the fact that the free movement of persons represents the cornerstone of universal human rights,

a negative attitude towards migration has strengthened in the 21st century. The media, scholars, and politicians, who speak of migrants as persons who endanger other nations and pose a threat to peace and stability in the world, have contributed to the fear of migration. In line with this narrative, a new term, "crimmigration", was coined to reflect the process of gradual criminalization of immigration law since 2006 (Stumpf, 2006, p. 376). Until the middle of the 20th century, people moved freely from country to country and migrated from one continent to another. Without the existence of unlimited mobility, it is hard to believe that the United States of America, Australia, and even the European Union would have reached the current level of development (Bosnić et al., 2017). But soon after the Second World War, the process of migration faced restrictions on both immigration and emigration. The rise of the ideological and political "iron curtain" between the East and the West made migration highly difficult for a few decades. An upheaval occurred in 1989. With the fall of the Berlin Wall, the mobility of people was restored and freedom of movement was proclaimed as one of the greatest values (*acquis communautaire*) of the European Union. However, new barriers to migration have gradually begun to grow. Consequently, 30 years later, there are more than 60 border fences around the world. Wire fences along the state borders were raised in the EU countries such as Slovenia (towards Croatia), Hungary (towards Serbia), Greece, and Bulgaria (towards Turkey), and Poland (towards Belarus), while the US constructed both iron and concrete walls towards Mexico. Similar walls were built between Denmark and Germany, Argentina and Paraguay, Uzbekistan and Afghanistan, South Africa and Mozambique, Kuwait and Iraq, Botswana and Zimbabwe, Saudi Arabia and Yemen. In the north of Africa, there are two completely closed Spanish immigrant enclaves — the cities of Melilla and Ceuta. The list does not end here. In addition to fences, migrants were occasionally restrained by police, the army, navy, and militant groups. Hostility towards migrants has become the focal point of some political parties in different countries. Some EU member countries showed a significant degree of inhospitality towards migrants, although in the 16th century the Europeans were the first conquerors of South and North America, and later Asia and Africa. Their expeditions caused a lot of suffering to the native population. Until the end of the 19th century, Europeans were the most numerous migrants worldwide. Over time, they imposed their own culture, languages, religion, education, habits, a system of governance, and lifestyle by various means on many nations living far from Europe. Hence, it is absurd that they fear the contemporary migrations from Asia, Africa, and Latin America could suppress the culture, customs,

and way of life of modern Europe (Bosnić et al., 2017). Many countries from which migrants are coming now to Europe were previously subject to the process of "Europeanization". The enormous spread of the Spanish and English languages and of Christianity is the result of European expansion. Finally, European art, music, literature, philosophy, ethics, and culture are so embedded around the world that their influence is dominant. A long time ago, economists proved that migration contributed to the growth and welfare of human society. They raised the question of what would happen to the world if migration stopped. The UN "Agenda 2030" warns that sustainable development can be achieved only in the event that the current level of the working-age population is preserved. Europeans should be concerned about the fact that their population is constantly ageing and the percentage of the working-age population is decreasing. Then how will it be possible to preserve the present level of development in highly developed countries? There are only two ways: to open the door to migrants or to extend the working lives of the population. Do migrants really represent a *bugbear* for the modern world, as the leading world media are arguing? According to the UN, it is quite the opposite. Neither the percentage of migrants nor their growth is dramatically higher than that of the world population. The percentage of migrants rises slowly and gradually. In 2022, only 3.6 percent, or 282 million of the world's population, is living outside their country of birth. The data indicated in Table 1 convincingly demystify migration and prove that the media hysteria, which has shaken the world, is absolutely unfounded.

Table 1 – International Migrants 1970–2022.

Year	Number of international migrants	Migrants as a % of the world population
1970	84 460 125	2,3
1975	90 368 010	2,2
1980	101 983 149	2,3
1985	113 206 691	2,3
1990	152 986 157	2,9
1995	161 289 976	2,8

Year	Number of international migrants	Migrants as a % of the world population
2000	173 230 585	2,8
2005	191 446 828	2,9
2010	220 983 187	3,2
2015	247 958 644	3,4
2020	280 598 105	3,6
2022 (estimation)	281 900 000	3,6

[Source: IOM–WMR 2022, pp. 24, 40]

The number of migrants began to increase slightly at the beginning of the 21st century, while the two most significant waves of migration occurred in 2015 and 2021. Truly speaking, contemporary migration was triggered by conflicts, but still, almost two-thirds of migrants are labor migrants in their search for employment. The first internal conflict of the 21st century erupted in 2001 in North Macedonia, but the strongest ones were the Western countries' coalition attacks against the Taliban in Afghanistan and, later, an intervention in Sudan as part of an international "war on terror" declared by the United States of America. Over the next two decades, there were wars in North Africa (Ivory Coast, Darfur in Sudan, Chad, Somalia, Libya), in the Caucasus (Georgia-South Ossetia, Nagorno-Karabakh), in Eastern Europe (the Crimean War), in the Middle East (Lebanon, Palestine), and in Central Asia (Iraq, Pakistan, Syria). The latest conflict broke out in February 2022 in Ukraine and is ongoing.

All these wars have instigated people from conflict zones, especially from Central Asia, the Middle East, and North Africa, to leave their homes. Most of them stayed in the same region or moved to neighboring countries, while the minority embarked on a long journey. Unlike traditional migration, which was focused on a specific country, modern migration encompasses all continents and impacts several countries, regardless of their level of development, degree of liberalization, or the nature of their regimes of power. Hence, it seems that the 21st century will remain marked as the "century of migration". The global effects of modern migration, its causes and consequences, have influenced migration management policies to become an important area of public policy at the national, regional, and

international levels. Such a development demanded a strengthening of the role and significance of the International Organization for Migration in international relations, particularly within the United Nations system.

INTERNATIONAL STANDARDS, MECHANISMS AND INSTITUTIONS FOR MIGRANTS' PROTECTION

From individual to a common approach to migration

In conjunction with the changes in the nature, causes, and characteristics of migration throughout history, changes in the viewpoints, policies, and laws regarding migration have occurred. Governments today perceive migration as a special phenomenon, strictly keep records of all migrants, research possible social, economic, and political effects of migration, and tend to regulate these processes. Simultaneously, they are shaping their own migration policies and appropriate working and social environment for the acceptance or rejection of migrants, mainly in line with their national interests. The Westphalian concept of state sovereignty (proclaimed in 1648) still prevails when it comes to migration. For that reason, when the need for the working population or specifically qualified workers is urgent, governments open the borders and invite migrants to enter, but in another period they close the borders and prohibit entry of migrants. Sometimes they even resort to the refoulement of migrants. Yet it seems that the phase of solely individual approach to migration surpassed its maxim by the end of the 20th century. We have been witness to the gradual penetration of a new, common, and integrated approach to migration in recent years. The very first initiative was undertaken after the end of World War II. Europe was flooded with refugees, and the issue of their settlement and transportation got on the political agenda of the main powers. To solve this problem, twelve West-oriented countries agreed in 1951 to form a provisional intergovernmental mechanism (predecessor of the IOM) tasked with the transportation of refugees. In that way, during the next decade, some 11 million refugees were moved out of Europe. However, the construction and design of the future institutions for migration were carried out slowly and with numerous controversies. Initially, assistance through the PICMME was limited to those individuals who left their homes prior to December 1951 and came from Western European capitalist countries. Apart from the World War II refugees, the other categories of migrants and vulnerable groups were neglected (i.e., economic emigrants, internally

displaced persons, asylum seekers, stateless persons, women left without husbands, children left without parents, etc.). In addition, the protection did not cover refugees from the so-called Socialist bloc. The founders were not interested in entrusting responsibility to the United Nations or a specialized agency to deal with migrations as a whole. The provisional mechanism was transformed into an organization (although with few members) for the first time in 1989, but remained outside the UN for another 27 years. Two waves of contemporary migration, the first one in 2015 and the second one in 2021, further strengthened a new approach to migration. Within a very short period of time, the international migration management policy came into the focus of the European Union and the United Nations activities. Globalization of migration has greatly contributed to such a development. Trade, financial, media, technological, and cultural connectivity and interdependence have changed the world. Many values, rules, and institutions of traditional societies have been redefined. Erosion of the state sovereignty and the gelatinization of borders are underway, together with the softening of the national laws and an increase in foreign interference in internal affairs. The rise of global corporations, the strengthening of supranational political institutions, and the continuous revolution of IC technologies have created a political environment that is favorable for migration. The spread of COVID-19 slowed migration but did not stop it. Contrary to the individual approach, the international migration management policy brought into focus the creation of a system and mechanisms for a sustainable and regulated influx of migrants, which will be controlled, directed, and well-balanced with the needs of both recipient countries and countries of origin. In such a way, illegal migration, violent incursions, and terrorist threats should be eliminated. The foundations for such a policy were already laid down at the regional level (EU, OAS, AU), in line with the resolutions and declarations of the UN, UNHCR, IOM, ILO, and others. Thus, individual interests become shaped and harmonized through collective and cooperative policy, for the benefit of all three parties — countries of origin, countries of transit, and countries of destination.

The emergence, role and transformation of the IOM

The IOM was founded in 1951 as a specific temporary institution with a narrow and limited mandate. Actually, it has evolved from the provisional intergovernmental committee (*Provisional Intergovernmental Committee for the Movement of Migrants from Europe* — PICRME), tasked with assisting the relocation and accommodation of European migrants escaping from the

Second World War disaster. This task was limited by time (migrations up to 1951), territory (only migrants from the Western European countries) and in a political sense (migrants from *democratic societies*). In 1952, the notion "provisional" was removed from its name (*Intergovernmental Committee for European Migration* — ICEM). Then, in 1980, the attribute "European" was also deleted from its name, but the task remained unchanged. The current name, the IOM, was adopted in 1989 along with other fundamental changes (*Intergovernmental Committee for Migration* — ICM). Thus, after 38 years of existence, the temporary regional service for refugees was proclaimed as a permanent international organization of a general character, with the ambition to encompass all categories of migrants. Although previously limited to technical tasks, the IOM was a politicized organization from the very beginning, closely associated with the leadership of the United States of America and with a homogeneous group of developed, "white and capitalist Western countries". The IOM additionally excluded the newly independent countries in Asia or Africa (Pecoud, 2018, p. 1624). The legal platform for such a relocation of (Western) European refugees was established through the *Geneva Convention Relating to the Status of Refugees* from 1951. The Convention was supplemented in 1967 by the *New York Refugee Protocol*, which facilitated the obtaining of refugee status and removed previous temporal, geographical, and political restrictions. Although a consolidated international regime for migration was not established in 1951, history shows that migration has been on the agenda of other international organizations for a long time (Parsanoglou & Tsitselikis, 2015, p. 13).[1]

The Provisional Committee for Refugees has long been on the margins of the public interest and would probably fade away in silence if the Soviet intervention in Hungary in 1956, and later in Czechoslovakia in 1968, had not provided it with a new impetus. Its reanimation was additionally instigated by the civil war in Yugoslavia (1991-1995) and the NATO aggression against the FRY in 1999, which caused mass migration. But none of these conflicts influenced the IOM to such an extent as the contemporary waves of migration, which had their peaks in 2015 and 2021. They led to the significant expansion and transformation not only of the role but also of the competences and capacities of the organization. Until these recent migration

[1] As early as 1927, Albert Thomas, who was the first director of the International Labor Organization, wrote about a need to form a supreme supranational body that would rationally and impartially control and direct migrations in the world.

flows, the IOM had long been overshadowed by two other international organizations that were directly incorporated into the UN's activities: the UN High Commissioner for Refugees and the International Labor Organization. It was only in 2016 that the IOM came out of their shadow and stepped over the wall that was separating it from the UN. On the basis of a special agreement with the United Nations, the IOM was designated as its *related organization.* From that moment, the IOM has been presenting itself as a "UN migration agency", but to tell the truth, it has not reached full membership status within the UN. Its position and status remain ambivalent. Some of the contradictions from the past are still reflected in the IOM's practice: (1) The technical nature of the IOM's work is in contrast with its embeddedness in a political environment, marked by a specific understanding of how migration (and societies at large) should be governed; (2) For a very long time, the emphasis on operational work (rather than on political/normative guidance) has been keeping up with the IOM's reputation as an efficient, results-oriented, cost-effective, and flexible organization, in a way that resembles the functioning of an enterprise rather than a UN agency; (3) The IOM's voluntarily broad mandate based on an extensive definition of "migrants" enables the organization to encompass a wide range of situations, well beyond the narrow categories that characterize other IOs (refugees for the UNHCR, migrant workers for the ILO) (Pécoud, 2018, p. 1625). The majority of the above-listed peculiarities contribute to a certain degree to the overlapping and rivalry between these three organizations. In 1951, the IOM had 23 members (16 states that founded it and seven more that joined it). Half a century later, in 2000 to be precise, the IOM reached 76 members, and then in 2016, the membership "exploded" to 166. Today, it has 174 members, eight observers, nine regional centers, and offices in over 150 countries. In addition, its annual budget exceeded two billion dollars, and the total number of employees reached 13,800. Such an expansion would make the IOM the third international organization in terms of the number of employees (Bradly, 2021, p. 254).

Undoubtedly, the IOM has grown into the most important international organization in the field of migration, aimed at the promotion of humane and orderly migration. According to the Statute, the IOM provides services and advice to governments and migrants and deals with the promotion of international cooperation in this area. Its fieldwork is dedicated to the search for practical solutions to migration issues and the provision of urgent humanitarian assistance to all migrants, including refugees and internally displaced persons. From the point of view of migration management, the IOM's activities and attention are focused on the four main areas: (1)

Migration and Development; (2) Facilitating Migration; (3) Regulating Migration; and (4) (Preventing) Forced Migration. The wide range of activities performed by the IOM includes fostering political debates, shaping guidelines on migration, collecting relevant information, promoting the international migration law, annual reporting on migration trends, monitoring of implementation of the *Global Compact for Migration's* goals, conducting research on countries' protection of migrants' rights and their health, providing help to women and children who are migrants, etc.

International standards for the protection of migrants

International protection of migrants has several interconnected aspects, two of which are always at the forefront: the legal aspect and the institutional aspect. Given that each country (government) has the sovereign right to decide whether it will admit or reject a foreigner's entry into its territory, national law has priority in migrant protection. Provisions that refer to migration are usually enacted in the Law on Foreigners, the Migration Law, the Law on Internal Security, the Labor Law, and partly in a number of other laws, by-laws, and regulations (on health care, education, employment, etc.). At the international level, the protection of migrants is not regulated by an umbrella document of a comprehensive nature and with clearly defined rights and obligations, sanctions, and a competent judicial body. That is probably the reason why there is no agreement among scholars on whether the International Migration Law already exists or represents only a theoretical construction. Due to the unwillingness of states to create a comprehensive legally binding international document on migration (agreement, resolution, convention, treaty, etc.), the potential rights and obligations regarding migration are only described by the soft law terminology and expressed through political declaration, which sounds high-minded and convincingly, but does not obligate. International standards, which refer to migrants, are partly incorporated into different documents within the framework of humanitarian law but are too general. Since the implementation of such standards is a matter of national competence, there are huge differences and inequalities among countries in the implementation of these standards for all categories of migrants. Given that migrants represent a very diverse group (legal-illegal, domestic-foreign, asylum seekers, stateless persons, displaced persons, refugees, etc.), international harmonization of their rights and protection is a matter of the uncertain future. After the termination of the Second World War refugees' resettlement, the issue of migration was pushed aside for a quite long time

and the question of the international migration law received little attention from scientific researchers. In addition, scholars were discouraged by the fact that potential provisions which could be included in international migration law were spread out in numerous subsystems of international public law, mainly in international human rights law, and often were inconsistent, uncoordinated, or of ambivalent meaning. The *Universal Declaration of Human Rights* (1948) is the initial international proclamation and source of the creation of standards that should be applicable to migrants as well. It guarantees the right to life, liberty and security, the prohibition of slavery and torture and other inhumane treatment, the prohibition of discrimination, the prohibition of arbitrary arrest, detention and expulsion, the right to a fair trial, the right to private and family life, the freedom of movement, the right to citizenship, the right to marriage and family formation, the right to property, the freedom of religion, expression, assembly and association, as well as political rights. This declaration established guarantees to the right of asylum at the international level for the first time. The *Geneva Convention Relating to the Status of Refugees* (1951), with its 1967 Protocol, prescribed a protection regime for only one category of migrants, those who fled due to the circumstances of the war. The UNHCR was entrusted with monitoring the implementation of this Convention and the protection of refugees. The Convention establishes the following principles of protection: Prohibition of violent return and expulsion, Non-discrimination, Confidentiality and data protection, Family unity, Impunity for illegal entry or stay, Protection of persons with disabilities, Gender provisions, Respect for the rule of law and Provision of legal protection. The *Convention on the Elimination of All Forms of Racial Discrimination* (1965) established standards of conduct and obligations of states in this regard, stating, among other things, the need to protect migrants. States parties are obliged to ensure such immigration policies that do not result in discrimination based on race, color, origin, nationality or religion, and to provide protection to non-citizens against racial or ethnic profiling and stereotypes. The *International Covenant on Civil and Political Rights* (1966 and entered into force in 1976) has established individual and collective rights and certain measures for monitoring and observance. The standards prescribed therein apply to all human beings, including all categories of migrants. *The International Covenant on Economic, Social and Cultural Rights* (which was adopted and entered into force at the same time as the previous document) also included migrants in its regime of general protection. *The Convention on the Elimination of All Forms of Discrimination against Women* (entered into force in 1981) covered the protection of migrant

women in the social, cultural, economic, political and civil spheres, as well as in every other field of life and work. *The UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (1984) proclaimed a general ban on such treatment of human beings, protecting all categories of migrants. A similar level of general protection, which includes migrants, was enacted as a standard in *the Convention on the Rights of the Child (*1989), *the Convention on the Rights of Persons with Disabilities* (2006), and the *Convention for the Protection of All Persons from Enforced Disappearance* (2006), as well as some other conventions. At the UN Summit in September 2016, the so-called *New York Declaration on Refugees and Migrants* was launched as the latest political platform in a long series of general documents. Due to the large discrepancy among countries, the maximum that could be achieved at the Summit was a decision to begin with the drafting of the *Global Compact on Migration*. By adopting the NY Declaration on refugees, participating countries committed themselves to the principles of general human rights protection, regardless of the refugees' status, approved their access to education not later than a few months upon arrival at the destination country, especially children, and introduced prevention and punishment of sexual and gender violence. They further supported the countries of immigration, criticized the practice of detaining children up to the moment of determining their status, condemned the xenophobia against refugees and migrants and encouraged the campaigns to combat these phenomena, committed to strengthening the positive contributions that migrants make to the economic and social development of their countries, as well as to improve humanitarian and financial assistance to the most affected migrants. In the middle of 2018, during the international conference in the Moroccan city of Marrakesh, the text of the international agreement titled "*The Global Compact for Safe, Orderly and Regulated Migration"* was harmonized and adopted. This document was accepted as the UN General Assembly Resolution later on. So far, it is the most important international document, which refers to the protection of all categories of migrants and surpasses all previous in terms of comprehensiveness. Along with the universal, three regional systems of human rights protection have been developed: American, European, and African. Each of them contains a list of standards for protection, which generally apply to migrants as well. Besides the protection at the normative level, migrants, refugees, and asylum seekers are provided with protection both at the international political and institutional levels. The most prominent institutions that cultivate and advocate comprehensive methods of migration treatment are the United Nations, the UN High Commissioner for Refugees (UNHCR), the

International Labor Organization (ILO), the International Organization for Migration (IOM), and many other organizations, institutions, and entities with less recognizable names.

THE FRAMEWORK AND NATURE OF THE UN – IOM RELATIONS

From the legal point of view, the IOM is an intergovernmental organization, based in Geneva, with specific knowledge and expert skills, authentic status, a dense network of subsidiaries, and a twofold source of financing. It defines itself as a "leading international organization in the field of migration", which is both an independent organization and a part of the UN system. The determination that the IOM is *a part of the UN system* was made in 2016, upon adoption of a special resolution by the UN General Assembly, which legalized the *Agreement on Relations between the United Nations and the IOM*. A similar provision did not exist in the Statute of the IOM, but after 2016, such a determination as "a part of the UN system" was constantly present on the front page of the IOM website and its handbooks, reviews, surveys, and other documents.[2] The Agreement on Relations was concluded with the intention of ensuring better coordination between the UN agencies and the IOM in dealing with migration, but without affecting the competence of the UNHCR with regard to refugees and the International Labor Organization with regard to migrant workers. This Agreement, after many years of the IOM's separation from the UN, established a formal relationship and a close cooperation between the two international institutions. In that way, the IOM "has passed the Rubicon" and became an organization related to the United Nations. However, it should be noted that the UN Charter does not define the term "*UN system*", nor is it clear what is understood by it. Regardless of this deficiency, the UN website on its front page dedicated to the UN system states that, in addition to the United Nations and its subsidiary bodies, it consists of the following group of institutions: a) Funds and Programs (quoted 6), b) UN Specialized Agencies (quoted 15), c) Other Entities and Bodies (quoted 9) and c) Related Organizations (quoted 7) (UN System website, 2022). However, the schematic presentation of the UN System, in the appendix, does not match this classification either by name or number (UN System, Charter, 2020, p. 1). Despite these differences in explanation of the UN System, in both cases, the IOM is classified within "related organizations". Yet, the problem arises

[2] Original title of the foundation act is: *Constitution.*

from the fact that the notion of a related organization does not exist in the UN Charter. The UN Charter in Article 57 prescribes that various specialized organizations, established by inter-governmental agreement in the economic, social, cultural, educational, health, and related fields and having wide international responsibilities as defined in their basic instruments, shall be brought into relationship with the United Nations, in accordance with Article 63. But that article requires the specialized agencies to first sign an agreement with the UN Economic and Social Council, which will then be approved by the General Assembly. The Council (ECOSOC) may coordinate the activities of the specialized agencies through consultations with and recommendations to such agencies and through recommendations to the General Assembly and the members of the United Nations. From the legal point of view, the UN-IOM Agreement *stricto sensu* does not adhere to the wording of Article 57 and other relevant Charter provisions. The IOM was not established as a specialized agency, nor does its Constitution (statute) set out any responsibility that refers to the refugees' transportation or the provision of consulting services to the governments. The request that the IOM initially sign an agreement with the ECOSOC has never been fulfilled. Additionally, the IOM was not obliged to submit its reports to the ECOSOC or to receive its recommendations. Finally, the Agreement did not assign the UN responsibilities to the IOM in the field of migration. The responsibilities stayed with the UN. The UN is looking at the IOM as "an essential contributor in the field of human mobility" and an "organization with a global leading role in the field of migration", but not as an agency. The UN clearly declares that only the IOM member countries, within its Resolution 1309, consider the IOM "the global leading agency for migration". This missing link between the IOM as a contributor and the IOM as an agency, which refers to the unattainable status of the IOM, the IOM Director tried to compensate after the signing of the Agreement by stating that "the UN now has a UN Migration Agency" (Bradly, 2021, p. 252). Basically, the text of the UN-IOM Agreement largely imitates a typical agreement signed between a UN specialized agency and the ECOSOC, which is subject to the UN General Assembly approval, but there is one crucial difference. It is about the IOM's position as a new UN family member. The UN-IOM Agreement determines the IOM as an "independent, autonomous, and non-normative international organization", which means that the IOM has no ambition to prescribe international norms and legally binding commitments.[3] The degree of

[3] Article 2, paragraph 3.

independence of the IOM towards the UN is significantly higher than any other agency or organization that has joined the UN family. In this respect, the IOM maintains its own independent sources of funding but will be authorized to use the UN funds. At the same time, the IOM was not deprived of its profitable character or its specific methods of project financing.

THE ROLE OF THE IOM IN THE IMPLEMENTATION OF THE GLOBAL COMPACT ON MIGRATION

The emphasis on the fact that the IOM shall not create international norms (as a non-normative organization) was set with the aim to remove a potential fear that the IOM could challenge the sovereign rights of states to decide to open or close doors for migration. The formulation of the IOM as a "non-normative" is not *per se* of a legal character, but of a political one, of course. Indeed, the IOM did not try to prescribe *legally binding rules* but continued to promote standards and encourage the behavior of countries in the desired direction. As a master of arts in transforming political stances into soft law terminology, the IOM played a key role in drafting and adoption of *the Global Compact for Safe, Orderly and Regulated Migration*. Capabilities and skills, which the IOM demonstrated during the two years of negotiations, were crucial for participants of the Marrakesh international conference to entrust the IOM with the role of secretariat and coordinator of the "UN Migration Network" (Global Compact, 2019, pp. 49-50). As a secretariat, the IOM bears responsibility for further monitoring and implementing the principles written down in the Marrakesh Agreement, which, upon adoption of the Resolution by the General Assembly, were incorporated into the UN document that introduces commitments for the member countries. Despite the absence of provisions that prohibit the inappropriate conduct of states regarding migration and that deal with possible sanctions, the *Global Compact* cannot be considered legally irrelevant. To a certain extent, the *Global Compact* possesses the force of "a soft law" because it was adopted by consensus and expresses the will of a large number of countries. Finally, the possibility that an *ad hoc court* could assess the Marrakesh international agreement as an appropriate basis for interpretation of national immigration law should not be excluded. For the first time in UN history, a body other than the UN Secretariat was given, through the UN GA Resolution adopting the *Global Compact,* the task of being coordinator and leader in the implementation of the UN General Assembly document. Such a novelty raises a lot of other questions and creates new ambivalent situations that need to be explained separately. For

example, it is known that the UN Secretariat must not receive instructions from member states nor be guided by material interests. But the IOM Statue states that this organization receives instructions from the governments and is guided by economic interests, i.e., it operates on a profitable basis. The future will show how this contradiction can be overcome. Although the *Global Compact* was defined as a document that does not represent a legally binding framework for cooperation between states and a document that confirms the primary role of national laws in the field of migration, it is obvious that the IOM's position was strengthened through the *Global Compact*.[4] Relying on the *soft law* wording, the IOM indirectly came into position to further shape, direct, and guide the activities of states in the field of migration management. The joint responsibility of states, common principles and values embedded in all the 23 Compact's goals are articulated in a similar way as the rights and obligations of states are usually defined in international relations. With the adoption of the *Global Compact* in 2018 as the most important international platform for migration management, the majority of initial values from the previous separate documents on migration were sublimated and consolidated in one place. The largest basis for further development in this field of international cooperation was laid down through standards, goals, values, recommendations, and policies of numerous human rights instruments adopted between 1975 and 2000. They also represent the foundation and source of further shaping and construction of International Migration Law as a specific discipline within international public law.

SERBIA AND THE INTERNATIONAL ORGANIZATION FOR MIGRATION

The IOM office in Belgrade was opened in 1992, soon after the beginning of the civil conflicts within the former SFRY. However, the Republic of Serbia became a member of the IOM in November 2001. Since then, very good cooperation has been established with this organization. The tragic experience of the civil war, which resulted in a large number of refugees

[4] The Global Compact is not an international agreement but a kind of joint statement, supported by 152 countries. However, 41 countries did not join it, including the United States of America, Israel, Australia, Argentina, Chile, Switzerland, and nine EU members. Russia put a hold on certain provisions. Croatia is the only former SFRY republic that did not support the Global Compact.

and displaced persons, certainly contributed to that. Between 1990 and 1995, the Republic of Serbia received many refugees and persons expelled from other republics. There is a saying that "Serbian people built a house on the main road". That is the shortest explanation for why migration was so frequent in the history of Serbia. For different reasons and causes, international migration left a huge impact on the Republic of Serbia and the Serbian people who lived across Yugoslavia and were the greatest national group. The civil war in the SFRY made Serbia both a country of destination for refugees and internally displaced persons and a country of origin for a small number of emigrants to the European Union and the United States of America. During the two mass migration waves to Europe in 2015 and 2021, Serbia demonstrated a high level of understanding and cooperation in helping refugees, providing shelter and medical care to them as well as to other categories of migrants. With its open and humane policy towards migrants, it became a regional leader in the protection of migrants, although it sometimes encountered misunderstandings from some neighboring countries or the European Union members. For international migrants, Serbia was only a country of transition, while Germany and other developed EU members were their main destinations. But Serbia was under pressure to receive and keep a higher number of migrants than its capacity allowed. Despite that, according to the EU plan for refugees' acceptance in 2015 (EC, 2015, pp. 6-17), and the New Pact from 2020 (EC, 2020, pp. 609), Serbia showed more understanding for such a carefully balanced approach than some highly developed and influential member states of the European Union.[5] The Republic of Serbia belongs to a small group of countries that passed a special *Law on Migration Management,* improved regulations on asylum seekers, expanded possibilities for employment of foreigners, adopted six sectoral oral strategies, allocated substantial funds for migrants' accommodation, and provided jobs for a significant number of migrants (RS, 2012). According to data from June 2021, all migrants that crossed the territory of Serbia or decided to stay there received a vaccine against COVID-19. There were 3,977 migrants accommodated in the refugee and asylum centers in Serbia, while in the previous period, over 38,000 illegal border crossings were prevented. The main government body for cooperation with the IOM's Office in Belgrade is the *Commissariat for Refugees and Migration of*

[5] The titles of the documents are: *A European Agenda on Migration* and *Migration and Asylum Package: New Pact on Migration and Asylum* (this second document contains 11 documents).

the Republic of Serbia. So far, in accordance with the policy, priorities and needs of the Government of Serbia, the IOM has implemented almost 40 different programs in Serbia, from the ones that provided support after the termination of the *state of emergency*, through those combating trafficking, assisting voluntary return, including compensation programs and durable solutions for refugees and internally displaced persons, to those aimed at capacity building in the field of migration management, and others. At this moment, the most significant project, which is in progress, refers to "Strengthening Capacities and Partnerships for Migration Management in Serbia". It is of great significance due to the fact that Serbia has faced all forms of international migration: external and internal, forced and voluntary, regular and irregular, migration of highly qualified and unskilled workers, immigration and emigration. This diversity poses a number of different but certainly related challenges in modern migration management. In close partnership and coordination with the Ministry of Internal Affairs and the Commissariat for Refugees, the IOM Mission in Serbia has supported national efforts to manage and respond to the challenges that migration brings. The Republic of Serbia has shown its readiness and ability to tackle these challenges in a comprehensive and holistic way, both through specified steps and through innovations in the normative framework of migration management. These activities have been implemented with high respect for European standards and even the broadening of the European Union's legal framework. At the same time, the national requirements necessary for the transformation of migration into a positive force for the country's further economic and social development were strictly respected. The work of the IOM in Serbia is characterized by the provision of assistance to vulnerable persons and a strong presence on the ground, which are the basis for a solid and lasting partnership with the governments, as well as with national and local NGOs. Thanks to open dialogue and true partnership, the IOM has accomplished its planned activities in Serbia.[6]

CONCLUSIONS

Contemporary migration, which marked the first two decades of the 21st century and was followed by media exaggerations and selfish approaches of some of the most developed countries in the world, has led to the evolution of the role and position of the IOM in international relations as

[6] These assessments are presented on the Commissariat's website.

well as the proliferation of numerous documents, declarations, resolutions, and platforms concerning migration. So far, none of the international organizations has experienced such a fast breakthrough and transformation as the IOM has. For many decades, the IOM operated in a political shadow, from which it stepped out only when it was asked to help with the transportation of new refugees or provide advisory services to the governments. But in 2016, almost overnight, it evolved into the main instrument of the UN and the leading international organization in the field of migration. From the margins of international affairs, it has arrived at its epicenter. The IOM joined the UN system as a related organization and was entrusted by the UN to coordinate migration policy and migration management at a global level. Given the fact that we live in an epoch of highly developed mobility of the world population, that migration has become more visible than ever before, and knowing that the UN has opted for comprehensive, common, conflict-free, and balanced migration management, it is clear that the importance and role of the IOM on the international scene will continue to grow and strengthen. Its development will flow in two directions. On the one hand, the IOM's influence, tasks, and contributions within the United Nations system will further increase. Thanks to the high degree of independence, specific dual financing system, and decentralized decision-making mechanism, it will have more space for maneuver and an advantage in achieving practical results than any other UN humanitarian or specialized organization. It will continue to articulate, amend, supplement, and elaborate on principles, standards and models of comprehensive, balanced, and cooperative migration management. Consequently, better protection of migrants and further harmonization of migration policies and principles could be expected. Long-lasting and reinforced attention to migration, the gradual redressing of political proclamations into normative clothes, constantly expressing standards of migrants' protection as the governments' commitments and obligations, could open the door for reshaping of the soft law instruments into the hard law provisions. Over the last few decades, international norms have overwhelmed almost all areas of human activity. They have gone far beyond the framework of classical state regulation, thus giving human rights and individual liberties a supranational character. This process gradually encompasses the field of migration. Nothing is surprising in the statement that: "The movement of persons across borders is international in essence: it presupposes a triangular relationship between a migrant, a state of origin, and a state of destination. Migration is, thus, a matter of common interest that cannot be managed on a purely unilateral basis. In the New York

Declaration for Refugees and Migrants, it is apostrophized that the movement of people across borders is a phenomenon that requires a global approach and solutions. No State can manage such movements on its own" (Chetail, 2019, p. 4). In any case, the foundations for constituting the International Migration Law as a specific scientific discipline or branch of International Law have already been laid. The IOM's future activities will further contribute to such a development. Due to the essential evolution of the IOM's position, its new role in international relations, and features that distinguish it from other organizations, sometimes it is difficult to understand and explain the nature of the IOM. The IOM works closely with the specialized UN agencies and acts as part of the UN system, but it is only a "related" organization, not a full member. The IOM was formed as an intergovernmental organization, but in practice it also functions as a private company, competing for projects and funds with non-governmental organizations. Its partners are both state institutions and civic groups. Its focus is on migration, but it also deals with issues that are completely separate, such as rebuilding affected areas, education of children, and so on. It was founded to carry out migrants' relocation and to help them, but sometimes it works against migrants, especially when it organizes the return of unwanted migrants and prevents the arrival of those who do not have proper documentation. When observed from the outside, it gives an impression of a centralized organization, but it actually works as a network of closely connected field offices, which deal with a wide variety of issues and could easily switch to some other task in line with new circumstances. However, in the current imperfect world, which is dominated by imperfect states, this and such an international organization has strengthened its capacities, expanded its role and become the most influential in the field of migration, both inside and outside the United Nations.

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FUNCTIONING OF THE UN HUMAN RIGHTS COMMITTEE (CCPR) IN THE 21ST CENTURY

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Abstract: This contribution critically discusses the actual and potential role of the UN Human Rights Committee, established under the International Covenant on Civil and Political Rights (1966) within the broader United Nations system, including its interactions with other treaty-based human rights bodies (e.g., the Committee on Economic, Social and Cultural Rights), as well as other UN human rights mechanisms (i.e., political bodies, such as the Human Rights Council, its mechanisms, and procedures). It also turns to the analysis of the Committee's interactions with other parts of the UN system more broadly, and lastly, it looks beyond the UN system and analyzes working contacts with other international organizations and, particularly, the judicial bodies (e.g., the European Court of Human Rights, the African Court on Human and Peoples' Rights, and the Inter-American Court of Human Rights) established in regional contexts. It evaluates the synergies and challenges of existing linkages and shares proposals for potential further enhancement of the interactions with international organizations, with the aim of supporting the achievement of their interconnected fundamental purposes in the 21st century.

Keywords: Human Rights, UN Human Rights Committee, International Covenant on Civil and Political Rights, Human Rights Council, UN System, International Organizations.

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INTRODUCTION

The United Nations (UN) system comprises the United Nations, established as an international intergovernmental organization in 1945. It currently has 173 member states and many funds, programs, and specialized agencies. Both are full-fledged international intergovernmental organizations, with their own areas of work, leadership, and budget. The UN coordinates its work with these separate UN system entities, which cooperate with it to help it achieve its goals (UN System website, 2022). Human rights, which have faced enormous challenges in recent years (e.g., phenomena of nationalism, populist, authoritarian, and illiberal democratic regimes, xenophobia, and all forms of discrimination, coupled by responses to pandemic diseases, such as a global pandemic of COVID-19), have been one of the three main pillars (in addition to security and development) and areas of work of the UN, especially in the last decades (United Nations, Treaty Series, 1945).[1] Although human rights are at the very centre of the institutional and normative activities of the UN, it happens that they do not act promptly or decisively when they are faced with their most serious violations, which often result in mass atrocities (Sancin, 2017; 2019).[2] As a result, it is constantly faced with the need for dynamic adaptation in response to numerous challenges, which is exacerbated by competition and overlap between organs and institutions working in or related to human rights. Nevertheless, it should be borne in mind that the UN is the only, although major, part of a much broader international human rights regime, which in addition to many specialized agencies (e.g., the International Labour Organization, the UN Educational, Scientific and Cultural Organization, and the World Health Organization), also encompasses a number of regional organizations (e.g., the Council of Europe, the European Union, the African Union, and the Organization of American States), which are significantly more focused on judicial adjudication (Alston, Mégret, 2020, p. 4). Although the role of civil society, particularly human rights-oriented NGOs, is ever-increasing globally,

[1] Article 1 of the UN Charter stipulates among its Purposes and Principles "to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples" (Para. 2) and to promote and encourage "respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion" (Para. 3).

[2] For example, abundant literature has been written on the principle of Responsibility to Protect, which has emerged from the above-mentioned failures.

regionally, and nationally, this contribution does not allow for further reflection on this important phenomenon. Recognizing the diversity and complexity of the international human rights regime, it is nevertheless still "the UN bodies, with their deep and varied legal mandates, based on the UN Charter, widely ratified treaties, or other initiatives, that give them a unique legitimacy and authority in developing human rights standards and policy", while at the same time, the relationship between the UN and human rights remains infused with "the tension between the project of human rights and that of universal organization, both promising projects in their own rights, but whose *modus operandi* may be incompatible in a multiplicity of ways, both foreseeable and not" (Alston, Mégret, 2020, p. 5 and 7). Since the establishment of the UN, there has been a constant increase in the number of UN bodies devoted primarily to dealing with human rights matters. In recent decades, an increase in the time devoted to the human rights part of their mandate can be observed in some of the main organs of the UN that were initially not so invested in these topics (e.g., the Security Council and the International Court of Justice). There is also a degree of overlap between various bodies, which is particularly notable in the case of reporting obligations under treaty bodies and the Human Rights Council (HRC). Thus, the resulting complexity, and at times, inconsistency, is the inevitable result of a multiplicity of actors, sometimes seeking to achieve diverse objectives within the same overall institutional architecture. There is a multiplicity of classifications of different types of UN human rights bodies. One can distinguish between those composed of governmental (political) representatives and those composed of (legal) experts, but even this boundary is often blurred in practice. Although experts are elected or appointed, predominantly subject to prior nomination by their governments, they need to remain independent from the UN, and more importantly, their own governments, in order to further a less partisan vision of human rights. However, some degree of overlap exists even within the main intergovernmental body, the HRC, which establishes subsidiary expert bodies and special procedures, with independent human rights experts holding thematic or country mandates (e.g., special reporters, independent experts, working groups) (United Nations, 2022). It is also important to emphasize that the High Commissioner for Human Rights, heading the Office of the High Commissioner for Human Rights (OHCHR), represents a special category of someone who is neither an independent expert nor a government representative, but a UN civil servant and a focal point for human rights at the UN, while at the same time enjoying a degree of autonomy in presenting views and assessments of events and situations that goes well beyond that of ordinary UN civil servants. For analytical purposes, however, it seems more

useful to make a distinction on the basis of whether the bodies were established under the UN Charter (i.e., Charter-based organs) or specific international human rights treaties (i.e., treaty bodies). The UN Human Rights Committee was established on the basis of the International Covenant on Civil and Political Rights (ICCPR), adopted in 1966.[3] Unlike the political bodies of the UN, such as the Human Rights Council, since its foundation, this body has been a treaty and expert body of the world organization and is often called the Committee on Civil and Political Rights (CCPR). (United Nations, Treaty Series United Nations, 1976, p. 171; 1977, p. 407; UN Treaty Collection, 2022).[4] The aim of this contribution is to critically discuss its role in the contemporary UN system, taking into account the challenges it is facing and possible solutions going forward. It tackles its interactions with other UN treaty-based human rights bodies as well as UN Charter-based bodies (Schultz, & Castan, 2004; Schabas, 2019). It includes insights into the CCPR's interactions with other parts of the UN system more broadly and looks beyond the UN system and analyses working contacts with other international organisations,

[3] The ICCPR entered into force on March 23, 1976, in accordance with Article 49 for all provisions except those of Article 41, and on March 28, 1979, for the provisions of article 41 (Human Rights Committee), in accordance with paragraph 2 of the said Article 41. As of June 29, 2022, it has 173 states parties.

[4] There currently exist ten human rights treaty bodies: in addition to the CCPR, the Committee on Economic, Social and Cultural Rights (CESCR) monitoring the 1966 International Covenant on Economic, Social and Cultural Rights, the Committee on the Elimination of Racial Discrimination (CERD) under the 1965 International Convention on the Elimination of All Forms of Racial Discrimination, the Committee on the Elimination of Discrimination against Women (CEDAW) under the 1979 Convention on the Elimination of Discrimination against Women, the Committee against Torture (CAT) under the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT) under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Committee on the Rights of the Child (CRC) under the 1989 Convention on the Rights of the Child, the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW) under the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Committee on the Rights of Persons with Disabilities (CRPD) under the 2006 Convention on the Rights of Persons with Disabilities, and the Committee on Enforced Disappearances (CED) under the 2006 International Convention for the Protection of all Persons against Enforced Disappearance.

particularly the regional human rights courts (e.g., the European Court of Human Rights, the African Court on Human and Peoples' Rights, and the Inter-American Court of Human Rights). It assesses synergies and challenges of existing linkages or lack thereof, and shares proposals for potential further enhancement of interactions with international organizations, with the aim of supporting the achievement of their interconnected goals in the 21st century.

THE ROLE AND MANDATE OF THE CCPR

The essential role of each treaty body is to monitor and encourage compliance with a particular treaty regime. A significant treaty body system growth since the establishment of the first treaty body in 1969 has greatly enhanced human rights protection, but has also brought about some challenges, such as a growing backlog of State reports, individual communications, and urgent actions, insufficient compliance by States parties with their reporting obligations (over 80% of States fail to comply), diverging working methods among the treaty bodies. In response, several initiatives to enhance the effectiveness of the treaty body system were undertaken (Independent Expert Philip Alston's reports (1988–1996); the UN Secretary-General's proposal of a single report (2002–2006); High Commissioner's proposal of a unified standing treaty body (2006)), including the adoption in 2014, by the UN General Assembly, of a resolution 68/268 titled "Strengthening and enhancing the effective functioning of the human rights treaty body system" (A/RES/68/268), to "consider the state of the human rights treaty body system no later than six years from the date of adoption of the present resolution, to review the effectiveness of the measures taken in order to ensure their sustainability, and, if appropriate, to decide on further action to strengthen and enhance the effective functioning of the human rights treaty body system". In 2020, the two co-facilitators, Switzerland and Morocco, presented their report for the review of the UN human rights treaty body system. However, in its "omnibus" biennial resolution on the treaty body system, adopted on October 30, 2020, the Third Committee of the UN General Assembly "takes note" of the co-facilitator's report but falls short of welcoming it, or recommending any action towards the implementation of the recommendations it makes. One of the central aspects of the process started by resolution 68/268 is that, according to the 68/268 formula, the member states must provide adequate resources for the treaty body system and should seek to ensure they adequately fund all aspects of the treaty bodies' work, a prospect that is yet to be fully realized. Another important aspect, where the functioning of the treaty bodies should be further strengthened and rendered

more effective, is the improved coordination of their periodic review function, which increases the accessibility and predictability of the process. The CCPR monitors the implementation of the ICCPR and encourages each state party: to adopt and maintain in place those laws, policies, and practices that enhance the enjoyment of these rights; possibly withdraw or suitably amend those measures that are destructive or corrosive of ICCPR rights; take appropriate positive action when a state party has failed to act to promote and protect these rights; and consider appropriately the effects in terms of the ICCPR of new laws, policies and practices that a state party proposes to introduce in order to ensure that it does not regress in giving practical effect to ICCPR rights. Over the years, the CCPR's work has resulted in many changes in law, policy, and practice. Although the cause and effect relationship of its work is not necessarily easy to determine, there are many positive stories where, for example, a recommendation was followed-up with the establishment of a human rights institution and its operation significantly improved the situation of human rights holders in a particular state party, or where an individual complaint led to positive results for the individual(s) concerned, be it in the form of a payment of compensation, a commutation of a death sentence, a retrial, an investigation into particular events, or a number of other remedies in the state party concerned. The states parties are obligated to submit periodic reports to the CCPR on how civil and political rights are being implemented in their respective legal frameworks and practice. After the initial report, which needs to be submitted one year after acceding to the ICCPR, each state party is to be reviewed every eight years in accordance with the adopted Predictable Review Cycle (PRC), pioneered by the CCPR and accepted as a common approach by all treaty-bodies at the 2022 annual meeting of the treaty-body chairs (The Geneva Human Rights Platform. 2022).[5] The CCPR examines each state's report and replies to the List of Issues (LOI) or List of Issues prior to reporting (LOIPR) – the latter in accordance with its simplified reporting procedure, accepted by a great majority of its state parties – and addresses its concerns and recommendations to the state party in the form of "Concluding observations" (COBs) after it has conducted a "constructive dialogue" of six

[5] The Conclusions of the Chairs of the treaty bodies at the 34th meeting of the Chairs of the treaty bodies from June 17, 2022, (unpublished at the time of submission of this contribution) stipulate: "All treaty bodies agreed to establish a predictable schedule of reviews. The Committees that have periodic reviews (CESCR, HRC, CERD, CEDAW, CAT, CRC, CRPD, and CMW) will establish an eight-year review cycle for full reviews with follow-up reviews in between".

hours over two days (when the delegation is present in Geneva), or, exceptionally, over three days (when the delegation participates online). In each COB, 2-4 (usually 3) "priority recommendations" are selected for the process of Follow-up to COBs, led by the CCPR's Special Reporter on Follow-up to COBs to monitor progress during the cycle by adopting a Follow-up report in the middle of the cycle (under the 8-year PRC, in the fourth year) (Note by the Human Rights Committee, December 23, 2021). The CCPR initiated the process of follow-up to concluding observations in 2001, 2002 and 2009. The inter-committee meeting of the human rights treaty bodies recommended that all treaty bodies should develop procedures for follow-up on concluding observations as these are an integral part of the reporting procedure. In the review process, in addition to the information submitted by the state party, all available sources of information, including those originating from other treaty bodies, special procedures, the Universal Periodic Review, and the UN system, as well as from regional human rights mechanisms, national human rights institutions (NHRIs), and non-governmental organizations (NGOs), can be, and regularly are, considered. One challenge yet to be fully overcome in practice is how to organise all the periodic reviews in a manner that does not add to, but rather alleviates the reporting burden on the state parties, through a well-organised and managed review calendar (Shany & Cleveland, 2016). A "digital uplift" project ongoing within the OHCHR will undoubtedly provide a great impetus towards the realisation of this objective. Although Article 41 of the ICCPR provides for the CCPR to consider inter-state complaints, no state has initiated this procedure to date.[6] Furthermore, the Optional Protocol to the International Covenant on Civil and Political Rights (OP), adopted at the same time as the ICCPR, gives the CCPR competence to examine individual complaints regarding alleged violations of the ICCPR by the states parties to the OP (a quasi-judicial function of the CCPR) (UN Treaty Collection, 2022).[7] The fact that not all states parties to the ICCPR have joined the OP creates a situation where an individual's access to this supervisory mechanism depends on whether the alleged human rights

[6] However, on March 8, 2018, for the first time in history, the CEDAW received two interstate communications submitted by Qatar against the Kingdom of Saudi Arabia and the United Arab Emirates under Article 11 of the Convention on the Elimination of All Forms of Racial Discrimination. On April 23, 2018, the State of Palestine submitted an interstate communication to the CEDAW against Israel.

[7] The OP entered into force on March 23, 1976, in accordance with Article 9. As of June 29, 2022, it has 117 states parties.

violation occurred within a state party's territory or the individual was at the time of its occurrence subject to its jurisdiction.

The CCPR appears nowadays to be the closest institution to an international adjudicatory body for human rights or a "universal human rights court" (Hennebel, 2020, p. 355). If it accepts the complaint and finds a violation or a non-violation of the CCPR, it adopts Views, which are not legally-binding judgments such as those adopted by regional human rights courts, but carry significant weight and the states parties found to have committed a violation of the ICCPR are expected to report to the CCPR on measures taken to ensure effective remedy and full reparation to the victims (a separate follow-up process to Views is carried out by designated special reporters). The CCPR developed rich jurisprudence, which is being regularly consulted also by other UN charter and treaty bodies and regional human rights courts (Nowak, 2005; Schabas, 2019). With regard to the latter, the CCPR started organising periodic consultations to exchange views on certain jurisprudential developments and methods of work. A serious challenge for the CCPR in recent years has been the increasing backlog of individual communications, which is a source of frustration for individuals alleging violations of their rights, as well as members of the committee and secretariat staff, which can, within the existing capacities, process only a certain number of communications. In addition to various civil society organizations raising concerns, a group of states parties to the OP wrote to the OHCHR in 2022, suggesting that certain measures be taken to address this growing concern. Taking into account the developments in recent years, including the withdrawal of the Russian Federation from the European Convention on Human Rights, the pressure on the CCPR in terms of new individual communications can be reasonably expected to grow exponentially, and a new strategy for effectively addressing this serious concern is desperately needed.

In 1989, states adopted the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, which has yet to achieve universal acceptance (United Nations Treaty Series, 1991).[8] The CCPR also publishes its interpretations of the content of ICCPR's provisions, known as "General Comments" (GC), on thematic issues or its methods of work (Sancin, 2022).[9] A number of domestic and

[8] The Second Optional Protocol to the International Covenant on Civil and Political Rights entered into force on July 11, 1991, in accordance with Article 8(1). As of June 29, 2022, it has 90 states parties.

[9] The CCPR has so far adopted 37 GC, although some of them address the same topic. A few of these address procedural matters, others relate to general or overarching

international, including regional, judicial bodies ascribe to them significant legal authority and weight (e.g., the Grand Chamber of the ECtHR in *Perinçek v Switzerland*, 2015; IACtHR, *Poblete Vilches and Others v Chile,* 2018). The arguably most prominent pronouncement on this issue comes from the International Court of Justice in *Ahmadou Sadio Diallo* (2010), where the Court stated that "it should ascribe great weight to the interpretation adopted by this independent body (CCPR) that was established specifically to supervise the application of that treaty. The point here is to achieve the necessary clarity and the essential consistency of international law, as well as legal security, to which both the individuals with guaranteed rights and the States obliged to comply with treaty obligations are entitled" (Para. 66). Therefore, GCs "tend to have a quasi-legislative character" (Ando, 2008, Para. 41) and "form some sort of persuasive body of jurisprudence" (Hennebel, 2020, p. 370).

THE COMPOSITION OF THE CCPR

The CCPR is composed of 18 independent experts, who are nationals of the states parties to the ICCPR (only one national of the same state can be a member of each CCPR's composition (Art. 31(1) ICCPR) and shall be persons of high moral character and recognized competence in the field of human rights, consideration being given to the usefulness of the participation of some persons having legal experience (Art. 28(2) ICCPR) and to an equitable geographical distribution of membership and the representation of the different forms of civilization and of the principal legal systems (Art. 31(2) ICCPR). The members shall be elected for a term of four years (Art. 32 ICCPR) by secret ballot by all states parties and shall serve in their personal capacity (Art.28(3) and 29 ICCPR). Experts can be nominated only by the states parties of their own nationalities, which in practice makes a nomination for election or re-election of the members dependent strictly on the will and timely action of the respective governments, as well as their "vote" prior to each election, raising a number of concerns regarding the polarization of the process, transparency issues, etc. (Callejon, 2021). Although the ICCPR (Art. 35) envisages that "the members of the Committee shall, with the approval of the General Assembly of the United Nations, receive emoluments from United Nations resources on such terms and conditions as the General Assembly may

matters concerning the ICCPR or substantive obligations. However, the majority relate to a particular provision of the ICCPR and the substantive rights and obligations flowing therefrom.

decide, having regard to the importance of the Committee's responsibilities", the members work strictly *pro bono* and have never been paid for their work, which, considering the ever-growing workload, raises another set of concerns, including the availability of competent experts. Furthermore, the composition of the CCPR does not reflect the gender representation in the world population, although it should. When electing new members, the states parties should also give special emphasis to this criterion in an attempt to ensure gender parity in the composition of the committee.

ORGANIZATION OF WORK AND WORKING METHODS OF THE CCPR

The CCPR adopted its Rules of procedure that guide its work in addition to the ICCPR (Human Rights Committee, 2021). It normally holds three sessions per year and, in principle, meets in Geneva at the OHCHR Secretariat premises, where dedicated staff from the office support its work. It used to meet for one session per year also in New York and is currently discussing the option of introducing the possibility of "rowing sessions", which would if adopted as an approach for the future, mean that once a year, a session would be organized in a selected region and the CCPR would review the states parties from that region. Such "country reviews" in the regions at the UN Headquarters could, among other advantages,[10] strengthen the UN nature of committees' work and facilitate a focus on the challenges of a particular region, with multiple country reviews from that region. A number of other ideas have been circulated, including the one to consider conducting *in situ* reviews (in one country). That would, however, necessitate prior invitations by respective countries, which might be difficult to reconcile with an 8-year PRC and would also not facilitate multiple country reviews.[11] Another idea, presented by the Geneva Academy, is to introduce the "mid-term focused reviews (originally called "TRIPS")", where a committee would send a couple of members to a country for a few days to review the implementation of selected COBs, could again only happen by invitation of the respective state party, and departs from the idea of reviews being

[10] The idea was initiated in the CCPR by its member Christof Heyns (2017-2020) and further developed by its member, Marcia Kran (2017-2024).

[11] In 2019, the CRC was conducted as a pilot project such as the in situ review in Samoa, which was very resource intensive, and the necessary resources for the effective work of the treaty bodies are already lacking to efficiently tackle the growing backlogs.

conducted by the entirety of the committees' membership observing the principle of "equitable geographical distribution of membership and representation of the different forms of civilization and of the principal legal systems" (Art. 31(2), ICCPR), which could in consequence negatively impact the COBs.

In preparation for each session, the selected CCPR members are organized into various task forces, led by a country reporter, for reviews of state parties up for "constructive dialogues" in that session. Those who participate in a pre-sessional working group on individual communications are also assigned as reporters for drafting decisions on individual communications and need to prepare drafts in advance of the session. For the states parties' reviews, the members distribute the issues (from LOI or LOIPR) among themselves, prepare questions for the respective state party, and, in this process, consult all available materials from all parts of the UN system, who have worked on the relevant aspects of the state party under review. Before each review, the CCPR regularly holds briefings with various stakeholders, including different international organisations and separate briefings with civil society organisations, in person and increasingly also online (Centre for Civil and Political Rights, 2022).[12] In particular, the experience with the COVID-19 pandemic has led the CCPR to continue its work online, which was far from an optimal setting. But after returning to in-person sessions in Geneva, it proved that some reasonable combination of the core members of the delegation being present in the room with the committee members, and some others offering some specific information online (limited to short intervention due to restrictions of available interpretation for online participation) might be maintained going forward when this increases accessibility and ensures greater participation while lessening the burden on the states parties. During the dialogue, which always takes place in a public session and is webcasted, the members are asked to observe a "3-minute per question" rule when they are members of the task force, and a "1-minute per question" rule when they are not, in order to leave sufficient time for the delegation of the state party to provide answers. Oftentimes, the questions of task force members and answers of the members of the delegation use up all the allocated time, meaning that other members will rarely have an opportunity to ask additional questions, which is regrettable, but necessary given the limited time available

[12] Particularly for the CCPR, the members benefit enormously from all the work in support of the Committee's mandate conducted by the NGO, called the Centre for Civil and Political Rights (CCPR-Centre).

for the review of each state party. Thus, external observers might sometimes wish that more detailed questions and more questions generally, including about findings by other bodies and international organisations, could be asked during the dialogue, but there is simply no time to do that under the current architecture of the CCPR's functioning. Should the state party wish to provide the committee with any further information or explanation, it can do so within 48 hours after the conclusion of the last day of the dialogue. The CCPR then moves to the drafting of the COBs and adopts them in a closed session. They are shared with the state party for technical errors first, and afterwards published on the designated OHCHR website. The working group on individual communication discusses all drafts one week prior to each session and prepares them for adoption in the plenary during the session. Trying to tackle the increasing backlog of individual communications within the existing insufficient resources, the CCPR adopted various techniques that could speed up its decision-making, including working in chambers, joining communications based on similar facts arising out of the same events in a concrete state party, preparing separate folders of repetitive cases, etc. All of these measures, while important and helpful, cannot address the persistent growth of the backlog. When the committee works on the elaboration of the new GC, usually one member serves as a reporter for that GC. This person is also the one who coordinates, with the assistance of the office staff, any meetings with relevant stakeholders, including international organizations, to receive their input on the topic of discussion in the GC under elaboration. In cases where any extra-budgetary resources are donated by certain states or available within relevant international organisations, the CCPR may also organise regional consultations, including with the regional human rights courts on relevant jurisprudence concerning the topic of the GC. The three working languages of the CCPR are English, French, and Spanish. Each document of the Committee thus needs to be translated into these three languages, which indirectly impacts the permitted length of the decisions adopted by the committee (max. 10,700 words).[13] Therefore, the quality of argumentation, particularly in Views, and even more so in separate opinions, is oftentimes a victim of the strict word count limits, which is regrettable as it might affect its persuasiveness.

[13] The word limit was set by the UN General Assembly in its resolution A/RES/68/268, Para. 15.

CONCLUSIONS

Despite various efforts to avoid unnecessary repetition and overlaps and the organization of coordination meetings among treaty-body chairs and the HRC's Special Procedures mandate-holders, the problems of duplication have by no means been resolved. Nevertheless, efforts are underway to reduce them and even profit from them (e.g., by organizing back-to-back reviews with the CESCR even before the adoption of a global calendar for all treaty bodies), while trying to ensure overall coherency, avoid competition, and rather endeavour to achieve synergies among them. Despite occasional attempts by the states parties to demonstrate to the CCPR otherwise, no country's record of protecting and promoting civil and political rights is without challenges that consequently trigger concerns expressed in COBs or Views. For the treaty bodies, including the CCPR, to be able to successfully continue their mandates, the states parties will need to address some of the major obstacles they are facing in the 21st century, such as providing them with sufficient material and human resources and elect best qualified and independent members in a transparent process, taking into account the need for gender parity. The increasing workload also calls for re-consideration of the long-term feasibility of the system as it currently stands with only a limited number of weeks of sessions per year. While the CCPR has already developed some practices of reaching out to other treaty bodies, through the appointment of focal points among members for each of the other treaty bodies, arranging briefings with other parts of the UN human rights system and organising inter-sessional meetings with regional human rights courts, there is certainly still room for more systematic consultation and coordination with various parts of the UN system and broader. However, to be fully materialized seems to require a shift from the *pro bono* work of its members to full-time paid positions on the committee for, ideally, a non-renewable 8-year mandate. Finally, the committees regularly refer to the General Comments and Recommendations when examining reports and engaging in constructive dialogue with state representatives or adopting Views, and it is noteworthy that in recent years, some of them have engaged in the preparation of joint projects. In particular, when it comes to issues that are of concern to most or all of them, such an approach seems a welcome innovation, and the CCPR should in the future consider the benefits and feasibility of a common approach to some crosscutting human rights issues, including the impact of climate change on fundamental human rights. In these endeavours, it seems indispensable that committees take into account and are informed by developments in all other subject-matter relevant mechanisms, organs and international organisations,

in addition to contributions from the states parties and all other relevant stakeholders (e.g., NGOs and academia), which again requires more time and resources. For the CCPR to keep its significance going forward, it is urgent to ensure its evolution, including through the use of modern technologies in its functioning. Nevertheless, given the developments in the global community of the 21st century and the growing world population that should enjoy fundamental civil and political rights at all times, nothing short of a small revolution, resulting in the establishment of a full-time permanent human rights body, capable of timely legal assessments of the human rights situations and alleged violations at a universal level, is warranted.

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THE ROLE OF THE UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES (UNHCR) IN THE PROTECTION OF REFUGEES AND ASYLUM SEEKERS

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Abstract: Since its inception in the post-war period, the United Nations High Commissioner for Refugees (UNHCR) has played an extremely important role in providing protection and care for refugees and asylum seekers around the world. The changing circumstances in the world over the seventy years of the UNHCR's existence have led the UNHCR to adapt to new situations. Millions of refugees and internally displaced people needed to be cared for after the Second World War. During the Cold War turmoil, the need to take care of refugees received a new note. Even after the Cold War, due to the disintegration of certain countries and the outbreak of armed conflicts, it left its mark in the area of taking care of refugees and displaced persons. Until the latest mixed refugee-migrant crisis, the UNHCR successfully adapted to the needs on the ground. By working in the field and adopting various documents, so-called "soft law" sources, the work of the UNHCR became effective. However, it remains to be seen whether all the needs of refugees in modern times will be met by an adequate legal framework, which would facilitate the activities of the UNHCR and other providers of refugee protection and asylum seekers.

Keywords: Refugees, asylum seekers, UNHCR, 1951 Refugee Convention, international protection, mixed migration.

INTRODUCTION

In the more than seven decades since the founding of the United Nations High Commissioner for Refugees (UNHCR), the needs of asylum

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seekers and refugees have changed significantly. A large number of asylum seekers and refugees in the world raise a number of questions regarding the regulation of their status, integration into host countries, relocation to third countries, and return to their country of origin. Activities in these areas require the joint and coordinated action of several actors in the international community, because it would be almost inconceivable that the only stakeholders would be the states in such processes. They are assisted in these activities by numerous international governmental and non-governmental organizations, and primarily the UNHCR, without whose activities regarding the care of refugees, a system of modern international protection would not be conceivable. The number of asylum seekers and refugees has been growing steadily from decade to decade and, more recently, from year to year. In 2020, that number reached 82.4 million refugees globally, with a tendency for further growth (UNHCR, 2021, p. 4) and, according to the latest estimates, in the middle of 2021, there were about 84 million forcibly displaced people in the world (UNHCR, 2022a). The largest exodus of refugees after the Second World War was initiated by the outbreak of the conflict in Ukraine in February 2022. In the first ten days of the conflict, the refugee wave caused more than a million people to leave Ukraine, and several hundred thousand people were internally displaced within Ukraine. In less than two months after the conflict began, more than five million people fled Ukraine, and millions more will be internally displaced within the country's borders (UNHCR, 2022b). These statistics are proof of the growing trend of an increasing number of asylum seekers and refugees, so it can be expected that by the end of 2022, there will be over 90 million forcibly displaced people in the world. Different periods and situations on the ground have significantly affected the work of the UNHCR, which has caused the need to adapt the UNHCR to changing circumstances and reflect on the provision of adequate assistance to asylum seekers and refugees. Today, the UNHCR is present in 132 countries and territories in the world with a staff of 17,878 people with different mandates or the degree of participation in the protection of asylum seekers and refugees (UNHCR, 2022c). Judging by the number of armed conflicts, crisis hotspots, and mass and systemic human rights violations around the world, there is almost a certain tendency to increase the number of IDPs in the world and the need for an increasing UNHCR presence on the ground. All this points to the need to consider the mandate of the UNHCR, its capacities, and role in solving problems related to modern forced migration.

THE ORIGIN AND DEVELOPMENT OF THE UNHCR

In order to properly understand the role of the UNHCR in the protection of asylum seekers and refugees, it is necessary to consider the situation in the world during the more than seven decades-long existence of the UNHCR. This is especially important due to various dramatic events, which are reflected in forced migration and the trend of increasing the number of asylum seekers and refugees in the world from year to year.

The post-war period and the emergence of the UNHCR

In the post-war period, after the adoption of the United Nations Charter, the adoption of international legal instruments in the field of human rights began, and over time, the formation of oversight bodies in this area. The system of international protection that existed in the past, under the auspices of the League of Nations, did not reach the level of global validity as built in the postwar period, but rested on an *ad hoc* basis, addressing the issues of certain refugee groups, such as Russian refugees and others in the interwar period (Hathaway, 2021, pp. 19-26). Faced with the biggest refugee crisis to date, the international community had to find a way to manage the refugee crisis and provide protection to millions of refugees in the post-war period. The decision to establish the UNHCR was made in 1949, and the following year the UNHCR Statute was adopted (UNHCR, 2022b). The focus was initially on millions of refugees and internally displaced persons in Europe, but in time it moved to other parts of the world due to the outbreak of various crisis hotspots on other continents, which led to the establishment of a universal system of international protection. Shortly after the end of the Second World War, due to issues related to resolving the status and protection of millions of refugees, the Convention on the Status of Refugees *(Refugee Convention)* was adopted in 1951, which entered into force on April 22, 1954 (United Nations Treaty Series, 1954). In addition to the definition of a refugee, it also contains the rights and obligations of refugees (Krstić & Mitrović, 2021, pp. 22-38).[1] However, the system established by the 1951 Convention

[1] The previous idea was to adopt an international agreement that would apply to both refugees and stateless persons. This was soon abandoned, and after the Convention on the Status of Refugees, the Convention on the Status of Stateless Persons (1954) and the Convention on the Reduction of Statelessness (1961) were adopted.

on Refugees initially contained a shortcoming that was somewhat remedied by the adoption of the 1967 Protocol to the Convention Relating to the Status of Refugees *(New York Protocol)*. Namely, the definition of a refugee from the 1951 Refugee Convention refers to refugees coming from Europe and to the period up to January 1, 1951. According to the New York Protocol, the domain of the 1951 Refugee Convention was extended to refugees coming from outside Europe even after January 1, 1951. In this way, the significantly narrower scope of application of the 1951 Refugee Convention has been removed, and the time and geographical limitations have been removed. However, in modern times, the problem remains in those states that have not acceded to the 1951 Refugee Convention and/or the New York Protocol (Allen & Muturi, 2021; Janmur, 2021).[2] The post-war period, until the formation of the UNHCR and the adoption of the 1951 Refugee Convention, was followed by initial steps of decolonization and the emergence of "new" refugees, i.e., refugees and internally displaced persons not related to the Second World War. Thus, the process of India's independence and its division into India and Pakistan due to mass relocation caused the suffering of thousands of people and millions of refugees and internally displaced persons. Also, the beginning of the war on the Korean Peninsula and the division of the peninsula into the Democratic People's Republic of Korea and the Republic of Korea caused not only a refugee crisis but also the separation of a large number of families and later defections from one Korea to another.

The Cold War period

The animosities that existed between the states of the Eastern and Western blocs caused frequent flights of dissidents from one of the two sides. Also, the period of decolonization and armed conflicts that erupted in these processes caused forced migrations. The position of any international organization in the bipolar world was difficult when it was necessary to balance between the two blocs. The process of decolonization did not always go without major setbacks and problems. Thus, armed riots, incidents, and conflicts broke out throughout Africa and Asia, which resulted in a large number of human casualties but also waves of refugees.

[2] This problem is present seventy years after the adoption of the Convention Relating to the Status of Refugees and more than fifty years since the adoption of the New York Protocol.

A special problem arose in connection with a large number of people who did not have regulated citizenship status and found themselves in a situation of statelessness. The adoption of two conventions dealing with statelessness, the Convention Relating to the Status of Stateless Persons (1954) and the Convention on the Reduction of Statelessness (1961), only seemingly gave hope that the phenomenon of statelessness would be eradicated (United Nations Treaty Series, 1960; 1975). In the decades after the adoption of these conventions, but also today, the role of the UNHCR in the suppression of statelessness is important.[3] During this period, due to its important role in caring for asylum seekers and refugees and contributing to peace and stability in the world, UNHCR won the Nobel Peace Prize on two occasions, in 1954 and 1981 (The Nobel Prize, 2022). This type of recognition is not common, and the reputation of the UNHCR has not declined in the future.

The post-Cold War stage

The tectonic changes in international relations after the fall of the Berlin Wall (1989), the disappearance of the Eastern Bloc, and primarily the collapse of the Soviet Union, led to major changes in international relations and the international community. In the last decade, there have been numerous armed conflicts, such as the escalation of the situation in the Middle East, the Iraqi invasion of Kuwait and the response of the international community, the collapse of the former Yugoslavia, the conflict in Rwanda that led to genocide, constant tensions in Palestine, and many other crisis hotspots around the world. This resulted in waves of refugees from different countries, and after a long time from Europe (dissolution of Yugoslavia). The characteristics of the Cold War frictions resulted in the flight of dissidents and political refugees from one bloc to another, but, with the end of the Cold War and bloody conflicts in the former Yugoslavia, for the first time since the Second World War, hundreds of thousands of refugees began to leave their countries on the European continent. In the latest conflict in Ukraine, it has been shown that although Europe was not a source of refugees for more than two decades and European countries were the "only" countries of transit and

[3] In 2014, UNHCR launched the global campaign #IBELONG in order to eradicate statelessness in the world in the period 2014-2024, which, for now, is showing good results, but the final results of the campaign will be shown after its completion.

reception of refugees, in the field of forced migration, new hotspots can open and refugees can also become citizens of economically stronger and politically more stable countries and territories. So, modern migration, which is mixed and massive, is possible in any part of the world. It can come from the areas from which refugees flee, transit, or find refuge.

Contemporary mixed (refugee-migrant) crises

Large waves of migration, such as those caused by the permanent crisis in Afghanistan or the wave of crises triggered by the Arab Spring, have caused the mass forced migration of extremely large numbers of people in the 21st century. The conflict has been going on in Syria for more than a decade, which has caused a mass exodus of Syrians. According to UNHCR estimates, about 6.6 million people have fled Syria since the conflict began in 2011 until 2020, and 6.7 million have been internally displaced, making up a significant portion of the country's total population (UNHCR, 2022d). The situation in the host countries (Jordan, Lebanon, Turkey, Pakistan, Iran and others) is also worrying, as parts of the countries in the region where riots are taking place or large numbers are migrating are under very strong pressure to take care of hundreds of thousands or even millions of refugees transiting through or seeking refuge in those countries. From the beginning of the Afghan war in 1979 and the temporary easing of tensions, to the Allied invasion of Afghanistan in 2001, to the escalation of the crisis with the return of the Taliban regime to power in August 2021, millions of Afghans were forced to seek refuge in other parts of Afghanistan as well as beyond its borders. Thus, in the last few decades, Afghan refugees have taken refuge in neighboring countries, primarily in Pakistan, which has not been able to adequately accept all refugees, and some of them have continued to Iran, Turkey, and other countries. However, due to the Arab Spring and the coups in several Arab countries (Libya, Tunisia, etc.), a wave of refugees started, and one part of the refugees went by sea (across the Mediterranean), towards the EU member states, and one part to the Middle East to Lebanon, Jordan, and Turkey, and since 2015, in the biggest wave so far, on the so-called Balkan routes towards EU countries, primarily to Germany, which was back then pursuing a so-called "open doors" policy. In other parts of the world, there has been mass and mixed migration, such as those that have been going on for years from the countries of South and Central America to the United States and Canada. During the mandate of the then President of the US, Donald Trump (2017-

2021), there was a tightening of measures and discriminatory policies that referred to refugees and migrants, which negatively affected the position and rights of those people (Galbraith, 2019a, pp. 377-386; 2019b, pp. 833-842; 2020, pp. 504-511; Eichensehr, 2021, pp. 340-347).[4] For several decades, the issue of refugees in Australia and New Zealand has been important. They mostly arrive by sea, and in the case of Australia, they are often detained outside that territory (Nauru and Papua New Guinea), or on the territory of Australia itself. The latest crisis in relations between Russia and Ukraine since the beginning of this year has shown that Europe is not only a refuge for refugees but also a place where a large number of refugees are fleeing due to armed conflicts. The largest number of refugees from Ukraine are seeking refuge in European countries, mostly in neighboring countries. Poland received almost half of the refugees from Ukraine, then Romania, Russia, Hungary, Moldova, and Slovakia. That makes Europe a continent that, while receiving large numbers of refugees, still creates new refugees. Large migratory movements have caused the tightening of policies and changes in the legislation of many countries regarding the transit and reception of refugees. As a result, a number of measures were adopted in some countries around the world, but also "protective" wires and walls were erected (in the US, Hungary, Greece, etc.). Also, the states did not shy away from explicitly violating the norms of international refugee law but also domestic law in that area. This, of course, hampered the codification and progressive development of international refugee law, further slowing the processes that would lead to the best solutions for managing mass and mixed migration, which is one of the modern international community's most pressing challenges. What is characteristic of modern migrations, especially since the second decade of this century, is their mass and mixed character. It concerns the movement of a large number of people—refugees and migrants—via the same routes. The International Organization for Migration (IOM) has defined mixed migration as follows: "A movement in which a number of people are traveling together, generally in an irregular manner, using the same routes and means of transport, but for different reasons. People traveling as part of mixed movements have varying needs and profiles and may include asylum seekers, refugees, trafficked persons, unaccompanied/separated children, and migrants in an irregular

[4] President John Biden and his administration have begun to overturn the decisions of the previous administration of the US.

situation." (IOM, 2019: 141, 142). However, what needs to be kept in mind is the different legal framework that applies to different categories of people on the move. One, which refers to refugees, the backbone of which is the 1951 Refugee Convention and the New York Protocol, and the other to other migrants. With regard to migrants, there is no "umbrella" international agreement, unlike the legal framework for refugees. Thus, with regard to migrants, there is "only" the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, an international agreement that covers one part of migrants — migrant workers and members of their families (United Nations Treaty Series, 2004).[5] Refugees, according to the provisions of international law, enjoy a higher degree of protection than other migrants (refugees are migrants in the broadest, sociological sense, but from a legal point of view, they are a special category covered by a special international and national legal framework). Especially since modern migrations are massive and mixed, their management is more complex and is an obstacle for all actors who manage migration due to the specifics it brings.

THE UNHCR MANDATE

When considering the mandate and role of UNHCR in the care of asylum seekers and refugees, two types of activities can be noticed: traditional, i.e., those that arose during the formation of the UNHCR, which are set by the UNHCR Statute and the 1951 Refugee Convention; and modern, i.e., those that have evolved due to changing circumstances on the ground (Loescher, Betts & Milner, 2008, pp. 10-16). Other activities have developed over time, with the fact that there is a wide field of action in which the UNHCR could develop activities in the field, such as taking care of the so-called environmental refugees, but also providing humanitarian assistance to people who are forcibly migrating. The different types of assistance provided by the UNHCR to asylum seekers and refugees cover a number of different domains. The UNHCR, with the help of executive partners, funds and supports the provision of free legal aid to asylum seekers and refugees in many countries around the world; assists their inclusion and integration into the host country; assists in the relocation of refugees to third countries; assists in the process of

[5] By March 1, 2022, the implementation of the Convention will become obligatory for 57 states.

return to the country of origin; assists state bodies in various ways in building and improving the asylum system; as well as in many other activities, such as providing humanitarian assistance to the most vulnerable persons of concern.

Traditional role and activities of the UNHCR

The UNHCR Statute prescribes the role of the UNHCR with the goal of protecting refugees that fall under its mandate.[6] Thus, UNHCR is obliged to take care of the ratification of international agreements that protect refugees but also to monitor their implementation and propose mandates; to promote, through special agreements with governments, the implementation of all measures designed to improve the situation of refugees and reduce the number of persons in need of protection; to assist governmental and non-governmental efforts in promoting voluntary return or assimilation within new national communities; to promote the reception of refugees; to seek permission for refugees to transfer property, in particular those necessary for their relocation; to obtain information from governments on the number and conditions of refugees in their territory, as well as on regulations concerning refugees; to maintain close liaison with governmental and intergovernmental organizations in these areas; to establish contacts with private organizations dealing with refugee issues, as well as to enable coordination in the efforts of private organizations dealing with refugee welfare. From these statutory competencies of the UNHCR, one can see the diversity and complexity of the role that the UNHCR has in its mandate. In order to facilitate the functioning and realization of the competencies of the UNHCR set out in its statute, the UNHCR Executive Committee (ExCom) was established in 1958 as an auxiliary body of the UN General Assembly. The ExCom began operations on January 1, 1959, with an executive and advisory role that included: advising the High Commissioner in the exercise of his/her functions; reviewing funds and programs; authorizing the High Commissioner; making appeals for funds and approving proposed biennial budget targets (ECOSC, 1958; UNHCR, 2022e). The ExCom is made up of representatives from 107 countries (UNHCR, 2022f). By 2022, the ExCom adopted a large number of legal documents. The ExCom documents are of great importance for providing international protection

[6] Article 8 of the UNHCR Statute.

and influencing the creation of the "doctrine" of the UNHCR (Lewis, 2012, pp. 60-77). Although they represent non-binding legal acts, i.e., sources of so-called soft law, the ExCom documents are of great importance as guidelines for all actors who deal with asylum seekers and refugees. Also, the authority of these decisions is significant given the composition of the ExCom, which includes representatives of states, including those states that have not committed to the implementation of the 1951 Refugee Convention and/or the New York Protocol. The traditional role of the UNHCR is to promote the 1951 Refugee Convention. Thus, for example, in Europe, almost all countries are obliged to implement the 1951 Refugee Convention and the New York Protocol. The problem is that, for example, Turkey is bound by the 1951 Refugee Convention with a geographical reservation relating to the definition of refugees, which in practice means that refugee protection is granted to refugees coming from Europe but not to refugees from other parts of the world. This, further, leaves a gap in the protection of millions of refugees who crossed the border with Turkey in the years behind us in search of adequate international protection (refugees from Afghanistan, Iraq, Syria and other countries). This problem also exists in other parts of the world, such as Asia, because many countries have not committed themselves to the 1951 Refugee Convention and/or the New York Protocol, or have made certain reservations that narrow the application of these instruments. The UNHCR's role is therefore important in countries not bound by the 1951 Refugee Convention and/or the New York Protocol by intervening to find ways to fill gaps with more or less sustainable solutions, but also by assisting countries in building asylum systems and resettlement to other countries of certain categories of persons in need of international protection. Also, the role of UNHCR is very important in terms of finding lasting solutions for refugees — assimilation in the receiving country or return of refugees to their country of origin. Although the UNHCR was formed in 1950, before the 1951 Refugee Convention was adopted, which entered into force in 1954, there is an organic and functional link between the UNHCR and the 1951 Refugee Convention. Most of UNHCR's activities are focused on the 1951 Refugee Convention, either in terms of the implementation of the 1951 Refugee Convention or in terms of filling in the gaps in the 1951 Refugee Convention itself that occur in practice. The UNHCR has taken on the role of the most relevant interpreter of the 1951 Refugee Convention, as evidenced, inter alia, by the role of the UNHCR when acting as an intervener (*amicus curiae*) before domestic and international bodies, or when these bodies use UNHCR documents and

views when making decisions. The "doctrine" of the UNHCR has been building for decades and represents a strong influence on the application of existing international legal instruments, but also domestic sources of law, and influences the adoption of new ones in the *spirit* of the 1951 Refugee Convention. One of the shortcomings regarding the work of the UNHCR is the inability to submit individual petitions from asylum seekers and refugees to the UNHCR, as is the case with many international treaties, universal and regional, which protect human rights and provide for a control body before which they can conduct interstate proceedings or proceedings on individual petitions.[7] This specificity is an expression of the attitude of states that the issue of granting asylum is the sovereign right of every state and belongs to the *domaine réservé* of sovereign states. The examination of each individual decision related to the asylum procedure could not be entrusted to a supranational body. Special attention should be paid to the period when the 1951 Refugee Convention and the then understanding of state sovereignty, as well as the position of the individual in international law, were adopted, which has changed significantly over time, in practice. About 70 years ago, it was unthinkable that an individual could initiate a dispute before an international body, either to sue his own state or a foreign state. Even disputes before the International Court of Justice (ICJ), which were conducted to protect the rights of the individual, were conducted in such a way that the state of which the injured party is a citizen initiates a dispute before the ICJ, thus substituting for the injured party. Today, the practice when it comes to human rights has changed significantly, so it is possible to conduct disputes against states before various international committees and courts with the party in the dispute being an individual, either its citizen or a foreigner under its jurisdiction. The 1951 Refugee Convention provided for the obligation of states to cooperate with the UNHCR, which is done within the activities within the competence of the UNHCR in order to facilitate its task of monitoring the implementation of the said convention.[8] States Parties undertake to provide, in an appropriate form, the requested information and statistics relating to the

[7] With the entry into force of many international treaties and their protocols in modern times, there is the possibility of filing individual complaints against a state that is alleged to have violated any of the human rights of human beings under its jurisdiction or the bodies such as the Human Rights Committee (CCPR), the Committee on the Elimination of Discrimination against Women (CEDAW), the

status of refugees, the implementation of conventions, and the laws and regulations and other regulations which will enter into force or have entered into force relating to refugees.[9]

Adapting the role of the UNHCR to changed circumstances

The UNHCR's presence in the field in different parts of the world in different periods required adaptation to different needs at a given time across the globe, but also at different levels — universal, regional, and local (Milner & Ramasubramanyam, 2021, pp. 195-200). In some countries, the UNHCR is fully taking over the role of taking care of asylum seekers and refugees, i.e., resolving their status issues, due to the fact that the receiving country does not have a prescribed procedure for determining refugee status. In other countries, the UNHCR assists receiving countries, either in some phases of the asylum procedure, or in building an asylum system, etc. Namely, in some countries, the UNHCR participates in the second-instance procedure for determining refugee status. In the third group of countries, which have a regulated asylum procedure and, in general, a functional asylum system, that is, the reception and protection of asylum seekers and refugees, the UNHCR helps in various ways. This is done in the form of humanitarian aid in the event of an influx of a large number of refugees who are in the territory of the receiving state, then by preparing reports on the situation in the countries of origin or transit of refugees, or as an intervener (*amicus curiae*) in proceedings conducted at the request of a refugee. Overall, the UNHCR's presence on the ground is of paramount importance given that the UNHCR is a factor with great authority, both moral and expert, in interpreting the norms of international refugee law. The changing circumstances on the ground, which may not have been foreseen during the formation of the UNHCR, have shown its strength to cope with new trends, which has further

Committee against Torture (CAT), the Committee on the Rights of the Child (CRC), the Committee on Migrant Workers (CMW), the Committee on the Rights of Persons with Disabilities (CRPD), etc., or judicial bodies of regional human rights monitoring mechanisms, such as the European Court of Human Rights (Convention for the Protection of Human Rights and Fundamental Freedoms), the Inter-American Court (Inter-American Convention on Human Rights), etc.

[8] Refugee Convention, Article 35, paragraph 1.

[9] Refugee Convention, Article 35, paragraph 2.

strengthened the role of the UNHCR. True, it would not be correct to conclude that only UNHCR is obliged to deal with all innovations and changes in refugee law, bearing in mind the still great role of states, but also due to the nature of the UNHCR, bearing in mind that the UNHCR is a UN agency, and therefore it must take care of neutrality[10] and still have an effective influence on changes and adjustments of state policies regarding the care of asylum seekers and refugees. The issue of different categories of people in forced migration, such as internally displaced persons (IDPs) or stateless persons, is a particular challenge to address. Namely, with regard to IDPs, there is no "umbrella" international agreement, such as those that exist for refugees and stateless persons, bearing in mind that IDPs are forcibly displaced within the state of which they are citizens, or in the case of stateless persons, where they have their habitual residence. This specificity, further, has the consequence that the countries in which the IDPs are located do not want to interfere with external factors and view the issue of resolving internal forced migration as an internal matter. Of course, over time, the practice has developed that various international entities, primarily the UNHCR, are involved in the management of IDP-related issues. The changing nature of migration and new tendencies caused by mass and mixed migration *(refugee-migrant),* but also the emergence of new forms of migration, such as environmental migration,[11] force the international community and its actors to adapt to new trends, which have had different success rates (Stojanović, 2020, pp. 73-89; Stojanović et al., 2021).[12] Thus, in 2016, in the midst of a refugee-migrant crisis that shook the world, the New York Declaration on Refugees and Migrants was adopted. The New York Declaration, although integrating issues related to refugees and migrants, foresaw the

[10] According to the UNHCR Statute, its mandate is non-political (Chapter I, para. 2 of the UNHCR Statute).

[11] Regarding the issue of so-called environmental refugees, the actions and procedures of other actors such as the Human Rights Committee are also indicative, which is the impact of human rights mechanisms that make up for shortcomings in the field of international protection and human rights.

[12] The challenges that actors involved in international protection face have been particularly evident since the outbreak of the COVID-19 pandemic. On that occasion, a number of controversial issues relevant to the matter of international refugee law and its principles arose, such as issues related to respect for non-refoulement principles.

adoption of two separate global compacts — one dedicated to refugees and the other to migrants (UN GA, 2016a). Thus, two years after its adoption, two global compacts were adopted — the Global Compact for Refugees (GCR) and the Global Compact on Safe, Orderly and Regular Migration (GCM) (UN GA, 2018a, 2018b; Krasić & Stojanović, 2020). The importance of both global compacts is reflected in the fact that the responsibility for taking care of asylum seekers and refugees, as well as migrants, has been lowered from the vertical to the horizontal level, involving various state and non-state actors in various processes related to these categories of people (Stojanović, 2022). Regarding the concretization of both global compacts, significant mechanisms are envisaged in both compacts. Thus, at the end of 2019, the first meeting of the Global Refugee Forum was held, hosted by the UNHCR and the Government of Switzerland, where the actors from the GCR committed themselves to concrete actions in the future (Stojanović, 2020b, pp. 195-198). In addition to the above steps taken by adopting international instruments to try to respond to new trends in cross-border migration, another important consequence of mixed migration is the closer cooperation between the UNHCR and the IOM, so that migration can be managed in a sustainable way. The changing nature of modern migration, i.e., its mixed and mass nature, has caused the need for collaboration between the UNHCR and the IOM. By adopting first the New York Declaration on Refugees and Migrants and then two global compacts – the GCR and the GCM – the foundations of that cooperation were laid. Previously, the IOM received the status of a UN-related organization in 2016 (UN GA, 2016b). Cooperation between the UNHCR and the IOM has lasted for years in various areas, such as the fight against human trafficking (Szojanović, 2020c, pp. 391-395). The UNHCR is also taking significant steps on the issue of new tendencies in international refugee law, such as the provision of protection to people who are forced to migrate due to environmental issues – the so-called "environmental refugees". People seeking international protection in the context of the adverse effects of climate change or disasters may have valid claims for refugee status. They may have a well-founded fear of persecution under Article 1A (2) of the 1951 Convention or be compelled to seek protection outside their own country owing to events seriously disturbing public order under Article I (2) of the 1969 OAU Convention and Conclusion III (3) of the 1984 Cartagena Declaration. In addition, there may be grounds for international protection under general international human rights law, i.e., non-refoulement obligations, including the right to life.

THE UNHCR IN THE 21ST CENTURY – NEW CHALLENGES AND OPPORTUNITIES

In the 21st century, the UNHCR faces a number of challenges. Mass and mixed migration, tensions in international relations, the crisis of multilateralism, and the problem of funding, are just some of the problems and challenges that hinder the functioning of the UNHCR. Mass and mixed migration put the UNHCR in a situation of necessary cooperation with other actors. In the first place, it is about cooperation with countries but also with other international organizations. In the first place, it is about the IOM, whose mandate is to protect migrants (Article 1 of the Constitution of the International Organization for Migration from 1953) (Chetail, 2022, pp. 244-264).[13] The need for cooperation is reflected in the fact that refugees and migrants in mixed migration share common routes, but they often have in common that countries of transit and reception often do not provide certain international standards for both categories of people in migration. Thus, the intertwining of circumstances in which refugees and migrants find themselves and their mass movement requires a multidimensional observation of the situation and necessarily points to cooperation with other relevant actors. Furthermore, mass influxes of refugees, especially in the context of mixed migration, have resulted in states protecting their borders by often resorting to illegal actions aimed at preventing refugees and migrants from entering their territory. This means that the achieved standards and already existing norms in the field of refugee law will be lowered, and legal norms will be violated. This problem, especially when it comes to absolute norms of international law *(ius cogens),* represents a serious blow to the international legal order, having in mind the seriousness and consequences of violating the norms of *ius cogens.* Due to these risks and the need to prevent violations of international law relating to asylum seekers and refugees, it is necessary to strengthen cooperation between states and other actors in order to make a fair distribution regarding the care of asylum seekers and refugees, to avoid illegal practices in dealing with people in need of international protection, and to facilitate the management of mixed migration in countries of transit and reception.

[13] The IOM Constitution has been amended several times. The following amendments were made to the Constitution on November 14, 1989: the organization was renamed to the International Organization for Migration; and on November 21, 2013, the Executive Committee was abolished.

The problem of UNHCR funding is not a new phenomenon. Given that the UNHCR is largely funded by state donations, with contributions from economically strong countries in the north and west, it is very difficult to avoid the influence of those countries in terms of policy making and fieldwork, which is a great challenge for the UNHCR. Unlike the IOM, which was influenced by the United States and its Western allies, the UNHCR has been open to all countries from the beginning, striving to act in all areas where there is a need for its intervention, not just in Europe, although at the time of the creation of the UNHCR and the Convention relating to the Status of Refugees, the Euro-centric attitude prevailed. In order to achieve sustainable financing, it is necessary to work on the awareness and conscience of all countries to improve their contribution to UNHCR's finances, bearing in mind that any country in the world can be a country of origin, transit, or destination of refugees. At the universal level, the UN provides refugee assistance and support to asylum seekers and refugees, as well as to the countries in whose territory they are located. For that reason, and because events from the recent past have shown that every country in the world may find itself in need of some of the types of assistance provided by the UNHCR. Not to mention that solidarity is necessary for taking care of asylum seekers and refugees. A holistic approach to vulnerable groups, which certainly includes asylum seekers and refugees, is a form of humanization of international law, which is a legacy of the post-Second World War period and thus one of the cohesion factors in the international community. Tensions in international relations have resulted in a crisis of multilateralism in various areas, including international refugee law, which is reflected in the functioning of the UNHCR. The need to adopt international legal instruments that have the character of so-called hard law is proving necessary in order to address burning issues related to international protection, such as the protection of so-called "environmental refugees". The limitations of the refugee definition given in the 1951 Refugee Convention require that ways be found to make up for the shortcomings, and that all those in need of international protection be provided with such protection. In order to overcome the stalemate in codification and progressive development related to international refugee law, it is necessary to sensitize all actors involved in the management of forced migration and refugee care — the state, international governmental and non-governmental organizations, and other actors. The activities of various expert bodies made up of legal experts — international lawyers — such as the Institut de Droit

International and the International Law Association, which in previous years have dealt with issues related to international protection and mass migration, can be useful.[14]

CONCLUSIONS

Changing circumstances on the ground, due to changes in international relations but also due to the development of international and domestic refugee law, have forced the UNHCR to change and adjust the way it works to provide protection and assistance to refugees and asylum seekers. The process of decolonization and the significantly larger number of countries that exist today than those that existed at the time of the creation of the UNHCR have increased the need to build a system that could effectively and sustainably monitor the situation of asylum seekers and refugees in all parts of the world and also balance the interests of different actors. In that process, it was never easy to keep the interests of asylum seekers and refugees as the most important ones. Through the historical development presented in this paper, it is clear that the UNHCR's adaptability to changes on the ground is perhaps most responsible for why the UNHCR has survived for more than seven decades and largely successfully provides protection to asylum seekers and refugees around the world, despite tensions in international relations, conflicts, and all other issues faced by asylum seekers and refugees forced to leave their country of origin. Through its various activities related to the protection of asylum seekers and refugees and the regulation of their status for more than seven decades, the UNHCR has influenced the creation of a robust system of international protection and the construction of national asylum systems in different parts of the world, which was by no means an easy undertaking. This is especially so because states jealously guard their sovereignty and strive to "protect" *domaine réservé* as widely as possible. Finding ways to successfully overcome the challenges is an important task the UNHCR is facing. This process will certainly not be easy, given the growing number of forcibly displaced persons around the world growing from year to year. If tensions in

[14] Institut de Droit International, Final Resolution, Sixteenth Commission: Mass Migrations, 2017, rapporteur: M. Maurice Kamto. More recently, the International Law Association has formed two committees – the Refugee Procedure (1992-2002) and International Migation and International Law, which was formed in May 2021.

international relations are added to that, as well as the emergence of new forms of forced migration, such as migration due to climate change, finding an effective and sustainable solution in the coming period will not be possible if the international community and the UNHCR do not face numerous difficulties and obstacles.

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HUMANITARIAN MISSION OF THE INTERNATIONAL RED CROSS AND RELATIONS WITH SERBIA

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Abstract: The International Red Cross is one of the oldest and most numerous international organizations. All modern states are members of the International Red Cross. The International Red Cross was founded on the personal initiative and commitment of Henri Dunant in Geneva in 1863. Henri Dunant's idea was that the International Red Cross would help the wounded and sick people in the war. Later, with time, the International Red Cross was given a very important and significant role in the humanization of war and armed conflict, especially related to the categories that were not initially part of the plan for the implementation of its activities, namely civilians, prisoners of war, shipwreckers, medical personnel, and religious personnel. Later, the International Red Cross's scope of work was enlarged to encompass peaceful times as well. The Red Cross has taken part in alleviating the consequences of major natural disasters such as earthquakes, volcanic eruptions, tsunamis, tornadoes, epidemics, floods, droughts, fires, and other disasters that cause great human casualties and material damage. In 1876, the International Red Cross was founded in Serbia, and it has played a great humanitarian role in the past period. This article deals with the international legal aspect as well as some of the most important activities and actions of the International Red Cross in cooperation with Serbia from 1876 to 2021.

Keywords: International Red Cross, Serbia, humanitarian law, wounded, sick, civilians, prisoners of war.

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INTRODUCTION

The origin of wars and armed conflicts could be traced back to the very beginning of an organized society or the emergence of states. Wars and armed conflicts have unfortunately been recorded from the first conflicts at the onset of human civilization and continuously throughout the Old and Middle Ages until nowadays, to a greater or lesser extent. Estimates speak in favor of the fact that there have been over 14,500 major and minor wars and armed conflicts since the beginning of human civilization. All wars and armed conflicts result in significant human casualties and the destruction of public and private property, the economy, and infrastructure. For the sake of illustration, we note the two most terrible wars – the First World War, which was waged from 1914 to 1918, when over ten million people were killed, and the Second World War, from 1939 to 1945, in which more than 70 million people were killed (Krivokapić, 2010, pp. 90). From the Old Ages until the mid-19th century, there were no rules, regulations, or international conventions on warfare, nor did the existing customary international law of war govern it in a generally accepted manner. War was considered a legal right of every state (*jus belli gerendi*). For centuries, this was treated as a generally accepted international regulation. In practice, the rules of warfare were most often prescribed and applied by victorious states and, later on, by great powers. Existing customary international law was not generally accepted, and it was applied and interpreted very differently. However, various attempts were made to regulate wars and armed conflicts through general rules as early as the Middle Ages. These attempts were primarily focused on humanizing warfare and thus protecting specific categories of participants in wars and armed conflicts. First of all, these were prisoners of war, wounded and sick, and the civilian population. Some ideas implied the protection of cities and other settlements of a non-military nature in times of war. The ideas about the humanization of wars and armed conflicts have been recorded from ancient times to modern times, originating from various philosophers, priests, scientists, politicians, and writers, such as Plato, Aristotle, Thucydides, Tacitus, Cicero, the Chinese writer Sun Tzu, and others. However, those ideas remained recorded in history as failed attempts. The great powers, in particular the colonial powers, were uninterested in regulating customary international law of war or in humanizing the law of war. After all, in those past epochs, wars and armed conflicts were allowed. There was customary international law that classified wars and armed conflicts into just and unjust wars. The decisions, assessments, and interpretations of just or unjust wars were made by the

victors or by the great powers. The fact is that the classification into just and unjust wars exists in modern international relations (Nis, 1985, pp. 205-286; Vozler, 2010, pp. 36-85; Krivokapić 2010, pp. 57-80). The reason for the lack of interest of these colonial forces was their expansion by conquering foreign territories through wars in which they ruthlessly killed enemy soldiers and local civilians while bearing no criminal liability. Keeping this in mind, one discovery is that the modern world demonstrates "different power configurations in different policy domains. This dynamic change in the structure of power refines the exercise of leadership. Aside from power and authority, leadership requires moral persuasion, all necessary strategies to build alignments" (Vasić 2018, pp.146-147). In the Middle Ages, the idea of the humanization of war continued to be developed by St. Augustine, Machiavelli, Thomas Hobbes, Francisco de Vitoria, Balthazar Ayala, Alberico Gentili, Hugo Grotius, Kant, Montesquieu, Hegel, Marx, Engles, Hitch, and many other authors who dealt with the law of war, war crimes, and the regulation and codification of customary law of war. Aside from these individuals who attempted to humanize customary international law of war, various scientific institutes and international organizations attempted to codify the same field with the same goal. Trust in the intentions of these persons was an important factor in history. However, the concept of trust as it exists among close friends is "something we can do without when it comes to relationships with leaders who are the embodiment of power. What has been overlooked is that perhaps they are the ones who created that crisis and that they should actually be held accountable for their actions" (Vasić 2018, p. 15). The mid-nineteenth century marked the beginning of the regulation of customary international law of war. It continued throughout the 20th century, with the adoption of the first international conventions on the law of war and the humanization of international law of war. The first was the Convention for the Amelioration of the Condition of the Wounded in Armies in the Field, adopted in 1864. The second was the St. Petersburg Declaration, adopted in 1868, renouncing the use of specific explosive projectiles in times of war (Petković, 1979, pp. 13-281). This is considered the beginning of the progressive codification of international public law (Šahović, 1971, p. 1495). Further on, in the 20th century, a whole series of multilateral international conventions were adopted, governing international war and international humanitarian law. The Hague Conventions, adopted in 1899 and 1907, were significant because they further influenced the adoption of several international multilateral conventions that at least partially humanized international law of war and gave direction and encouragement for further codification and

humanization of customary international law. These conventions are classified as: Protection of civilians in time of war; Law of war; Prohibited means of warfare; Protection of facilities; and Liability for violations of international humanitarian law. However, regardless of international conventions, the number of casualties in wars and armed conflicts has been steadily increasing, especially after the discovery of new weapons, primarily firearms, and later artillery, air force, submarines, missile weapons, poison gases, biological agents, radioactive agents, and atomic weapons (Lopičić, 1999, pp. 19-37).

ESTABLISHING INTERNATIONAL RED CROSS

The International Red Cross was founded in Geneva in 1863. The entire concept of establishing the International Red Cross was a matter of coincidence related to one Swiss man, Henry Jean Dunant (Levey, 1983; Greenhall, 1983, p. 245). The Swiss merchant Henry Dunant happened to be in northern Italy, near the town of Solferino, on June 24, 1859, where a great battle took place between the French and the Italians, on the one hand, and the Austrian occupation army, on the other. More than 300,000 soldiers participated in this battle. The battle itself, which lasted fifteen hours, was dreadfully bloody. There were over 40,000 dead and wounded who remained on the battlefield. The medical service could not provide medical assistance to a great number of wounded soldiers, so they remained on the battlefield. The whole battle was observed by Swiss merchant Henry Dunant, who happened to be there by coincidence. Dunant was horrified by the scenes and the suffering of the wounded soldiers. Therefore, he invited the nearby residents of Solferino and the residents of the nearby town of Castiglione, who were participants in this war conflict, to join him in organizing and providing medical assistance to the wounded soldiers no matter which side they fought on. A substantial number of residents of Solferino and Castiglione responded to Henry Dunant's "cry for help" in order to provide medical assistance as per their abilities to the wounded soldiers on both sides of the front (Kashoven, 1991, pp. 8-9; Starčević, 2010, pp. 7-8). Henry Dunant was haunted by tremendous and tragic impressions of the battle of Solferino in 1859, as well as the massive number of human casualties and the wounded that could not be provided with the necessary medical help. The lack of medical assistance caused the deaths of soldiers. For this reason, and at his own expense, in Geneva in 1862, he published a book titled *A Memory of Solferino* (Dunant, 1998). Henry Dunant's book was well received by a wide range of readers. Dunant sent this book to rulers

across Europe, as well as to politicians, public workers, government officials, and officers, and a wide circle of his friends. The goal of such a wide distribution of Dunant's book was to spread the word of the horrors of war and armed conflicts in a direct and documented way. The emphasis was primarily on improving the status and destiny of the wounded people and all other victims of wars and armed conflicts. In this truly unique action, Dunant visited all European courts. He met politicians, publicists, journalists, writers, professors, and intellectuals, with the clear goal of introducing them to all the horrors of wars and armed conflicts, and thus inviting them to join him in the humanitarian action to improve the fate of all participants in warfare through the humanization of the law of war (Dunant, 1998). Henry Dunant had in mind two ideas for his mission, along with the idea of humanizing the existing customary international law of war. The first was to create "relief societies" in various countries during peacetime, which would gather and train volunteers to assist the wounded in times of war and armed conflicts. The other idea was to adopt an international agreement that would recognize the status of these societies and provide protection for them. With these ideas that he conceived and presented to people, Henry Dunant managed to win over four other famous and respectable citizens of Geneva: Théodore Maunoir, M.D., General Gustave Moynier, Louis Appia, M.D., and Moynier, a lawyer. Together with four prominent and renowned persons, on February 17, 1863, in Geneva, Dunant founded an informal committee known as the Committee of Five.

The first activity of the Committee of Five was the organization of an international conference in Geneva on October 26, 1863, which was attended by representatives of 16 countries. The Committee of Five was renamed the "International Committee for Relief to the Wounde" prior to the start of the Conference. In this way, both Henry Dunant's idea and the plan came true. After this first international conference, national Red Cross societies were founded in ten European countries until the middle of 1864. The countries in which the national Red Cross societies were founded included: Wittenberg, Oldenburg, Mecklenburg-Schwerin, Prussia, Belgium, the Netherlands, Denmark, France, Italy, and Spain (Boisser, 1985, pp. 45-67). Another fundamental and significant idea of Henry Dunant and the International Committee for Relief to the Wounded was the International conference held in Geneva in August 1864. At the International conference in Geneva, the first international convention on the humanization of the existing customary international law of war was adopted. It was called the Convention for the Amelioration of the Condition of the Wounded in Armies in the Field (Međunarodne konvencije o ratnom pravu i o sigurnosti

1979, p. 281). The International Geneva Convention, which was adopted in 1864, confirmed the Red Cross sign as a sign of recognition, becoming a symbol for medical personnel protection. The International Committee adopted the Red Cross sign as its own mark. The first International Conference of the Red Cross, organized by the International Committee for Relief to the Wounded, was held in Paris in 1867, and it was attended by the representatives of national societies and states. The international conferences of the Red Cross with representatives of national committees and member states discussed current issues through the prism of international humanitarian law. Then, recommendations would be made to all members and all other stakeholders on further activities regarding improvements in the field of humanitarian law.

ESTABLISHING THE SERBIAN RED CROSS

Back then, the Principality of Serbia followed the founding of the International Committee of the Red Cross with great attention. On February 6, 1876, the Serbian Red Cross Society was founded in Belgrade, and it has continued to exist to this very date. The founder of the Serbian Red Cross Society was Vladan Đorđević, a medical doctor, politician, diplomat, and writer (Đorđević, 2007, pp. 522-525). At the time, Turkey opposed Serbia's accession since, under its rule, Serbia was not yet internationally recognized as an independent state. On March 24, 1876, the Government of the Principality of Serbia acceded to the 1864 Geneva Convention. It fulfilled all the necessary conditions for international recognition, so the Serbian Red Cross Society became an equal member of the International Committee of the Red Cross. From the aspect of international public law, this accession of the Principality of Serbia to the Red Cross was significant due to the fact that it was yet another formal and *de facto* international recognition of its statehood and independence. Very quickly, the Serbian Red Cross Society expanded its activities and organization throughout Serbia. Therefore, before the very beginning of the First World War in 1914, it had over 500 subcommittees. The Serbian Red Cross Society, together with the Serbian government and army, crossed Albania to Corfu, where it continued its work and activities (Starčević, 2010, pp. 20-21). During the First World War, the International Red Cross was especially active. In addition to Serbian Red Cross members, there were a large number of volunteers who provided medical care to hospitals during the most severe epidemics of typhus, diphtheria, tuberculosis, and other infectious diseases, which decimated not only soldiers, wounded, sick, and civilians, but these diseases also decimated

doctors and other medical staff. Primarily, volunteers provided great humanitarian and medical aid to prisoners of war, the wounded and the sick, and then to the civilians, whom Austria-Hungary detained in numerous concentration camps without even the minimum conditions of accommodation, food, or healthcare in times of constant outbreaks of typhus, cholera, tuberculosis, diphtheria, and dysentery (Lopičić-Jančić, 2012, pp. 32-50). In the Austria-Hungarian concentration camps, primarily Serbs suffered. They were not only in the category of prisoners of war, wounded or sick, but they were also civilians. There were even children who were non-military personnel; ergo, regulations on prisoners of war could be applied on any grounds (Đuković, 2002; Lopičić-Jančić, 2015, pp. 355). On the other hand, the army of the Kingdom of Serbia in the First World War (1914-1918) fully complied with all international multilateral conventions on the law of war, so there was no retribution for the mass and horrific crimes of Austria-Hungary and its allies against the Serbs (Hrabak, 1964, pp. 107; Đuković, 2008, pp. 15-95). Other activities of the International Red Cross at the time were reflected in helping flows of refugees or forcibly expelled or displaced persons. The aftermath of the First World War induced a considerable rise in poverty for a large number of civilians who had a Phard time surviving the famine. Poverty and famine led them to death, so the International Red Cross provided humanitarian help in that field as well. The fact is that the aggressor states, such as Austria-Hungary, Germany, Bulgaria, and Turkey, all massively violated the existing international multilateral conventions about prisoners of war, wounded, sick, and civilians that they had all previously signed and adopted (Rajs, 1928, pp. 35-45, Rajs, 1995, pp. 57-90; Rajs, 2000, pp. 66-89; Tinhoven. 2014, pp. 43-47; Šturceneger, 1989, pp. 57-79). With the creation of the new state of the Kingdom of Serbs, Croats, and Slovenes, the Serbian Red Cross Society continued its work from 1918 until December 25, 1921, when the last 35th Assembly was held. Forty-five years after its establishment, it continued working as part of the new Red Cross Society of the Kingdom of Serbs, Croats, and Slovenes (Starčević, 2010, pp. 21-22). There was no autonomous Red Cross in Vojvodina when it was part of Austria-Hungary. However, in some places, there were Red Cross branches: in Pančevo in 1881, in Novi Sad in 1882, in Bela Crkva in 1884, and in Subotica and other places. After the defeat of Austria-Hungary, the decision of the Grand National Assembly of Vojvodina on November 28, 1918, actually declared the secession of Vojvodina from Austria-Hungary and eventually its annexation to the Kingdom of Serbia. Shortly afterwards, on December 1, 1918, the Serbian Red Cross Society in Banat, Bačka, and Baranja was founded, seated in Novi

Sad. Local committees of the Serbian Red Cross Society were created across the territory of Vojvodina. The result of establishing these local committees was a large amount of humanitarian aid provided for the devastated areas in Serbia. After the Second World War, the Red Cross in Vojvodina was renamed the Provincial Committee, i.e., the Provincial Organization of the Red Cross of Vojvodina, a part of the Serbian Red Cross (*Ibid.,* 22-24). The main goal of the International Red Cross was defined at its beginnings and referred to the fight for humanity and the further contribution to the development of every society and overall international relations. Then, other goals were introduced in the further development of humanitarian activities, such as preventing or mitigating human suffering. This principle is reflected in the motto *Inter arma caritas*, already defined by the initial activities of the Red Cross. The primary activity was expanded, and in 1961, the motto "*Per humanitatem ad pacem*" (with humanity towards peace) was established. That undoubtedly corresponds to the modern understanding of the principles of humanity (Jakovljević, 1981, p. 7). The twentieth International Conference of the International Committee of the Red Cross, held in Vienna in 1965, was the event when the fundamental principles of humanity, neutrality, impartiality, neutrality, independence, voluntary service, unity, and universality were adopted. Humanity is the core activity and ultimate goal of the International Red Cross, which aims to alleviate and prevent human suffering. This principle, among other things, implies that every person should be provided with care and assistance in order to protect their lives and health. It also implies and emphasizes the protection of human integrity, along with the improvement of the environment, and the further dissemination of knowledge about international humanitarian law contained in the program of the International Committee of the Red Cross. The program implies an impartial approach, meaning that it makes no discrimination among nationalities, religions, classes, or political views. Based on impartiality, the International Red Cross strives to alleviate the suffering of affected persons and meet their needs as much as possible. The International Red Cross is guided solely by the principle and criterion of assisting affected people. Neutrality is a principle that the International Red Cross constantly implements. It implies choosing no sides in wars or armed conflicts, and it also emphasizes resisting any kind of engagement in political, racial, religious, or ideological debates. In this way, by applying the principle of neutrality, the International Red Cross has gained and preserved its integrity worldwide (Starčević, 2010, pp. 29-30). Independence is also one of the essential principles of the International Committee of the Red Cross. In practice, this means that the International Committee of the

Red Cross, as an international organization, does not depend materially or politically on any country or any other international organization. In its humanitarian activities, it bases its independence primarily on its members and the national Red Cross societies, which must act in compliance with the laws of their country (*Ibid.,* pp. 30-32). Voluntary service is one of the first principles of the very idea of the International Red Cross Movement. Practically, it comes down to the work of volunteers. This volunteering is the main driving force of all activities of the International Committee of the Red Cross, as a strong conviction which implies humanitarian work for the benefit of all vulnerable people in various situations, whether in times of war, armed conflict, or natural disasters around the world. In addition to volunteers, a significant number of various humanitarian organizations and institutions participate in these activities purely on a voluntary basis (*Ibid.,* pp. 32). Unity means that there can only be one Red Cross or Red Crescent Society in one country. The Red Cross or Red Crescent Society must carry out its humanitarian activities across the territory of the particular country, and they must be available to all interested parties. Consequently, the Red Cross or Red Crescent Society is recognized throughout the country by competent public authorities as a humanitarian organization. The head of the Red Cross or Red Crescent Society must be a central body that represents the organization without inclination to discrimination, nationalistic attitudes, disrespect for religious convictions, and political views. This body is competent to make decisions binding on all societies in the country (*Ibid.,* pp. 33-34). Universality is also one of the essential principles of the International Red Cross and Red Crescent, according to which all societies have equal status and the right and duty to help one another. The idea of universality has been undoubtedly realized since the International Red Cross and Red Crescent Movement includes 185 internationally recognized national societies as their members. Based on the known principles and ideas, national societies are obliged to provide assistance to all societies that have difficulties or problems in carrying out their humanitarian activities (*Ibid.,* pp. 33-34). The twenty-second International Conference in Bucharest also adopted the definition of the Red Cross mission, which determined the elements common to all national and international Red Cross organizations (Jakovljević, pp. 7-9; Starčević, 2010, pp. 27-34). The International Red Cross, as a complex international organization, has its own bodies. These are the National Red Cross and Red Crescent Societies, the International Committee of the Red Cross, and the League of Red Cross Societies. There is also the Statute of the International Red Cross, which legally regulates the functions and competencies of the International Red Cross bodies (*Ibid.,* pp. 10). The

International Red Cross, as a complex international organization, has very diverse activities. It is difficult to list all these numerous and diverse functions reflected in practical solutions. However, there is an agreement that these functions can be reduced to only three basic functions: Humanitarian Aid, Protection, and Community Service. Humanitarian aid is one of the basic and traditional functions that have existed since the founding of the Red Cross. This humanitarian aid is provided not only in times of wars and armed conflicts but also in times of natural disasters (earthquakes, floods, volcanoes, droughts, famines, cyclones, fires, landslides, and epidemics), including conditions of human suffering. The Red Cross provides humanitarian aid for the benefit of war victims both during and after the war. In addition to humanitarian aid, the International Red Cross also often acts as an intermediary between the parties that are engaged in a conflict. Also, the International Red Cross operates outside of war zones, primarily while providing humanitarian aid to refugees. Namely, it is well-known that every war or armed conflict results in refugees fleeing the war zone in order to save their lives. In those conditions, they need the bare necessities, starting with accommodation, food, and medical care. Another critical function of the International Red Cross is protection for the benefit of victims of war and natural disasters. Certainly, one of the critical and successful protections is the adoption of two Additional Protocols to the Geneva Conventions of 1977, based on which international humanitarian law has been significantly expanded and adjusted to modern needs and conditions. The third basic function of the International Committee of the Red Cross is Community Service. This activity implies constant and long-term tasks that the Red Cross has to achieve in its work. These activities primarily imply the improvement of health and social standards for the people, with the aim of visibly improving the general health level, especially in the prevention of various mass diseases (Jakovljević, 1982, pp. 17-24). The connection between the Red Cross and international humanitarian law also has to be emphasized. Namely, Henry Dunant's idea was to adopt rules that would prescribe and regulate the inviolability and neutrality of medical personnel that provide assistance to the wounded and sick in times of war and armed conflicts. This should be regulated by international humanitarian law. The fact is that the International Red Cross was the initiator of the adoption of many international multilateral conventions and other decisions related to the humanization of the law of war. There are many definitions of international humanitarian law, and they are more or less similar. Contemporary International Humanitarian Law is recognized as a special branch of

international public law. It consists of several international multilateral conventions, various rules, decisions, declarations, as well as rules of customary international war law containing rules for the protection of all victims of wars and armed conflicts (prisoners of war, wounded, sick, shipwreckers, civilians); they also include protection of certain facilities, as well as the prohibition of certain means and methods of warfare. In addition to the above mentioned, international humanitarian law also contains a number of conventions related to protecting cultural property, and banning certain types of weapons, such as biological and chemical weapons, cluster munitions, radioactive weapons, and ammunition (Starčević, 2002, p. 45). This paper represents an opportunity to state one definition of international humanitarian law, which, in our opinion, is quite acceptable, especially for members of the International Committee of the Red Cross: "International humanitarian law is a set of rules which seek, for humanitarian reasons, to limit the effects of armed conflict. It protects persons who are no longer participating in hostile activities and it further restricts the means and methods of warfare. International humanitarian law is also known as the law of war or the law of armed conflict. Whichever definition is used, we could say that these rules do not vary much from one another, as they are basically humanitarian in their own nature" (Starčević, 2010, pp. 34-35). Although after the end of Second World War in 1945, a number of international multilateral conventions were adopted, regulating the manner of waging wars and armed conflicts as well as the protection of prisoners of war, wounded, sick, and civilians, numerous and mass violations of these conventions were committed (Ganzer, 2008, pp. 67-463).

CONCLUSIONS

This paper, which deals with the topic of the connection between the International Red Cross and Serbia, strives to present the history of the International Red Cross from 1863. It also had the aim of explaining the humanitarian activities of its founder, Henry Dunant, along with all phases of the development of relations between the Red Cross and the Principality of Serbia (Durand, 2017, pp. 45-78). The fact is that the International Red Cross is the biggest and most numerous humanitarian organization globally, which has generally been accepted since its inception, and it has achieved enormous humanitarian results in its field of work. The world of the 21st century expresses different power configurations in different policy domains. This dynamic change in the structure of power redefines the exercise of leadership. Along with power and authority, leadership requires

moral persuasion and every single strategy needed to build strong alignments (Vasić 2018, pp. 146-147). Soft power is important in this context, and the International Red Cross considers soft power tools when carrying out its activities. For example, soft power is of crucial importance for employing pressure and encouraging pragmatic engagement and especially for managing conflicts between great powers (*Ibid.,* pp. 147) Although many books, systematic works, monographs, collections of papers, collections of conventions, articles, comments, debates, feuilletons, and reviews have been written about the International Red Cross, there is still a need to continue writing about the International Committee of the Red Cross, especially for the scientific and professional public as well as the general readership and young populations, with the aim of providing them with the opportunity to learn about the International Committee of the Red Cross and eventually give them the chance to become its volunteers.

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CONFRONTING THE LEGACY OF WAR – THE MANDATE OF THE INTERNATIONAL COMMISSION ON MISSING PERSONS (ICMP) AND THE INTERNATIONAL OBLIGATIONS OF SERBIA

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Abstract: The missing persons issue might be one of the most sensitive and durable parts of the 1990s conflicts in the former Yugoslavia. The legacy of these conflicts continuously affects normalization, reconciliation, and integration efforts in the Western Balkans. With all its complexity and perplexity, it poses numerous challenges for the Republic of Serbia as well. For almost three decades, the Republic of Serbia has made considerable efforts to deal with the issue of missing persons through the creation of an adequate legal and institutional framework, both internal and external. This article deals with an international institutional structure created for international cooperation in this field, the International Commission on Missing Persons (ICPM). Its roots, the context of constitutionalization, structure, jurisdiction, and activities will be analyzed and explored. As to preliminary issues, the pertaining obligations of the Republic of Serbia under international law will be briefly displayed.

Keywords: International Commission on Missing Persons, Former Yugoslavia, International Committee of the Red Cross, International Humanitarian Law, ICTY.

INTRODUCTION

War or armed conflict — the moniker used in modern International Humanitarian Law (IHL) treaties — is a multifaceted threat to individuals, groups, nations, and the international community as a whole. Some of its

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consequences are immediate: battle deaths, wounds, starvation, deprivation of basic existential needs, and forced migrations. But some of them may be felt long after the conflict is over. They affect entire generations of individuals long after the original stimulus is gone: permanent debilitating disabilities, psychological impact, and the destruction of productive facilities. Among those consequences that are imminent and persistent, individual as well as collective, the phenomenon of those whose fate is not known causes the same or the worst trauma. On an individual and family level, it is the source of persistent pain and horror, and it precludes the start of the mourning process. On the level of communities, it is an obstacle to the reconciliation process, contributing to the decrease in confidence in authorities and breeding hatred. The imminent and persistent consequences of armed conflicts during the 1990s that can be traced back to the demise of the Socialist Federative Republic of Yugoslavia (SFRY) were not an exemption in that respect. More than 35,000 people were reported missing to the International Committee of the Red Cross (ICRC). The destiny of approximately 10,000 of them is still uncertain (ICRC five-year strategy on the missing in the former Yugoslavia).[1] For almost three decades, the Republic of Serbia has made considerable efforts to deal with the issue of missing persons through the creation of an adequate legal and institutional framework, both internal and external. Nevertheless, conflict-related disappearance, with all its complexity and perplexity, still poses numerous humanitarian, as well as political and legal challenges. It is worth noting that the issue of missing persons is an important element of the bilateral dialogue between the European Union (EU) and Serbia, as well as Bosnia and Herzegovina. The dialogue takes place in the framework of the sub-committee on Justice, Freedom and Security under the Stabilization and Association (SA) Agreement and at the political level under the SA Committee and SA Council. EU delegations in the region regularly monitor the implementation of the obligations stemming from International Law, primarily from International Humanitarian Law (IHL), and this is done in close cooperation with the International Committee of the Red Cross (ICRC) and the International Commission on the Missing Persons (ICMP) (Working Party of Public International Law (COJUR), Report on the EU guidelines on promoting compliance with international humanitarian law, 2021, pp. 11, 17.). Having that in mind, the pertaining obligations of the Republic of Serbia under international law will be briefly displayed as a preliminary point.

[1] According to the ICMP the total number of conflict-related disappearance is 40 000.

INTERNATIONAL HUMANITARIAN LAW AND THE CONFLICT-RELATED DISAPPEARANCE

International humanitarian law deals with conflict-related disappearances through a comprehensive and complex body of rules (Knežević-Predić, 2007a). It dates back to the Hague Conventions (1899 and 1907) and the Geneva Convention of 1906, pertaining to the individual identification and exchange of information on prisoners of war and wounded soldiers.[2] During the first half of the XX century, the focus on missing combatants shifted to the other categories of war victims. The Second World War brought attention to civilians, who increasingly became victims of war. To respond to that fact, the Diplomatic Conference convened in Geneva in 1949 adopted the Convention (IV) relative to the Protection of Civilian Persons in Time of War, providing, *inter alia*, for the provisions dealing with missing civilians in the occupied territories (Article 26). The 1974-1977 Geneva Diplomatic Conference that led to the adoption of two Additional Protocols to the Geneva Convention (AP I and AP II) further improved the body of rules pertaining to conflict-related disappearances (Knežević-Predić et al., 2007b). First of all, the participating states did not hesitate to reveal the ratio inspiring all the novelties: "To mitigate the suffering of the families of those who disappeared in war by removing the uncertainty about their fate and to give them an opportunity to remember their dead in the place where their remains lay was a fundamental humanitarian principle" (ICRC, Commentary on the Additional Protocol I, Article 32, Para. 1196). The ratio got its legal expression in the form of the right of families to know the fate of their relatives in article 32 of AP I. The participants made it clear that the provision of Article 32 invests no enforceable individual right in the members of the missing person's family. It has also not affected the person's right to know his or her fate as a party to the conflict.[3] As Marco Sassoli concludes, "Persons are considered

[2] Articles 14 and 19 of the Hague Regulations respecting the Laws and Customs of War on Land annexed to the Hague Convention II of July 29, 1899, and the Hague Convention IV (Convention for the Pacific Settlement of International Disputes of October 18, 1907). Article 3 and 4 of the Convention for the Amelioration of the Condition of the Wounded and Sick in Armies in the Field provide for measures to search for the wounded, protect them, and to exchange information between belligerents on the wounded and on internment and transfers.

[3] The Commentary to the Additional Protocol suggests that the right to know is a shared right but that priority should be given to the right of the family. For the legal character of the right to know, see the ICRC, Commentary on the Additional Protocol I, Article 32, Paras. 1197-1203, 1211-1216.

missing if their relatives, the power on which they depend (in the case of combatants), or the country of which they are nationals or in whose territory they reside (in the case of civilians), have no information on their fate" (Sassoli, 2019, 339). The wording of article 32 AP I also specifies the entities upon which the obligation regarding the missing and dead persons is vested: parties to the conflict, contracting parties, and international organizations.

As the Commentary to the Additional Protocol I informs us, the drafters of the Protocol deliberately applied the rather vague expression "international organizations" to cover all international forms of organizations active in the field, both intergovernmental and non-governmental (ICRC, Commentary on the Additional Protocol I, Article 32, Paras. 1208-1210). On the other hand, Article 33 of AP I, devoted to the obligations of the parties to the conflict, aimed "to extend the obligation to search for missing persons to embrace also persons not covered by the Conventions, and on the other hand, to reinforce the duty to furnish and exchange information on the missing and the dead in order to facilitate the search for them" (ICRC, Commentary on the Additional Protocol I, Article 32, Para. 1222). The article itself provides that: "As soon as circumstances permit, and at the latest from the end of active hostilities, each Party to the conflict shall search for the persons who have been reported missing by an adverse Party. Such adverse Party shall transmit all relevant information concerning such persons in order to facilitate such searches". Paragraph 2 of Article 33 defines a particular regime for all those who do not receive a more favorable regime under the Conventions and Additional Protocol I, i.e., prisoners of war, wounded, sick, shipwrecked, interned or detained persons. It includes the obligation of the party to the conflict to (a) record information in respect of missing persons who have been detained, imprisoned or otherwise held in captivity for more than two weeks as a result of hostilities or occupation, or who have died during any period of detention; and (b) facilitate, to the fullest extent possible, and if need be, carry out the search for and recording of information concerning such persons if they have died in other circumstances as a result of hostilities or occupation. The information should be exchanged directly or via an intermediary (Protecting Power, the Central Tracing Agency of the ICRC, or national Red Cross (Red Crescent, Red Lion, and Sun) Societies. The missing persons could be dead or alive. Once their faith is ascertained, they enjoy the protection that the IHL provides for the category of protected persons they belong to (Boutruche, 2009, Paras. 1-25; Kleffner, 2008, pp. 337-339). Additional Protocol II to the Geneva Convention, applicable in non-international armed conflicts, lacks explicit provisions pertaining to missing persons. Nevertheless, the parties to a non-international conflict are obliged

to account for persons reported missing and to provide their family members with any information they possess on their fate on the basis of customary law (ICRC, Study on customary international humanitarian law, Rule, p. 117).

THE INTERNATIONAL COMMISSION ON MISSING PERSONS

The origins, early work and context

The previously described legal regime was in force when the armed conflicts on the territory of the Socialist Federative Republic of Yugoslavia (SFRY) broke out in 1991. Having in mind that the SFRY was a State Party to the Geneva Conventions and the Additional Protocol I and that it was obliged via customary law, the parties to the conflict had not only a moral but also a legal obligation to take care of the persons missing because of the conflict. However, this obligation did not materialize. After the conflict was over, a number of missing persons were accounted for, and the states that came into being after the dissolution of the SFRY could not fulfill their international obligations in this regard. In such circumstances, the international community, reflected in the leading role of the United States of America (US), headed what was to become an initiative for the establishment of a specialized organization that should support the endeavors to search for the missing. At the meeting of G7 states in Lyon in 1996, the United States president, Bill Clinton, proposed the creation of an international Blue Ribbon Commission on the Missing in the Former Yugoslavia. The establishment of the Commission was put in the context of the cooperation of parties to the Dayton Peace Agreement, and its primary and overall task was to secure such cooperation through "locating the missing from the 4-year conflict and to assist them [the state parties to the Dayton Agreement] in doing so" (Administration of William J. Clinton, June 29, 1996, Statement on the Blue Ribbon Commission on the Missing in the Former Yugoslavia, p. 1159). Cooperation between the parties in this matter was of the utmost importance, having in mind that "there is virtually no aspect of the missing person's effort that does not depend upon the active and/or passive cooperation of the parties" (Blue Ribbon Commission on the Missing, Concept Paper). The pivotal role of the US in the creation of the Commission is seen in several aspects. As for the financial aspect, President Clinton pledged that "the United States will make a startup contribution of $2 million" (*Ibidem*). Moreover, President Clinton appointed the former Secretary of State, Cyrus Vance, as the chairman of the Commission. As the

blue ribbon moniker in the name of the Commission pointed out, it would "be made up of distinguished members of the international community." (*Ibidem*). Sarajevo, the capital of Bosnia and Herzegovina, was established as the seat of the organization.[4] While the overall task conferred on the Commission was clear — to secure the cooperation of stakeholders in the process of location and identification of the missing persons in the former Yugoslavia — the means through which to achieve this task could vary. From the original contours of the Commission's tasks, it was clear that it was based on a two-pirogue approach: the first one was to enable scientific support in the process of identification of the remains of the missing persons; and the second one was to establish strong roots in the local community through outreach initiatives, specially oriented to relatives of the missing persons (Juhl, 2009, pp. 257-258). The actual work of the Commission in these early days is not easy to track. On October 11, 1996, the ICMP held its initial meeting in Geneva; "during the fall of 1996, the ICMP established an office in Sarajevo, and in late November, the Chairman and some members paid a first visit to the region (Commission on Human Rights, 1997, Paras. 47-48); while the first full meeting was held in Zagreb on March 21, 1997 (Nowak, 1998, p. 120). In November 1997, a new chairman was appointed — US Senator Robert (Bob) Dole. On that occasion, Secretary of State Madeleine K. Albright pointed out that under the leadership of Vance, the Commission's work has resulted in "the release of illegally held prisoners, the exchange of records that reveal the fates of hundreds of individuals, efforts to find and identify human remains throughout Bosnia, and support for the families of the missing and the organizations that they have formed." (Press Conference at the Department of State Washington, D.C., November 7, 1997). As for the legal status of the Commission, it became a bit clearer after the conclusion of the international agreement with Bosnia and Herzegovina — on April 26, 1998, Dole signed the Headquarters Agreement between ICMP and the Council of Ministers of Bosnia and Herzegovina. This Agreement marked the beginning of the regulation of the legal status of the Commission, albeit in the national legal framework. The Agreement explicitly stated that "the status of the ICMP shall be comparable to that of an intergovernmental organization" (Headquarters Agreement, 1998, Article 1) and that "the ICMP shall have juridical personality". Bosnia and Herzegovina recognizes that the ICMP has the capacity to contract

[4] It is interesting to note that the Concept Paper on the Commission proposed that the seat of the Commission be in the US, in either Washington or New York.

obligations, institute legal proceedings, and acquire rights, and to acquire and dispose of movable and immovable property" (Headquarters Agreement, 1998, Article 2). While the Headquarters Agreement confirmed the international organization features of the ICMP, these features were based on the domestic legal personality in the law of Bosnia and Herzegovina, which proved to be an obstacle when the Commission started to expand its work.[5] In the early days of the ICMP, it was clear that it focused its work on the territory of Bosnia and Herzegovina. From 1999, the Commission focused its work also on Kosovo; the ICMP opened an office in Belgrade, Serbia, in March of 2001; in Zagreb, Croatia, on April 2, 2001; and signed an agreement with Macedonia in 2003, thereby truly encompassing the whole of the territory of its title. In material terms, it was also clear that the Commission put emphasis on the scientific part of its work. In that regard, it quickly established the "DNA-led" approach to DNA identification of the missing on a very large scale" (Parsons et al., 2019, p. 237). In order to implement its DNA-led approach, the ICMP established "(a) a network of Family Outreach Centers to collect blood references from living family members; (b) DNA laboratories to extract and test DNA from bone and blood specimens; and (c) training for local scientists in state-of-the-art DNA identification technology" (Huffine et al., 2001, p. 273; Annual Report of the ICTY, 1996; Cordner & Mckelvie, 2002; Commission on Human Rights, 1997).[6] The ICMP came to be in the ambit of the conflict in which many other international actors were already involved. In that context, the ICMP needed to position itself amid already functioning actors, among which of special importance in this regard were the ICRC and the International Criminal Tribunal for the former Yugoslavia (ICTY). The special role of the ICRC in dealing with the missing persons was provided in Article V, Annex 7 of the

[5] From this characterization, the following legal consequences were also determined: the immunity and inviolability of ICMP premises, property and assets; regulation of financial resources, taxes and charges; status of international staff as international civil servants and in accordance with the Vienna Convention on Diplomatic Relations; comparable status of ICMP members, advisors, and experts on temporary mission; freedom of movement; cooperation; freedom to display emblem; and freedom to cooperate with the government authorities.

[6] At the beginning of the ICMP work, the forensic expertise was offered by the Physicians for Human Rights (PHP), a US-based non-governmental organization that uses its scientific expertise and investigations to document evidence in cases of severe human rights breaches. Physicians for Human Rights were also included in the work of the ICTY in the gathering of the relevant evidence for the Prosecutor's Office.

Dayton Peace Agreement, which stated that "The Parties shall provide information through the tracing mechanisms of the ICRC on all persons unaccounted for. The Parties shall also cooperate fully with the ICRC in its efforts to determine the identities, whereabouts, and fate of the unaccounted for". The ICRC was, and still is, involved in the process. Throughout the years, the ICRC has developed a wide array of different mechanisms to address the issues of missing persons in general (Sassoli, Tougas, 2002) and in the Western Balkans in particular (Commission on Human Rights, 1997; ICRC five-year strategy on the missing in the former Yugoslavia, 2020). However, the role of the ICRC had one important intrinsic limitation when it came to collecting and using evidence in criminal procedure. Namely, the evidence that the ICRC gathered in individual cases could not be used in potential trials (Sassoli, Tougas, 2002, p. 745; Rona, 2002, p. 207). This was an important limitation, having in mind the judicial accountability that was strived for in the case of the former Yugoslavia conflicts and that was put in the limelight by the creation and promotion of the work of the ICTY. Wagner explains that the "two primary instances of international intervention have dominated post-war Bosnia's reparation politics and effort aimed at transitional justice: the proceedings at the ICTY (…), and the identification process led by ICMP" (Wagner, 2010, p. 28). The interlinkage between the ICMP and the ICTY was evident from the very beginning. On the occasion of taking the post of Chairman of the Commission in 1997, Senator Dole stated: "So, in my view, the work of the Commission can also play an integral part in facilitating the work of the War Crimes Tribunal. Mr. Chairman, I'll look for new ways in which the work of the Commission can complement the work of the Tribunal" (Press Conference at the Department of State Washington, D.C., November 7, 1997). And in the years to come, the ICMP and its DNA-oriented approach did complement the work of the ICTY, which was most apparent in the following cases: *Haradinaj et al, Popović et al, Tolimir, Mladić,* and *Karadžić* (Vanderpuye and Mitchell, 2020, pp. 215-218; Fournet, 2020). In these cases, the ICMP "provided scientific methodology reports, archaeology and anthropology reports, DNA match report lists, selected DNA case files … and expert witness testimony" (Parsons et al., 2019, p. 241).

The expansion and the constitutionalization

The ICMP has slowly but firmly started to expand, both in territorial and material scope. Regarding the material scope, the Commission started to be included in the work not only strictly related to armed conflicts. This change

went hand in hand with the further widening of the territorial scope. "In the aftermath of the terrorist attacks on the United States in 2001, he (*the Chairman, James V. Kimsey*) deployed the Commission's DNA experts to assist in the identification of remains found at Ground Zero" (Westpoint, Distinguished Graduate Award, 2008). In the years to follow, the Commission was also involved in: "Efforts after the fall of the Saddam Hussein regime in Iraq in 2003 to begin locating and identifying people missing for decades; the Asian Tsunami in December 2004; Hurricane Katrina in the United States in 2005; efforts in Colombia in 2008 and after the Peace Agreement of 2016 to help coordinate the location and identification of persons who went missing since the early 1960s; efforts in Chile to begin locating and identifying those who went missing during almost two decades of authoritarian rule; and efforts to begin locating and identifying missing persons in Libya following the violent collapse of the 42-year long Gaddafi regime in 2011" (ICMP, 2022). Other indicators of the Commission's abundant and versatile work are also seen in the fact that the Commission lost its link with the former Yugoslavia in its title in 2003-2004 (Agreement on the Status and Functions of the International Commission on Missing Persons, 2014), as well as in the international treaties it signed with different stakeholders: the International Criminal Police Organization – INTERPOL in 2007, the International Organization for Migration in 2013, and the Office of the Prosecutor of the International Criminal Court in 2016. This amplification of the Commission's work clearly pointed out the need for the regulation of its international legal status in a uniform manner and not in the form of a patchwork of bilateral agreements with interested parties. The multifaceted expansion revealed the need to constitutionalize the ICMP as a genuine international organization. The first attempt at constitutionalization was rather short-lived and unsuccessful. The US Secretary of State, Collin Powel, was credited as the one who moved forward the work of the Commission. In 2002, at the Board of Commissioner's meeting in Washington, he said that "The Commission has created a capacity that goes well beyond Bosnia and Herzegovina (…). Our challenge now is to translate that progress into a lasting change in the Balkans and throughout the world" (U.S. Secretary of State Colin L. Powell Attends ICMP Board Meeting). For that purpose, a working group with representatives from the United States, the United Kingdom, the Netherlands, Denmark, and Pakistan was formed (HM Queen Noor, 2015, p. 4). However, it seems that the group did not have any substantial success until 2004, when Powel was succeeded by Condoleezza Rice, who, however, did not share the support for the ICMP work. Her Majesty Queen Noor of Jordan, one of the ICMP Commissioners

since 2001, stated that in 2005 she received notice from the US that they do not support the "proliferation of international organizations". HM Queen Noor also hinted that the wariness towards such proliferation rests on financial and political issues (related to the issue of state sovereignty), but also on the stance that international organizations as bureaucratic structures are redundant and costly (HM Queen Noor, 2015, p. 4). Be that as it may, in the case of the US, the fact that the state which initially established the ICMP stepped back from the process of strengthening the legal personality and capacity of the organization meant that all other states stepped back as well. The second and most successful attempt at the Commission's constitutionalization was led by the Netherlands and the United Kingdom, and it began in 2013. As Blokker notes, the ICMP was created as an international organization only when "a number of governments became convinced that ICMP needed this international status in order to be able to perform its functions effectively in a growing number of countries, including countries that are unstable or are recovering from an armed conflict" (Blokker, 2016, 33). He pointed out the ICMP as an example of a new international organization that was created because "the new area for international cooperation is not or not yet covered by existing organizations, or when it is decided that focused cooperation in this field is so urgent that it needs a separate, visible institution of its own" (*Ibidem*). However, even when the ICMP was constitutionalized as an international organization, it had distinct features. The idea behind the process of inaugurating the ICMP as an international organization was to establish a "light but efficient modern international organization" (HM Queen Noor, 2015, p. 5). This characterization is probably crucial both for the understanding of the success of this second attempt as well as for the understanding of the content of its constituent document — the Agreement on the Status and Functions of the International Commission on Missing Persons (the Agreement), which was concluded on December 15, 2014, between the Netherlands, the UK, Sweden, Luxembourg, and Belgium.[7] It could be said that the "lightness" of the organization is reflected in the arrangements for its financing (it was agreed that the Commission's work would be based on voluntary contributions) and in the fact that the Commission "does not entail new international commitments in respect of missing persons" (*Ibidem*). Article I of the Agreement leaves no doubt as to the legal status of the Commission — it is

[7] While Belgium did sign the Agreement on December 15, 2014, it has still not ratified it.

an international organization with full international legal capacity and enjoys such capacities as may be necessary for the exercise of its functions and the fulfillment of its purposes (Agreement, Article I). While this provision is clear in its terms, it is not that often in practice that those constituent documents of international organizations actually entail such unambiguous statements about the legal personality. Namely, "most constitutions of international organizations lack explicit provisions on legal personality under international law" (Schmalenbach, 2020, Para. 20). While the Agreement entails the explicit legal personality of the ICMP, it also stresses that that personality is functional and that it rests on the functions and purposes of the Commission. This international legal capacity is further underpinned by the Powers of the Commission enumerated in Article VI and in the Headquarters and International Agreements which it can sign according to Article VII. The Membership of the organization is open only to States (Article IX), and there are no special requirements in that regard. Any State Party can also withdraw from the organization, unilaterally. Current State Parties to the Agreement are Luxembourg, the Netherlands, Sweden, the United Kingdom, Serbia, Afghanistan, Chile, and Cyprus, while Belgium and El Salvador signed but did not ratify the Agreement. It is evident that the number of state parties to the ICMP Agreement is not abundant, and therefore it is even more notable that the Republic of Serbia is one of the state parties. Namely, Serbia signed the Agreement on December 16, 2015, and ratified it on July 21, 2017. The Agreement was implemented by the Serbian national law, and on that occasion, the reasons for Serbia's inclusion in the Agreement were stated. It was underlined that the support of the ICMP regarding the resolution of the missing persons' problem in Serbia is of great importance, especially having in mind that the remains of a large number of missing persons are not in the territory of Serbia and that Serbia has made pertaining to several states in the region. Moreover, the active participation of Serbian representatives in the ICMP could be used in order to hinder the politization and the misuse of this, in essence, humanitarian but very sensitive issue (Proposal for the Law on Confirmation of the Agreement on the Status and Functions of the International Commission for Missing Persons).

CONCLUSIONS

Dealing with conflict-related disappearances is a difficult process fraught with technical, practical, financial, logistical, and, not least, political stumbling blocks. Its success depends upon the receptiveness of the parties to the conflict. The parties to the conflict continue to bear primary

responsibility for granting family members the right to know the fate of missing persons. Success also presupposes the presence of a minimum of structured authorities that are able and willing to gather information in the field and inform relevant authorities. Unfortunately, those assumptions are not always fulfilled during and after armed conflict, and the engagement of external actors is needed. For the 1990s war in the former Yugoslavia, the traditional actor in that regard – the ICRC – did not suffice. It was not only due to the ICRC's limited resources; it was also due to the inherent limitations reflected in its solely humanitarian mandate, which was founded on the principles of impartiality, neutrality, and confidentiality. In order to support not only humanitarian goals in the search for the missing but also the internationally broadly accepted policy of accountability of those responsible for massive atrocities, as reflected in the work of the ICTY, a new actor was needed. Therefore, the ICMP evolved from the top-down and not from the bottom-up. The paternalistic decision to establish the ICMP lacked explicit provisions on its goals, competences, institutional framework, legal capacity, and legal personality. This vague legal framework enabled the ICMP to develop in practice a wide range of goals and activities that went beyond the humanitarian field, strictly speaking, but which perfectly fit with the emerging concept of the international criminal judiciary and transitional justice. This perfect fit was coupled with the proven and praiseworthy expertise in forensics that was the solid basis for the long and troublesome, but finally successful process of ICMP's evolution toward a full-fledged international intergovernmental organization with strong legal capacity and legal personality in international law. And, perhaps more importantly for the Republic of Serbia, the explanation for its ongoing presence and significant role in the Western Balkans. According to the European Commission, the most important issue to be resolved in the Western Balkans is conflict-related disappearances (European Commission Serbia Report, 2021, p. 76).

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THE APPROPRIATION OF HUMAN RIGHTS PROTECTION BY INTERNATIONAL ORGANIZATIONS – SERBIA AND CULTURAL RIGHTS

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Abstract: This article is principally focused on the conceptualization of international human rights protection throughout various international organizations, comprising international and regional ones. The promotion of cultural rights is to be examined from three angles: the ideological one, the operational one, and the practical one. Firstly, this article elaborates on the understanding of cultural rights within International Human Rights Law. While the concept of cultural rights is barely mentioned in the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights provides the very first elaboration of their protection on the occasion of peace, which is to be complementary or additional to the guaranteed cultural rights on the occasion of an armed conflict – International Humanitarian Law. Secondly, this article enumerates the international institutional framework rules of cultural rights protection, which smoothly follow the proliferation of international organizations. Finally, the role of Serbia, which undoubtedly contributed to the promotion of cultural rights protection implementation worldwide, is to be considered.

Keywords: International Cultural Rights, International Human Rights Law, International Humanitarian Law, National Minority Rights, Cultural Heritage, International Organizations, UNESCO.

INTRODUCTION

Cultural rights, being a subcategory of human rights within the scope of International Human Rights Law, do not have a clear definition but their

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elaboration can be found in many international instruments such as the International Covenant on Economic, Social and Cultural Rights dated 1966 (International Covenant 1966), the European Convention of Human Rights (European Convention), UNESCO's conventions on the protection of cultural heritage, the Geneva Conventions (1949) and its Additional Protocols (1977), etc. The question of culture is usually linked to a question of identity because the concept of the Nation-State seems to be the concept behind the ratio to establish the principle of national sovereignty and the concept of cultural rights seems to be the elaboration of the principle of self-determination. Both principles of Public International Law, national sovereignty and the right to self-determination, have been recognized universally by the Charter of the United Nations (UN Charter) or by various international treaties and other documents of universal value. Moreover, the proliferation of international organizations, which came after the founding of the United Nations, somehow contributed to the elaboration of both concepts. It is not by accident that after the establishment of the United Nations agencies and programs, such as the United Nations Educational, Scientific and Cultural Organization (UNESCO), or the regional organizations established according to Article 52 of the UN Charter (its wider interpretation meaning that the maintenance of international peace and security comprises the respect of human rights as a precondition to a perpetual and lasting peace), many Member States of the United Nations tried to adopt the basic safeguards for cultural rights because culture has always been the main substance of the identity of nations. If the Universal Declaration of Human Rights (Universal Declaration) is the first universal legally binding document to mention *cultural rights*, it is to stress the difference between this new concept in comparison to a *right to culture,* which is, for instance, related to the provisions of Articles 26 and 27 of the Universal Declaration that guarantee the right to education and the right to the cultural life of a community. However, it should be noted that even if culture has its facet which is inherently related to identity, it also has its facet which is related to universality because culture is a means to have access to valid universal knowledge and to confirm universal values (Faes, 2008, p. 85). This means that the concept of cultural rights includes many rights, not just a particular one or cultural particularities. As well, this concept does not necessarily recognize unicultural or multicultural communities. However, the definition of the cultural heritage of outstanding universal value makes the difference. This definition appears under the UNESCO Convention, a Convention concerning the Protection of the World Cultural and Natural Heritage (World Heritage Convention) dated 1972. Concurrently, the birth

of new international organizations, particularly the regional ones, led to definitions of cultural rights which imply specific rights such as a right to practice language or religion and in different fields of community life, such as education, which is linked, as a concept, to a specific national or ethnic community and the concept of national minorities and indigenous peoples. The constitutions of different international organizations, which all have their own fields of mandates according to their constitutional acts, have contributed to a proliferation of international treaties which provide protection of specifically defined cultural rights. Last but not least, a valid occurrence under the auspices of the protection of Public International Law is of a group of human beings whose cultural rights are fostered by many international treaties, such as women, children, refugees, etc. Since the aforementioned agreements belong to the spheres of activity of various international organizations, they risk the possibility of conflicting applicable rules, which can further cause fragmentation of international law and legal uncertainty (Jutronić, 2020). Bearing in mind that Serbia, according to its Constitution, is a country of Serbs and all inhabitants of its territory, it is important to mention that Serbia recognizes national minorities under legally defined conditions, just in line with the national sovereignty principle and the anti-discrimination clause contained in various international treaties. It is important to analyze to what extent the positioning of Serbia within international organizations and the decisions adopted within different international organizations contributed to the elaboration of cultural rights within the scope of international law. First, this article confirms that International Human Rights Law has its roots in International Humanitarian Law, particularly with regard to a definition of cultural rights. Second, it analyzes the roles of different international organizations involved in the protection of cultural rights. Finally, this work will demonstrate how the different foreign policy actions of Serbia are to be valorized as contributions to the development of cultural rights, particularly those of national minorities, which are not universally recognized.

ESTABLISHMENT AND CONCEPTUALIZATION OF CULTURAL RIGHTS

The codification of cultural rights in a number of relevant international treaties dealing with International Human Rights Law came long after their initial recognition within Public International Law, including the acknowledgment of some rules of warfare devoted to the protection of cultural rights (basically religious rights) to be customary rules of

International Law. As it was explained in the introductory note, the recognition of some cultural rights follows the establishment of the rules of law of armed conflict among states, meaning that the first codification of the rules and customs of warfare recognized some cultural rights. The Convention with Respect to the Laws and Customs of War on Land (First Hague Convention (1899)) established the following rules and regulations for conducting an armed conflict: cultural rights of prisoners - exercise of their religion, including attendance at their own church services (Article 18), rules on the special status of edifices devoted to religion which are to be exempted from the war hostilities (Article 27), and the respect of religious convictions and liberty by the belligerents (Article 46) (Schindler, Toman, 1988, p. 69-93). However, these safeguards for cultural and religious rights at the time of conflict were not sufficient to prevent their massive violations during World War II. Similarly, the UN Charter and the Universal Declaration of Human Rights reaffirm human dignity and equality in their preambles. Further, the clause on the prohibition of discrimination, developed from the principle of equality meaning that all people are born and remain free and stipulated in Article 55 of the UN Charter, explicitly says that everyone is entitled to all the rights and freedoms outlined in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinions, national or social origin, property, birth or other status. However, the absolute anti-discrimination clause was elaborated throughout the affirmation of cultural rights. Article 18 of the Universal Declaration guarantees the right to freedom of opinion and expression; this right includes the freedom to hold opinions without interference and to seek, receive, and impart information and ideas through any media and regardless of frontiers, whereas Article 19 guarantees the right to freedom of peaceful assembly and association. Moreover, according to Article 20, "everyone has the right to take part in the government of his country, directly or through freely chosen representatives". All these rights indicate that human rights, without elaboration on specific categories of human rights, are to be protected and respected by all Member States of the United Nations.[1] However, the very specific category of cultural rights was confirmed by its enumeration in the International Covenant, adopted by the General Assembly of the United Nations Resolution 2200A (XXI), on December 16, 1966. Even if their codification in terms of economic and social

[1] The Universal Declaration was adopted by Resolution 217 A of the General Assembly of the United Nations on December 10, 1948.

rights is limited, it is worth noting that State Parties to the International Covenant recognize "the right of everyone to participate in cultural life" in Article 15.1(a). Furthermore, the State Parties are required to take steps to ensure the full realization of the protection of moral and military interests, including those required for the conservation, development, and dissemination of science and culture (Article 15). These universal or quasi-universal instruments do not explicitly define or list specific international cultural rights, but instead, leave room for State Parties to act in accordance with their national specificities in order to protect the cultural rights of their inhabitants.[2] A specific relationship between International Humanitarian Law and International Law of Human Rights reveals that not only cultural rights but the other categories of human rights initially found their conceptualization at the time of the codification of the rules of armed conflicts. In the context of the elaboration of rules of international cultural human rights law, in the case of warfare, i.e., the use of force in the settlement of international disputes, which is generally prohibited by the UN Charter, they allowed a transfer of the protection of cultural rights in the event of an armed conflict to the adaptation of their protection at the time of peace. Normally, the protection of human rights at times of peace and during armed conflicts is compatible or complementary, with a few exemptions.[3] However, the agencies of the United Nations, such as UNESCO, as well as the regional organizations, such as the Council of Europe, contributed substantively far more to the elaboration of international cultural rights protection than universally accepted documents such as the Universal Declaration and the International Covenant (Kolb, 1998, p. 410). With regard to the division of human rights into individual and collective ones, it is important to stress that cultural rights cannot be enjoyed individually because the concept of culture relates to the culture of a community. Cultural rights are broadly defined as "human rights that directly promote and protect the cultural interests of individuals and communities, and are meant to advance their capacity to preserve, develop, and change their cultural identity" (Donders, 2015, p. 3). It is to be noted that cultural rights belong, as well, to a so-called third generation of human

[2] The International Covenant on Economic, Social and Cultural Rights has 171 States Parties, in comparison to the Universal Declaration, which is universal in terms of acceptance, which further means that its provisions become part of Customary International Law.

[3] The right to life is the most debatable human right in the context of this comparison.

rights, meaning that the active role of the state is needed to be assured with regard to their implementation (Vasak, 1984, p. 839-840). This is why different conceptions of cultural rights translated into national rules of states can be observed. If the Western conception, meaning the European conception of tolerance of cultural rights *vis-à-vis* the principle of state sovereignty throughout history, gives credit to Thomas Hobbes, the translation of the respect of cultural rights in other continents than Europe lies principally in the promulgation of the principle of self-determination of peoples (Ssenyonjo, 2010, p. 37).

INTERNATIONAL ORGANIZATIONS AT THE SERVICE OF CONCEPTUALIZING CULTURAL RIGHTS

If the UN Charter (Chapter VIII) recognizes the role of regional arrangements in the promotion and maintenance of international peace and security, there are no such provisions referring to universal organizations dealing with specific fields of competence, but according to Article 57 of the UN Charter, "the various specialized agencies, established by intergovernmental agreement and having wide international responsibilities, as defined in their basic instruments, in economic, social, cultural, educational, health, and related fields, shall be brought into relationship with the United Nations" (Jutronić, 2018). As a result, these two types of international organizations, universal and regional, that deal with cultural rights require special attention. The universal organizations or organs with a mandate to promote cooperation among states in the field of culture or to promote the protection of cultural rights belong to the UN *family* of international organizations. In the aftermath of the Second World War and the creation of the United Nations, the states agreed to create UNESCO. According to the Preamble of the UNESCO Constitution, adopted in 1946, it is "created to advance, through the educational and scientific and cultural relations of the peoples of the world, the objective of international peace and of the common welfare of the mankind for which the United Nations was established" (UNESCO Constitution, 1945, p. 1). There is no mention of cultural rights as a part of the mandate or purposes of the creation of UNESCO. However, under the UNESCO mandate, many *cultural* conventions were adopted and those conventions contributed to the adoption of definitions of important concepts such as *cultural heritage,* particularly in comparison to cultural property defined by international humanitarian law, *intangible cultural heritage,* etc. For instance, the Convention Concerning the Protection of the World Cultural and Natural Heritage (World Heritage

Convention) identifies what can be considered cultural heritage and establishes the conditions for its protection (World Heritage Convention, 1972). Likewise, the Convention for the Safeguarding of the Intangible Cultural Heritage (Intangible Heritage Convention) identifies what can be considered intangible cultural heritage, but in comparison to the World Heritage Convention, in its Article 11, it makes reference to communities practicing and safeguarding their intangible cultural heritage (Intangible Heritage Convention, 2003), which implies the existence of cultural rights of specific communities to whom these practices belong. Moreover, the Convention on the Protection and Promotion of the Diversity of Cultural Expressions (Diversity of Cultural Expressions Conventions), after defining *cultural diversity*, *cultural content,* and *cultural expressions*, goes a step forward because its articles 1(h), 2, paragraph 2, and 6 affirm the sovereign rights of states to maintain, adopt, and implement policies and measures that they deem appropriate for the protection and promotion of the diversity of cultural expressions on their territory (Diversity of Cultural Expressions Conventions, 2005), which indirectly confirms that cultural rights belong to a so-called third generation of cultural rights. These provisions are significant because they both confirm and indicate the existence of different cultures on the territory of a state, which may have different content and expressions, as well as the importance of respecting the cultural rights of communities, despite the lack of explicit mention. However, none of these conventions has the mandate to deal with cultural rights themselves as particular rights. The monitoring of the protection of cultural rights in the United Nations Member States has found its place within the Human Rights Council and the United Nations Treaty Bodies.

The Human Rights Council, the successor of the Commission on Human Rights, is a subsidiary intergovernmental organ of the UN General Assembly, created to monitor the respect of human rights by the UN Member States, assure their promotion, and make recommendations to the UN General Assembly for further development of international law in the field of human rights, while recognizing human rights as a third pillar of the UN system (UN General Assembly Resolution A/RES/60/251, 2006, pp. 2-3). After the explanation in its preamble that all human rights must be treated in a fair and equal manner, where cultural rights are explicitly mentioned while taking into account national and regional particularities, the Preamble stresses that states, regardless of their political, economic, and cultural systems, have a duty to promote and protect all human rights. The Resolution in its Article 5(e) tasks "the Human Rights Council to undertake the universal periodic review of fulfillment by each State of its human rights

obligations (…), a mechanism which will not duplicate the work of treaty bodies", established in accordance with human rights conventions adopted within the UN system, among which is the International Covenant. Finally, as a department of the United Nations Secretariat, the Office of the High Commissioner for Human Rights was established with a mandate "to promote and protect the enjoyment and full realization of all rights established in the United Nations Charter and international human rights laws and treaties" (UN General Assembly Resolution A/RES/48/141, 1994, p. 3). This is how the United Nations system organized its institutional framework in order to monitor the respect of cultural rights by its member states, in accordance with existing international legal instruments in the field of cultural rights. This system can be considered universal because all member states of the UN are obliged to fulfill the same duties. However, this universal system of protection of cultural rights lacks an efficient system of legal responses to violations of cultural rights because the documents and declarations that these institutions adopt usually have moral but not legally binding strength, basically because not all states have the same understanding of cultural rights. If the anti-discrimination clause prohibits unequal treatment of any kind based on race, color, sex, language, or religion, the cultural rights system fails to qualify those different national or ethnic minorities that have or may have different affiliations with regard to culture, religion, and language. If a group of individuals have certain characteristics in common in terms of ethnicity, language, and religion, which are undeniable parts of one culture and differ from the majority of the inhabitants in one state, there is a minority that represents a national minority (Ivanov, 1998, p. 2). Moreover, the Human Rights Committee in its General Comment No. 23 underlines that "the existence of an ethnic, religious, or linguistic minority in a given State party does not depend upon a decision by that State party, but requires to be established by objective criteria" (General Comment adopted by the Human Rights Committee, 1994, p. 2). This general comment was adopted two years after the adoption of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (UN Declaration on Minorities) by the UN General Assembly. This Declaration does not define national minorities, but it does recognize people who are members of national, ethnic, religious, or linguistic minorities. This declaration lists the cultural rights which the UN Member States shall protect, such as the "right to enjoy their own culture, to profess and practice their own religion, and to use their own language, in private and in public, freely and without interference or any form of discrimination" (UN Declaration on National Minorities, 1992).

However, the UN Declaration on National Minorities does not have a legally binding force, and the definition and enumeration of concrete cultural rights to be assured by states remains at the UN Member States' disposal. Nevertheless, some legally binding provisions regarding the protection and promotion of cultural rights found their place in treaties and other documents adopted under the auspices of some regional organizations in Europe and Latin America. For the purpose of this article, which examines the role of Serbia in the promotion and development of cultural rights throughout international organizations, only regional organizations in Europe and their documents will be examined.

SERBIA AND ITS CONTRIBUTION TO THE DEVELOPMENT AND PROTECTION OF CULTURAL RIGHTS WITHIN REGIONAL INTERNATIONAL ORGANIZATIONS

The birth of the Council of Europe in 1949 has particular importance for human rights protection and promotion in the UN Member States on the European continent. With respect to cultural rights, the European Convention is significant because it elaborated through its articles specific cultural rights that States Signatories of the European Convention are bound by and it founded the European Court of Human Rights (European Court) with the jurisdiction to decide on individuals' complaints in cases of human rights violations by states but as well on complaints submitted by states against another state (European Convention on Human Rights, 1950). It means that the provisions of the European Convention are legally binding and that the violation of cultural rights by states can be sanctioned. Even if *cultural rights* are not explicitly mentioned in the European Convention, they are contained in other rights and freedoms such as freedom of thought, conscience, and religion (Article 9), freedom of expression (Article 10), freedom of assembly and association (Article 11), and the prohibition of discrimination, which lists even discrimination based on *association with a national minority* (Article 14). Furthermore, the case-law of the European Court contributed to the elaboration of the protection of cultural rights and their safeguards. However, cultural rights, such as the right to artistic expression, access to culture, cultural identity, linguistic rights, education, cultural and natural heritage, historical truth, and academic freedom, were elaborated through the case-law of the European Court. The growing importance of cultural rights before the European Court can be explained by the fact that persons and groups of people belonging to national minorities brought complaints regarding the right to maintain a minority

identity and to lead one's private and family life in accordance with the traditions and culture of that identity (Report of the European Court on Human Rights: *Cultural Rights in the case-law of the European Court of Human Rights*, 2017, p. 4).

Another important document adopted within the Council of Europe is the Framework Convention for the Protection of National Minorities from 1994 (Framework Convention), which provides the scope for Signatories to implement its provisions into a specific country's situation through national legislation and appropriate governmental policies, with a special focus on language, education, and participation rights. Even if this document is a *framework* convention and it gives a wider set of possibilities for states to protect and promote the cultural rights of national minorities, some states remain unwilling to sign it, and the Framework Convention has 39 signatories, among whom is Serbia. However, cultural rights, such as the right to artistic expression, access to culture, cultural identity, linguistic rights, education, cultural and natural heritage, historical truth, and academic freedom, were elaborated through the case-law of the European Court. The growing importance of cultural rights before the European Court can be explained by the fact that persons and groups of people belonging to national minorities brought complaints regarding the right to maintain a minority identity and to lead one's private and family life in accordance with the traditions and culture of that identity (Report of the European Court on Human Rights: *Cultural Rights in the case-law of the European Court of Human Rights*, 2017, p. 4).

Serbia's role in the development of cultural rights and their safeguarding within international organizations is significant. Besides the ratification of legally binding instruments in the field of protection of cultural rights at the universal level, such as the Universal Declaration, the International Covenant, the Hague Conventions, the Geneva Conventions and its Additional Protocols, and the UNESCO Conventions, Serbia ratified almost all relevant treaties at the universal and regional level.[4] It is also worth noting Serbia's commitment to cultural rights and cultural heritage protection, as Serbia has been a core group member of the Human Rights Council Resolution "Cultural Rights and the Protection of Cultural Heritage," which develops the link between the enjoyment of cultural rights and the

[4] "The Convention on Offences relating to Cultural Property" aims to prevent and combat the illicit trafficking and destruction of cultural property. It is adopted within the Council of Europe.

protection of cultural heritage, and which notes that the destruction or damage to cultural heritage may have a negative and irreversible impact (Human Rights Council Resolution A/HRC/33/L.21, 2016, p. 1). This Resolution as well introduces the concepts developed under the UNESCO Conventions into a work of the Human Rights Council, such as tangible and intangible cultural heritage, but also refers to International Humanitarian Law obligations of States when it mentions "unlawful military use or targeting of cultural property, or calls for enhanced international cooperation in preventing and combating the organized looting, smuggling, theft, and illicit trafficking of cultural objects and in restoring the stolen, looted, or trafficked cultural property to its countries of origin" (Human Rights Council Resolution A/HRC/33/L.21, 2016, p. 2). This Resolution clearly links the cultural rights that fall under International Human Rights Law and the protection of cultural property, which is to be protected under the Hague Conventions, the Geneva Conventions and its Additional Protocols, but it also introduces the cultural heritage defined by the UNESCO World Heritage Convention. Moreover, this Resolution invites all States "to consider becoming a party to all relevant treaties that provide for the protection of cultural property" (Human Rights Council Resolution A/HRC/33/L.21, 2016, p. 2). Moreover, besides its active role in the development of cultural rights expressed in the willingness of Serbia, as a subject of International Law, to be bound by specific duties in order to protect cultural rights, its passive role, despite the controversy on passivity when it comes to defining the role of willingness in international relations, Serbia also has an important passive role in the conceptualization of cultural rights. Namely, the Conference for Peace in Yugoslavia in 1991 contributed to the development of cultural rights within the Organization for Security and Co-operation in Europe (OSCE). Since Serbia, as a successor of Yugoslavia, was one of the signatories to the Final Act of the Conference for Security and Co-operation in Europe (Helsinki Final Act), which undoubtedly makes reference to the protection of cultural rights (Chapters VII and VIII), an active role of the European Community to mediate the negotiations between opposed parties in the conflicts in Yugoslavia imposed some new rules with regard to cultural rights, particularly the rights of national minorities. Concretely, the Declaration on the Guidelines on the Recognition of New States in Eastern Europe and the Soviet Union (Declaration), adopted on 16 December 1991 by the Council of Ministers of the European Union (European Economic Community at the time), *unprecedentedly* made a conditional connection between the recognition of states and guarantees for the rights of ethnic and national groups and

minorities in accordance with the commitments subscribed to in the framework of the Conference for Security and Co-operation in Europe (CSCE) (Caplan, 2005, pp. 93-95). Even if the recognition of (new) states is solely the responsibility of other states, one regional international organization, the European Union (EU), developed conditions for the recognition of new states in Eastern Europe, including Serbia (Yugoslavia), which included the respect of national minorities' rights. This is to reflect how one regional instrument such as the Helsinki Final Act was used and interpreted so that new standards of respect for cultural rights were applied in order to serve the political interests of other states. Even if different branches of International Law do not levitate separately, due to the presumed unity of International Law which connects them by their basic principles, it is illegitimate to impose quasi-judicial interpretations with the view of reaching a political compromise.

The equality of states implied by the principle of national sovereignty guaranteed by the UN Charter does not permit differentiation among states based on cultural rights protection criteria, and the protection of cultural rights of individuals and persons belonging to minorities cannot determine statehood. However, despite the illegitimacy of the Declaration, it served as a basis for the engagement of states to improve cultural rights protection, particularly in Serbia, which developed many legal safeguards for cultural rights and especially for the protection of cultural rights of national minorities (Nikolić, 2019, pp. 74-75). When it comes to the positive engagement of Serbia in the promotion of cultural rights, it should be noted that Serbia is preparing a nomination of "Slovak naïve painting", in order to have it inscribed on the UNESCO Representative List of the Intangible Cultural Heritage of Humanity, which unequivocally demonstrates that Serbia highly appreciates and safeguards the Slovak national minority, guaranteeing that they exercise national rights in the domains of culture, education, information, and official use of language and script. Finally, it is important to point out that there is no case against Serbia in the field of cultural rights that has been brought before the European Court in Strasbourg.[5]

[5] In the case of Milanović v. Serbia (Application no. 44614/07), the European Court, in its judgement of December 14, 2010, held that there had been a violation of Article 3 of the European Convention (prohibition of torture), but as well of Article 14 (prohibition of discrimination), taken in conjunction with Article 3 of the European Convention.

CONCLUSIONS

Since the introduction of the anti-discrimination clause, which includes religion as a potential ground of discrimination against war prisoners and belligerents in the Law of Armed Conflict, the protection of cultural rights in times of peace has been developed recently and gradually. Furthermore, its development was implemented not only throughout the International Law of Human Rights instruments but also throughout various treaties and organs dealing with concepts related to the protection of cultural rights by their nature, such as the protection of cultural heritage and the rights of national minorities, on a global and regional scale. In this sense, various international organizations have been continuously trying to foster cultural rights protection. With regard to the role of Serbia in the development of the safeguards of cultural rights, it was demonstrated how its active and passive roles within and under the auspices of numerous international organizations significantly contributed to the elaboration of mechanisms dedicated to the promotion of cultural rights, and specifically the promotion of the cultural rights of national minorities. Bearing this in mind, we should stress the devotion of Serbia to respecting cultural rights at an international level, which has unprecedentedly contributed to the protection of cultural rights at a national level. However, the case of Serbia, which is an extraordinary example of cultural rights protection, especially with regard to the countries in Europe, also serves as an example of fragmentation in international law because the phenomena of Public International Law fragmentation confirms the fact that law-making treaties are tending to develop a number of historical, functional, and regional groups, which are separate from each other and whose mutual relationships are in some respects analogous to those of separate systems of municipal law (Jenks, 1953, p. 403). The appearance of special rules whose implementation differs from the implementation of general rules on cultural rights can be detrimental to the unity of international law, as it was reflected in the case of the Declaration, and it leads to deviations and the loss of legal certainty, which is to be separately explored in other research.

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THE UNITED NATIONS SPECIALIZED AGENCY FOR EDUCATION, SCIENCE AND CULTURE (UNESCO) AND ITS ROLE IN THE PRESERVATION OF SERBIAN CULTURAL HERITAGE

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Abstract: The issue of culture, especially cultural heritage, is important for every person, every nation, and every country. Culture is also important for humanity in general. An important segment of culture and cultural heritage are specialized international governmental and non-governmental organizations and the United Nations Agency for Education, Science and Culture (UNESCO), which is aimed at promoting world peace and security through international cooperation in education, arts, sciences, and culture. The promotion of peace, which is one of the key goals of this organization, also includes the achievement of sustainable development and human rights by facilitating cooperation and dialogue between nations. This goal should be achieved through the development of education, natural, social and humanistic sciences, and the spread of culture and communication. In contemporary international relations and cultural diplomacy, in particular, UNESCO is one of the leaders in the protection of various cultural values of peoples and countries, especially their tangible and intangible heritage and cultural diversity.

As a focal point for world culture and science, UNESCO gathers almost all members of the United Nations, but also representatives of associates – internationally unrecognized territories. In the discussion that follows,

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the role of UNESCO in the protection of Serbian cultural heritage will be analyzed.

Keywords: UNESCO, Serbia, Kosovo and Metohija, culture, cultural heritage, cultural policy, diplomacy, international relations.

INTRODUCTION

The matter of culture, art, and particularly of cultural heritage is essential for an individual, yet equally so for a nation or a country. Culture, alongside art and heritage, bears universal significance for humankind. International organizations make up an important segment of culture, art, and heritage (Archer, 2011; Dimitrijević & Račić, 2011). Within them, there can be specialized agencies. These agencies can be involved in specialized activities according to their authority or various international activities, like international monitoring and projects of collaboration with a member state. Some international organizations among the specialized agencies are authorized for the preservation and protection of culture, specifically, a nation's material and non-material cultural heritage. One of the mentioned international organizations is the United Nations, which plays a key role in current international relations, especially in cultural exchange and diplomacy (United Nations, 2022a). By analogy, a specialized agency of utter importance within the United Nations is the United Nations Educational, Scientific and Cultural Organization (UNESCO, 2022a). UNESCO is headed by cultural diplomats, that is, diplomats working in cultural diplomacy as a form of soft power – as opposed to influence (Bound et al., 2007). As professor Nye said, "Soft power is not the same as influence" (Nye, 2005, p. 4; Melissen, 2005). Therefore, acting in the field of culture and using soft power, diplomats help issue far-reaching decisions both in the United Nations and in its specialized agency, UNESCO. Put differently, cultural diplomacy, as a form of soft power, is run by cultural diplomats who focus on the appeal of culture and art in their work (Nye, *Ibid,* p. 6). Let us keep in mind that cultural diplomacy is an integral part of public diplomacy and, as such, vital to every internationally recognized country that is a member of the United Nations. Official representatives on the property of ambassadors of UNESCO member states and their co-workers are working on culture and cultural heritage – in our case, the cultural heritage of Serbia. Serbian cultural heritage is most prominent in the Autonomous Province of Kosovo and Metohija. Besides its very existence, its recognition is equally important (Rogač, Mijatović, 2014, pp. 178, etc.). This is all the more because of the permanent value of the cultural

heritage of Kosovo and Metohija, which was the same in the past as it is today, and will remain so in the future. The way that cultural heritage is perceived and recognized influences attitudes, positions, and valorization. The cooperation of state officials and cultural workers with UNESCO officials is realized in the fields of 1) education, science, information and communication, as well as in the field of culture (Jović-Lazić & Nikolić, 2011, pp. 302, 307). According to Ana Jovic-Lazić and Marko Nikolić, UNESCO officials also have an important role in the protection and restoration of the cultural heritage of Kosovo and Metohija (*Ibid.,* p. 310). The best and most efficient ways of achieving one's interests in foreign relations and international politics through international organizations are diplomacy and, where allowed, diplomatic lobbying (Vasić 2015a, p. 36). "Diplomats can be involved in lobbying, (without being *de iure* lobbyists) only in international organizations" (Vasić, 2015b, p. 18). Diplomatic participation in international organizations is legal and legitimate, with all international legal rights as well as all conventional, statutory, regulatory, ethical, and professional rights, as well as corresponding duties and obligations. This is what makes the human and professional qualities of diplomatic representatives in such missions vital for success in international politics, with the right instructions from their foreign ministries, in line with the official policies of corresponding governments or parliaments, according to the representatives' mandate. Nowadays, all diplomats are also actively involved in cultural politics within international relations. A study of international cultural relations is necessary for professional, responsible action in cultural diplomacy. Among the theoreticians of international organizations and international relations, there is no consensus concerning a definition of an international organization (Šobe & Martin, 2014). Depending on the author's theoretical perspective, the concept of an international organization is defined from the standpoint of public international law or international politics. The integral elements of every international organization are: 1) States; 2) International conventions; 3) Forums; 4) Operating field of the members; 5) Special status of international legal subjectivity (authority for signing international conventions, using privileges and immunity), not held by the representatives of a trans-national organization. On the criterion of international relations theory and history, as well as that of culturology, different divisions of international organizations are present. Thus, according to the criteria of membership, organizations are distinguished as universal, regional, or particular, with special interests in action. According to the degree of authorization, organizations can be open (immediate

admission to membership) or closed (only certain countries can be admitted to full membership, provided that their diplomats are invited by representatives of the international organization). International organizations can be permanent or temporary, according to the duration. Finally, according to areas of activity, international organizations are divided into general and specialized for a specific areas of activity in international relations. Diplomacy, economic and cultural diplomacy, in particular, bear special importance in current international relations. We are dealing with the latter. Current cultural diplomacy is distinctive in two ways: a) cultural diplomacy is a means, not an aim; and b) diplomats, cultural diplomats especially, achieve their interests by engagement and influence. Based on these principles, it is necessary to define cultural diplomacy in the context of international organizations and international cultural relations. Cultural diplomacy is the strategic, planned, and concrete implementation of diplomats' influence on the decision-makers in the interest of the envoy-state.

THE SIGNIFICANCE OF THE UNITED NATIONS AS A CULTURAL CONSTRUCT FOR THE CONTEMPORARY WORLD

It is a historical and universal fact that the United Nations is not only a political but also a cultural human construct. The United Nations is undeniably an important part of contemporary human heritage. It must also be mentioned that the United Nations is the largest international political organization in the modern world. The title United Nations (UN) was first coined by the 32nd president of the United States of America, Franklin Delano Roosevelt, in the United Nations Declaration of January 1, 1942, during the Second World War (United Nations, 2022b). The United Nations Charter was signed on June 26, 1945, by fifty official state representatives in San Francisco, California. (United Nations Charter, 1945). Although Polish officials were not present at the San Francisco Conference, their representative signed the UN Charter later as the fifty-first full member state. The United Nations was officially formed as the largest international political organization at the San Francisco Conference on October 24, 1945, when the official representatives of the People's Republic of China, the Republic of France, the Union of Socialist Soviet States, the United Kingdom of Great Britain and Northern Ireland, and the United States of America verified the Charter. The Charter is the essential legal act of the United Nations. The seat of the United Nations is in New York. Accordingly, we can conclude that the United Nations is the greatest and most important

international political organization in the modern world. Nevertheless, despite some announcements, diplomatic initiatives, and attempts, there has been no thorough reform of this major international organization yet, nor of the Security Council, with new regular or temporary member states (Dimitrijević, 2009).

THE ROLE OF UNESCO IN CURRENT INTERNATIONAL RELATIONS AND ITS SIGNIFICANCE FOR SERBIA

We have already mentioned that, within the United Nations as a dominant international organization, there exist autonomous special agencies. One of those 15 is the Organization of the United Nations for Education, Science and Culture. In the organizational system of the UN, the above-mentioned specialized agency is eminent not only in the field of culture but also in education and science. The basic legal act of UNESCO is the Statute, signed by the official representatives of 37 countries on November 16, 1945, in London. (UNESCO, 2022b). The UNESCO Statute came into force on November 4, 1946, after the official representatives of 20 countries were registered. The seat of UNESCO, as a specialized agency of the United Nations, is located in Paris (France). The current Ambassador of Serbia to UNESCO is Tamara Rastovac Siamasvili (Rastovac Siamasvili, 2022).The active presence of their ambassadors in UNESCO is very significant for every member state. Their presence provides contacts, information exchange, the reassessment of positions on important matters and also influence on the final decisions on the topics, problems and issues that are on the schedule of their sessions. In this manner, the instructions of the corresponding foreign ministries of UN member states, particularly those represented by an ambassador in UNESCO, are carried out. What is the significance of UNESCO in contemporary international relations? Concisely, it is as follows: international recognition of the culture of a member state; International perception and distinction of cultural heritage as cultural capital and cultural industry; international preservation of the existing cultural heritage and protection of the endangered cultural heritage of a member state. The four most important activities in international organizations, specifically in the United Nations and UNESCO, are efforts towards the admission of one's country into full membership, acquiring an observer status or a joined membership, depending on the policy of the executive officials; performing in international cultural politics according to the diplomatic instructions of one's government through the corresponding foreign affairs ministry; activities and lobbying of ambassadors and cultural

diplomats to bring as many as possible of the material and non-material heritage onto various UNESCO lists; diplomatic engagement on the implementation of the relevant resolutions of the UNESCO officials. It is very significant that Serbia is a full-status member of the specialized agency of the United Nations organization for Education, Science and Culture. This status provides that, apart from diplomats and guests on invitation, state officials may also be present. Thus, at the 40th Session of the General Conference of the United Nations organization for Education, Science and Culture in Paris, at the third Plenary held on November 13, 2019, President of the Republic of Serbia Aleksandar Vučić talked about the Sustainable Development Program by the year 2030. In this speech, he talked about cultural heritage in the context of a nation's identity but also that of humanity. "Cultural heritage benefits national identities, while also belonging to the whole of humanity" (UNESCO, 2019). This is particularly true of the Serbian Mediaeval cultural heritage in Kosovo and Metohija, which is endangered *(Ibid.,* p. 2). At UNESCO's General Conference on November 20, 2019, Serbia became a member of its Executive Board (Executive Board, 2022). As regards this, the membership of a full-status country in the UNESCO Executive Board is limited to four years.

UNESCO AND CULTURAL HERITAGE OF SERBIA

Like other nations in the world, the Serbs also have their own culture and cultural heritage. The specific contribution of the Serbian people and Serbia to the world's heritage, as a full member of the United Nations, is in the cultural property, of which a minor part is under the protection of UNESCO. By April 30, 2022, there were 1154 cultural properties on the UNESCO world heritage list (UNESCO, 2022c). The cultural heritage of full member states of UNESCO is officially divided into four groups: the List of World Heritage; the List of World Heritage in Danger (UNESCO, 2022d); the Tentative List (UNESCO, 2022e); and the World Heritage List Nominations (UNESCO, 2022f). The cultural heritage of Serbia on the UNESCO World Heritage list includes Stari Ras with Sopoćani Monastery; Studenica Monastery; the Medieval monuments in Kosovo: Visoki Dečani Monastery, the Patriarchate Monastery of Peć, Bogorodica Lijeviška Monastery, and Gračanica Monastery. The medieval monuments in Kosovo have been on the UNESCO List of World Heritage in Danger since July 13, 2006. Cultural heritage can be at risk of destruction or misappropriation. A relevant three case-studies on Louvre, Kosovo, and Palmira, were performed by Danijela Nešić, Renata Samardžić, and Dragan Simeunović.

Visoki Dečani Monastery is the only monastery in Kosovo that is under the protection of KFOR soldiers (the Kosovo Force). In addition, it is important to mention that Kosovo is also under the international protectorate of the United Nations, based on Resolution 1244 of the Security Council, instigated on June 10, 1999, in New York (Republika Srbija i Ujedinjene nacije, 2022; UNESCO, 2022g; Nešić et. al., 2022; NATO, 1999; Security Council, 1999). Apart from the four lists of cultural heritage that are mentioned, there is the Memory of the World Register UNESCO (UNESCO, 2022h). The Memory of the World Register officially recognizes three cultural properties of Serbia: the Miroslav Gospel Manuscript from 1180, which was added in 2005 (Gospel, 2022); the Nicola Tesla Archive, which was added in 2003 (UNESCO, 2022i); and the Telegram of Austria-Hungary's declaration of war on Serbia on July 28, 1914, added in 2015 (UNESCO, 2022j). Conclusively, there are nine cultural properties in Serbia on the formerly mentioned UNESCO lists. The entire cultural heritage of Serbia should be put into the function of cultural tourism and international cultural exchange.

CONCLUSIONS

Diplomats and cultural diplomacy make an indispensible contribution to culture, cultural heritage, and cultural diversity in the present-day world. One modern, effective tool is diplomatic lobbying at UNESCO. It can be applied in discussions at the General Conferences, which meet every two years to determine UNESCO's programs of action. Also, lobbying is possible during the election of members of the Executive Board, which manages UNESCO's work and appoints every four years a Director-General, who serves as UNESCO's chief administrator. It would not be of little importance to lobby within the coalition of UN agencies and organizations whose goal is the promotion and implementation of the sustainable development goals of the world organization (the United Nations Sustainable Development Group). Any encouragement of the adoption of important resolutions for our country, such as those concerning the protection of cultural heritage in Kosovo and Metohija (but also cultural exchange and cultural tourism), should become our priority at UNESCO. Thus, as a reminder, Visoki Dečani Monastery in Kosovo and Metohija is the most valuable part of Serbian cultural heritage that is under the protection of KFOR soldiers (Kosovo forces), but officially also under the protection of UNESCO. Kosovo and Metohija are the Autonomous Province of Serbia, which is under the international protectorate of the United Nations according to Security Council Resolution 1244. This monastery represents part of the cultural and

historical identity of Serbia, something that Serbia is known for in the world. As a result, the international guarantees provided by UNESCO for the preservation and promotion of Serbian cultural heritage cannot be overlooked; rather, they must be firm and recognized by all significant international actors.

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STATUS OF THE WORLD INTELLECTUAL PROPERTY ORGANIZATION (WIPO) IN THE UNITED NATIONS SYSTEM AND ITS COMPETENCES

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Abstract: As a specialized agency of the United Nations (UN), the World Intellectual Property Organization (WIPO) plays a key role in promoting the protection of intellectual property (IP) throughout the world and also represents a global forum for IP services and cooperation. Moreover, the WIPO strives to contribute to balanced international development but also endeavors to deal with an extraordinarily long list of related and/or transversal policy topics. Taking into consideration the tectonic changes brought about by digital transformation, the COVID-19 outbreak, the aggression of the Russian Federation on Ukraine, and rising global inequalities, the paper re-examines WIPO's role in the global context by focusing on three major issues. First, it analyses some of the WIPO's main functional and organizational features (Chapter 2), striving to distill some of its unique characteristics. Second, it turns to the question of WIPO's role in the protection of copyright (Chapter 3) and examines the scope of improvements to the international regulatory framework established by the Berne Convention. Finally, it focuses on the functioning of the WIPO-administered systems related to some major industrial property rights (Chapter 4), arguing that they are functional, user-friendly, and mainly accessible online, but also characterized by certain shortcomings, such as the "home mark" requirement and the risks of "central attack" (for trademarks), as well as cost, duration, and better implementation of the recommendations formulated by the WIPO Development Agenda (for patents).

Keywords: WIPO, UN system, international organization, intellectual property rights, copyright, trademarks, patents.

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INTRODUCTION

The entire new system of multilateral international relations established after the Second World War and, to some extent, even during its last months, largely relies on the so-called *United Nations System* (United Nations, 2022; Federal Reserve, 2022).[1] In this system, the specialized agencies of the United Nations (UN) play an important and ever-expanding role. Comprised *lato sensu* – in order to include the related organizations maintaining liaison offices[2] at the UN Headquarters – there are 17 such entities, including, among others, the International Criminal Court, the Food and Agriculture Organization, the International Atomic Energy Agency, the International Telecommunication Union, the United Nations Educational, Scientific and Cultural Organization (UNESCO), and the World Health Organization. This list also includes the World Intellectual Property Organization (WIPO), a specialized agency of the UN whose mission is to "lead the development of a balanced and effective international IP system that enables innovation and creativity for the benefit of all" and to represent "the global forum for intellectual property (IP) services, policy, information, and cooperation" (WIPO, 2022a). The WIPO is a self-funding organization and has 193 member states and 1,588 employees (WIPO, 2021), while around 250 inter-governmental and non-governmental organizations have official observer status at various meetings organized and coordinated by the WIPO. In a rapidly changing world, when the entire system dedicated to the protection of intellectual property rights (IPRs) is challenged not only theoretically and ideologically (Kinsella 2013) but also blatantly side-lined for political reasons, the role of the WIPO can be even more important and, therefore,

[1] The so-called "Bretton Woods System", established in order to set the basis of international monetary relations, was the consequence of an Agreement reached in July 1944, during a conference held in New Hampshire, United States, and attended by 730 delegates, representing 44 allied nations. Delegates to the conference have set the basis of the International Monetary Fund (IMF) and of the system nowadays known as the World Bank Group (WBG).

[2] According to the Report entitled *Liaison Offices in the United Nations System* prepared in 2007 by Gérard Biraud, a liaison office is defined "as an office established by one entity (organization, fund, or program) of the United Nations system at the headquarters location of another, to ensure the former's representation and coordination on issues and activities of common interest".

it is worth being thoroughly re-examined (Gotev, 2022).[3] Given that, despite its ever-growing complexity and the influence of digital transformation (Ćemalović, 2021), the entire system of IPR protection can still be divided into two big sections: copyright and industrial property. The role of the WIPO should be analyzed separately in those distinct fields. For methodological reasons, the subject analysis should be preceded by an overview of the main characteristics of the WIPO as a sui generis specialized agency of the UN. The author's intention is to observe all the above-mentioned elements in light of rapidly changing international relations while also dedicating attention to WIPO's role in global development. Therefore, this article will first focus on some of the WIPO's main functional and organizational features (Chapter 2), before turning to the question of its role in the protection of copyright (Chapter 3), and industrial property (Chapter 4).

THE WIPO's MAIN FUNCTIONAL AND ORGANIZATIONAL FEATURES

Even though the Convention Establishing the WIPO was signed in 1967 and entered into force in 1970, this UN specialized agency administers some important long-standing international treaties, such as, among others, the Paris Convention for the Protection of Industrial Property (signed in 1883) and the Berne Convention for the Protection of Literary and Artistic Works (signed in 1886). The two above-mentioned conventions provided for the establishment of an "International Bureau", an entity that could be seen as a predecessor of what is nowadays the WIPO. This organization is also "the world's most comprehensive source of data on the intellectual property system, [but also] of empirical studies, reports, and factual information on intellectual property" (WIPO, 2022b). However, the WIPO's most significant *differentia specifica* from many other UN agencies is the fact that it is a financially independent, almost entirely self-funding organization. This chapter shall, therefore, first focus on the sources of the WIPO's financing before turning to the questions of the

[3] According to the latest report of the International Trademark Association (INTA), numerous disturbances in the functioning of the entire system of IPR protection have been observed in Russia, while on March 7, 2022, the Government of the Russian Federation decided that IPRs should not be paid to patent holders from "unfriendly countries".

organization's governance and functioning. The WIPO's main source of financing is the fees paid by legal or natural persons intending to acquire various IPRs through the systems of international registration or deposition administered by the organization, such as, for example, the Madrid System (for trademarks) and the Patent Cooperation Treaty (for patents). Many of those fees can also be paid online, through the system WIPO pay.[4] The WIPO's financial autonomy due to fee incomes undoubtedly defines its overall functioning, while some authors have questioned whether the organization can "continue to use income surpluses in the manner to which it has become accustomed given the shaky legal justifications on which such expenditures rest [mainly because] much of the WIPO's current financial and governance arrangements rest on *de facto* rather than *de jure* foundations" (Heath, 2020, pp. 340-341). However, it remains to be seen to what extent the WIPO's income and expenditures have been impacted by the COVID-19 breakout, but also if and how the aggression of the Russian Federation on Ukraine will reshape the world's economy, as well as the existing systems and practices of international IPR protection. In the current state of affairs, the WIPO undoubtedly remains "the UN's most successful self-financing organization (also facing) a range of governance challenges that arise from these unique financial arrangements" (Birkbeck, 2016, p. 3). While the observation related to "shaky legal justifications" for expenditures seems to be somewhat excessive and summary, it is certainly true that, in some aspects of its functioning, the WIPO remains the victim of its own financial success. The overall governance of the organization is defined by the Convention Establishing the WIPO (WIPO Convention), but it also includes a complex scheme of governing and consultative bodies and organs related to the Unions administered by the WIPO. The main decision-making and policy bodies of the organization are the 22 assemblies (one of which is the WIPO General Assembly – GA) and the Coordination Committee (CC). Moreover, any WIPO's governing body is entitled to constitute permanent committees, while the GA can establish *ad hoc* standing committees in order to treat a specific issue within the organization's scope of competence. Any state having membership status

[4] Apart from the Madrid System and the Patent Cooperation Treaty, WIPO Pay enables online payments for the Lisbon System (geographical indications), the Alternative Dispute Resolution mechanism, the Domain Name Dispute Resolution mechanism, and WIPO Academy.

in any of the Unions administered by the WIPO has the right to have a representative in the General Assembly. According to the WIPO Convention, "the Government of each State shall be represented by one delegate, who may be assisted by alternate delegates, advisors, and experts" (Art. 6-1b), while the expenses of national delegations are borne by their governments. Each state has one vote in the GA, while the working quorum is one-half of all member states. Of the ten competences of the GA enumerated in Article 6-2 of the WIPO Convention, some are related to the functioning of other bodies and entities of the organization (the right to appoint the Director General and to approve her/his report; the competence to review and approve the reports and activities of the Coordination Committee); while the others concern various administrative and financial issues (measures related to the administration of the international agreements; adoption of the "budget of expenses common to the Unions"; adoption of the internal financial regulations; and the right to determine the working languages of the Secretariat). Even if, to a certain extent, the WIPO's CC may look like the organization's executive branch of power, its competences (defined by Art. 8-3 of the WIPO Convention) are more advisory and preparatory than *stricto sensu* decision-making. For example, the CC advises other organs (of the Unions and the WIPO) "on all administrative, financial, and other matters of common interest either to two or more of the Unions, or to one or more of the Unions and the Organization" (Article 8-3i). In a similar vein, the CC prepares the draft agenda of the GA, as well as the draft agenda and the draft program and budget of the Conference. Most of the operational competence of the CC is related to the nomination of the candidate for the Director General and the appointment of the Acting Director General. With its main constitutive, legal, and functional features, the WIPO has all the major characteristics of a typical international organization. As some authors have rightfully summarized, it "was founded by an international treaty, its membership comprises states, it has a secretariat (…), the plenary organ (…), and can be said to possess international personality" (Duxbury, 2020, p. 46). However, apart from its quasi-total self-financing status already mentioned above, what distinguishes it from practically all other classical international organizations – including the other UN specialized agencies – are the following two features. First, the organization is, on the one hand, in its healthy mid-fifties, given that it was formally established by a treaty signed in 1967, but, on the other hand, through a complex organizational structure, it administers Unions established by the conventions signed

almost a century and a half ago. Second, apart from its main mission to assure the protection of IPRs, the WIPO endeavors to deal with an extraordinarily long list of related and/or transversal policy topics, such as, among others, global health, climate change, economics, and frontier technologies. All the above-mentioned policy topics, as well as some others, are also enumerated on the WIPO's website, in the list of "other policy topics" related to the policy in the field of intellectual property taken *stricto sensu*. It is very likely that, with digital transformation and other phenomena related to the 4th industrial revolution, this list will progressively become longer. Finally, when it comes to the disturbances in the international IP system caused by the aggression of the Russian Federation on Ukraine, the WIPO's reaction was relatively swift but, according to the *Statement of Provisions Potentially Applicable to WIPO Global IP Services Regarding Ukraine and the Russian Federation*, has been limited to the invocation of some potentially applicable provisions already adopted in the framework of the Madrid System (Rule 5 and 5*bis*(1) of Regulations) and the Patent Cooperation Treaty (PCT Art. 48 and Rules 26*bis*.2, 49*ter*.1, 49*ter*.2, 49.6 and 82*bis*) (WIPO, 2022c).

THE WIPO'S ROLE IN COPYRIGHT PROTECTION

On the international level, the legal basis of copyright protection is established by the Berne Convention for the Protection of Literary and Artistic Works, signed in 1886 and amended in 1979. Apart from the Paris Convention, the Berne Convention is the oldest international treaty administered by the WIPO. This treaty introduces the common minimum standards of protection in three important aspects: 1) nature of the works to be protected; 2) rights stemming from that protection ("copyright", also known under the term "author's rights"); and 3) duration of the protection.[5] In addition, this Convention sets some basic principles of copyright protection, of which the most important is the so-called

[5] According to a general rule, each party to the Convention should, in the context of its own national legislation, grant the protection that lasts during "the life of the author and fifty years after his death" (Art. 7-1). There are, however, certain exceptions, like, for example, in the case of works of applied art and photographic works, for which "it shall be a matter for legislation in the countries of the Union to determine the term of protection [but] this term shall last at least until the end of a period of twenty-five years from the making of such a work" (Art. 7-4).

principle of non-formal, automatic protection of whatever work defined as "literary or artistic" by its Article 2-1. So-called "automatic protection" effectively means that, unlike in the case of various types of industrial property rights, "the enjoyment and the exercise of (author's) rights shall not be subject to any formality" (Art. 5-2). This is particularly important in light of the fact that the overwhelming majority of "scientific, academic, literary or artistic works is (…), by nature non-material, intangible, even if they can often be followed by important material outcomes, such as a sculpture, a painting, a sheet of music or a book" (Ćemalović, 2020, p. 150). For this particular reason, the Berne Convention allows its signatories an important exception to the principle of "automatic" protection of an author's rights: national legislation is entitled not to grant the protection for some "specified categories of works (…), unless they have been fixed in some material form" (Art. 2-2). As for the administrative tasks regarding the Union established by the Berne Convention, they are performed by a unified[6] International Bureau.

Taking into consideration that, in many aspects, the Berne Convention is not adapted to the realities of the 4th industrial revolution and digital transformation, the 1996 Diplomatic Conference has given birth to two important treaties. First, the WIPO Copyright Treaty (WCT) has introduced two important new subject matters to be protected by copyright: 1) computer programs; and 2) compilations of data or other material (so-called "databases"). Second, the WIPO Performances and Phonograms Treaty (WPPT), another international agreement signed the same year under the auspices of the organization, covers the rights of performers and producers of phonograms, intending to adapt them to the digital environment. However, given the rapid technological development, both the WCT and the WPPT nowadays require some important amendments and improvements in order to cover issues such as, for example, online content-sharing services and fair remuneration of authors and performers.[7] The two copyright-related international

[6] According to Art. 24-1a) of the Berne Convention, the International Bureau "is a continuation of the Bureau of the Union united with the Bureau of the Union established by the International Convention for the Protection of Industrial Property". This International Bureau can be considered as a predecessor of today's WIPO.

[7] On the level of the European Union, these two issues are covered by a recently adopted Directive 2019/790 of April 17, 2019, on copyright and related rights in the Digital Single Market.

agreements have been adopted at a very early stage of the development of the Internet, and "the current international copyright agenda deals with the remnants of what was a very promising – and, for an international organization, a very early – start in tackling or in addressing this question in the holding of the 1996 Diplomatic Conference" (Ginsburg, 2011, p. 2). Judging by the organization's activity over the past ten to fifteen years, the WIPO strives to raise awareness of the need to adapt the existing regulatory framework to new realities and challenges. For this reason, it permanently organizes conferences on various topics, including those relevant to copyright protection in the digital environment.[8] Those events gather the representatives of states, civil society, rights holders and scholars, and often produce significant and applicable recommendations, but rarely engender legally binding documents.

THE WIPO'S ROLE IN THE PROTECTION OF INDUSTRIAL PROPERTY

The notion of industrial property encompasses various IPRs whose quintessence is that they grant the right holders a time-limited monopoly to use the object of right (for example, an invention or a sign used in trade) after fulfilling a number of formal criteria.[9] Taking into consideration, on the one hand, the variety of industrial property rights (patents, trademarks, designs, geographical indications, etc.) and, on the other hand, the limited space, this chapter will focus on the WIPO's role regarding the Madrid System (for registering and managing trademarks) and the Patent Cooperation Treaty (allowing to seek patent protection internationally). What is nowadays known under the common designation "Madrid System" is the consequence of a long and laborious international cooperation, initiated by the Madrid Agreement Concerning the International Registration of Marks (Madrid Agreement), concluded in 1891 and amended in 1979. The most significant practical feature of the

[8] For example, back in 2011, the WIPO organized the conference "Enabling Creativity in the Digital Environment: Copyright Documentation and Infrastructure". The objective of this event was to "present the information and findings the WIPO has gathered through a number of initiatives during the past biennium".

[9] As it has already been mentioned in the previous chapter, this is the main distinction between industrial property rights and copyright (author's rights), given that, in principle, the enjoyment of author's rights cannot be subject to any formality.

Madrid Agreement is that it allows the nationals of all contracting parties to "secure protection for their marks applicable to goods or services" by filing a single trademark application and paying only one set of fees, allowing them to acquire protection in up to 128 countries.[10] This application is filed at "the International Bureau of Intellectual Property referred to in the Convention establishing the World Intellectual Property Organization" (Art. 1(2)). However, the Madrid System is nowadays a much more complex set of tools, providing (potential and existing) trademark owners with various services, ranging from a trademark database search to application assistance, fee calculation, and portfolio management. However, the main precondition for using the Madrid System is to hold a trade mark application or a registration in a contracting party of the Protocol to the Madrid Agreement (so-called "home mark" requirement) but also to fulfill one of the following three criteria: be a national of the Protocol contracting party, be domiciled or have a real and effective industrial or commercial establishment in it. As it was rightfully underlined, "the requirement of a "home mark" creates difficulty for a person or corporation which does not have any of those links" (Przygoda, 2011, p. 75), while an international trademark registration can be attacked in all designated states via the invalidation of its application or registration in the home country, an operation often referred to as the "central attack" (Gilson, Gilson Lalonde, 2003, p. 20). As it was the case of the WIPO's financing more thoroughly examined in Chapter 2, the Madrid System administered by the organization is, to an important extent, the victim of its most important (and successful) feature: unique application before a central international administrative entity. The most important common characteristic of the Madrid System and the Patent Cooperation Treaty (PCT) is that they both allow seeking protection internationally by filing

[10] As it has been underlined in one of WIPO's explanatory publications, the objectives of the Madrid System are two-fold, given that "it facilitates the obtaining of protection for marks (trademarks and service marks) [but also] since an international registration is equivalent to a bundle of national registrations, the subsequent management of that protection is made much easier, [because] there is only one registration to renew, and changes such as a change in the ownership or in the name or address of the holder, or a limitation of the list of goods and services, can be recorded in the International Register through a single simple procedural step". For more details, see the Overview of "The Madrid System for the International Registration of Marks. Objectives, Main Features, Advantages".

a single application. The PCT was signed in 1970 (amended in 1979, modified in 1984, and 2001), and, as of May 31, 2022, has 156 contracting states. This Treaty allows international application for the protection of an invention (Art. 3) and provides for an international search in order to "discover relevant prior art" (Art. 15-2). Moreover, it comprises rules on international preliminary examination of patent applications (Art. 31-42) and introduces a basic regulatory framework as regards to patent information services (Art. 50). Apart from its numerous advantages concerning the reduction of administrative burden for multinational patent applications, some of the most commonly underlined disadvantages of the system established by the PCT are its cost, duration (Singh, 2021), and the fact, that as in the case in some countries of Latin America, its main beneficiaries "have been non-residents rather than local companies and individual inventors [what] rebuts the frequently made argument that acceding to the PCT would generate incentives for local innovation and benefit local inventors by boosting their capacity to protect their developments in third countries" (Correa and Correa, 2020, 803). Given that the WIPO Development Agenda, formally established in 2007, insists on "taking into account the priorities and the special needs of developing countries", there is some considerable room for improvement in the regulatory framework established by the PCT. Moreover, taking into consideration that, according to the latest World Inequality Report, the COVID-19 pandemic has exacerbated intra-state but also inter-state misbalances in development and income, the WIPO's role in making the international IP system "balanced and effective (…), for the benefit of all" becomes even more important.[11]

CONCLUSIONS

As a specialized agency of the UN, the WIPO has some standard characteristics typical for an international organization: its members are states; it has been established by a multilateral treaty; and the structure and competences of its main organs in many aspects look like those of many other organizations belonging to the UN family. However, a more thorough examination of the WIPO's main functional and organizational features has shown that it has some important specificity, mainly because

[11] The WIPO's Committee on Development and Intellectual Property (CDIP) was established by the WIPO GA in 2008.

of its particular mission, quasi-total self-financing status, and the fact that it deals with a long list of related and/or transversal policy topics. The complex, trans-disciplinary, and sometimes technical, but also subtle and often etheric substance of IP as a concept has undeniably left an imprint on the eponymous UN specialized agency dealing with IPRs, and it is, therefore, legitimate to consider it as a *sui generis* organization in many important aspects. When it comes to the WIPO's role in the protection of copyright, the international regulatory framework established by the Berne Convention has been considerably improved in the last decades via numerous initiatives undertaken by the organization, but it remains mostly obsolete and not fully adapted to the needs of the digital environment. Finally, while the functioning of the WIPO-administered systems related to some major industrial property rights can be described as functional, user-friendly, and mainly accessible online, their main shortcomings are the "home mark" requirement and the risks of "central attack" (for trademarks), as well as cost, duration, and better implementation of the recommendations formulated by the WIPO Development Agenda (for patents).

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ORGANIZATION OF THE HAGUE CONFERENCE FOR THE PROGRESSIVE UNIFICATION OF THE RULES OF PRIVATE INTERNATIONAL LAW AND ITS SIGNIFICANCE FOR SERBIA'S LEGISLATION

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Abstract: The Hague Conference on Private International Law is an intergovernmental organization that was founded in 1893. It operates under the auspices of the Government of the Kingdom of the Netherlands. The goal of the Hague Conference is to develop and unify the rules of Private International Law. The Hague Conference is a forum for member states where common rules of private international law are developed and incorporated into legislation. In addition, the Hague Conference aims to promote international judicial and administrative cooperation in the fields of protection of the family, children, civil proceedings, and trade law. The paper also explains the technique of conventions' adoption through precisely defined phases. We also link the influence of the countries of Anglo-Saxon law to the development of the Hague Conference. Serbia is a member of the Hague Conference and a signatory to several conventions. Regarding the membership of our country in this organization, after the dissolution of the State Union of Serbia and Montenegro in 2006, the Republic of Serbia (Serbia) continued its membership in the Hague Conference. All the conventions signed by Serbia have influenced, in general, the regulation of this area in our country.

Keywords: Hague Conference, Private International Law, Conventions, membership, Serbia.

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INTRODUCTION

The Hague Conference on Private International Law (the Hague Conference) has made a great contribution to the development of legislation governing this area, as well as other areas in which the rules apply, which include the foreign element in civil law relations. Private international law would certainly have been regulated completely differently if the Hague Conference had not influenced the development of this scientific discipline, i.e., if it had not influenced the legislation regulating this matter, either in special laws governing only this area or in the laws that also regulate issues related to the existence of the foreign element in civil law relations. The legislation of Serbia is developing in parallel with the development of legislation of countries belonging to the continental legal system, but the fact is that the development of legislation of the Anglo-Saxon legal system affects the development of law and legislation in Serbia. The development of private international law cannot be excluded from the above. The Hague Conference also influenced the development of legislation in our country. In Serbia, the Act on Resolving Conflicts of Laws with the Rules of Other Countries (ARCL, Off. Gazette of the SFRY, 43/82; 72/82-correct.; Off. Gazette of the SRY, 46/96; Off. Gazette of the Republic of Serbia, 46/2006-another Act), which was passed in 1982 in the former Yugoslavia, is still in force. That Act took over a lot of rules from previous laws that regulated this matter, but the conventions passed by the Hague Conference also had a great influence on the development of the ARCL. By the way, the ARCL regulates the matter of general issues of private international law, which is a special part of the conflict of laws, i.e., the determination of applicable law, as well as the international procedural law within which it regulates civil court proceedings with foreign elements and international commercial arbitration. However, the area of arbitration was regulated in the ARCL until 2006, when the Act on Arbitration was passed (Off. Gazzete of the Republic of Serbia, 46/2006). In this paper, we will examine the emergence and development of the Hague Conference as well as the impact of the Hague Conference on the development of private international law. We will also pay attention to connecting the Hague Conference with regional organizations and, above all, with the European Union. Finally, as we said, the influence of the Hague Conference on the development of private international law in Serbia is great.

DEVELOPMENT OF PRIVATE INTERNATIONAL LAW

When we talk about the modern development of private international law, we are talking about the period in which the Hague Conference was founded and developed. But also, for the development of the mentioned scientific discipline, it is very important to mention the specificity of continental, and above all, European private international law in relation to the Anglo-Saxon system. Namely, the current private international law of European states is characterized by the following: 1) regulation of private international law by the acts; 2) the great importance of case law in the development of this scientific discipline; and 3) the development of private international law is impossible without theory, that is, a doctrine (Čolović, 2012, p. 36). We are still starting from the teachings developed by Savigny, which refer to resolving the legal relation with foreign elements by referring to the legal order which has the closest connection with that legal relation. In addition, the current European private international law is characterized by the following: a) protection of the weaker party in the procedure, i.e., legal relations (this applies particularly to consumers and workers), which are defined by certain specifics in the collision rules; b) expanding the field of application of the autonomy of will of the parties not only within the framework of contractual relations but, to a certain extent, also within the framework of matters related to civil offenses and inheritance; c) the application of more favorable law and, in this connection, alternative points of attachment; d) frequent application of the rules of direct application; and e) the application of avoidance clauses, which prevent the application of the applicable law, if that law is not, in the specific case, closest to the legal relation (Čolović, 2000; 2012, p. 36-37). The question of which applicable foreign law will apply depends on the different circumstances for each type of legal relationship. Thus, for the legal capacity of a person, there is not only one type of reference to the applicable law, but the reference depends on the following: a) whether it is a matter of commercial contracts; or b) whether it is the conclusion of a marriage; or c) whether it is a contract of property transfer (Čolović, 2012, p. 37). The problem with private international law is that different solutions of different legal orders as to which law is applicable can lead to different meritorious solutions. In order to prevent this as much as possible, efforts are being made at the international level to draft multilateral conventions that would harmonize the collision rules. The unification of private international law is a task set by many international organizations.

ESTABLISHMENT AND DEVELOPMENT OF THE HAGUE CONFERENCE

The Hague Conference was founded in 1893 and since then, with minor interruptions, it has been performing its activities. The Hague Conference operates under the auspices of the Government of the Kingdom of the Netherlands (Varadi, Bordaš, Knežević, Pavić, 2007, p. 52). Pasquale Stanislao Mancini and Tobias M.C. Asser had the greatest influence on the establishment of the Hague Conference. Mancini and Asser pointed out the great importance of concluding multilateral conventions and took the initiative to hold a conference dedicated to various issues of private international law (van Loon, 2007, p.4). The Hague Conference on Private International Law (fr. Conférence de La Haye de droit international privé) was established at the first (Founding) conference at the initiative of Tobias Asser, to resolve issues relating to civil procedure and jurisdiction. The first conference was organized by the Government of the Kingdom of the Netherlands. The first Hague Conference was so successful that it was immediately followed in 1894 by the second diplomatic conference. Once again, Asser presided over the conference. Asser went on to lead the third conference in 1900 and the fourth in 1904, each one organized on an ad hoc basis without the support of any permanent secretariat. From 1893 to 1904, the Hague Conference adopted seven international conventions:

1. The Convention of 1896 relating to civil procedure (later replaced by that of 1905);
2. The Convention of June 12, 1902, related to the settlement of the conflict of the laws concerning marriage (replaced by the Marriage Convention of 1978);
3. The Convention of June 12, 1902, related to the settlement of the conflict of laws and jurisdictions concerning divorce and separation (replaced by the Divorce Convention of 1970);
4. The Convention of June 12, 1902, related to the settlement of guardianship of minors (replaced by the Protection of Minors Convention of 1961 and now by the Convention on the Protection of Children of 1996);
5. The Convention of July 17, 1905, related to conflicts of laws with regard to the effects of marriage on the rights and duties of the spouses in their personal relationship and *with regard to their estates* (replaced by the Matrimonial Property Regimes Convention of 1978);

6. The Convention of July 17, 1905, related to the deprivation of civil rights and similar measures of protection (replaced by the Protection of Adults Convention of 2000).
7. The Convention of July 17, 1905, related to civil procedure (replaced by the Convention on Civil Procedure of 1954, the Service Convention of 1965, the Evidence Convention of 1970, and the Access to Justice Convention of 2000) (van Loon, p. 5).

In 1951, the seventh Hague Conference took place, whose participants institutionalized the work by creating a permanent organization: the Hague Conference on Private International Law. The implementing statute, which came into force in 1955 and was originally signed by 16 states, provided that diplomatic conferences should take place in principle every four years and created a small permanent secretariat to organize and prepare these conferences for the development of new conventions. Meetings were to take place, as they do to this day, at the Peace Palace in The Hague. In the beginning, the sole official language was French, but when the United States, Canada, and other common-law countries joined the Hague Conference in the 1960s, English became its second official language (van Loon, p.5). After the Second World War, more precisely from 1951 to 2008, 38 international conventions were adopted (Dyer, 1981, p. 158). With the growth in its membership, bridging the gap between common law and civil law systems has become an important challenge for the Hague Conference. The concept of "habitual residence" became prominent as a connecting factor in international situations, both in order to determine which law to apply and which court should have jurisdiction. Over the years, the Conference has generally been most successful when it has attempted to establish channels for cooperation and communication between courts and authorities in different countries (van Loon, p.5). In 1993, on the occasion of the hundredth anniversary of the Hague Conference, a resolution was adopted defining the goal of that institution. This goal consists of the progressive unification of the rules of private international law. In addition, the Resolution defines the role of the Hague Conference as a world center for the development and service of international judicial and administrative cooperation in the field of private law. The area related to child protection must be singled out. If we look at the development of the Hague Conference, it must be said that the Conventions in the field of family law were initially adopted. Then, for the development of the Hague Conference, we link the influence of the countries of Anglo-Saxon law and the adoption of the Convention on Conflict of Laws regarding the form of testamentary provisions. After that,

the beginning of the eighties of the last century marked the adoption of a very important Convention on the Civil Aspects of International Child Abduction. Finally, the last adopted conventions refer to judicial cooperation between states, but some of them also refer to the matter of conflict of laws (Varadi, Bordaš, Knežević, Pavić, pp. 53-54).

The Procedure for adopting conventions

As for the technique of adopting the conventions within the Hague Conference, it consists of several phases. The first phase refers to the consideration of the issue of a certain area in which the convention should be adopted by the Secretariat of the Hague Conference. Then, sessions of a special commission are held, in which experts from the Permanent Bureau participate, as well as experts from the member countries and international organizations (if they are interested in adopting that convention). A chief reporter is then appointed, and when the text of the convention has been finally prepared and agreed upon by the experts of the member states, a diplomatic conference is convened which accepts the final text of the convention. After accepting the convention, it is ready to be signed. Of course, the diplomatic conference does not have to accept every text of the draft convention. The convention enters into force upon ratification by the member states (Sajko, 2005, p.63-64).

The Institutional structure of the Hague Conference

As a rule, plenary sessions of the Hague Conference are held every four years. The draft conventions prepared by the Special Commissions are adopted in plenary sessions. According to the rules of procedure at the plenary session, each delegation has one vote. Decisions shall be taken by a majority of the delegations of the member states. According to the tradition from the first session, the president elected at the plenary session is also the president of the Dutch Standing Government Committee for Private International Law. The activities of the Hague Conference are organized by the Secretariat — the Permanent Bureau, based in The Hague, whose employees must be of different nationalities. The Secretary-General is assisted by five lawyers: the Deputy Secretary General, two First Secretaries, and two Secretaries. The main task of the Permanent Bureau is to prepare for plenary sessions and special commissions. The Permanent Bureau also maintains and develops contacts with state bodies, experts, and delegates

of the member states, as well as with the central authorized bodies of the member states, which are signatories to the Hague Conventions (Hague Conference, 2008, p. 3). The Secretariat of the Hague Conference maintains close contact with the governments of its member states through national organs designated by each government. For the purpose of monitoring the operation of certain treaties involving judicial or administrative cooperation, the Permanent Bureau enters into direct contact from time to time with the central authorities designated by the states parties to such treaties. The activities of the Conference are organized by a secretariat — the Permanent Bureau — which has its seat at The Hague and whose officials must be of different nationalities. The Permanent Bureau's main task is the preparation and organization of the Plenary Sessions and Special Commissions. Its members carry out the basic research required for any subject that the conference takes up. They also maintain and develop contacts with the national organs, experts, and delegates of the member states and the central authorities designated by the states parties to the Hague Conventions on judicial and administrative cooperation, as well as with international organizations, and increasingly respond to requests for information from users of the conventions (Čolović, 2012, pp. 44-45).

The Goal of the Hague Conference

If we talk about the reason for the establishment and existence of the Hague Conference, then it is the development and unification of the rules of private international law. But we can explain this general reason with a few facts that explain the activities of the Hague Conference. These are: 1) the Hague Conference is a forum for the member states where common rules of private international law are developed and incorporated into legislation, as well as the coordination of relations between different private legal systems; 2) promotion of international judicial and administrative cooperation in the fields of protection of families and children, civil court proceedings, and tribunal law; 3) introduction of high-standard legal services and technical assistance between the member states and signatories to the Hague Conventions; 4) introduction of high quality and accessible information for member states and signatories to the Hague Conventions (Čolović, 2012, p.45).

CONNECTING THE HAGUE CONFERENCE WITH REGIONAL ORGANIZATIONS

The Hague Conference has substantial cooperation with other institutions based in The Hague as well as with other international organizations. The various Hague institutions are interconnected in several ways. Occasionally, the International Court of Justice may deal with a dispute between states concerning a question of private international law or even the Hague Convention. The arbitration bodies at The Hague sometimes draw inspiration from the Hague Conventions. The Conference works closely with a large number of international and regional, intergovernmental and non-governmental organizations to avoid duplicated work. The development of the Hague Conference gained a new dimension at the beginning of the 21st century by defining the possibility of connecting this organization with regional organizations. This possibility was given its place in the amendments to the Statute of the Hague Conference, which entered into force on January 1, 2007. The most important change is defined in Article 2a, which, as it was said, enables regional organizations to become members of the Hague Conference. The EU joined the Hague Conference with a declaration of acceptance of the Statute, then a declaration of EU competence with attached certain areas in which the member states transfer their competence to the Community, as well as a statement of the EU on certain cases related to the Hague Conventions. Namely, on October 5, 2006, the Council Decision on the Accession of the Community to the Hague Conference was adopted (Official Journal of the European Communities, 2006, pp. 1-10). For the mentioned organization to be able to join the Hague Conference, it must be constituted by sovereign states and they must transfer to it their competencies in the areas covered by the Hague Conference, including decision-making powers in those areas. In this regard, any regional economic or other similar organization applying for membership in The Hague Conference must provide a declaration of competence, which the community has done. The Act of Accession to the Hague Conference is an integral part of the Decision, as are the two statements that are necessary for the accession to take place. Pursuant to Article 2a of the Statute of the Hague Conference, the Community has issued a declaration relating to the areas in which competence has been transferred to the Community, namely the ability to make decisions by the member states. The EU has internal competence to adopt general and specific measures relating to private international law. Accordingly, the EU is competent to adopt measures in the field of judicial cooperation in civil

matters with cross-border implications as necessary for the functioning of the internal market. These measures include a) improvement and simplification of the system for cross-border service of judicial and extrajudicial documents, and cooperation in the taking of evidence, recognition and enforcement of decisions in civil and commercial matters, including decisions in extrajudicial cases; b) improvement in the harmonization of the rules applicable in the member states concerning conflicts of law and jurisdiction; and c) elimination of obstacles to the smooth functioning of civil proceedings, if necessary by improving the harmonization of the rules on civil procedure in the member states. Otherwise, within the EU, it was adopted through instruments, which made it similar to the competence in this area. Some of these instruments relate to insolvency proceedings, service of judicial and extrajudicial acts of the member states, jurisdiction and recognition and enforcement in civil and commercial matters, cooperation of courts of the member states on the taking of evidence in civil and commercial matters, the introduction of a European Enforcement Order, consumer protection, insurance, intellectual property, etc. Within the EU, it will be decided whether there is an interest in joining the existing Hague Conventions in the areas of its competence. In that sense, within the EU, it will be possible for the representatives of the Permanent Bureau of the Hague Conference to participate in the meetings of experts, which will be organized by the EU Commission on matters of interest to the Hague Conference. We will mention that the private international law of the EU is based on the adjusted reception of certain conventions adopted by the Hague Conference. These are, above all, related to the field of private international procedural law. However, the impact of the Hague Conference conventions on EU legislation in the field of child protection is more significant. This influence is manifested in two ways. The first refers to the direct impact of the Hague Conventions, so that the EU takes over in unchanged forms the solutions from the Hague Conventions, as far as, first of all, matters of subsistence are concerned, but also the mentioned solutions are adjusted for the needs of EU legislation (Marjanović, 2014, p. 876). Second, the indirect impact is based on encouraging the member states to ratify those Hague Conventions to which the EU cannot be directly bound. Here we mean the conventions that regulate the area of parental responsibility. In any case, these influences represent a partial unification, i.e., harmonization of EU private international law with private international law, which is shaped by the Hague Conventions (Marjanović, p. 877). Of course, the impact of the Hague Conventions is visible in other areas regulated by private international law,

but it is greatest in the above. There is also a goal in the EU regarding unification in the field of judicial cooperation. But it is a matter of regional unification (Župan, 2019, pp. 471-472).

SOME CHARACTERISTICS OF THE CONVENTIONS ADOPTED WITHIN THE HAGUE CONFERENCE

Conventions governing the narrow areas of private international law have often been adopted within the framework of the Hague Conference. These conventions represent significant steps towards the unification of this area. The Hague Conference initially adopted conventions in the field of family law. Later, under the influence of the common law system, these acts are more often passed in the areas of international legal assistance and procedural issues in this area. The next phase is marked by conventions that bring some of the original solutions. Here, first of all, we mean the Convention on the Civil Aspects of International Child Abduction of 1980. The main purpose of the adoption of this Convention is to establish a mechanism of cooperation between the competent authorities of the contracting states in order to return the child to the country of his or her regular residence as soon as possible. We also single out the legal instrument that was adopted relatively recently (Duraković, 2019, pp. 19-20). These are the Principles on the Choice of Applicable Law in International Trade Agreements from 2015. This act serves as a model law for the contracting states in drafting their own conflict-of-law rules. Apart from the mentioned acts and the efforts of the Hague Conference to influence the development of legislation in the member states, one of the tasks of this organization is to work on the wider application of existing conventions, as well as work on spreading knowledge about conflict of laws. The conflict of laws is a complex relationship, so it is necessary not only to know the rules for resolving it but also the causes that lead to the conflict of laws. In a large number of countries, there are legislations that regulate the matter of private international law. However, the problem is the willingness to consistently apply the rules defined in these legislations. This refers not only to the manner of learning and applying foreign applicable law but also to the readiness of courts and other bodies to consistently apply other rules in this area, such as those governing retaliation and referral, violation of public order, etc. The problem is the lack of understanding of the real meaning of the laws that regulate this matter, and, therefore, there is an incorrect application of the provisions of these laws. This is exactly one of the goals of the Hague Conference, as well as the member states that are trying to

change that situation. In that sense, the cooperation of the competent authorities of the member states is very important, which would refer to the wider application of the conventions (Duraković, p.20).

SIGNIFICANCE OF THE HAGUE CONFERENCE FOR THE SERBIA

The Hague Conference is of great significance for Serbia. Serbia is a member of the Hague Conference as well as a signatory of several Hague Conventions. At this point, we will present the facts related to Serbia's current membership in the Hague Conference. After the break-up of the State Union of Serbia and Montenegro, Serbia continued its membership in the Hague Conference. Namely, the Ministry of Foreign Affairs of the Netherlands, which is the depositary of the Hague Conventions, stated on July 5, 2006, that the Declaration of Independence of the Republic of Montenegro was adopted, as well as the right of Serbia to continue its membership in the Hague Conference (Čolović, 2009, p. 44). The National Assembly of Serbia on June 5, 2006, passed the decision that Serbia is a signatory of the following acts adopted within the Hague Conference:

1. The Statute of the Hague Conference of Private International Law from 1955;
2. The Convention of 1 March 1954 on Civil Procedure (Off. Gazette of the FPR Yugoslavia - International Agreements No. 6/62);
3. The Convention of October 5, 1961, on the Conflicts of Laws Relating to the Form of Testamentary Dispositions (Off. Gazette of the FPR Yugoslavia – International Agreements No. 10/62);
4. The Convention of October 5, 1961, on Abolishing the Requirement of Legalisation for Foreign Public Documents (Off. Gazette of the FPR Yugoslavia – International Agreements No. 10/62);
5. The Convention of November 15, 1965, on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (Off. Gazette of the Republic of Serbia - International Agreements No. 1/2010; 13/2013);
6. The Convention of March 18, 1970, on the Taking of Evidence Abroad in Civil or Commercial Matters (Off. Gazette of the Republic of Serbia - International Agreements No. 1/2010; 13/2013);

7. The Convention of May 4, 1971, on the Law Applicable to Traffic Accidents (Off. Gazette of the SFR Yugoslavia - International Agreements No. 26/76);
8. The Convention of October 2, 1973, on the Law Applicable to Products Liability (Off. Gazette of the SFR Yugoslavia - International Agreements No. 8/77);
9. The Convention of October 25, 1980, on the Civil Aspects of International Child Abduction (Off. Gazette of the SFR Yugoslavia - International Agreements No. 7/91);
10. The Convention of October 25, 1980, on International Access to Justice (Off. Gazette of the SFR Yugoslavia - International Agreements No. 4/8);
11. The Convention of May 29, 1993, on Protection of Children and Co-operation in Respect of Intercountry Adoption (Off. Gazette of the Republic of Serbia - International Agreements No. 12/2013);
12. The Convention of October 19, 1996, on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children (Off. Gazette of the Republic of Serbia - International Agreements No. 20/2015);
13. The Convention of November 23, 2007, on the International Recovery of Child Support and Other Forms of Family Maintenance (Off. Gazette of the Republic of Serbia - International Agreements No. 4/2020);
14. The Protocol of November 23, 2007, on the Law Applicable to Maintenance Obligations (Off. Gazette of the Republic of Serbia - International Agreements No. 1/2013).

All the mentioned conventions were signed and ratified by the former FPR Yugoslavia, that is, the SFR Yugoslavia, as well as the Republic of Serbia. As for the conventions signed by the former Yugoslavia based on the rules that apply in the conditions of succession, Serbia is a signatory to those conventions. When it comes to international agreements, in the case of the FR Yugoslavia, there was a double regime (Čolović, 2009, p. 45). Namely, only when it came to international agreements concluded under the auspices of the United Nations, it was considered that the FR Yugoslavia was a predecessor of the SFRY, i.e., that it had continuity with it. On the other hand, when it came to other international agreements, it was considered that the FR Yugoslavia was not their member or signatory, although they were signed and ratified by the SFRY. These were also the Hague Conventions (Stanivuković, Živković, 2004, p. 83).

CONCLUSIONS

The Hague Conference has had an immense impact on the advancement of the law in general. It is certain that the Hague Conference had the greatest impact on the development of private international law. Most countries have accepted the solutions from the Hague Conventions, regardless of whether they are members of this organization or not. The Republic of Serbia has ratified "only" 12 conventions, mainly in the fields of international legal assistance and judicial cooperation. We can ask why the acts of the Hague Conference in the fields of regulation of marriage and marital property have not been ratified. However, the fact is that the Hague Conventions have played a key role in the formation of legislation that regulates the element of foreignness in civil law relations in the Republic of Serbia. Unification is one of the goals of the Hague Conference. It has been achieved in the areas regulated by the Hague Conventions, at least in those countries that have ratified them. It must be said that the Hague Conference has contributed to universal unification not only in the field of private international law but also in the field of judicial cooperation. This has facilitated international legal transactions. However, the Hague Conference has also influenced the development of legislation in other international organizations. Here, first of all, we mean the EU, which, as we have seen, is one of the members of the Hague Conference. The EU also has a goal regarding unification, which, as we already noted, also entails judicial cooperation, mostly in civil cases.

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THE PLACE OF THE UNIVERSAL POSTAL UNION (UPU) AS A SPECIALIZED AGENCY OF THE UNITED NATIONS IN THE CONTEMPORARY WORLD

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Abstract: The Universal Postal Union (UPU) is an intergovernmental organization and a specialized agency of the United Nations that acts to stimulate economic and social development and facilitate communication among all the inhabitants of the world. The UPU represents the leading international forum for the cooperation of state authorities, regulatory bodies, and postal operators in the regulation of international postal services. Among other things, its task is to ensure the existence of an integrated global network and to strengthen the role of the postal sector as an instrument of reform and development. Postal services around the world should constantly improve to keep up with the digital age by building a seamless physically and virtually connected network with a local and international presence fully adapted to the changing and growing needs of governments, businesses, and customers. The UPU has developed a strategy to transform the postal industry to better serve the economies of countries and the growing needs of their customers by creating a global partnership for reform and development, thus shaping a better perspective for the postal sector in the contemporary world.

Keywords: UPU, postal traffic, international communication, cooperation and network, reform.

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"A visionless action is just a passage of time,
A vision without action is mere daydreaming,
Vision and action can change the world".
Nelson Mandela

INTRODUCTION

The UPU represents a specialized agency of the United Nations based in Bern (Switzerland). The Union was founded in 1874 with the mission of establishing and improving cooperation on a multilateral basis and ensuring the successful functioning of postal traffic, as well as contributing to achieving higher goals of international cooperation in the cultural, social, and economic fields (Jovičić, 2011). The UPU has 192 member states, 29 industrialized and 163 developing countries, united for the uniform and quality performance of international postal services. The Universal Postal Union, as a non-political organization, does not deal with the internal aspects of the organization and functioning of the postal traffic of the member states. However, the member states accept the obligation to apply Union regulations to international postal traffic. The basic principles of these regulations are: unity of postal territory, freedom of postal transit, and uniform principles of charging for international letter services. The UPU became a specialized agency of the United Nations in 1948 and, as such, contributes to the development of UN policies and missions to promote social and economic development. With more than 690,000 permanent post offices and 5.3 million staff, the postal network is the largest network in the world, unrivalled in its ability to reach each and every citizen on a daily basis. This infrastructure network makes approximately 340 billion USD in revenue per year, and the sustainability of the whole industry is insured by the interconnection of national postal infrastructure networks, where each nation has sovereign rights over the technical and operational management of its own network while being at the same time a part of the single worldwide postal territory of the Union, thus ensuring the smooth flow of letters, parcels, and financial instruments between all the countries of the world.

THE MISSION OF THE UPU

The UPU remains an intergovernmental organization and a specialized agency of the United Nations, which will continue to adhere to the traditional values proclaimed by the Constitution, including ensuring the

provision of efficient and accessible postal services to all citizens of the world. It is defined in the United Nations Human Rights Declaration that all inhabitants of the world have the right to communicate. Pursuant to this right, all 192 member countries of the UPU are obliged to ensure that all citizens enjoy the right to a Universal Postal Service (the USO), involving the permanent provision of quality basic postal services at all points in their territory at affordable prices. According to the preamble of the UPU Constitution, the mission of the organization is to stimulate the lasting development of efficient and accessible universal postal services of high quality in order to facilitate communication between the inhabitants of the world. The mission would be accomplished by: Guaranteeing the free circulation of postal items over a single postal territory composed of interconnected networks; Adopting common standards and use of technology; Ensuring interaction and cooperation among stakeholders; Promoting effective technical cooperation and satisfying customers' needs. Postal Vision 2030 is based on the aim of adjusting to the UN Sustainable Development Goals by promoting socio-economic development, which relies on the synergic actions of governments, regulators, operators, and other stakeholders in the postal sector. In order to utilize the postal network to enhance socio-economic development, governments should increase investments in the postal sector and adopt focused policies. Regulatory bodies should harmonize the sectors' regulatory framework, and operators should improve their performance by implementing diversified strategies and introducing operational and technical improvements. Other stakeholders from the private sector and public institutions should cooperate with the UPU through different programs, projects, and partnerships. As outlined in the vision of the Universal Postal Union, the postal sector enables inclusive development and is an essential component of the global economy. Given the rapidly changing world, the vision of the UPU is more relevant today than it has ever been. The proactive action of the UPU contributes to the development of the global economy through its long-lasting leadership in monitoring the development of the postal sector. The global postal sector realizes the value of adapting to innovation and, in turn, the world recognizes the significant potential of the postal sector in strengthening the future of the global economy. This vision is only achievable when combined with a commitment to the mission of the Universal Postal Union. The mission adopts a global approach to supporting the priorities and needs of each country and region, and covers fundamental areas where the UPU can contribute to having a positive and significant impact on users around the world. In order to support Postal Vision 2030,

the UPU as a UN agency must coordinate three main strategic pillars in the forthcoming period: as the main forum; as the provider of innovative and affordable technical solutions; and as the knowledge centre of the postal sector (UPU, 2018).

SCOPE AND OBJECTIVES

The countries adopting this Constitution shall comprise, under the title of the Universal Postal Union, a single postal territory for the reciprocal exchange of postal items. Freedom of transit shall be guaranteed throughout the entire territory of the Union, subject to the conditions specified in the Acts of the Union. The Union's goal is to ensure the organization and improvement of postal services, as well as to promote the development of international collaboration in this area. The Union shall take part, as far as possible, in postal technical assistance sought by its member countries. The formation of a single postal territory with each country agreeing to the incorporation of its sovereign territory and existing postal service network laid the foundation for the provision of Universal postal service to all segments of society. The provisions explicitly establish the commitment undertaken by member governments to ensure that all segments of the population are able to exercise their right to universal postal service, confirming their obligation to guarantee the basic right, namely the right to communication through access to postal service. With this aim, the member countries are obliged to set forth, within their national legislation, the scope of the postal services offered, respecting the requirement for quality and affordable prices, taking account of the needs of their population and their national conditions.

Acts and bodies

The Constitution represents the basic Act of the Union. It contains the organic rules of the Union and it is not subject to reservations by the member states. The General Regulations embody these provisions, which ensure the implementation of the Constitution and the working of the Union. They are binding for all member countries and shall not be subject to reservations. The Universal Postal Convention and its Regulations embody the rules applicable throughout the international postal service and the provisions concerning the letter-post and postal parcel services. These Acts are binding for all member countries. The member countries should ensure that their

designated operators fulfill the obligations arising from the Convention and its Regulations. The Agreements of the Union and their Regulations regulate the services other than those of the letter post and postal parcels between those member countries which are parties to them. They are binding for those member countries only. Signatory member countries should ensure that their designated operators fulfill the obligations arising from the Agreements and their Regulations. The Congress is the supreme authority which decides on new policies and rules on the international exchange of postal items and adopts world postal strategy for the forthcoming cycle. Plenipotentiaries from the UPU's 192 member countries gather every four years to shape the future of the postal sector. The Council of Administration consists of 41 member countries elected during the Congress with the task of ensuring the continuity of the UPU's work between the Congresses, supervising its activities, and conducting regulatory, administrative, legislative, and legal work. The Postal Operation Council is the technical and operational body of the UPU and consists of 40 member countries elected during the Congress, which deals with economic, operational, and commercial aspects of the postal business. The International Bureau provides logistical and technical support to the bodies of the Union.

The UPU as an organization of the UN system and an organization for the postal sector

The Union faces risks and opportunities common to other UN agencies, such as the International Civil Aviation Organization (ICAO), the International Maritime Organization (IMO), the International Telecommunication Union (ITU), and the World Intellectual Property Organization (WIPO), which are similar sector-based organizations of technical nature tied to specific sectors. In order to develop a new vision of the future, it has to respect the voice of governments while fulfilling the needs of its stakeholders through developing and implementing a different range of solutions. The UPU maintains ties with major development organizations in order to promote postal development, and by keeping good relations with the World Bank and other financial institutions, it can ensure investment in the postal sector. The UPU also has an important role in the national postal development. It can cooperate with governments to promote postal reform, and it can provide technical support for the posts that are unable to implement reform without external assistance (UPU, 2017; Berthaud, A., Davico, G., March 2013, Boffa, M., Borba. F., Piotrowski, L., October 2021).

THE POSTAL SECTOR ENVIRONMENT

The Postal sector and a wider business environment

In its traditional form, the postal sector is run by three main actors: governments, regulators, and authorized postal operators. The first two actors define the basic policy and development strategy that represent the framework for the functioning of postal services, while authorized postal operators have a legal obligation to ensure the provision of basic postal services to all citizens in the territory - the universal postal service. In the face of a rapidly growing wave of postal market liberalization, it is extremely difficult to sustain the meaningful level of Universal service obligation and at the same time develop a competitive postal market without efficient regulatory authority. The scope of activities of authorized postal operators originally included services related to the transmission of letters and parcels. However, with the entry of integrators such as DHL, FedEx, and UPS into the most profitable parts of the market, with the increasing liberalization of the postal sector, many authorized postal operators have experienced a decline in their market share. At the same time, the boundaries of the sector were extended to the services they provided only as a marginal part of past postal activities, such as logistics and financial services. Today, the postal sector comprises four basic segments: letter services; package and logistics services; financial services; and other related services. Authorized postal operators face competition in all these segments, but not necessarily from the same player. For example, integrators pose a challenge for authorized operators in the segments related to letter, parcel, and logistics services, while banks and insurance companies represent alternative solutions to postal operators in the field of financial services. However, banks and insurance companies are the main alternatives for postal operators. "Postal networks should be an integral part of discussions in which governments, policymakers, and international organizations design strategies for fostering financial inclusion" (UPU, 2017). However, in most countries, post offices are a guarantee of trust that allows them to be recognized as natural providers of the full range of services needed in the age of e-commerce, from ordering to delivery and payment. Postal operators are facing restructuring processes and further deregulation that will prepare them for the coming days when they enter the open market. Increasing competition will condition the postal sector to improve the quality of postal services and meet customer requirements. The postal network in rural areas and inaccessible regions has a very important role in integrating businesses into the national

and global economy by uniting social and business relations. This is aimed at further development of the infrastructure network, which will provide users in rural areas with new electronic communication services. The members of the UPU should expect the strategic goals of the Union and set priorities in order to facilitate trade for micro, small and medium enterprises. They should aim to build the necessary capacities through an integrative approach to ensure the sustainability of e-commerce services and encourage development along the entire three-dimensional postal network. It is extremely important to define a multilateral legal and operational framework that enables coordination of postal network activities and cross-border trade management, as well as the process of integrating the dimension of payments and financial intermediation between small and medium enterprises and tax authorities in the exporting countries. Public postal operators of the member states should all work to find a single integrative solution with a recognizable international brand to facilitate e-commerce trade and enhance growth in the postal sector and worldwide (Jovičić, 2015). According to the estimates published by the World Bank in 2021, global growth was 3.5% in 2020. The forecast for 2021 is +5, 6%, and for 2022 is +4, 3%. The risks to future growth are greater than ever. Although governments have injected simulative packages into the economy, the uncertain outlook has resulted in a shortage of investment and the erosion of both human and digital capital (World Bank, June 2022).

Development challenges for the member countries of the UPU

The postal sector has developed differently in various regions of the world in accordance with the level of economic development of a particular country. In this regard, there is a difference in infrastructure development between industrialized and developing countries, which indicates a strong need for operators in developing countries to define different postal strategies and place a greater focus on capacity building. This will ensure that the world's post offices are closer to each other, which is a precondition for an efficient global postal network. Postal networks are well positioned to serve 2.1 billion inhabitants of the planet who do not have adequate access to banks and other financial institutions and to facilitate payments to individuals by the state, e.g., payment of social assistance. The postal sector has a number of different markets, with different drivers of economic development in developed and less developed economies. The lack of market organization and regulation has slowed the exchange of postal items, especially in underdeveloped countries and regions of the world. The

solution lies in the better development of the market and a deeper understanding of the exchange of shipments in domestic and international traffic and supply chains and their impact on the well-being of citizens.
The most successful intergovernmental organizations have differentiated their product portfolios and their sources of revenue. The UPU has many ways to help foster development in the member states, such as: a) giving opinions on interoperability, e-commerce, payment methods, business development, product harmonization, and diversification; b) development and implementation of international standards, methodologies, and procedures, as well as safe technological solutions at low prices; c) providing hubs for a high-quality intelligence market and acting as a forum for greater coordination between governments, regulators, operators, and other stakeholders; d) supporting the creation and implementation of the development policy of the postal sector, capacity building, and facilitation of negotiations on multilateral regulations; and d) providing its knowledge of generating revenue. The UPU should also consider some significant risks, mainly: a) the ability to develop products and services that stakeholders consider relevant; and b) the ability to secure funds to ensure long-term financial sustainability.

Situation analysis

In our divided world, where some countries are struggling with economic and political unrest while others are successfully conducting international trade, posts represent bridges of trust to connect and adapt to this ever-changing world. Global trends affect the postal sector and provide opportunities for the sector to implement positive change. The analysis of the situation in the postal sector reveals the following trends:

1. In the political field, we are facing the emergence of new international and regional groups. Changes in interactions between governments and citizens have led to the proliferation of initiatives such as e-government. The role of governments in supporting mandatory universal service (USO) is changing, as are measures and policies to combat frequent security threats. Liberalization and privatization have significant political implications;
2. In the process of liberalization and privatization, new players emerged, which is now a reality for many member states of the Universal Postal Union. Changes in postal business models as well as innovations through the application of new technologies have influenced the new

way of functioning of modern mail. Business models are further affected by increased cross-border trade, the cost of energy instability, changes in financial models, access to finance, and global capital flows. Of great importance is the financial inclusion of the rural part of the population by the post office. The dominance of large and influential private-sector entities and their growing virtual integration significantly affect the development of the postal sector and the way the postal services are provided;

3. The digital age and changes in consumer patterns have contributed to the evolution of new consumers with unique needs and expectations. Mitigating cross-border interactions, migration, and demographic change have changed our understanding of user needs. Defining time values for users who are constantly connected via new devices is a new challenge. Postal addressing in a physical and digital context is now both a challenge and an opportunity;
4. Technology is the key to understanding current and future transformations. The growth of e-commerce has led to a market increase in the volume of parcels and the need to redefine our goals and plans for the future. It is imperative to be aware of and adapt to the acceleration of technological change;
5. There is a necessity to define new postal regulations and establish new international standards;
6. Recognition of the role of the postal sector in combating climate change and responding to global crises has also increased.
7. The key global trends identified as factors influencing the postal sector have brought to light the urgent need for the UPU and the postal sector to develop solutions that focus on innovation within the Union. Also, by offering a variety of sustainable products and services for global users of tomorrow, it should promote the integration of interoperable solutions through its complex and extensive broadband network.

SWOT analysis

SWOT analysis represents the construction of the analysis based on the identification of current trends, past experiences, and future opportunities, i.e., SWOT (strengths, weaknesses, opportunities, and threats). In order to maintain the relevance of the UPU and the postal sector in the global economy in the years to come, it is crucial to act faster in adapting to trends

in all three dimensions: physical, financial, and digital. In order to respond quickly to current and future trends, the UPU needs to highlight its weaknesses, identified in the SWOT analysis, as a priority. These weaknesses have remained relatively unchanged in the last two cycles, showing that they have not been adequately treated. If the UPU does not adjust, it will be difficult to use its current opportunities and will be unprepared to face its identified threats. Therefore, waiting for change to take place gradually is no longer an option, and the UPU urgently needs to meet the challenges, adapt quickly to the market and address its weaknesses through: integrated structural reform to enable more efficient decision-making and to enable bodies of the Union to quickly adapt to new trends and needs of users; and greater participation in and adoption of modern sustainable products and services by Member States and their authorized operators. Encouraging strengths and addressing weaknesses will enable the Union to seize opportunities and defend itself against threats through the integrated, innovative, and inclusive implementation of the Universal Postal Strategy at the global, regional, and national levels.

NEED FOR REFORM AND DEVELOPMENT

Postal reform is a long-term, complex process that requires the strong will and shared vision of all the stakeholders in the postal sector that would be responsible for the implementation of the reform process. The postal reform process is conducted through legal reform, organizational reform, commercial reform, operational reform, and technological reform. Legal reform is conducted through establishing a new legal framework embracing the market as a whole with all its components involving services, customers, designated operators, private operators, and regulatory authorities. Organizational reform is conducted by the restructuring of the designated operator, meaning its organizational structure, legal status, ownership structure, obligations, etc. Commercial reform is conducted through the commercialization of business operations of a designated operator, including concepts of quality of service, customer service orientation, IT systems, development of new services, etc. Operational reform is conducted through the establishment of projects for the modernization of operating processes by improving quality, raising productivity, and cutting costs. Technological reform is conducted through the intensive use of technology in production infrastructure to help increase efficiency and build market share. For the reform to succeed, governments should exercise their commitment by including postal issues in the national development plans

and policies; by allocating funding for the activities during the reform processes; by planning and designing work for postal reform programs; by providing technical cooperation; and by issuing executive orders, decrees, and other acts providing a basic framework for legal reform. The main objectives that governments should set to be achieved are:

1. Ensuring universal access to postal service, meaning the widespread coverage of postal services and extending service into areas where is it currently unavailable;
2. Finding the right balance between universal coverage and competition,
3. Promoting the development of new services, providing new solutions to better serve society's needs;
4. Strengthening the role of the postal sector as an instrument of social and economic development;
5. Ensuring the self-sustaining universal postal service by preserving the system's self-financing capacity;
6. Strengthening the role of the postal sector as an interactive channel of communication between government and society;
7. Restructuring the designated postal operator to improve its performance and prepare the postal sector for international integration;
8. Strengthening the government's role in establishing a regulatory framework and governing the postal sector and
9. Promoting job creation by taking specific measures to help create new jobs and prevent job insecurity.

"Sectoral and institutional reforms are necessary in order for us to be able to keep pace with the market. We must be able to stay up to speed with the demands of the market", stated former UPU Director General, Bishar A. Hussein (UPU, 2019; Spring 2020).

ABIDJAN POSTAL STRATEGY

Strategic pillars for the 2021–2025 period

The Abidjan Postal Strategy is a strategic plan of the UPU which sets the direction of the postal sector at the international level in the upcoming planning period from 2021 to 2025 (UPU, 2021a, doc.13). In this regard, three strategic pillars have been defined in response to the existing environment as well as possible activities to be carried out by the Union bodies and

stakeholders (governments, regulators, and authorized postal operators). Postal stakeholders have identified three strategic pillars that respond to their objectives. The first pillar focuses on strengthening the UPU's role as a forum for the postal sector. This will be achieved through the following types of solutions: the UPU should become the unique global forum where all key postal sector stakeholders can meet to share best practices, define strategies, and obtain support to achieve socio-economic development and fulfill the vision for the sector; the UPU should also confirm its crucial role in adopting and implementing treaties and international agreements. It should be recognized as a place where governments can find multilateral solutions to global and regional challenges and the UPU should offer mechanisms through which postal sector stakeholders can settle transactions and accounts in the harmonized procedures that are most beneficial and efficient to all parties involved. The UPU's role as a provider of affordable technical solutions for postal stakeholders will be achieved through three main types of solutions: consulting and capacity building by the UPU, which should offer the postal sector stakeholders training, technical cooperation, and expertise in order to support them in responding to the challenges and opportunities of the fast-changing environment; the UPU should enhance the development of IT solutions to more closely match the needs of stakeholders in the present electronic era to bridge the digital divide; and the UPU should reinforce its setting of standards and certification activities, thus promoting global interoperability for the benefit of all postal sector stakeholders in all countries and territories. The UPU should develop as a knowledge centre of the postal sector, which will be obtained through the following types of solutions: the UPU should further develop its capacities in order to support the postal sector stakeholders to better understand and better adjust to changes that have taken place in the postal sector; the UPU should leverage the potential of the big postal data that it holds, and offer solutions for the postal sector stakeholders in the form of focused insights and analysis; and the UPU should strengthen its role as a custodian of international data about the sector, storing it in a secure and neutral manner. These three pillars ought to enable the UPU to boost its importance and financial strength while supporting postal sector stakeholders in achieving Postal Vision 2030. These strategic goals, through the accompanying programs, are a guide and a starting point for further development of regions and restricted unions. The strategy defines the obligations of the governments of the member states, authorized postal operators, core unions and permanent bodies of the Union as key players in the postal sector, in charge of achieving the mentioned goals, which will be specially elaborated

at the global and national level. In addition, the role, relevance, and achievements of the postal sector in contributing to the UN Sustainable Development Agenda 2030 will be monitored and assessed through the Sustainable Development Goals indicators proposed at the global, regional, and national levels for this sector.

Key success factors

In order to ensure a successful outcome in the three strategic pillars, the Union will have to:

1. Focus on its financial, human and material resources in the creation of new products and services for a wider stakeholder base;
2. Improve its financial strength by increasing its revenues and diversifying its funding structure, using fee-paying models for each of its solutions, which would thus be directly financed by users.
3. Continue efforts towards building a diversified and highly competent workforce capable of responding to the needs of all users of the Union's solutions;
4. Increase the level of regionalization of the Union's activities, with a greater presence in the field and a higher share of production and distribution activities undertaken outside of the headquarters in Berne.

"The road ahead will not be easy, however, as our predecessors did, we must appropriately respond to the changes of the time and move forward as an organization that is truly needed by customers and society", stated Masahiko Metoki, Director General Elect, in his inauguration speech (UPU, Autumn 2021; UPU, 2021b).

CONCLUSIONS

Globalization and the liberalization of postal markets are leading to dramatic changes within the postal sector. Significant increases in traded goods and services have led to much closer interaction between economies. The liberalization of markets has also resulted in the opening of earlier barriers to trade in goods and services, as well as competition with a far greater range of quality and products becoming available to customers. This has also increased the area of postal activity open to competition. The development of new technologies and the evolution of customers' needs have created new challenges for governments, which are expected to define

new rules of competition. Postal services offered by public and private operators have undergone a period of rapid and fundamental evolution. Advances in electronic communications, information processing, and transportation systems have caused basic changes in the supply and demand chains for postal services. These market developments have been followed by legal and institutional changes accompanying the creation of a worldwide postal market. Innovation, in the form of the use of information technologies, has become inevitable for today's postal market. Technology today is changing the way in which individuals communicate and collaborate. With this in mind, the postal sector is in an excellent strategic position, as sectoral global connectivity and internet access open up new markets that can provide governments with opportunities in terms of involving rural areas and creating opportunities for economic and trade development. The concept of interconnection remains one of the main challenges facing the postal sector today. For UPU member states, the interconnection of postal networks, in a broader sense, of all stakeholders in the postal sector, is important for the integration of the global postal transmission chain. This goal is achieved through the modernization and full integration of the product portfolio and support for billing systems, accelerating the development of e-commerce solutions, supporting the development of various products and services, and supporting the facilitation of trade through the postal network. The UPU's contributions to the development of the postal sector should be focused on encouraging market and sectoral information, improving efficiency in policy, regulatory and strategic areas, and mobilizing environmental and sustainable development. One of the key conclusions from the Strategic Conference was that sustainable development must remain an issue of essential importance for the UPU and the entire postal sector. Sustainable development should be understood in the broadest sense, through social issues, environmental protection, the sustainability of the postal business model and sector development through all three network dimensions: physical, electronic and financial. The three-dimensional network should remain a cornerstone of the Union's strategic approach. The global development of the postal sector by all Union members will continue to be a guiding concept of all upcoming Union initiatives. Throughout its long history, the UPU has pursued its objectives and constantly expanded its field of activities. In leading the postal sector, the UPU continues to play a crucial role in facilitating communications by using new technologies that move beyond the traditional business of the post, thus shaping the future of the postal sector. I would like to close my presentation with a quote from the author Jullus

Juhlin, President of the VIII Congress of the Universal Postal Union, held in Stockholm in 1924, which stands as an inscription at the entrance to the Central Post Office in Washington: "The bearer of consciousness and knowledge of the human mind, a means of exchanging material and cultural goods, an advocate of peace and goodwill among peoples and nations, a voice of sympathy and love, a mediator between separated friends, comforter of grieving and lonely souls, the connection between separated family members, a reflection of the joy of the society in which we live".

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EUROPEAN ORGANIZATIONS

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THE EUROPEAN UNION AT A HISTORICAL WATERSHED

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Abstract: The paper presents an analysis of the consequences of the war in Ukraine, which began at the end of the winter of 2022, for the European Union as an institutional creation but also for European society as a whole. This war will probably be one that separates historical epochs, and after that we can expect a changed economic and security architecture both in the world and on the Old Continent. One of the main geopolitical and geo-economic consequences of the war in Ukraine for the world and Europe is reflected in the completion of the process of returning to so-called real-politics, namely the policies of so-called *hard power* in international relations. This will probably be followed by the so-called process of "geopolitical lockdown" of different geopolitical areas because the war in Ukraine has accelerated the process of disintegration of a single international diplomatic, security, and economic system. The paper investigates the consequences of this process of returning *hard power* and splitting the single international system in Europe, the Balkans, and especially in the capacity of the European Union for enlargement. Therefore, the analysis offered in this paper can be useful for further conceptualizing Serbia's strategy in its relationship with the European Union and devising an optimal approach to the European integration process given the possible developments in Europe after the war in Ukraine. The analysis undertaken in this paper can be useful for Serbian public policies because it is not one-sided or

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ideological, but includes various scenarios for the European future and takes into account their impact on the region and Serbia.

Keywords: Europe/EU, geopolitics, geo-economics, Balkans, Serbia, war in Ukraine, consequences

INTRODUCTION

This paper is an attempt to offer an objective analysis of the social and political processes that started this conflict on the Old Continent after the first weeks of the war in Ukraine, as well as to put these processes in a broader, currently very hot, global geopolitical context (Cvetićanin, 2017a).[1] One of the theses of our work is that, after the COVID-19 pandemic, which contributed to the return of the so-called real-politics (*realpolitik*) statehood (Cvetićanin, 2016a; 2016b)[2] in world relations through a kind of "vaccine geopolitics", the war in Ukraine definitely marks the complete return of the so-called "hard power", i.e., policies of force and power relations in world relations with weakened multilateral cooperation and global organizations such as the UN and others (Maksimović, 2021, 73, 78-79).[3] This is especially true of the Old Continent, which has long been lulled to sleep by an exclusive focus on *soft power*, whose main illustration is the emergence and development of the European Union. Since the so-called *global lockdown* caused by the COVID-19 pandemic was in fact a kind of geopolitical lockdown that contributed to the rounding off and "closure" of various

[1] At the moment we are writing this paper, it is not certain how long the war in Ukraine will last and what its immediate military-diplomatic outcome will be. Similar analyses of international events that we thought could be useful in designing far-sighted public policies and especially the far-sighted foreign policy of Serbia, we have presented in our previous works, among which the work on the analysis of socio-political processes that determine global events at the beginning of the 21st century.

[2] The term "*realpolitik*" is of German origin and was coined in Bismarck's Germany in the second half of the 19th century to legitimize the pragmatic approach to politics practiced by the "iron" German chancellor, who brought the realistic pattern of politics to the extreme by defining it as the "skill of the possible".

[3] Apart from *realpolitik*, another term from the end of the 19th century, "iron chancellor", is returning to the small door to market economies, and that is social policy. When this term is used, it means the need to increase the activities of the state in social events and the changes that these events cause. The creation of prosperity and the strategy of safety of life and health of workers and the population, aim to reduce diseases and fears caused by the crises of the 21st century.

geopolitical units (large spaces), the war in Ukraine moved things to another level in depth and breadth, causing the mentioned geopolitical "locking" to be no longer just a consequence of health problems (seen through a kind of *vaccine geopolitics*), but due to the latest events in and around Ukraine, it became an economic and security process. This is especially visible through the policy of rigorous economic sanctions, which the so-called Global West imposed on Russia because of its intervention in Ukraine, as well as through the accompanying reduced level of diplomatic communication. This confirms the thesis that we are currently witnessing the process of disintegration of the unified international economic and diplomatic system. The paper will try to investigate the consequences of this process for the European Union as an institutional creation and also for European society as a whole. In this sense, we can keep in mind two scenarios. *The first scenario* (realistic) is based on the view that the European Union will emerge from the "era of prosperity" in which it has been for decades and move into the "e*ra of survival"* due to the return of the policy of force and "hard power". Because of the war in Ukraine, the capacities of autonomous disposition of "hard power" are limited, and in the latest global conflict circumstances, the EU is realistically, security-wise, and economically vulnerable. *The second scenario* (normative), is based on the fact that existing events are an opportunity for the European Union to build its own mechanisms of *hard power* and strategic resources much faster based on a common security and defense policy and to complete itself as a geopolitical force in the system of the "Global West" under the leadership and control of the United States, with the flexible possibility of economic cooperation with other geopolitical forces such as China. In addition, the paper discusses the economic consequences of the war in Ukraine for the European Union and especially the sanctions that EU countries imposed on Russia due to the war. The question is to what extent all this will have drastic consequences for the European Union itself, announcing the end of the era of prosperity and the inauguration of the era of survival. It is less likely that the EU will emerge from the latest unfortunate geopolitical and geo-economic developments without significant consequences for its citizens' living standards. The paper also raises the question of the overall position of the European Union as a pan-European institutional order in this context of the return of the politics of power, i.e., real-politics and hard power in world relations, again bearing in mind different scenarios that we can metaphorically call weak and strong scenarios for Europe. The paper discusses the situation that led to the unfortunate awakening of the European Union from its "dream of soft power", in which it has been for decades, and the development of awareness

of the need to develop its own "hard power", i.e., its own strategic resources. The "dark" scenario predicts that the European Union will be significantly affected by the war in Ukraine, primarily economically. Accordingly, from the era of prosperity, the EU enters the era of "living dangerously", i.e., the era of survival, remaining squeezed in a kind of "geopolitical sandwich" between real geopolitical superpowers — the United States, Russia, and China. The opposite, positive scenario predicts that the war in Ukraine will be a kind of positive "wake-up call" for the European Union, and as a result, the European Union will be more focused on strengthening its own strategic capacities and its geopolitical encirclement. In the conclusion of the paper, we will consider the probability of different scenarios previously presented and, accordingly, draw appropriate conclusions about the consequences of the war in Ukraine on the European Union.

AWAKENING OF THE EUROPEAN UNION FROM THE "DREAM OF SOFT POWER" AND THE END OF THE ERA OF PROSPERITY

The explicit return of the so-called real-politics and the so-called policy of power on the European continent were not caused exclusively by the war in Ukraine or the COVID-19 pandemic, but this process could have been noticed earlier. The war in Ukraine and the COVID-19 pandemic undoubtedly accelerated and intensified this process. This process could be noticed a couple of years before the outbreak of the COVID-19 pandemic. It was evident from the statements of the highest officials of European governments, which pointed to a new strategic fact that was unthinkable at the beginning of the previous decade. For example, it is reflected in the statement of the German Minister of Foreign Affairs, Heiko Mass, from 2018, who stated that "it is high time to reconsider the transatlantic partnership in a sober, critical, and even self-critical way". He announced that he would come up with a "plan for Berlin's new foreign policy towards the United States" in order to create a "strong and independent Europe, which should be a counterweight to the United States every time Washington crosses the red line" (Blic, 2018, August 27). The previously quoted statement of the German foreign affairs minister was caused by the change in the foreign policy of the then-US President Donald Trump Administration towards Germany and the European Union as a whole. Since the end of World War II and the famous Marshall Plan of the late 1940s, US administrations have treated Germany and Western Europe as *protégés* to help recover from the devastation of war and to represent the "junior partner" of the transatlantic partnership and a buffer zone towards Soviet Russia. However, the

unification of Germany led to its strengthening, especially at the economic level, so that from the "younger" it became not only an equal, but a dominant partner in the EU (especially at the economic level). As a result, the balance of power between the "transatlantic partners" has changed greatly compared to the time of the Marshall Plan, which is especially visible in this "political decade". Germany is no longer a war loser and a peacetime darling who, as a "younger partner", is only suitable to passively follow the United States, but has (again) grown into a continental power whose economic strength determines evolution on the Old Continent, being very ambitious in the global economy, pushing in it step by step its former overseas "partners" who until recently were doing worse in terms of economic parameters and who were doing worse in those real industrial economic sectors in which Germany was getting better. However, the war in Ukraine put aside the economic rivalry between Germany (that is, the entire EU) and the United States and put on the table the thoughts on the future of the transatlantic partnership. In the new circumstances, Germany will most likely apply the logic of reducing or severing (economic) ties with Russia (as illustrated by the suspension of a major Nord Stream II infrastructure project aimed at increasing gas imports from Russia, which has already been completed), which could be quite an economic cost (Danas, 2022, March 31).[4] On the other hand, if the United States wants Germany to be its "key European partner" again, it must balance its European transversal strategy with Britain, Poland, and the Baltic states, which are currently clearly its most eager strategic partners in Europe. The rhetoric used by Donald Trump in his 2016 presidential campaign was prompted by a real change in transatlantic relations in which the economic component of US-European competition began to jeopardize their strategic partnership, as voters all over the world are not thinking about strategic things, but primarily about their economic prospects. The Trump team noticed this fact and pragmatically exploited it during the campaign that ended in November 2016, announcing a set of new policies that the Trump Administration has tried to implement throughout its term, sometimes more, sometimes less successfully. The new administration of Joe Biden obviously thinks much more geostrategically, returning to that pole of American foreign policy that has always been aware

[4] According to some estimates, the interruption of the supply of Russian gas would cost each German 1,000 euros, and the entire German economy would fall by 3.4 percentage points, while the growth of the entire Eurozone would be reduced by 2.2 percentage points. The interruption of Russian gas would cost every German 1,000 euros.

that the status of a strategic superpower costs money, and which was not inclined to equate strategy with economics. The beginning of the world economic crisis at the end of the first decade of the twenty-first century, which exposed geo-economical relations, causing united economic, strategic, and finally political changes, was the first step in the return of so-called realpolitik and so-called hard power in world relations and on the European continent, after a quarter-century of the liberal paradigm's triumph. Until the election of Donald Trump as President of the United States, there were cases when representatives of policies that were opposed to liberals triumphed in different countries and milieus. However, the fact that this happened with Trump at the very center of the global system, shows that this system is changing at its core, and not just on the periphery, showing that change is in fact structural and that it is a process, not a series of unrelated coincidences.

THE WORLD AND THE EU - THE END OF GLOBALIZATION AND THE RETURN OF GEOPOLITICS

It would be naive to believe that a simple change of administration in the United States can halt this process and return American internal and external relations to the time constants of Barack Obama or George W. Bush. However, the first consequence of the war in Ukraine is obviously the reaction of the consolidation of the "Euro-Atlantic ranks". However, it remains to be seen how much this consolidation of the Euro-Atlantic ranks will cost and who will pay that price. It should be borne in mind that the European Union is crossed in a "geopolitical sandwich" between the United States (which provides it with a security umbrella), Russia (which is its main supplier of energy) and China (which is one of its largest trading partners). In the conditions of the pandemic, the process of "closing" the world into several geopolitical units was more clearly outlined. The Anglo-Saxon (so-called *Five Eyes*), European, Russian, and Chinese geopolitical entities naturally closed before the spread of the COVID-19 pandemic. This was especially visible in the self-sustainable way of production and distribution of vaccines against COVID-19, in which Europe was again in the most unpleasant situation because it had to learn to think strategically again, ensuring self-sufficiency in strategic resources such as vaccine production. The process that began with the beginning of the COVID-19 pandemic and which will undoubtedly continue with the war in Ukraine, caused the European Union to return to the so-called strategic reindustrialization, i.e., the production of strategic resources on its soil (Cvetićanin, 2021, 77-92). This transformation from the process of yesterday's colorful international

relations (transformation from a unipolar to a multipolar system at the beginning of the XXI century) into "pure" geopolitics, i.e., real-politics of competition, rivalry, and realization of *hard power,* will be nothing but a specific combination of geopolitics, geo-economics, and geostrategies by which the great powers will try to ensure their own economic, political, and strategic self-sustainability and security in a situation of instability and transformation of the world system (Wallerstein, 1974).[5] In other words, the world system is (once again) transforming from an order dominated by US imperial liberalism to a multilateral and rather chaotic order based on the application of the so-called policies of force and power relations. Since the whole process of the "return of geopolitics" (if it ever disappeared from them at all) is objective and legal in world relations, sooner or later it had to come to Europe. The war in Ukraine confirmed this process and made it clear. In situations of world crises, whether military (wars), economic (recessions and depressions) or health (pandemics and epidemics), strategic issues take precedence over tactical ones. Thus, Europe, willy-nilly, was completely thrown into the "brave new world" of hard power games during the war in Ukraine, which raises the question of its overall strategic capacities and possibilities to maintain its current level of prosperity in such a world. However, it cannot be said that Europe did not recognize the outlines of the "brave new world" into which it was thrown during the COVID-19 pandemic, having in mind official or unofficial strategic documents dedicated to the question of how Europe could survive in such a world (FORST, 2021).[6] Although the Old Continent has not been the center of the world system since the world wars, as it had been for several centuries prior, it still has authority in world relations order since the formation of the modern international Westphalian and modern economic capitalist systems. This is evidenced by the fact that French President Macron and German Chancellor Scholz are the only Western leaders to have, in addition to the war in Ukraine, a direct line with Russian President Vladimir Putin. At the

[5] The phrase "world system", as well as the thesis that this "world system" has its own recognizable economic and political logic that allows for approximate analytical predictions of the future, were taken from Wallerstein.

[6] One of the speakers at the International Conference on Strategic Flows 2021, organized by the Forum for Strategic Studies (FORST) in Belgrade in the early summer of 2021, was Steven Blockmans, Director of CEPS, one of Europe's largest think tanks. He devoted most of his presentation to this process of reindustrializing Europe's strategic resources.

time of the global return of geopolitics, the countries of the European Union kept their old role of promoters of the global balance of power (which was unfortunately disturbed by the war in Ukraine), which was once intended for it by De Gaulle, and which Macron and Scholz continue today. Although the global balance of power has been significantly disturbed by the war in Ukraine, this does not change the fact that the European Union is one of the parties most interested in re-establishing it. This is evidenced by the efforts of Macron and Scholz to prevent the war in Ukraine, that is, to stop and to preserve the so-called project of European strategic autonomy, the form and character of which will be significantly affected by the war in Ukraine (European Parliament, Briefing, 10 March 2022). It should be added that even earlier, with Brexit, Britain started the process of its own kind of "strategic autonomy" in isolation, which confirms our thesis that we are witnessing a kind of *geopolitical lockdown* – that is, the "locking" of various geopolitical spaces.

THE EUROPEAN UNION AS A "JUNIOR STRATEGIC PARTNER" IN NATO WITHIN THE PROCESS OF "GEOPOLITICAL LOCKDOWN"

The question remains in which way the European Union will be geopolitically "locked in", i.e., whether it will definitely remain a younger partner of the US in the transatlantic partnership due to the war in Ukraine, as it seems at first glance. It is difficult to expect that the EU will have enough vision and enough strength to continue the project of its own strategic autonomy, which is, in fact, the old idea of De Gaulle, which was advocated by Macron and Scholz until the outbreak of the war in Ukraine.[7] Whatever the evolution of the idea of European strategic autonomy, in the short term, it will not mean distancing the EU from the United States, which would be unrealistic to expect at a time when transatlantic partnership ties have strengthened as a result of the war in Ukraine (primarily in NATO military

[7] Opinions on this are divided in the quoted briefing of the European Parliament in 2022, but all analytical reports of the briefing show pessimism that the project of European strategic autonomy is sustainable in the new circumstances of the inaugurated war in Ukraine. However, we still do not know the definitive outcome and consequences of the war in Ukraine and the distribution of global forces after it, so it is currently unclear whether the project of European strategic autonomy is currently only on ice or will completely collapse in the new war.

cooperation). The strategic autonomy of the EU will go more in the direction of strengthening geostrategic capacities, but within the framework of systems dictated and controlled by the US (NATO, etc.). In this context, there will continue to be room for a kind of "geopolitical bargaining" of the EU, led by France and Germany, which in practice will mean the possibility of concluding autonomous geo-economics arrangements with other geo-economics powers (Hasselbach, 2022, March 1).[8] This "geopolitical bargaining" between the EU and the United States, but also with China and Russia, will only accelerate due to the war in Ukraine. Its final result will depend on the concrete result of that war and its consequences on how much one of the geopolitical superpowers will gain and how much it will lose. It is obvious that the United States, as a consequence of this war, predicts Russia's economic exhaustion, while Russia is trying to secure a better negotiating position with the United States in a kind of "new Yalta". On the other hand, China is watching all this from the sidelines, being for now the biggest winner of the events caused by the war in Ukraine. At the beginning of the third decade of the 21st century, different political and economic entities – state, international or corporate – must take into account realpolitik and use all the means at their disposal to improve their overall strategic position, with less regard than before in the case of "happy liberal times" towards other entities, especially if they are its competitors. In this situation, the former classical geopolitics is actually mutating into a new form suitable for the 21st century – geo-economics. The basic question is whether, in such circumstances, the European Union can maintain its current level of relative development and prosperity, embodied in its classic Welfare State, or will the Old Continent necessarily, from the era of prosperity, due to war on its soil and sanctions in force between the EU and Russia, enter an era of difficult and dangerous living in which the availability of vital resources will gradually become increasingly limited. In a world in which the most important powers, such as the United States, China, and Russia, entered earlier (in the second decade of the 21st century) from the ideological to the ruthless field of real politics, at the end of the

[8] With the war in Ukraine, the foreign policy of the Bundestag is changing. Namely, the German government approved one hundred billion euros for the armed forces as a one-time expenditure, with the aim of permanently increasing defense expenditures. At the same time, the arrival of refugees from Ukraine is welcomed, so they do not have to go through the asylum procedure and they receive protection on the territory of the EU for three years.

second and beginning of the third decade of the new millennium, so-called "Old Europe" was thrown on the field. The war in Ukraine is only the last episode of the disturbed continental balance. The Old Continent, i.e., the European Union as its current dominant pan-European institutional expression, is an economic giant but still a security and strategic dwarf. This is why the strategists of the European Union came to the conclusion that it is necessary to strengthen the Union's own strategic capacities, primarily at the geo-economics level, and that the war in Ukraine will only accelerate. The stability of the European system itself, including the EU, depends on the constellation of relations between the great geopolitical powers (above all, the United States, China, and Russia) and their agreements, i.e., possible conflicts. This continental stability is currently drastically disrupted. It is in Europe, with the war in Ukraine, that two major geopolitical powers, the United States and Russia, are playing their strategic poker, while the European Union is essentially following the main decisions produced in Washington, and Brussels and other capitals of the Union just follow it. The European Union received the global strategic poker, which we are all witnessing due to the war in Ukraine, divided into various "clubs" in which some of the mentioned global geopolitical forces have greater influence than what is called "Brussels". Thus, some countries of the "new Europe" (especially Poland, Romania, and the Baltic states) are currently closer to Washington than to Brussels as a kind of shield against Russia. On the other hand, Paris and Berlin, which have the greatest influence on the decisions of the EU institutions, are not ready to sever all ties with Moscow for now. Europe is not only in a geopolitical sandwich, but it has also become a scene of struggle between different geopolitical interests, which can undoubtedly destabilize it and, among other things, affect its capacity for enlargement in various ways, which can affect our region, including Serbia (Lopandić, 2017, 2018; Cvetićanin, 2017b).

CONCLUSIONS

After a series of crises, such as the global financial crisis of 2007/8, the migrant crisis, Brexit, the crisis of the COVID-19 pandemic, as well as the war in Ukraine, the European Union became aware of its strategic weaknesses and began the process of restructuring its strategic capabilities in the field of energy resources, as well as in the fields of the Common Foreign and Security Policy (CFSP) and Common Security and Defense Policy (CSDP). This process began immediately after Brexit (adoption of the so-called *global strategy of the EU 2016*) and has been strengthened by various

initiatives in recent years in the areas of common defense policy (strengthening the European Defense Agency, the PESCO initiative, the special financial instrument for defense, etc.), energy union, industrial and digital policies, as well as environmental policies. Adoption of the so-called "Strategic Compass" by the European Council in April 2022 represents a new step in specifying the strategic goals of the EU in the new geopolitical conditions after the tectonic disruption of the European security system created after February 24, 2022, by the war in Ukraine. However, it is not yet clear how much the various measures taken by the EU against Russia (several rounds of sanctions), i.e., the United States (urgent procurement of weapons, especially by the Federal Republic of Germany, which drastically increased funds to strengthen defense), or various disorders in the economy (especially possible restrictions on energy supply), will cost. According to the projection of the investment bank Goldman Sachs, the complete exclusion of gas inflows from Russia would reduce the growth of the Eurozone by 2.2 percentage points. The biggest damage would be suffered by the economies of Germany, which would fall by 3.4 percentage points; Italy, with a decrease of 2.6 percentage points; and the increase in gas prices would affect the Eurozone GDP by 0.6 percentage points. This would probably mean the emergence of stagflation in Europe, which would be characterized by high inflation and weak economic growth and which would send the Old Continent from the era of prosperity into an era of hard living with no prospect of reviving significant economic growth. This "dark" scenario of the consequences of the war in Ukraine for the European Union implies the end of one and the beginning of another era, where the era of prosperity would be replaced by the era of "survival". Some European leaders are aware of that, so it is no wonder that they are the ones who are most trying to stop the war in Ukraine. This position is certainly not pleasant for the European Union, but it was realistically thrown into it during the war in Ukraine. The consequences of this "dark" realistic scenario, if realized, would be felt by the Balkans, i.e., those countries that are not yet members of the European Union and whose accession to the Union would still be in question. The EU's capacity to expand to our region, and thus the position of the state of Serbia in all the previously described processes, will depend on the way in which the European Union and its dominant national centers will amortize the negative consequences of the war in Ukraine on their own economies. On the other hand, there is a scenario according to which the "geopolitical awakening" of the European Union could lead to a revival and acceleration of the enlargement process to the Western Balkans in the coming years (similar to what happened with the accession of

Romania and Bulgaria to the EU earlier in this millennium, after the bombing of Serbia by NATO). The capacity of the European Union for enlargement will be predominantly influenced by the attitude of the EU elites towards further enlargement as well as the attitude of the EU citizens, in which the events in Ukraine will play an important role. Considerations about the eventual membership of Ukraine in the Union are, for now, just an attempt to open a moral umbrella before the war, without many chances to be realized. However, we will have to wait for the final outcome of the war in Ukraine and possible peace agreements that will affect the final position of the EU. Currently, two solutions can be envisaged with regard to further EU enlargement: *The first scenario* is the continuation of the policy of "enlargement fatigue", both among the elites and the citizens of the European Union. Under the influence of the war in Ukraine, due to the war events and the accompanying consequences of the new wave of refugees from Ukraine, the public in the EU would be less and less inclined to support EU enlargement in the future. *The second scenario* is to proceed with the accelerated enlargement of the European Union to the Western Balkans in order to show that the Union is still, even in new unfortunate geopolitical circumstances, vital and capable of expanding. This would pacify Europe's potential *Balkan Achilles' heel*, which could be particularly embarrassing in a situation of geopolitical turmoil as a potential source of instability, as the Balkans were and remain a border area where different geopolitical interests intersect, causing crises.

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THE FUTURE OF THE EUROPEAN UNION AND THE EUROPEAN INTEGRATION

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Abstract: There have been some attempts to form a separate bloc of European Union (EU) states, sometimes with the assistance of a foreign country. This would lead to the disintegration of European construction, as some might take advantage of it. But the Ukraine crisis had a tremendous impact on the EU's unity. Except for Hungary, all the EU members are united in all the decisions related to Ukraine and Russia. There is no sign of any idea of trying to get back sovereignty or at least to enhance it by diminishing the power of EU institutions and NATO. The Western Balkans (WB) countries strive to enter the EU with the democratic values typical of the founding members. If the EU becomes a "two-block" EU, the WB countries would enter into the eastern part of the EU, creating a very different alliance with more autocratic values, less respect for human rights and less freedom of the media, and not respecting the rule of law and an independent judiciary. Is there still any sense in entering into such an alliance? Due to elections in some EU members, where the pro-European forces were the winners, and due to the Ukraine crisis, the EU became significantly more united and stronger. Unfortunately, the prospects of entry into the EU for the Western Balkans countries did not change.

Keywords: EU, Western Balkans, Ukraine crises, integration prospects.

INTRODUCTION

The movement toward the unification of Europe was undoubtedly a major event in the world history of the twentieth century, appealing to a free and united Europe through a link between states renouncing their absolute sovereignty. After the Treaty of Rome (1957), when the common

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market was achieved, a single market and monetary union were achieved by the Treaty of Maastricht (1992), some borders between the member states were abolished by the Schengen agreements (1985), and finally, the Lisbon treaty was signed (2007). In the last 20 years, except for some minor formal reforms, no adequate measures have opened the way to a reshaping of the Union. The necessity of reshaping was simply not strong enough. At the end of the previous century, political as well as economic implications made the enlargement of the Community a priority issue, with many finding it easier to increase the membership than to improve the political profile. It was furthermore evident that the United Kingdom would have opposed any steps towards a political union. The EU was always perceived as a group of nations with the same status. They were and still are equally represented in the Council; each member state has its own commissioner and has a relative number (according to its population) of members in the EU parliament. In this sense, the conditions of a stable and efficient EU are very clearly defined, and a balance of power between member states that can actually be maintained is formally guaranteed. In other words, the EU exists according to the "one-block" system (Kunić, 2021, 5 December).

INTEGRATION PROCESSES AND POWER BALANCING IN EUROPE

According to Henry Kissinger, the balance of power works best when one of the following conditions is met: first, when any nation feels free to join any other nation in accordance with circumstances; second, when there are fixed alliances, the balancer makes sure that none of the existing coalitions becomes dominant. And third, when there are rigid alliances and there is no balance but alliance cohesion is relatively low, there are compromises or changes in alignment on any issue. When none of these conditions prevails, diplomacy turns rigid. In such situations, a "zero-sum game" develops, in which every gain of one party is imagined as a loss for the other. Arms races and rising tensions are inevitable (Kissinger, 1994). Given Kissinger's conditions for a prosperous and internationally important EU, at least one of the three conditions for the functioning of the power relations among its members should be met. Such an EU would be "one-bloc", not "two-bloc". Within the EU, there are some alliances where the cohesion of those alliances is relatively low, so that, on any issue, there are either compromises or changes in alignment. For the sake of example, I will mention three such cases:

The first is the Nordic Council, which represents the official body for formal inter-parliamentary Nordic cooperation between the Nordic countries. The Nordic Council was founded in 1952 and has 87 members from Denmark, Finland, Iceland, Norway, and Sweden, as well as from the autonomous areas of the Faroe Islands, Greenland, and Åland. The representatives are members of parliament in their respective countries or areas and are elected by those parliaments.

Another case is the Baltic Assembly, which represents a regional international organization whose goal is to promote intergovernmental cooperation between Estonia, Latvia, and Lithuania. The Baltic Assembly was formed after the decision on its establishment was made in Vilnius on December 1, 1990. It operates in accordance with the rules defined on November 8, 1991, in Tallinn, which were formally adopted three years later, on June 13, 1994. According to many economic, political, social, and cultural issues, this organization tries to find a common position by adopting decisions that have an advisory force.

The third case is the Benelux, which represents the political-economic union and formal international intergovernmental cooperation of three neighboring countries in Western Europe: Belgium, the Netherlands, and Luxembourg. Benelux was created during the Second World War when the governments of the three countries in exile signed an agreement on a customs union (1944). After the end of the Second World War, the Union ceased to exist (1960). It was replaced by the Benelux Economic Union, which had an impact on the creation of the EEC (the European Coal and Steel Community in 1951 and the European Community in 1957).

There are some other less visible organizations among the EU members, but some states do not belong to any such alliance, for instance, Ireland, Malta, Spain, Portugal, France, and Germany. Until the cohesion of the alliances is relatively low so that, on any given issue, there are either compromises or changes in alignment, a "two-block" EU cannot emerge. There were some examples of trying to establish a separate block of the EU states, sometimes with the support of some foreign country. This would lead to the disintegration of European construction, as some might take advantage of it. China advocated for the formation of a 16+1 alliance. The 16 states of Central and Eastern Europe (Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Estonia, Hungary, Latvia, Lithuania, Macedonia, Montenegro, Poland, the Czech Republic, Romania, Serbia, Slovakia, and Slovenia) plus China would strengthen the economic links between China and Central and Eastern Europe. The format was founded in 2012 in Budapest to push for cooperation

among the "16+1" (the 16 CEE countries and China). China was interested in infrastructure, renewable energy, and agriculture investments. The leaders of Central and Eastern Europe met with Chinese Prime Minister Li Keqiang in 2013. Later, this group evolved into 17+1 when Greece joined in 2019. Although the 17+1 initiative initially had some successful projects, such as the railway on the Greece-Hungary corridor and investment in Port Thessaloniki, the EU was able to moderate Chinese influence on EU unity. Nations belonging to the 17+1 group felt free to align with any other state, depending on the circumstances of the moment. Recently, some countries have been thinking of leaving this alliance. In March 2021, the Lithuanian National Radio and Television (LRT) reported that in February 2021, the Lithuanian parliament agreed to leave what was previously known as the Chinese 17+1 format. Foreign minister Gabrielius Landsbergis said the cooperation between Beijing and Lithuania has brought "almost no benefits". (Radio, 2021) This initiative is definitely not challenging the unity of the EU.

The Three Seas Initiative

This initiative is a forum of twelve states of the EU, along with a north–south axis from the Baltic Sea to the Adriatic Sea and the Black Sea in Central and Eastern Europe. The initiative aims to create an *Intermarium*-based (Late Middle Ages system of governing the region spanning the Baltic, Adriatic, and Black seas) regional dialogue on various questions affecting the member states. The member states are Austria, Bulgaria, Croatia, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia, and Slovenia. They held their first summit in 2016, in Dubrovnik. This initiative is supported by the US. Every year, the Three Seas Initiative brings together 12 member countries. The initiative is focusing on funding cross-border infrastructure projects, especially in the fields of energy, transport, and digitalization. We cannot exclude the possibility that behind the idea of creating this alliance there is the idea of creating a separate block of eastern members of the EU, thus creating the tampon zone between the western part of the EU and the Russian Federation. But the cohesion of this alliance is too low to be able to lead the EU towards a two-block EU.

The Visegrád Group

The Visegrád Group, or Visegrád Four, or V4, is a cultural and political alliance of four countries (the Czech Republic, Hungary, Poland, and

Slovakia), all of which are members of the EU and NATO, to advance cooperation in military, cultural, economic, and energy matters with one another. The Group traces its origins to the summit meeting of leaders from Czechoslovakia, Hungary, and Poland held in the Hungarian castle town of Visegrádon on February 15, 1991. The Visegrádgroup was clearly supported by the United States during Mr. Trump's presidency. The visit of Mr. Pompeo, the state secretary, just confirmed it. Some expected Mr. Biden, the newly elected President of the United States, to change this policy. Nevertheless, it would be too naive to expect fast and big changes in the US's foreign policy. After Mr. Janez Jansa became the president of the Slovenian government, Slovenia became a strong supporter of the Visegrad policy. At that moment, it seemed that Slovenia had de facto become a member of this group. Recently, Visegrád countries have had disagreements with the EU Commission and the EU Parliament over the EU's values. Due to strong pressure from specific countries, in which the effects of the COVID-19 pandemic were very grave and which were threatened with very serious economic consequences, talks on the provision of assistance were organized. The main impediments to brokering an agreement were the disagreements between the Netherlands and Italy regarding conditioned assistance from the *European Stabilization Mechanism* (ESM) and the divergence between the stances of the South and the North on the issue of joint debt. Nevertheless, the EU managed to find a way to provide solidarity-based assistance, and the common problem (the pandemic) has at least led to some convergence of interests. However, an important element of this assistance is that some member countries strongly advocate the idea that the assistance should be conditional on compliance with European values. Naturally, the accurate definition of European values is rather debatable, but it is related, *inter alia*, to the freedom of the media, free and fair elections, the rule of law, respect for human dignity and rights, etc. Although such conditions have not yet been formalized, bearing in mind the stances of the richest member countries, they may be effective at the practical level. Speaking about European values, it was more than evident that it was an issue for the Visegrád countries, especially Poland and Hungary. The Visegrád alliance is somehow challenging the EU's unity. In the fields of freedom of the media, free and fair elections, the rule of law, and respect for human dignity and rights, this alliance seems to be rigid and, as there is no strong balancer, there are no compromises or changes in alignment on those issues. The third Kissinger condition is not totally fulfilled, and it could lead the EU towards a "two-block" EU. A zero-sum game may develop in which any gain for one side is conceived as a loss for the other. Mounting tensions become

inevitable. The strongest tool in the hands of the EU to achieve the rule of law and democracy in the EU is imposing the conditions for the distribution of EU funds. But the president of the EU Commission, Ursula von der Leyen, was following her promise, given before she got the position, to diminish the confrontation with Poland and Hungary. Sometimes, economic interests overrule the defense of the basic EU values. The European Commission warned Poland and Hungary to respect freedom of speech, organize fair elections, strive for a free and independent media, and to have a politically independent judiciary. But the market for the products from Germany, France, and other most developed European countries is so important that those countries would not be willing to lose it on account of European values. At this moment, there is no effective balancer in the EU. Knowing this, the four leaders of important political groups in the EU Parliament (Manfred Weber, EPP; Iratxe Garcia Pérez, S&D; Dacian Cioloş, Renew Europe; Ska Keller and Philippe Lamberts, Green/liberals) wrote the letter (October 2020) to the EU Commission and the European Council emphasizing that the EU values are not on sale. Recently, the EU Commission decided to limit access to some funds to Hungary due to non-compliance with some basic values of the EU. Traditionally, the UK played the role of the European balancer, but they opted to leave the EU. Germany and France are the only countries capable of acting as balancers. At this moment, they seem to be trying to play this role, but they have not been very successful. After the elections in Germany and France, we can expect that the roles of France and Germany will be much stronger within the EU. If the EU Parliament, together with some important and economically strong members, is not successful in balancing the Visegrád group, the way towards a double-speed EU will be opened. After the elections in the US where Mr. Trump was replaced by Mr. Joe Biden, we could expect that the policy of diminishing the power of the EU will probably be changed. Under the presidency of Mr. Donald Trump, the US supported the activities of the Visegrád group. It seems that the reason for this is the creation of the tampon zone between the EU and the Russian Federation and, at the same time, to split the EU into two parts, thus diminishing its power. Together with the support of Brexit, it is evident that the policy of diminishing EU power de facto follows the idea of "Make America first". Immediately after the election of Joe Biden as the new US president, there were a lot of expectations that this policy was going to be changed. But soon it became clear that we could see the weakening of the transatlantic link, a clear orientation of the US towards Asia. It became more evident after the signing of the defense treaty between the US, the United Kingdom, and Australia (Zerjavic, 20211, 21

September). But the Ukraine crisis had a tremendous impact on the EU's unity. Except for Hungary, all the EU members are united in all the decisions related to Ukraine and Russia. There is no sign of any idea of trying to get back sovereignty or at least to enhance it by diminishing the power of EU institutions and NATO.

PERSPECTIVES FOR THE INTEGRATION OF THE WESTERN BALKANS INTO THE EU

A European perspective for the Western Balkans was among the priorities during Slovenia's Presidency of the EU Council in the second half of 2021. Slovenia is among the main initiators of constructive discussion regarding the future of EU enlargement policy. The yearly multilateral meeting of the leaders of the WB countries is called the Brdo-Brioni process, which was established by the president of Slovenia, Borut Pahor, and the president of Croatia, Ivo Josipović. It is important that shortly before the Slovenian EU-Council presidency, the Brdo-Brioni meeting was realized. Let me mention that the Brdo-Brioni process inspired the creation of the Berlin process.

But now the countries of the WB do not expect to become members of the EU in the near future, although officially they do not say it, and the need for regional cooperation has resulted in the creation of some alliances in this region. Serbian President Aleksandar Vučić (SNS), Prime Minister of North Macedonia **Zoran Zaev** (SDSM) and Prime Minister of Albania **Edi Rama** (PS) signed on October 9, 2019, in Novi Sad, a Joint Declaration of intent to establish a "*Mini Schengen*" among the three states. The joint declaration envisages the elimination of border controls and other barriers, which should facilitate movement in the region by 2021. It would also enable citizens of the three countries to travel in the region using only an identification card and find employment anywhere in the region based on their professional qualifications. The signed declaration should help the Western Balkans region to start functioning on the basis of four key freedoms on which the EU is founded: *freedom of movement of people*, *capital*, *goods,* and *services*. The initiative is also open to other Western Balkans countries: Bosnia and Herzegovina, Montenegro, and Kosovo. It was stressed that the respective initiative is not compensation or an alternative to the membership of the countries in the region in the EU. However, it replaces some of the benefits of freedom enjoyed by EU members. In reality, this initiative is a form of compensation for EU membership. Also, North

Macedonia is following a similar policy. They intend to foster better relations among neighboring countries, although they have not been very successful. Of course, they would like to enter the EU as soon as possible. Nevertheless, they signed some important agreements, the Ohrid Agreement and the Prespan Agreement, and they changed the name of the country and became North Macedonia. Is the EU going towards a "one-block" EU or a "two-block" EU? It seems that there are some world superpowers interested in creating a double-speed EU, an EU with two blocs of countries with the possibility of mounting tensions between them. Yet, the EU has always been able to surpass such ideas as dangerous to unity. Especially after the UK's decision to leave the EU, the idea of a "one-block" EU being strong and stable is very active. Nevertheless, the UK took this decision, and the EU was simply not able to preserve unity with the UK. Although the position against a "two-block" EU is supported by important European forces as well as many European citizens, the fact that the EU will become a "two-block" EU cannot be ignored. Some analysts are even more pessimistic and estimate that the split between the western part of the EU and the eastern part is deepening, and it seems that this process is irreversible (Apih, 2021, 9 September). The participation of the important political persons at the 16th Bled Strategic Forum and the content of the discussions seemed to pave the way for the eastern part of Europe to work together (Forum, 2021). The Forum focused on the future of Europe and the call to increase its resilience. The topics of the conversation touched on the priorities of the second Slovenian presidency of the Council of the EU, which is taking place within the project "Together Resilient". The slogan "*Reconciliation" is conditio sine quanon* for developing understanding, cooperation, and progress of the WB6 region. Given the current political, security, and socioeconomic conditions in the WB6 region, and in each of the member countries in particular, should the EU find ways and means to support, with adequate measures, the elaborated and well-intended reconciliation process, the accomplishments of which would create a favorable environment for the resolution of specific existing problems in the region, and thus for ensuring the step-by-step integration of WB6 countries into the EEU? Reconciliation means finding a way in which two situations or beliefs that are opposed to each other can agree and exist together. It is a very complex task. Its ways and means should be elaborated after analyzing the factual situations and finding an adequate methodology for building activities that could create an adequate environment for stimulating solutions to the existing problems. In post-conflict societies where past injustices remain unresolved, there exists a latent risk of a renewed outbreak of violence, years or decades later.

Therefore, reconciliation has become increasingly important in the context of conflict prevention and the development of cooperation (Devetak, 2021).

CONCLUSIONS

The analysis in question shows that the countries of the Western Balkans are striving to join the EU (Kunić, 2021). For them, joining the EU would mean accepting the democratic values that are typical of the EU member states. Considering the perspectives of integration processes in Europe, we concluded that if the EU became an international organization composed of two blocs, then the Western Balkans would enter the eastern part of the EU, which would be a completely different alliance, with more autocratic values, with less respect for human rights, and less freedom of the media. This "eastern bloc" could completely relativize the meaning of the principles of the rule of law and the independence of the judiciary. It would then be fair to ask the question: does it still make sense to enter into such an alliance? According to the author, the EU of two blocs is not a good option, neither for the EU nor for the whole world. We should preserve the united EU and do our best to make it politically stronger and more economically successful. Due to the elections in some EU member states, where pro-European forces were the winners, and due to the Ukrainian crisis, the EU, according to the author, has become much more united and stronger. Unfortunately, the prospects for the Western Balkans to enter the EU have not improved significantly; moreover, they may have stagnated.

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PERSPECTIVES ON THE ECONOMIC INTEGRATION OF THE WESTERN BALKANS INTO THE EUROPEAN UNION

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Abstract: In this paper, the authors analyze the perspectives of the economic integration of the Western Balkans into the European Union (EU). The work is dedicated to the study of the exchange of the Western Balkans with the EU in comparison with the exchange within the EU from March 2020 to February 2022. The analysis shows that the economic (trade) relations between the partners have become stronger in the post-COVID period. The goods of the Western Balkans, mostly traded with the EU, are not characterized by inter-industry complementarity. Concentrations of trading partners have been different, leading to these Western Balkan countries facing different recoveries. One positive exception is Serbia, which has a diversified trade system with various partners from non-EU countries. EU membership remains attractive for the Western Balkans, but it is dependent on the fulfillment of criteria that may prolong the entire accession process. Restructuring of the global value chain and supply chain, EU financial aid to the Western Balkans for recovery, and high inflation in the EU show different perspectives for the accession of the Western Balkan countries to the EU.

Keywords: Western Balkans, European Union, Economic Integration, COVID-19, post-COVID.

INTRODUCTION

The unexpected outbreak and spread of COVID-19 affected not only the health of people but also the global value chain and supply chains

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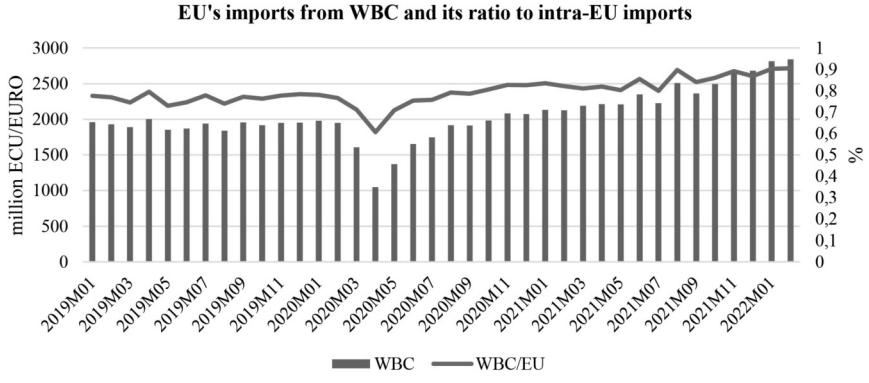
connecting countries. Almost all countries in the world took measures such as quarantine to contain the spread of the COVID-19 pandemic in its early stages. Both supply and demand were limited, which caused unwanted side effects. Economic activity was slowed down, and cross-border supply chains were disrupted. The scale of economic recovery was small until the vaccination rate rose and the death rate of COVID-19 was lowered. The COVID-19 pandemic began in Europe in mid-March and was in full force during April 2020. It restricted the free movement of goods, services, capital and persons in the European Union (EU), which was the key feature of the European single market. So did the economic relations between the EU and candidate countries and potential candidates. The Western Balkans (WB) is composed of Albania, Bosnia and Herzegovina, Montenegro, North Macedonia, and Serbia. Montenegro, Serbia, North Macedonia, and Albania currently have EU candidate status, while Bosnia and Herzegovina is a potential candidate. Due to the geographic proximity and size, it is not surprising to find that the EU is a major trade partner of the Western Balkans. As the economic convergence among the EU member states was fiercely affected by the COVID-19 pandemic, it is necessary to study its impacts on the economic relationship between the EU and the Western Balkans. Free movement of goods lies at the heart of the European single market and has been key to boosting the EU's GDP significantly. Trade in goods currently generates around a quarter of the EU's GDP and three-quarters of intra-EU trade (European Parliamentary Research Service, 2019, April 18). Similarly, trade in goods is the most important connection between the Western Balkans and the EU, which could also be said about their industrial relationship. Therefore, this paper concentrated on this issue. This paper has four parts plus an introduction. Part two studies the Western Balkans-EU trade relationship in the post-COVID era by analyzing their monthly trade growth rates from March 2020 to February 2022 in general. Part three analyzes the dominant goods in the Western Balkans-EU trade. Part four compares the partner concentrations of the Western Balkans-EU trade among the Western Balkans. Part five gives a forecast about the Western Balkans' economic integration into the EU in the post-COVID era.

THE WESTERN BALKANS-EU TRADE RELATIONS BECAME CLOSER IN THE POST-COVID ERA

While trade among the Western Balkans accounted for 15% of their total exports and 9% of their total imports in 2021, the European Union was the main partner of the Western Balkans for both exports (81%) and imports

(58%) (Eurostat, 2022, March). Although the Western Balkans is farther from Western Europe compared with the Central and Eastern EU members, they are important parts of Europe in terms of geography and economy. They have seen the rapid economic development of Central and Eastern EU members and are eager to join European integration in order to boost their own economy. The economic relationship between the Western Balkans and the EU experienced a sudden shock at the beginning of the COVID-19 pandemic and became closer with gradual recovery when the global value chain and supply chains were restructured and relocated to be more resilient. We compared the absolute value and relative value of the Western Balkans-EU trade and the intra-EU trade to get an idea of their recovery in trade relations. The EU's imports from the Western Balkans countries (WBC) decreased sharply when the COVID-19 crisis erupted in early 2020, and began to recover after the pandemic was under control since May 2020 (see Figure 1). The value of the EU's imports from the WBC has been higher since October 2020 than before the COVID-19 outbreak. The relative value of the EU's imports from the WBC to the intra-EU imports did not reach the pre-COVID level until August 2020, and it has tended to rise since then. Although the ratio was only 0.91% in February 2022, it was higher than that before the pandemic eruption, reflecting a closer trade relationship between the EU and the Western Balkans.

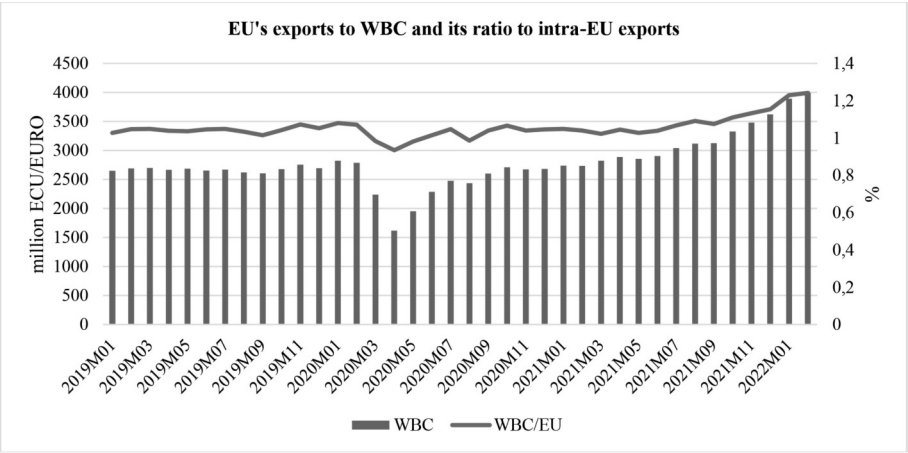
Figure 1 – The EU's imports from the Western Balkans and its ratio to intra-EU imports (in seasonally and calendar-adjusted trade value)



Source: Eurostat.

The EU's exports to the WBC recovered later than its imports from the WBC (see Figure 2). It has been since March 2021 when the value of the EU's exports to the WBC was higher than before the COVID-19 eruption. The relative value of the EU's exports to the WBC to the intra-EU exports did not bounce back above the pre-COVID level until August 2021, and it tended to go up from then on. The ratio was 1.24% in February 2022, which was much higher than that before the pandemic outbreak, indicating their deeper trade dependence on each other.

Figure 2 – The EU's exports to the Western Balkans and its ratio to intra-EU exports (in seasonally and calendar-adjusted trade value)



Source: Eurostat.

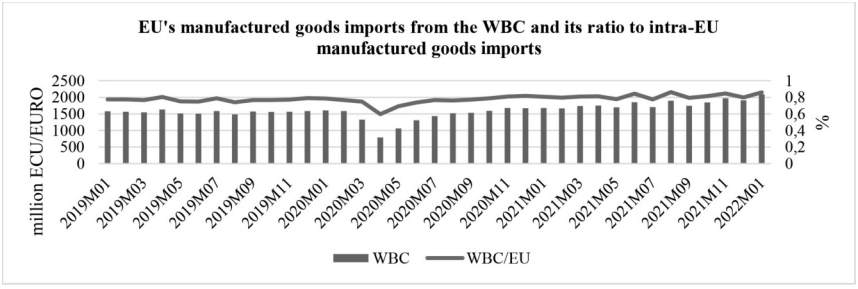
MANUFACTURED GOODS DOMINATED THE WESTERN BALKANS-EU TRADE RECOVERY

The Manufactured Goods Trade Led the Recovery in the Western Balkans-EU Trade

Studying the commodity trade structure is helpful in understanding the Western Balkans-EU trade relations. In terms of the most traded goods in the Western Balkans-EU trade and the intra-EU trade, manufactured goods accounted for about 80% of the EU's imports from the WBC and the intra-EU trade, respectively. The value of the EU's manufactured goods imports from the

WBC and its relative value compared with the intra-EU manufactured goods imports did not reach the pre-COVID level until November 2020 (see Figure 3). It fluctuated several times, recorded 0.86% in January 2022 and tended to rise.

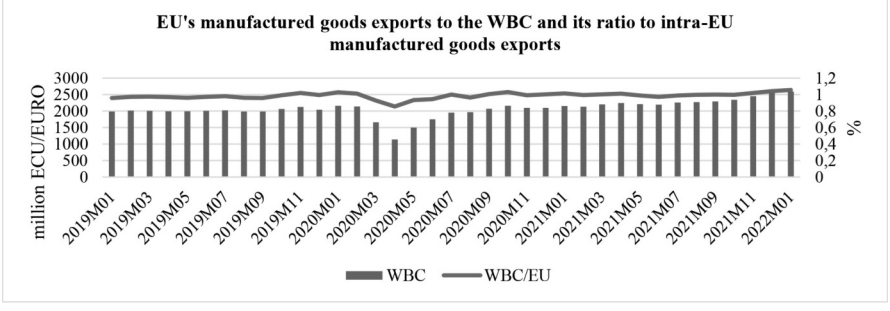
Figure 3 – The EU's manufactured goods imports from the WBC and its ratio to intra-EU manufactured goods imports



Source: Eurostat.

Correspondingly, manufactured goods dominated the EU's exports to the WBC and accounted for about 75% of the EU's exports to the WBC. The value of the EU's manufactured goods exports to the WBC did not reach the pre-COVID level steadily until March 2021 (see Figure 4). And its relative value compared with intra-EU manufactured goods exports went back to the pre-COVID level even later. The ratio has been higher than the pre-COVID level only since December 2021. It reached 1.06% in January 2022 and has tended to go up.

Figure 4 – The EU's manufactured goods export to the WBC and its ratio to intra-EU manufactured goods exports, Source: Eurostat.



Source: Eurostat.

Differences in the Most Traded Goods Among the Western Balkans

The composition of the most traded goods in the Western Balkans-EU trade and the intra-EU trade was not completely the same. According to Eurostat, the most traded goods in the intra-EU trade included transport vehicles, machinery, pharmaceutical products, plastic products, mineral fuels, iron and steel, organic chemicals, and optical products. And their most traded 4-digit HS codes were HS 8703, HS 8708, HS 3004, HS 3002, HS 8471, HS 2710, HS 8517, and HS 8704.[1] However, the most traded goods among the Western Balkans were different. Albanian top imports from the EU in 2020 were transportation equipment, petroleum oils, medicaments, leather,

[1] HS 8703: Motor cars and other motor vehicles principally designed for the transport of persons, incl. station wagons and racing cars (excluding motor vehicles of heading 8702);

HS 8708: Parts and accessories for tractors, motor vehicles for the transport of ten or more persons, motor cars and other motor vehicles principally designed for the transport of persons, motor vehicles for the transport of goods and special purpose motor vehicles of heading 8701 to 8705, n.e.s.;

HS 3004: "Medicaments consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured doses ""incl. those in the form of transdermal administration"" or in forms or packings for retail sale (excluding goods of heading 3002, 3005 or 3006)";

HS 3002:Human blood; animal blood prepared for therapeutic, prophylactic or diagnostic uses; antisera and other blood fractions and immunological products, whether or not modified or obtained by means of biotechnological processes; vaccines, toxins, cultures of micro-organisms (excluding yeasts) and similar products;

HS 8471:Automatic data-processing machines and units thereof; magnetic or optical readers, machines for transcribing data onto data media in coded form and machines for processing such data, n.e.s.;

HS 2710: Petroleum oils and oils obtained from bituminous minerals (excluding crude); preparations containing >= 70% by weight of petroleum oils or of oils obtained from bituminous minerals, these oils being the basic constituents of the preparations, n.e.s.; waste oils containing mainly petroleum or bituminous minerals;

HS 8517: Telephone sets, incl. telephones for cellular networks or for other wireless networks; other apparatus for the transmission or reception of voice, images or other data, incl. apparatus for communication in a wired or wireless network [such as a local or wide area network]; parts thereof (excluding than transmission or reception apparatus of heading 8443, 8525, 8527 or 8528);

HS 8704: Motor vehicles for the transport of goods, incl. chassis with engine and cab.

footwear, surface-active agents, bakers' wares, textiles, ceramic products, and water. Bosnia and Herzegovina's top imports from the EU in 2020 were petroleum oils, transportation equipment, medicaments, meat, leather, chocolate, food preparation, footwear, wheat, and Maslin. North Macedonia's top imports from the EU in 2020 were petroleum oils, ceramic wares, transportation equipment, medicaments, cables, prepared binders, electrical apparatus, flat-rolled products, and electrical energy. Montenegro's top imports from the EU in 2020 were petroleum oils, transportation equipment, medicaments, meat, artificial corundum and aluminum, food preparations, cement, blood, and electrical energy. Serbia's top imports from the EU in 2021 were medicaments, transportation equipment, petroleum oils, auto parts, cables, human blood or animal blood, electrical apparatus, and polymers. Similarly, Albanian top exports to the EU in 2020 were footwear, clothes, packing containers, and ferro-alloys. Bosnia and Herzegovina's top exports to the EU in 2020 were seats, furniture, cables, footwear, structures and parts of structures, electrical energy, auto parts, plastic products, and wood products. North Macedonia's top exports to the EU in 2020 were reaction initiators, centrifuges, cables, seats, furniture, motor vehicles, auto parts, tobacco, and tubes. Montenegro's top exports to the EU in 2020 were aluminum, electrical energy, mineral ores, bars and rods, transportation equipment, transmission shafts, petroleum oils, waste, and scrap. Serbia's top exports to the EU in 2021 were cables, electric motors, maize or corn, tires, fruit and nuts, flat-rolled products, transportation equipment, seats, surface-active agents, and electrical apparatus. The onset of the COVID-19 pandemic revealed the vulnerability of Europe's food chain to severe supply challenges (European Union 2022, March 7). The ongoing economic recovery pulled up energy prices because of rising demand. Since 2021, Europe has experienced a hike in energy prices that is part of a global surge. The dominant goods in the Western Balkans-EU trade showed their complementation of each other. To some extent, the entire Western Balkans is part of the European auto industry's regional value chain. Although there was two-way trade in electrical energy, transportation equipment, auto parts, and food, the inter-industrial trade dominated the Western Balkans-EU trade. The Western Balkans imported transportation equipment and pharmaceutical products from the EU because the EU had advantages in this production. There were more pharmaceutical products imported in the post-COVID era because of vaccination and testing kits required to contain the pandemic. The majority of Western Balkans countries imported petroleum products and electricity from the EU, demonstrating the energy demand in these countries and the EU's requirement for a green transition. The trade of agricultural products

illustrated the structural shortage of some foods in the Western Balkans and the EU. The large amount of trade in food between the Western Balkans and the EU reflected how much their daily lives depended on each other. The Western Balkans exported footwear, clothes, seats, and cables to the EU, showing their competitive advantages in labor-intensive product production.

PARTNER CONCENTRATION OF THE WESTERN BALKANS-EU TRADE

While the EU is the largest group-trade partner of the Western Balkans, the EU member countries have different degrees of importance for the Western Balkans because of geographic proximity and supply chain relations. Serbia is the largest economy in the Western Balkans and the largest trade partner of the EU in the region. While only Serbia has recorded positive trade growth since the COVID-19 outbreak, all of the Western Balkans have witnessed positive growth in their trade with the EU since then.

Partner Concentration of the Western Balkans' Imports from the EU

Serbia imports approximately 57% of its goods from the EU and exports approximately 65% of its goods to the EU. The ratios of Serbia-EU goods trade to Serbia's total goods trade fluctuated several times due to the waves of contagion after the COVID-19 eruption, but they were still lower than those of the pre-COVID level. Serbia clearly attempted to re-establish its trade in the post-COVID era by seeking new trade partners from non-EU countries. The monthly growth rate of Serbia's total goods imports between March 2020 and February 2022 was 1.7%. However, Albania, Bosnia and Herzegovina, North Macedonia, and Montenegro decreased their total goods imports from 2020 to 2021 because of the supply chain disruption in the world. Correspondingly, when the Western Balkans' imports from the EU were considered, we found that the monthly growth rate of Serbia between March 2020 and February 2022 was 2.0%, which was the largest in the region, followed by North Macedonia (1.5%), Albania (1.3%), Bosnia and Herzegovina (1.2%), and Montenegro (0.7%). Hungary increased its goods exports to Serbia sharply, and the average monthly growth rate of Hungarian goods exports to Serbia from March 2020 to February 2022 was recorded at 5.2%. According to Table 1, the relative value of most Western Balkans' imports from the EU compared with their total imports from the world fell during 2019-2021. However, Serbia recorded a larger ratio in 2020

and almost recovered to the pre-COVID level in 2021. Among the five Western Balkans, only Serbia had more than half of its imports from the EU in 2021. The top five EU exporters and their concentration might explain the excellence of Serbian imports in the post-COVID era. The top five EU exporters to Serbia accounted for 61.3% of Serbia's imports, which was the lowest ratio among the Western Balkans. As China, Russian Federation, Turkey and Bosnia and Herzegovina ranked as top exporters of Serbia these years, Serbia managed the trade risk and supply chain risk by diversifying its trade partners and developing trade relations with non-EU countries and nearby Western Balkan countries. The time of the COVID-19 outbreak and the pace of recovery in different places all over the world made it possible for Serbia to maintain the growth in imports. For the other four Western Balkans, their recovery in imports depends more on the EU members. In terms of the value chain and supply chain, the recovery in Germany and Italy was of great importance for the entire Western Balkans.

Table 1 – Partner Concentration of the Western Balkans' Goods Import from the EU

Country	EU/World (%)			Top 5 EU exporters in 2020-2021	
	2019	2020	2021	Top 5 EU exporters	Ratio of the EU (%)
Albania	63.8	62.5	48.2	Italy, Greece, Germany, Spain, Czech Republic	80.4
Bosnia and Herzegovina	72.2	71.5	35.6	Germany, Croatia, Slovenia, Italy, Austria	73.0
North Macedonia	60.6	57.6	42.6	Germany, Greece, Bulgaria, Hungary, Italy	74.6
Montenegro	43.1	39.2	25.2	Greece, Germany, Croatia, Italy, Slovenia	67.5
Serbia	57.6	58.8	57.3	Germany, Hungary, Italy, Czech Republic, France	61.3

Source: Trade Map.

Note: The ratios for Serbia are calculated with direct data. The ratios for Albania, Bosnia and Herzegovina, North Macedonia, and Montenegro are calculated with mirror data.

Partner Concentration of the Western Balkans' Goods Exports to the EU

Like imports, the monthly growth rate of Serbia's total goods exports between March 2020 and February 2022 was 1.7%. However, Albania, Bosnia and Herzegovina, North Macedonia, and Montenegro decreased their total goods exports from 2020 to 2021 because of the COVID-19 pandemic. Correspondingly, the Western Balkans' exports to the EU recorded positive growth. The monthly growth rate of Serbia's goods exports to the EU between March 2020 and February 2022 was 1.8%, compared with Albania (2.4%), Bosnia and Herzegovina (2.4%), and North Macedonia (1.1%). However, as Montenegro's total goods exports to the EU fluctuated greatly between March 2020 and February 2022, it is not easy to tell its exact trend or growth rate. According to Table 2, the relative value of most of the Western Balkans' exports to the EU compared with the Western Balkans' total exports fell during 2019-2021. Among the Western Balkans, North Macedonia recorded the highest dependence on EU imports, while North Macedonia and Serbia almost bounced back to the pre-COVID level in 2021. The top five EU importers of North Macedonia accounted for 82.2% of its exports, which was higher than any of the Western Balkans. As its top importers during these years were Serbia, the United Kingdom, Turkey, and the United States of America, North Macedonia managed trade risk and supply chain risk by diversifying its trade partners and developing trade relations with non-EU countries, particularly with neighboring Serbia and other major importers around the world. The time of the COVID-19 eruption and the pace of recovery in different parts of the world made it possible for North Macedonia to maintain growth in exports. The top five EU importers of Serbia accounted for 61.6% of Serbian exports, which was the lowest ratio among the Western Balkans. As Bosnia and Herzegovina, the Russian Federation, China, Montenegro, and North Macedonia ranked as important importers of Serbia during these years, Serbia developed trade relations with non-EU countries, especially nearby Western Balkan countries, to manage the trade and supply chain risk. For the other three Western Balkans countries, their recovery in exports depended more on the EU members. In terms of the value chain and supply chain, the recovery in Germany was very important for the entire Western Balkans.

Table 2 - Partner Concentration of the Western Balkans' Goods Export to the EU

Country	EU/World			Top 5 EU importers in 2021	
	2019	2020	2021	Top 5 EU importers	Ratio of the EU (%)
Albania	78.6	79.4	70.3	Italy, Greece, Spain, Germany, France	84.7
Bosnia and Herzegovina	72.1	72.7	47.1	Germany, Croatia, Italy, Austria, Slovenia	77.2
North Macedonia	80.9	80.4	79.9	Germany, Greece, Czech Republic, Hungary, Bulgaria	82.2
Montenegro	45.5	36.7	40.2	Spain, Germany, Hungary, Slovenia, Greece	73.3
Serbia	64.9	64.9	64.6	Germany, Italy, Czech Republic, France, Hungary	61.6

Source: Trade Map.

Note: The ratios for Serbia are calculated with direct data. The ratios for Albania, Bosnia and Herzegovina, North Macedonia and Montenegro are calculated with mirror data.

CONCLUSIONS

The crisis resulting from the COVID-19 pandemic is becoming increasingly complex and does not stop at borders. The EU, its member states, candidates, and potential candidates have already established cross-border cooperation and solidarity mechanisms to effectively manage crises and protect people. Even though the number of COVID-19 infections in many European countries remains alarming, the increasing rate of vaccination and decreasing rate of deaths left the economic impact of the pandemic manageable in almost all EU member countries, which re-opened their markets to EU members and other non-EU countries with authorization. The low vaccination rates in the Western Balkans compared with the EU might pose a risk to their economic recovery. However, due to their geographic proximity and lower labor costs, the Western Balkans were

a good choice for the EU-dominated global value chains and supply chains to restructure and relocate in order to secure more resilience, which could accelerate their economic integration into the EU. The Western Balkans-EU trade tended to grow in the post-COVID era and enhanced their economic relations. The EU's long-term budget, coupled with *Next Generation EU* (NGEU), the temporary instrument designed to boost the recovery, will be the largest stimulus package ever financed in Europe. A total of €2.018 trillion in current prices will help rebuild a post-COVID-19 Europe.[2] It will be a greener, more digital, and more resilient Europe. The EU's long-term budget will continue to be financed through the well-known revenue sources of the EU budget: customs duties, contributions from the member states based on value-added tax (VAT), and contributions based on gross national income (GNI). Not only the EU members but also the candidates and potential candidates will benefit from the recovery plan. The EU proposed to provide up to 3 billion euros of macro-financial assistance to ten enlargement and neighborhood partners to help them cope with the economic fallout of the COVID-19 pandemic in 2020, which would be provided in the form of loans on highly favorable terms. In this sense, it was predicted that Albania would receive 180 million euros in financial aid, Bosnia and Herzegovina 250 million euros, Montenegro 60 million euros, and North Macedonia 160 million euros (European Council, 2020, May 5). It is said that the benefits of EU enlargement include increased prosperity for all member states: three times more trade exchanges between old and new member states; five times more trade exchanges among new member states; greater stability in Europe; and more weight for the EU in global affairs (European Union, 2022, January 10). The European Parliament's (EP) research suggests that further action in goods trade — whether by continued adoption of harmonized product rules, wider application of the principle of mutual recognition (wherever such rules do not exist), better transposition and implementation of existing EU law, and/or speedier remedies for non-enforcement of the latter — could boost the EU economy by between 1.2 and 1.7% of EU GDP, or between €183 and €269 billion (European Parliamentary Research Service, 2019, April 18). In fact, until the Western Balkans is fully integrated into Euro-Atlantic institutions, including the EU, its development is fragile (The Vienna Institute for International Economic Studies, 2022). The EU was committed to the integration of the Western Balkans because of its history, interests, and values at the EU-Western

[2] According to 2018 prices, that amount is worth €1.8 trillion.

Balkans summit in Kranj, Slovenia, on October 6, 2021. The EU announced it would increase its Economic and Investment Plan package for the region to 30 billion euros (34.6 billion US dollars) over the next seven years. However, the EU has not set a date for the accession of the Western Balkans. In a post-summit declaration issued by the leaders of the EU and of the Western Balkan partners, the EU reaffirmed its commitment to the enlargement process based upon credible reforms by partners, naming the primacy of democracy, the rule of law, the fight against corruption and organized crime, human rights, gender equality, and minority rights. As most of the reforms are not easy to do or time-consuming, the time to meet the requirements might be long. Over the past few years, various challenges have shown the need to increase the resilience of critical entities. The European Council negotiating mandate covered critical entities in nine sectors: energy, transport, banking, financial market infrastructures, health, drinking water, waste water, digital infrastructure and space. These entities need to be able to prevent, protect against, respond to, resist and recover from natural disasters, terrorism or health emergencies such as COVID-19 (European Union, 2021, December 20). High inflation and debt have been the biggest risks to economic recovery in Europe since aggressive fiscal and monetary policies and measures were taken in all European countries. The war in Ukraine has aggravated the energy crisis in Europe as spending on energy and food accounts for a much higher share of total spending than it did in the pre-COVID era. The governments of Serbia and North Macedonia have already introduced price controls on food, not least for reasons of domestic political stability (The Vienna Institute for International Economic Studies, 2022, April 5). The EU's dilemma in green transition and energy supply shortages made its enlargement face more difficulties. On the other hand, the war in Ukraine made the EU members, candidates, and potential candidates worry about their national security, which might unite the EU and improve the EU accession prospects for the Western Balkans enormously (The Vienna Institute for International Economic Studies, 2022, April 5).

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THE PROCESS OF ACCESSION NEGOTIATIONS BETWEEN SERBIA AND THE EUROPEAN UNION

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Abstract: This paper considers the relations between the Republic of Serbia and the European Union through the process of admission to membership through several different prisms. The author especially deals with the chronology of negotiations, legal aspects of negotiations, as well as the analysis of this process from the point of view of a member of the negotiating team of the Republic of Serbia. The negotiation process is presented as highly dependent on complex relations in the European Union, as well as conditioned by numerous procedures that complicate the accession process. Special attention is drawn to the events that shook the European Union itself, such as Brexit, the migrant crisis, COVID, the energy crisis, and so on. The conclusion of the paper is that the process of EU enlargement has fallen into crisis and that the European Union itself lacks a clear enlargement strategy as well as a European Union reform plan. The Republic of Serbia, with its internal problems, is trying to satisfy the new way of joining the European Union, accompanied by clusters. The paper forecasts the future course of accession negotiations and analyzes various relations between the Republic of Serbia and the European Union. It indicates the high level of economic cooperation with the European Union, which is often not accompanied by good and sincere political cooperation. The author concludes that the process of the Republic of Serbia's accession to the European Union is still at the top of Serbia's foreign policy priorities, but that it is necessary to eliminate political problems as soon as possible, and that the European Union needs to find strength for a new reform course that will improve this international integration at a high level.

Keywords: Republic of Serbia and European Union relations, negotiation process, political relations, economic relations.

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INTRODUCTION

The relations between the Republic of Serbia and the European Union have been quite difficult and oscillating over time. Even while the SFRY existed, formal relations with the then European Communities were present. It can be said that it was a rarity for countries that had a socialist system and a mostly planned economy. That concept did not fit in with the ideas of liberal capitalism on which Communities then rested. As a confirmation of such attitudes, the fact that the SFRY had a permanent delegation to the European Community as early as 1968 can be mentioned, as well as that the economic agreements on cooperation between the EC and the SFRY were signed shortly afterwards. The most important of these is the Agreement on Economic Cooperation, which was signed in 1980. This agreement also introduced certain forms of political cooperation in the relations between the mentioned entities (Vukadinović, 1996). Unfortunately, shortly after that, the conflicts in the former SFRY occurred, and relations quickly went from good to very bad. During the mentioned conflicts, the European Community grew into the European Union and it only just introduced foreign policy into its competences, but it did not yet develop effective mechanisms for its realization (Milisavljević et al., 2016). Thus, the young European Union could not help in resolving the conflict in the former SFRY, but, on the contrary, the member states of the European Union acted to dismantle this large and important state. Shortly afterwards, the European Union imposed economic sanctions on the FRY, until it did the same against other newly formed states. In that way, it seems that the European Union has sided with one side in the conflict, which has disrupted relations for a long time. Relations began to recover after the signing of the Dayton Peace Agreement, so that "(...) the total volume of trade in 1997 reached three billion dollars, of which Yugoslav exports amounted to about 1.1 billion, and imports to close to 2 billion." (Lopandić, 1999). Sadly, shortly afterwards followed the NATO aggression on the FRY, during which the European Union clearly sided with the Albanians from Kosovo and during which NATO countries committed a large number of war crimes, including permanent environmental pollution using depleted uranium. For the stated reasons, Serbia's relations with the European Union were very difficult, but after 2000, relations improved and the European Union was gradually becoming more open to bring Serbia closer to membership in this organization. The most important segment is, in addition to political improvements, the improvement of economic relations, which is very important for Serbia at the moment. In the late 1990s, the European Union prepared a special

strategy for the countries of the Western Balkans. Thus began the process of stabilization and rapprochement of the Western Balkan countries, both with each other and with the European Union. The FR Yugoslavia was admitted to the Stability Pact for Southeast Europe in October 2000. The process of moving towards the European Union was formalized at the Zagreb Summit in November 2000 (European Council, 1993, June 21-22).[1]

A PERIOD OF CONCRETE PROGRESS IN EU ACCESSION

After a series of political meetings between the European Union and Serbia, progress occurred when the Commission decided in April 2005 that Serbia was ready to start negotiations on concluding the Stabilization and Association Agreement. On the other hand, Serbia's clear intention to embark on the journey towards full membership in the European Union was shown when the National Assembly of the Republic of Serbia adopted a Resolution on joining the European Union on October 14, 2004. In addition, in June 2005, the Serbian government adopted the National Strategy for Serbia's Accession to the European Union. At the end of 2006, the Free Trade Agreement in Southeast Europe (CEFTA) was signed, and on September 18, 2007, the Visa Facilitation Agreement and the Readmission Agreement between the European Community and the Republic of Serbia were signed. As a formal confirmation that Serbia is on the path to full membership in the European Union, the Stabilization and Association Agreement was initialed first, and then signed on April 29, 2008. However, due to the problems related to the illegal recognition of Kosovo and Metohija by most of the member states of the European Union, the Agreement was frozen and did not even enter into force. In the meantime, Serbia unilaterally applied the trade part of the Agreement, which was unfrozen in the fall of 2009, and the process of ratification of the Agreement was initiated until its final entry into force. The Stabilization and Association Agreement finally entered into

[1] The Copenhagen criteria are formal membership criteria that should be met by any country that intends to become a member of the European Union. They were defined by the Copenhagen Summit in 1993 as political, economic, and administrative/institutional: 1) stable institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities; 2) a functioning market economy capable of coping with competition and market pressures in the European Union; and 3) the ability to take on the obligations of membership, including commitment to the goals of political, economic and monetary union.

force on 1 September 2013, when the European Union finally completed the ratification process of this act. Of the member states, Lithuania was the last to ratify the SAA (Sporazum o stabilizaciji i pridruživanju, 2008, April 29). That the entry into force of the Lisbon Treaty affected the process of further expansion of the European Union can also be seen through the fact that Serbia submitted an official application for membership in this organization on December 22, 2009. One of the positive developments is the removal of visa requirements for our citizens and their inclusion on the white Schengen list, which has allowed for greater freedom of movement from Serbia through the territories of European Union member states. All these facts lead towards the conclusion that our country is approaching membership in this organization, but also make it clear that much more needs to be done in the field of economic stabilization, as well as in terms of legal reforms and law enforcement on the territory of Serbia. The process of joining the European Union can be prolonged and will depend on the attitude of our country towards the problems we have in relation to Kosovo and Metohija. Regardless of that, the procedures for accession negotiations really take quite a long time in order to remove all obstacles to our country's entry into membership of the European Union. In November 2010, the European Commissioner for Enlargement, Stefan Fuele, presented the Prime Minister of Serbia with a Questionnaire from the European Commission to prepare an opinion on Serbia's application for EU membership, which is one of the conditions for EU candidate status. On January 31, 2011, he submitted the Answers to the Questionnaire of the European Commission sent to the RS in order to prepare an opinion on Serbia's application for EU membership to the European Commissioner for Enlargement. After long negotiations between the representatives of our state and Kosovo and Metohija, mediated by the European Union, positive progress has been made, so Serbia officially received the status of a candidate country for membership in the European Union on March 1, 2012. It remains to achieve a result in the coming period regarding the exact date of the start of negotiations, which would consider the various chapters that need to be harmonized upon Serbia's accession to the European Union. In April 2013, finding that Serbia had met a key priority of taking steps towards a visible and sustainable improvement in relations with Kosovo as set out in its 2011 opinion on Serbia's application for membership, the Commission recommended that the Council open negotiations on accession. The European Council decided to open accession negotiations with Serbia on June 28, 2013. It accepted the Council's recommendation that the Commission submit without delay a proposal for a negotiating framework in line with the December 2006 European Council

conclusions and established practice, which includes a new approach to the chapters on the judiciary and fundamental rights and justice, freedom and security (European Commission, 2013). In January 2014, the first intergovernmental conference between Serbia and the EU was held in Brussels, marking the beginning of accession negotiations at the political level. At the same time, the negotiating frameworks of both sides were presented with clear principles for future negotiations. It is about the need to fulfill the already known "Copenhagen criteria", but also a series of special tasks that the Republic of Serbia should fulfill in the coming period. The list of chapters on which negotiations will be conducted in the following period was also adopted: free movement of goods; free movement of workers; right of business residence and freedom to provide services; free movement of capital; public procurement; company law; intellectual property law; competition policy; financial services; information society and media; agriculture and rural development; food safety; veterinary and phytosanitary policy; fisheries; transport policy; energy; taxation; economic and monetary policy; statistics; social policy and employment; enterprise and industrial policy; trans-European networks; regional policy and coordination of structural instruments; justice and fundamental rights; justice, freedom and security; science and research; education and culture; environment and climate change; consumer and health protection; customs union; foreign economic relations; foreign, security and defense policy; financial control; financial and budgetary provisions; institutions, and other questions. Since the process of negotiations with the European Union is very complex, it requires a certain amount of organization from the Republic of Serbia. Thus, the necessary bodies have been formed to participate in the negotiation process. The basis of such an internal organization is the Coordination Body, which was established back in 2008. Through this body, the National Integration Program 2008-2012 was drafted, followed by the National Program for the Adoption of the *Acquis Communautaire* 2013-2016. After that, at the end of July 2014, the revised National Program for the Adoption of the *Acquis* was adopted and extended until 2018 because it is estimated that by then the negotiations could reach their final stage. The Coordination Body is headed by the Prime Minister, who manages this body, which also includes: the First Deputy Prime Minister and the Minister of Foreign Affairs; the Deputy Prime Minister and the Minister of Construction, Transport, and Infrastructure; the Deputy Prime Minister and the Minister of Trade, Tourism, and Telecommunications; the Deputy Prime Minister and the Minister of Public Administration and Local Self-Government; the Minister in charge of European Integration; the Minister

in charge of Finance; the Minister in charge of Justice; and the Minister in charge of Agriculture and Environmental Protection. The Director of the Office for European Integration and the Head of the Negotiating Team for conducting negotiations on the accession of the Republic of Serbia to the European Union also participate in the work of the Coordination Body. Another 35 negotiating groups will be formed to participate in the negotiations and perform tasks related to the implementation of the *Acquis* of the European Union.

SOME PERSONAL OBSERVATIONS AS A MEMBER OF THE NEGOTIATING TEAM

The Negotiating Team of the Republic of Serbia for accession to membership negotiations was founded in 2015 and, with some minor changes, functioned as such until the middle of 2021 (The Government of the Republic of Serbia, 2015). After that, a complete reconstruction of the Negotiating Team was carried out, and it was reduced to one administrative-political body that had to respond to new requirements in the accession process, which were adjusted to the introduced cluster accession strategy. The previous convocation of the Negotiating Team, of which I was a member, meant a very successful combination of a professional, scientific, and political body. That this was a successful team is also shown by the fact that in the mentioned period from 2015 to 2021, the greatest progress was made in the process of European integration of the Republic of Serbia. It can be said more precisely that this convocation of the Negotiating Team functioned best while it was headed by Tanja Miščević, who resigned in 2019 due to the transfer to a new position (Beogradska otvorena škola, 2013).[2] From personal experience, I can confirm that the work of the negotiating team was very dynamic and meaningful, but that we also had great technical difficulties due to cooperation with other

[2] On September 3, 2013, the Government of the Republic of Serbia appointed Prof. Dr. Tanja Miščević as the head of the Negotiating Team for conducting negotiations on the accession of the Republic of Serbia to the European Union. By the Decision of August 15, 2015, the Government of the Republic of Serbia appointed 24 members of the Negotiating Team for conducting negotiations on the accession of the Republic of Serbia to the EU. On September 21, 2019, Tanja Miščević resigned from the position of the head of the Negotiating Team for conducting negotiations on the accession of the Republic of Serbia to the European Union.

organs of the state. One of the indicators is the situation regarding the opening of Chapter 32, which was one of the first to be opened in the process of European integration. Namely, we received the green light from the European Union for the opening of this chapter, but it was necessary to confirm our participation in the Convention on the Prevention of Counterfeiting of Money, which was ratified by the previous SFRY. An answer from our side was awaited, and in our country, there was a conflict of jurisdiction between several ministries — on the one hand, the Ministry of Foreign Affairs; on the other, the Ministry of Justice; and on the third, the Ministry of Finance. We stayed in that triangle for several weeks because each side thought that the other side had an obligation to initiate a successor statement. With my personal engagement as a jurist in the Negotiating Team, this dilemma was removed and we sent such a statement very quickly. This first-hand example shows how sometimes in the process of European integration, we were responsible for slowing it down in a period that was politically favorable for us because we had good signals from the European Union. In terms of organization, we did not have a great position because, unlike, let's say, neighboring Croatia, which had the Ministry of Foreign and European Affairs, we had a structure broken into several parts. On the one hand, it was the Office for European Integration, which in the meantime grew into the Ministry of European Integration, then the Ministry of Foreign Affairs, as well as the Negotiating Team and the Coordination Body of the Government of the Republic of Serbia. This may not have been so problematic if there was not a political division where the SPS (Socialist Party of Serbia) was the main speaker in the Ministry of Foreign Affairs at the time, while the rest was led by the SNS (Serbian Progressive Party) representatives. In practice, this led to problems because some decisions could not be implemented without difficulties or could not be implemented at all. Problems were especially felt in certain chapters that were related to the work of public firms, especially "Srbijagas" and special relations with the Russian Federation, which at that time were mostly through the SPS political party. From this, we can conclude that such an organizational structure, together with political divisions and interest groups of big capital, greatly influenced the self-slowing down of the European integration process in a period that was favorable for us. On the other hand, we had delays from the European Union itself, which was often late with the assessment of negotiating positions in this period because it did not appoint in time the persons who were in charge of their assessment. When it comes to Chapter 35, which is especially problematic for the Republic of Serbia, as a member of the Negotiating Team during this period, I did not have a direct

insight into the content of negotiations because they were always conducted behind closed doors and at the highest level. At the meetings of the Negotiating Team, we received reports on the dynamics of negotiations and indications of what was being negotiated, and I got the impression that these were topics that burdened everyday life, such as the energy community, solving plates' problems, integrated crossings, and the like. Since my position in the team was that I was a jurist, I worked on drafting acts for the needs of the Negotiating Team, so I made the Rules of Procedure for the Negotiating Team, as well as Guidelines for Cooperation of the Negotiating Team with Civil Society. Throughout the work of the Negotiating Team, we had excellent cooperation with the National Convention, in which there were representatives of civil society who were interested in the process of European integration (National Convent on the European Union, 2022). Cooperation with the civil sector has always been high on the list of priorities of the European Union itself when it considered the progress in the process of the Republic of Serbia's joining the European Union.

EXTERNAL PROBLEMS IN THE PROCESS OF EUROPEAN INTEGRATION

In addition to the problems that the Republic of Serbia encountered while attempting to join the European Union, other issues arise from outside sources over which Serbia has little control. The European Union as a global actor is exposed to great turbulence, and it has already been pointed out that when the European Union has its own problems, the process of admitting new members will slow down. In the past 15 years, the European Union has had only one accession to Croatia in 2013, but also one withdrawal from the membership of a very important country — Great Britain (Milisavljević, 2017a). In addition to this tectonic disturbance, the European Union also struggled with the economic crisis, the refugee crisis, and relations with the Russian Federation, first around Crimea, and today due to Russia's intervention in Ukraine, but COVID also had an impact on the European integration process. Today, it can be said that relations with the Russian Federation are a great economic and political problem for the European Union, but also for the process of European integration of the Republic of Serbia towards the European Union. On top of all the above, there is a problem regarding the unresolved issue of the Republic of Serbia's relations with Kosovo and Metohija. Serbia is under constant political pressure due to relations with Kosovo and Metohija, as well as to joining the sanctions imposed by the European Union on the Russian Federation. In the past

period, the Republic of Serbia has made a good step forward in the process of European integration and also the rule of law in general, because it has adopted amendments to the Constitution in order to depoliticize the judiciary and the prosecutor's office (Milisavljević, 2017b). On the one hand, since it is clear that Serbia's European path is burdened by difficulties, it seems that there is no alternative to this foreign policy movement of our country. The reason is of an extremely practical nature, considering that a large part of Serbia's foreign trade is directed directly at the countries of the European Union, primarily the surrounding countries, but also Germany, Italy, and so on (EU Delegation to the Republic of Serbia, 2021). On the other hand, it is almost the same with foreign investments in our country. Therefore, the Republic of Serbia should continue on its path toward European integration in the years to come. This will depend not just on our side, and occasionally not even on the European Union, but also on other geopolitical developments that we frequently have no control over. If it turns out that the path of Serbia's entry into the European Union is impossible and too long, there is no doubt that we should stick to different types of economic cooperation. Therefore, any radical polarization for Serbia in terms of choosing east or west is not good at all. It is in Serbia's best interests not to be able to decide, but to work cooperatively with all actors.

CONCLUSIONS

The relationship between the Republic of Serbia and the European Union is long and complex. I think that those authors and analysts who think that the process of European integration depends only on Serbia are wrong. On the contrary, as a member of the negotiating team, I could see that it is very rare and that very often this process is conditioned by the position of the European Union, individual member states, or even external factors that the European Union itself is not able to effectively influence. In such circumstances, the process of joining the European Union is not so close, and unfortunately, it is not even known. In such unstable circumstances and in circumstances that do not depend on the Republic of Serbia itself, the maximum should be achieved for the national interests of the Republic of Serbia. This means that it is necessary to continue reforms in these clusters themselves, namely within the chapters that are within the clusters, but for the sake of systemic progress, establishing the rule of law, a healthy environment, freedom of competition, and a number of other problematic segments. This does not mean that it is necessary to give up membership, but that adjustments are made regarding the implementation

of foreign policy in accordance with the given circumstances. If it turns out with time that it is possible to become a member, then a decision should be made on that, and in the meantime, work should be done on comprehensive reforms and cooperation at the highest possible level, not only with the European Union but also with member states. That the European Union is at a kind of institutional milestone is evidenced by the fact that the member states are not unanimous regarding the sanctions they apply to the Russian Federation, and that there is growing resistance and reservations about that, and that there are exceptions for member states from those measures. This tells us that after the armed conflict in Ukraine, there will be a redefinition of relations in the European Union, and the fate of the Western Balkans will be incorporated into this new concept of the European Union. Maybe the European Union of different speeds will now become formalized, because otherwise there may be new demands for withdrawal from membership. Any further polarization within the member states will endanger the European Union itself, which is certainly not good. On the other hand, integration will largely depend not only on political and economic relations within the region but also on policy towards the Russian Federation, China, the United States, and NATO. In any case, the entire region, including the Republic of Serbia, is facing turbulent times in which it is necessary to maintain economic and political stability, and that will already be a great success. If, in addition to that, significant progress is made on the path of European integration, that will be just another great gain for us as a state.

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THE IMPORTANCE OF RESHAPING THE EUROPEAN IDENTITY FOR THE EUROPEAN INTEGRATION PROCESS OF SERBIA

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Abstract: The European Union, as we know it today, is the result of a complex evolutionary process that is characterized by its "vertebral column": European integration. On the one hand, European integration encompasses numerous internal intertwined economic, political, and legal processes that built the present Union of 27 Member States from the first European communities. On the other hand, European integration also represents the EU's strongest foreign policy tool, which results in a long and thorough process that is "exported" outside and whose outcome is determined by the Union. Associated or candidate countries, like Serbia, go through this process in order to accede and become an integrated part and member state of the EU. Of course, only when all the criteria assumed by European integration are met. The article analyzes the process of reshaping the European identity and its impact on the European integration of Serbia. Therefore, changes in the "European constitutional arena" are very important, all the more so if we take into account the spillover effect, which is of great importance to the candidate states and also to the EU enlargement policy itself. Studying the legal evolution of European principles and values as well as their role in the (re)construction of European identity, the text sheds new light on the dynamics of the current process of European integration of the Republic of Serbia.

Keywords: European identity, values, rule of law, candidate country, Europeanization, European integrations, Serbia.

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INTRODUCTION

The European integration process went well beyond the concrete achievements that prominently stood hand in hand with the principle of solidarity as the "carrying pillars" of the then newly introduced European Community in the Schuman Declaration (Schuman Declaration, 2020, May 8).[1] The European project has outgrown the Community motivated predominantly by purely economic reasons (at least for most of the founding states) and evolved into the political Union that is founded on the values common to its Member States. So, with stronger and more coherent political integration, followed by the legal evolution of the founding Treaties, the EU accentuated the importance of "unity" in every possible aspect. This "unity" is strongly depicted in the idea of European identity — the notion which reflects the EU's legal and political evolution and has gained importance, especially in the dialogue on the commonality of values in the European arena nowadays. This dialogue was preceded by previous enlargement rounds and pre-accession conditionality introduced with the Copenhagen Criteria in 1993 (Copenhagen European Council, Presidency Conclusions, 1993) and especially after the "Big Bang" enlargement (Zalan, 2020) that succeeded. Furthermore, all of this has shaped and influenced the integration path of the Western Balkans, especially that of Serbia and Montenegro, being the frontrunners on their road to the European Union. Hence, the main idea of this article is to point out the connection between the reshaping of the European Union, with special emphasis on the evolution of the European identity built on the concept of common values and common constitutional traditions, on the one hand, and the spill-over of the EU internal processes on the external integration, i.e., on the EU integration of candidate countries such as the Republic of Serbia, on the other hand. Having that in mind, we will first briefly analyze the growing importance of common values in the evolution of the European Union, especially their dual role: in the widening and, in parallel, in the deepening of the EU, meaning in the building of the European identity. Additionally, we will cover the role of these values in the EU conditionality policy and enlargement processes (previous and current). Furthermore, we will then identify the shortcomings of the said conditionality policy used in the enlargement

[1] The Schuman Declaration was adopted on May 9, 1950, and is considered "the foundation of the European Union as we know it".

rounds that resulted in the crisis of values in the EU. The latter demonstrated how the idea of validating the European project—which was based on its founding ideals and values—is complicated by the collision of two identities: the national and the European. Taking into account all the above, the second part of this article will give a different perspective on European integration: one country that recently "celebrated" a decade since the European Council granted it candidate status (European Council Conclusions, 2012).[2] On its (long) path to the EU, the Republic of Serbia is rebuilding not only its political reality, but it has also undergone, and continues to undergo, democratic transition of its political and legal systems. We can freely state that the EU integration process has had and continues to have a transformative impact on the legal order of the Republic of Serbia. The process of Serbia's Europeanization shares common traits with the south-eastern enlargement rounds, but, at the same time, it is specific and strongly influenced by the internal EU post-accession conundrums (De Ridder, Kochenov, 2011, p. 196).

BUILDING EUROPEAN IDENTITY THROUGH A COMMUNITY OF VALUES

The rhetoric on "European values" is not something that came out of nowhere and appeared in the midst of a "polycrisis" in the EU (Speech by President Jean-Claude Juncker, 2016, June 21).[3] Moreover, the common civilization background that stems from the ancient Greek tradition and the ideas and values shared during the Renaissance and Enlightenment periods, on the one hand, and Christianity, on the other, has portrayed the uniqueness of the European continent since the very beginning (Rakić, Vlajković, 2021, p. 236). So it was no wonder that when the Treaty establishing a Constitution for Europe was discussed, Christianity and shared values among the member states were mentioned as the founding

[2] In March 2012, Serbia was granted EU candidate status. On January 21, 2014, the First Intergovernmental took place and Serbia's accession negotiations officially started.

[3] The former president of the EU Commission, Jean-Claude Juncker, often used the Greek word "polycrisis" to describe the situation in the EU arena in the last decade, burdened by the economic crisis, refugee crisis, security threats, and finally the crisis of values.

ideas of the European identity. In addition, even before values appeared in the Treaties or in the European Court of Justice's practice, the member states were already declaring their shared ideals and political traditions in another important regional European organization — the Council of Europe. The Statute of the Council of Europe affirmed values as common heritage shared among their parties, and symbolically, two decades later, this Statute was the inspiration for the first document of the European Communities which announced a new dimension of unity among the member states: the Declaration on the European Identity (Council of Europe, 1949).[4] The Declaration (1973) marked the orientation of further European integration that would have the aim of ensuring the political legitimization of a United Europe. In order to follow the dynamic nature of EU integration and to create the European Union, the member states agreed that they would, among other things, cherish the values that are common to them. However, in accordance with Robert Schuman's prediction, there were many more "concrete achievements" to be accomplished in order to create a solid ground for the notion of "common" as well as the feeling of "commonality" in the sense of the European identity. The criteria that were set up by the European Council in 1993, the famous Copenhagen criteria, marked a new era in the enlargement policy and EU integration process of future candidate countries. It was very clear that the criteria set were envisaged *pro futuro* for the new countries that were preparing for the EU accession process, especially the countries of Central and Eastern Europe. Those were the countries that were going through democratic transition and the Europeanization process, and criteria such as economic development and enhancing administrative and institutional capacities to effectively implement the *acquis* were not sufficient in order to be adequately integrated into a growing political entity such as the Union. Therefore, another criteria, political (or democratic criteria), was brought up and it demanded guaranteeing the stability of institutions, democracy, the rule of law, human rights, and respect for and protection of minorities, i.e., guaranteeing the (future) values of the European Union (European Commission, 2022; Vlajković, 2019). That same year, the Maastricht Treaty, besides creating the European Union with a plethora of legal, political, and institutional novelties,

[4] "Reaffirming their devotion to the spiritual and moral values which are the common heritage of their peoples and the true source of individual freedom, political liberty and the rule of law, principles which form the basis of all genuine democracy (…)".

introduced another equally important component of the European identity *in statu nascendi* — European citizenship (The Treaty on European Union, 1992, Article 8). The idea was not to replace national identity but to upgrade it and to create another sense of belonging, especially in the political sense (Rakić, Vlajković, 2021, p. 253; Vlajković, 2018). That way, the European project could gain political legitimization, which was another step forward in creating a European identity with supranational elements. Since the beginning, common values were not enunciated as values but as principles until the Treaty of Lisbon (Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, 2007, Article 2). The Lisbon Treaty continued and slightly altered the path that the Treaty establishing a Constitution for Europe aimed to achieve. In its *traveaux préparatoires* (Penelope Project, 2002), values prominently stood out as the foundation of the EU. Aside from the controversial introduction of Christianity as another common aspect among Europeans, which was dismissed, Article 2 of the Lisbon Treaty[5] took over most of the narrative of the values of the "European Constitution". The role of values in the Treaty of Lisbon is multifold and multilayered.[6] Firstly, values are portrayed as the axiological foundations of the European Union (Jovanović, 2021, p. 8). Furthermore, they confirm the EU's identity in international relations and re-affirm the goals of its foreign policy.[7] Moreover, with Article 7, values transcend their role as solely symbolical and aspirational goals that should be promoted among the member states (Article 3).[8] The respect of values by the member states is now guaranteed

[5] Article 2 of the Lisbon Treaty: "The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to all the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity, and equality between women and men prevail".

[6] Values are mentioned in ten articles in the Lisbon Treaty: Articles 2, 3, 7, 8, 13, 14, 21, 32, 42, and 29.

[7] It was not only mentioned in the Lisbon Treaty articles but also in the Preamble where it stated: "Resolved to implement a common foreign and security policy including the progressive framing of a common defense policy (…), thereby reinforcing the European identity and its independence in order to promote peace, security and progress in Europe and in the world (…)".

[8] Article 7, envisaging sanctions when the core values are being violated, was introduced in the Treaty of Amsterdam in 1997. The idea behind it was to create an EU legal and political instrument that should be at its disposal when values

by the sanctioning mechanism envisaged in Article 7. Finally, and most importantly, to emphasize the importance of values in the process of EU integration, Article 49 states that "any European state that respects the values referred to in Article 2" is eligible to become a candidate for EU membership. Taking into account the most important Treaty articles values-wise (Articles 2, 7, and 49), we can conclude that values were indeed finally normed and (at least partially) legally defined, taking over as the leading criteria in the further Europeanization process inside, but especially outside of the EU. However, not everything was so bright on the road to acceptance of the values that ought to be common for each member state from the very beginning. On the one hand, the introduction of the common values led us to a situation where values that were supposed to be the sort of glue that is depicted in the "United in diversity" motto are actually strongly contested by several member states (EU, 2022). On the other hand, and as a consequence, values are promoted and enunciated more than ever by the Court of Justice of the EU (CJEU) and other EU institutions in order to remedy the shortcomings in the previous enlargement rounds that resulted in the crisis of values. Finally, this strongly influenced future enlargements too.

ENLARGEMENT: A SUCCESS STORY THAT RESULTED IN AN IDENTITY CRISIS

In order to understand why the idea of European identity was reshaped even before it was properly formed, one should make a connection between the "pre-accession conditionality with post-accession conundrums" (De Ridder, Kochenov, 2011, p.196). The pre-accession phase, marked by the implementation of the conditionality policy by the EU, resulted in several post-accession weak points that deeply impacted the European Union. The one standing out in the aforementioned plethora of crises is the "rule of law backsliding" (Kochenov, Pech, 2016, p. 1063), which encompassed the backsliding of common values *in toto* and brought upon identity clashes and the everlasting primacy-sovereignty discussion between the member states and the EU. The latter became painfully noticeable with the cases of Hungary and Poland, which are now called the states of "constitutional capture"

enunciated first in Article F and then in Article 6 are violated. This coincided with the Eastern Bloc states' accession that was ongoing and was a sort of insurance that the political criteria, as set up in Copenhagen, were fulfilled even upon the accession.

(Müller, 2015, p. 142) or "illiberal democracies" as Hungarian President V. Orban tends to call them (Kovács, 2019, July 27).[9] To simplify, as tackling issues that are occurring in these two member states would have to be the topic of a separate article, according to the EU institutions that triggered Article 7 Para. 1 against Poland in 2017 (European Commission Reasoned Proposal, 2017) and against Hungary in 2018 (European Parliament Resolution, 2018), values were jeopardized by the member states' governments, and those values were the ones that are common to all member states, i.e., European values (Scheppele & Pech, 2018, March 10). Therefore, the European identity was at stake, and it was compromised by (for now at least) two member states (EURACTIV, 2006, January 13).[10] If we were to make a 'U-turn' and go back to the pre-accession phase, we would be able to determine why the abovementioned scenario was inevitable and how it affected the building of the European identity. Firstly, the "ambiguity and vagueness of the Copenhagen criteria" (Kochenov 2004, p. 23) implemented by the EU Commission made sure that future member states did comply with the conditionality mechanisms, but mostly "on paper" in the form of a pre-accession "window dressing" (Kochenov 2011, p. 598). Without a doubt, the conditionality mechanisms imposed requirements and future member states that were going through transition complied with them without ever questioning the quality beyond formal fulfillment. Furthermore, the understanding of values and principles substance, which was at the basis of the said criteria or requirements, was never discussed or determined: neither by EU institutions observing the progress in the democratization and Europeanization processes, nor by the avid candidate countries rushing to transform and become a part of the European Union. The monitoring system that followed the process of negotiations and the

[9] The expression "illiberal democracy" was coined by the Hungarian president in order to manifest his political tendencies by not deserting democratic principles in governance but at the same time not adapting them to the European liberal democratic model.

[10] It would be good to point out that prior to these two "rogue" member states, the EU had initiated post-accession value debates in 1999 and 2000, when the far-right Austrian party joined the government. The case of Austria or the Haider affair sparked a debate since it failed to provoke the member states to trigger preventive mechanisms for the protection of EU values, i.e., Article 7 of the Treaty of Nice. Questioning the political acceptability inside the EU, Cécile Leconte stated: "The EU is now less likely to take steps against national governments or leaders that might openly contest its fundamental values".

fulfillment of the Copenhagen criteria was imposed on each candidate country in 1997 (Moorhead, 2014, p. 13). However, it varied from state to state and was "poorly executed" by the EU institutions. As Moorhead discussed, this was more of a "process-oriented process, that emphasized "progress" at all cost" (Moorhead, 2014, p. 30). Secondly, when those countries became fully-fledged member states of the European Union, conditionality was replaced with the principles of mutual solidarity and sincere cooperation (Vlajković, 2020, p. 247). It was implied that all values are common and that all member states share them. However, this is where we come to our third point, or, so to say, a question: are values really common to all member states? More precisely, do all member states have the same understanding of their content and their meaning, having in mind that the EU "constitutionalisation" of values was introduced just before the Big-Bang enlargements, and not from the very start? The commonality of values stemmed from the fact that it was assumed that for founding member states (or for the Western member states) they already existed and were understood as common from the very beginning, and for the others that arrived later, they became common, because that was one of the most important conditions in order to enter the EU (Torcol, 2017, p. 395). Moreover, as it was more a matter of progress with quick results rather than a thorough process, grasping the importance of common values in building European identity was definitely not among the priorities of the states trying to live up to the Western criteria and standards while acceding to the EU. Coming back to the present times, it is no wonder that Hungary is claiming its own exclusive values (Körtvélyesi, Majtényi, 2019) that are different from the European's, referring to its self-identity[11] and that Poland is strongly defending its own constitutional identity against the European (Constitutional Tribunal of Poland, Case K 3/21). The latter case is particularly interesting as the Polish Constitutional Tribunal, upon request for the interpretation made by the Polish Prime Minister Mateusz Morawski, declared that Articles 1, 2, and 19 TEU are partially unconstitutional.

[11] In the case of Hungary, the Constitutional Court explored and underlined the notion of self-identity, extracting it from the Hungarian historical constitution that the Fundamental Law of Hungary recognizes. Besides equalizing the protection of constitutional identity with sovereignty issues, the Hungarian Constitutional Court draws attention to exclusive national constitutional values, among which are constitutional self-identity as well as belonging to the Christian church, belonging to the Hungarian ethnic nation, fidelity, etc.

Focusing solely on the Article 2 interpretation for the purposes of this paper, we draw your attention to the fact that in this case, the Constitutional Court of a member state renounced any other significance to Article 2 than the "axiological" one. This decision seemed to continue the line of decisions brought by the Constitutional Court of Poland since the entry into the EU, where it questioned the application of the founding principles, such as the principle of primacy (Constitutional Court of Poland, Case K 18/04) and now common values — all core elements of the European constitutional identity that Poland should be (at least on paper) a part of. Pulling the "constitutional identity" card when it comes to the changes in the legal and constitutional systems of both states is not something that should be scrutinized, as there are no "European constitutional standards" that can determine the limits of national constitutional identities against the European identity (Körtvélyesi, Majtényi, 2019, p. 1724). However, when the constitutional identity narrative is used directly in relation to EU law and its constitutional factors, it is inevitable to question whether and to what extent the European identity is nuanced and reshaped by these actions. Moreover, EU institutions, especially the Court of Justice of the EU, expressed the urge to "step up" and be more prominent about the importance of the European identity and its constitutional foundations — common values. This is the reason why, in its most recent decision in February 2022, the CJEU, while dealing with the measures for the protection of the Union budget in the cases of breaches of principles of the rule of law challenged by Hungary and Poland, stated that the values envisaged in Article 2 TEU are "the values on which the European Union is founded — which have been identified and shared by the member states and which define the very identity of the European Union" (CJEU, Cases C-156/21 and C-157/21, Pares. 127 and 145). Besides outlining the identity of the EU, the Court emphasized that the core value, such as, here contested, the rule of law, is a "value common to their (member states') own constitutional traditions, which they have undertaken to respect at all times" (CJEU, Para. 266). The CJEU continues to elaborate on the importance of values in the construction of EU identity: "Article 2 TEU is not merely a statement of policy guidelines or intentions, but contains values which (…) are an integral part of the very identity of the European Union as a common legal order, values which are given concrete expression in principles containing legally binding obligations for the member states" (CJEU, Para. 264). It seems that on both sides – European and national – the notion and the content of identity became a shield and a sword, putting forward the "game of values" and the European understanding of the latter into the spotlight. As Faraguna and Drinóczi explained, the difference

between the member states' roles in the building (but also in the understanding) of the European identity's basic principles and values is visible as "older member states have been participating in these changes" and the ones who have joined the EU adapted their constitutional and legal systems to the "state of integration they found at the time of their accession" (Faraguna, Drinóczi, 2022). Bearing all that in mind, ensuring value homogeneity becomes a mission impossible (Claes, 2019) that takes the lead role in the discourse on further European integration.

THE SIGNIFICANCE OF REDEFINING THE EUROPEAN IDENTITY FOR THE EUROPEAN INTEGRATION OF SERBIA

The Republic of Serbia, along with Montenegro, is the "frontrunner" of the European integration process in the Western Balkans region (WB). Without a doubt, the European integration process was, and still is, a key factor in not only constitutional changes but also the transformation of the (entire) legal and political system in the Republic of Serbia. Furthermore, since the beginning of the twenty-first century, or more precisely since the democratic transition that introduced core democratic changes, external regional players, beginning with the OSCE, the Council of Europe (with special emphasis on the role of the Venice Commission), and, of course, the EU, have played an important role in the stabilization and then the Europeanization process of the Republic of Serbia. If we take Anastasakis' definition of Europeanization as "a means and an end" (Anastasakis, 2005, p. 78), we can see that European integration of the Republic of Serbia is a (long-term) process in which Serbia has been actively involved for more than two decades, but it is at the same time a primary strategic goal of the Government of Serbia. Since the Stabilization and Association Process was initiated, and especially since starting negotiations process in 2014, the EU became an active participant in the Serbian legal and constitutional evolution, as the Europeanization process became a part of a complex state-building encompassing legal, political and social changes (European Commission, 2003).[12] The most powerful "weapons" of European integration – conditionality instruments were

[12] "The Stabilisation and Association Process (SAP) is the European Union's policy towards the Western Balkans, established with the aim of eventual EU membership". The SAP was initiated in 1999 and confirmed at the Thessaloniki Summit in 2003, where Serbia participated.

established through the Stabilization and Association Agreement (Stabilization and Association Agreement between the European Communities and the Republic of Serbia, 2013) and at the same time through the negotiation chapters adapted from previous enlargement rounds, particularly the last with Croatia, and adapted for Serbia and Montenegro (European Commission, 2004).[13] However, when it comes to the fundamental values that are at the core of the political accession criteria, with special emphasis on the respect of the rule of law, which is central to Chapters 23 and 24,[14] Croatian experience led the EU to change the approach when it comes to negotiating the two aforementioned chapters. Because of the noticeable shortcomings in the previous enlargement rounds, respect for the common European values became essential for the negotiating framework with candidate countries such as Serbia (European Commission, 2006, December 13; Council conclusions, 2011).[15] In addition, this approach included more proactive involvement of the European Commission in not only the observation and guidance through the process of the EU *acquis* adoption but also in the process of introducing legislative changes and adopting constitutional amendments (European Commission, 2016, pp. 4, 54).[16] In particular, opening and closing (as well as interim) benchmarks were introduced when it comes

[13] When it comes to the accession of Croatia to the EU, the use of "benchmarks" was first introduced when it comes to opening and provisionally closing the Negotiation Chapters.

[14] Negotiating Chapter 23 - Judiciary and Fundamental Rights; Chapter 24 - Justice, Freedom, and Security.

[15] One of the examples is the Cooperation and Verification Mechanism, an instrument introduced with the entry of Bulgaria and Romania to the EU, with the aim of actually remedying the rule of law related issues post-accession. "Strengthening the rule of law and public administration reform is essential to come closer to the EU and later to fully assume the obligations of EU membership. The experience acquired from the negotiations with Croatia should be used to the benefit of future negotiations, notably in relation to the negotiating chapters on judiciary and fundamental rights and to justice, freedom and security".

[16] he Progress Report of the European Commission for 2016. Chapter 23 opens up with the sentence: "The EU's founding values include the rule of law and respect for human rights. A properly functioning judicial system and an effective fight against corruption are of paramount importance, as is respect for fundamental rights in law and in practice (…). As regards political criteria...constitutional reforms are needed for alignment with EU standards".

to Chapters 23 and 24, along with the possibility to suspend negotiations with Serbia (or other candidate countries) if there is a serious and persistent breach of values on which the Union is founded (Pejović, 2021, p.657). In that way, the respect of the values was pre-introduced in a more rigorous and stringent way, 'mirroring' article 7 TEU even for candidate countries. Furthermore, together with the Venice Commission, the EU Commission provided reports regarding the progress of the Republic of Serbia in the process of first drafting and now introducing the constitutional changes, especially related to the judiciary reforms (Council of Europe, Venice Commission, 2022). This also reflected one of the characteristics of the "upgraded" Europeanization process, where a cross-cutting institutional approach was implemented through the cooperation of various external key factors, such as the Council of Europe and the EU, which actively participated in the core constitutional and legal changes. In the case of Serbia and other WB countries, this regional institutional cooperation when it comes to internal legal, especially constitutional reforms, stands out as a prominent feature of a candidate country's transformation. Externalization, or the involvement of foreign European actors in the adoption of the EU acquis as well as in constitutional reforms, is present in the Republic of Serbia from the beginning (drafting or amending the constitutional or legal norms) to the end (implementation of the new constitutional amendments and legislation). One of the examples is the National Action Plan for Chapter 23 by the Government of the Republic of Serbia that was brought up in July 2016, and has undergone many changes influenced by different internal as well as external actors and stakeholders.[17] "Enlargement is not about ticking boxes", stated the Enlargement Commissioner Štefan Füle in order to accentuate the shift in the EU enlargement approach, motivated by the drawbacks in the values' respect by the member states that were a direct result of the early 2000's pre-accession conditionality policy that led to the painfully present "Copenhagen dilemma" (Füle, 2010, November 9; Reding, 2013, April 22). Internal doubts about Europe's identity forced the EU institutions and member states to reconsider its most important tool, enlargement policy. As a consequence, in 2018 the European Commission published a Communication titled "A credible enlargement

[17] Also, the Negotiating Position of the Government of the Republic of Serbia from 2016 for the Intergovernmental Conference on the Accession of the Republic of Serbia to the European Union for Chapter 23 – Judiciary and Fundamental Rights.

perspective for and enhanced EU engagement with the Western Balkans" where it promoted the principle "fundamentals first" (European Commission Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 2018). The document clearly stated: "Addressing reforms in the areas of the rule of law, fundamental rights, and good governance remains the most pressing issue for the Western Balkans. It is also the key benchmark against which the prospects of these countries will be judged by the EU. The region should embrace these fundamental values of the EU more strongly and more credibly" (EC Communication, 2018, p. 4). Furthermore, the need for an "overall balance" that will link the progress in the rule of law (political criteria) chapters with the opening and closing of other negotiation chapters was strongly emphasized (Pejović, 2018, p. 79) for both Serbia and Montenegro. In addition, to strengthen the role of the EU Commission, an elaborate system of monitoring (*Ibid.,* p. 81) was re-affirmed, introducing, besides standardized Annual Progress Reports delivered by the European Commission, Non-papers on Chapters 23 and 24 that focus solely on the progress made in the aforementioned Chapters, with special emphasis on the respect and insurance of the values. Consequently, as a direct result of the rule of law backsliding, which is at the heart of the European identity crisis, new instruments as well as the revision of the accession methodology for the candidate countries were proposed by the EU at the beginning of 2020 to Serbia and Montenegro and set for other WB countries (Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Enhancing the accession process – A credible EU perspective for the Western Balkans) (European Council, 2021, May 11).[18] In the case of Serbia, which accepted this revised methodology on July 10, last year, this different approach to the negotiations with the EU demanded a stronger and more visible commitment to reforms that were once part of the negotiating chapters, now being replaced with clusters. The first cluster, called "Fundamentals", encompasses former Chapters 23 and 24 and determines the pace of the whole negotiation process. Furthermore, besides proving to be more

[18] "The Council announced the application of the revised enlargement methodology to the accession negotiations with Montenegro and Serbia, after both candidate countries expressed their acceptance of the new methodology".

demanding when it comes to the fulfillment of the conditions and the reporting on the demands met, especially regarding the Fundamentals cluster, the sanctioning mechanism, similar to the one in Article 7 TEU, was intensified. The intention was to prevent the possible breach or risk of breaching the common values as well as backsliding by candidate countries acting according to the revised methodology (Pejović, 2021, pp. 661-663). Determined (at least politically) to stay on its path towards the EU, the Republic of Serbia pleaded for clearer guidelines when it comes to the adaptation to the functioning of the new (revised) methodology, having in mind that the European Commission provided a uniform methodology for all WB countries (The Government of the Republic of Serbia, 2022, March 2).

CONCLUSIONS

To sum up, in the last two decades, the Republic of Serbia has been a candidate country whose constitutional and legal *ordre juridique* were without a doubt influenced by the Europeanization process determined by European integration. This can be drawn firstly by noting Serbia's formal determination in the Constitution where it defined itself as a state committed to the European principles and values (Constitution of the Republic of Serbia, Article 1) or in its EU-related documents such as Serbia's Action Plan for Chapter 23 (Government of the Republic of Serbia, Action Plan for Chapter 23, 2016), which opens with the introductory headline "Commitment to European values". It can also be concluded from its strategic political determination and finally from its ongoing and active involvement in the European integration process: from the undertaking of the 2012 methodology, followed by a decade of negotiations and legislative harmonization chapter by chapter, to the acceptance of the 2020 revised methodology. Evidently, the revised methodology was the outcome of the "spill-over", or in this case, internal disintegration stemming from the inner EU circles that were hit hard by "polycrises" to the outer EU circles. Hence, the Republic of Serbia has a not-so-easy task for numerous reasons: Firstly, with further disagreements on the common European values inside the EU, another additional layer of alterations, in order to ensure that those values are respected in the future, was added to the accession and integration methodology applied to the candidate countries. The latter leads to the question, will it be the last revision of the accession methodology and what can the candidates rely on in terms of legal and political security? Second, the previously

mentioned additional "layers" that comprise the revised methodology are not country-specific but are provided "in bulk," risking the possible dispersion of a candidate country's understanding of the common values on the one hand and proper and focused monitoring by the EU Commission on the other. Finally, given the changes and additional conditions that have been implemented over the years, the decline of European identity may contribute to increased fatigue from enlargement both inside and outside the EU (European Western Balkans, 2018, February 2).[19] This particularly refers to the current situation with the candidate states for joining this supranational organization. (Marićić, 2022, April 29).[20] The aforementioned reasons point out the fact that the Republic of Serbia is a good example of making a *liaison* between the internally driven processes depicted in the reshaping of the European identity and the external circles of the "European onion" (De Neve, 2007). The accession process that forms a part of the enlargement policy is very asymmetrical: it is determined and influenced by the EU and its own political evolution. How the other side, in this case, the Republic of Serbia, adapts and prepares itself for the new circumstances and the constant evolution of European identity, is of utmost importance for its further EU integration path.

[19] In 2018, former European Commission President Jean-Claude Juncker marked 2025 as an indicative date for Serbia's accession, however, stating: "It is wrong to assert that I and the Commission have said that Serbia and Montenegro must be in by 2025. No, that is an indicative date, an encouragement, so that the parties concerned work hard to follow that path".

[20] According to the Public Opinion Research effectuated by Ipsos, in the Republic of Serbia in April 2022, 35% of the citizens were for joining the EU, while 44% were against it. This also shows a big discrepancy if we compare it to 2009, when 74% of the Serbian citizens were in favor of EU membership. We also have to bear in mind the momentum of the information gathered.

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CONSTITUTIONAL IMPLICATIONS OF THE NEGOTIATIONS ON SERBIA'S MEMBERSHIP IN THE EUROPEAN UNION

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Abstract: The European integration process of the Republic of Serbia has raised the issue of amendments to the Constitution of the Republic of Serbia of 2006. The experience of EU member states shows that constitutional changes, as part of the EU membership negotiation process as a whole, are expected and inevitable. Such amendments mainly concern the transposition of the so-called *integrative clause* into national constitutions, including modifications of the constitutional provisions necessary for harmonization with the obligations arising from EU membership. Furthermore, after joining the EU, it could become necessary to make amendments to the Constitution of the member state in accordance with the changes in the functioning of the EU. In that context, the change to the Constitution of the Republic of Serbia is perceived as a necessary step in the further strengthening of the rule of law as well as in further harmonization with the *acquis communautaire* and EU standards. Following the current foreign policy orientation of the Republic of Serbia, in which EU accession is proclaimed the state's strategic priority, the author analyzes the reasons for making amendments to the Constitution of the Republic of Serbia of 2006, the types of constitutional amendments that can be expected in that context, as well as the main challenges and modalities for their successful overcoming. In June 2021, the National Assembly of the Republic of Serbia formally initiated the procedure of changing the Constitution, and in September, the first official version of the text was determined and sent to the Venice Commission for an opinion. Additionally, the specificity of

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the negotiation process of the Republic of Serbia, which places the dialogue between the representatives of the authorities in Belgrade and Priština in the context of European integration, makes the issue of potential amendments to the Constitution in public discourse even more intriguing and controversial. The key research methods in the paper refer to content analysis of the relevant documents and discourse analysis.

Keywords: Republic of Serbia, EU, Constitution, amendments, accession, negotiations, the rule of law, *acquis communautaire.*

INTRODUCTION

The European Union functions on the basis of the powers granted to it by the member states, which have thus transferred to it a part of their constitutional powers, which means that apart from internal law, EU law also applies on the territory of the EU member states. While the internal legal order is based on the supremacy of the constitution, the legal order of the EU is based on the founding treaties of this supranational organization. The large number of supranational competencies and the direct applicability of the Union's legal acts to member states and their natural and legal persons define this the *sui generis* character of this international organization. The EU is in a constant process of improving its own functioning, so it is logical that it differs greatly from the EU of the 1990s. Continued institutional development of the EU makes it obligatory for each new member state to accept the existing legal order of the EU. Currently, the EU *acquis* is divided into 35 negotiating chapters covering a number of technical, legal, economic, and political issues. Within the accession negotiations, the candidate country accepts the *acquis communautaire* in its current form and adjusts to the EU legal, economic, and social system, negotiating the conditions and modalities of the accession. Harmonization with the *acquis communautaire*, in addition to harmonization with the provisions of primary and secondary EU legislation, also includes the adoption of principles on which the EU is based, formulated in the judgments of the Court of Justice of the European Union. As one of the key principles, the principle of supremacy of EU law over the regulations of the member states means that the constitutional provisions of a member state must be in accordance with the obligations arising from its membership in the EU. The European Court of Justice has reaffirmed its commitment to the primacy of European Union law over the law of the member states in a number of its judgments (Internationale Handelsgesellschaft mbH v Einfuhr-und Vorratsstelle für Getreide und Futtermittel, 1970). In this context, the need to introduce an integrative clause

in the constitutions of the member states aims to introduce the law of the European Union into the legal systems of future members and ensure its primacy in relation to national legislation. The issue of changing the 2006 Constitution was raised during the negotiations on the accession of the Republic of Serbia to the EU. Given the dynamics of the accession negotiations and the experience of the member states that joined the Union in the period from 2004 to 2013, it is clear that the Republic of Serbia, as a candidate for EU membership, is not exempt from this issue. This means that if the Constitution of the Republic of Serbia was kept in the same form, the process of the Republic of Serbia's accession to the European Union would be prevented. Considering the scope and dynamics of the constitutional changes of the states that are in the process of joining the Union, the change of the Constitution of the Republic of Serbia, as well as the procedure of change itself, arise as extremely important issues. Based on this, the professionals in this sphere believe that the current process of changing the Constitution should be analyzed in terms of its potential results and benefits. The plan for the revision of the Constitution itself should also provide an answer to the question: will the amendments to the Constitution be adopted partially, as they are identified (in connection with accession to the EU, as is the case with the judiciary, or otherwise), or will all the necessary amendments, which are not related to the integrative clause, be adopted together? (Jerinić, 2019, p. 49).

THE NECESSITY OF CONSTITUTIONAL CHANGES

According to Tanja Mišćević, the change of the 2006 Constitution in the context of Serbia's accession to the European Union will be necessary, with an emphasis on determining the elements that require such a change via screening through all the areas. The former practice of EU members shows that the candidate countries for EU membership started changing their constitutions only in the final phase of the accession process. In the case of the Republic of Serbia, this phase began on January 21, 2014, when the First Intergovernmental Conference between Serbia and the EU was held in Brussels. Previously, Serbia was expected to fulfill its obligations related to the conclusion of the Stabilization and Association Agreement by obtaining candidate status in 2012, to meet the Copenhagen criteria, and thus enter the last and certainly the most difficult phase of membership negotiations. In the context of this research, two documents are particularly important regarding the obligations of the Republic of Serbia: the Stabilization and Association Agreement, which entered into force in 2013, and the

Negotiating Framework for Accession of the Republic of Serbia to the EU of 2014, based on which the current phase of negotiations on EU membership is being conducted. The foundations of this process are laid by Article 72 of the SAA, which stipulates that the harmonization of regulations of the Republic of Serbia with the *acquis communautaire*, especially at an early stage, must focus on basic elements of the judiciary, while the strengthening of institutions and the rule of law are quoted as priority areas (Government of the Republic of Serbia, Ministry of European Integration, 2008). In addition, Article 80 of the Agreement envisages the need to strengthen the independence of the judiciary and improve its efficiency. That a strengthened judicial system is the main precondition for the effective implementation of the *acquis* was confirmed in the Negotiating Framework for the Accession of the Republic of Serbia to the EU, in item 14, which stipulates Serbia's obligation to continue harmonizing its legislation with EU law and ensure full implementation of the key reforms and regulations, especially in the area of the rule of law and judicial reform (CONF-RS 1. Accession Document, 2014, January 21). The provisions of the Constitution (of 2006) on the judiciary contain objections of a formal and essential nature. The essential objection of professionals in this sphere is that the constitutional provisions do not provide for the minimum independence of the judiciary (Radojević, 2009, p. 249). In this regard, the Venice Commission of the Council of Europe in 2007 presented the relevant objections to the normative solutions of the 2006 Constitution, which primarily concern the rule of law. In the position of the Venice Commission on the Constitution of Serbia, the main objection is that: "The National Assembly elects, directly or indirectly, all members of the High Judicial Council, which proposes the appointment of judges and, in addition, elects the judges". Together with the general re-election of all judges after the entry into force of the Constitution, as envisaged by the Constitutional Law on the Implementation of the Constitution, there is a serious danger that political parties will control the judiciary" (European Commission for Democracy through Law (Venice Commission), 2007, March 19). It is exactly this objection of the Venice Commission, which essentially refers to the need to exclude executive power from the functioning of the judiciary, which the European Commission included in its Screening Report for Chapter 23 – Judiciary and Fundamental Rights. It is further stated in the Report that certain constitutional provisions should be additionally harmonized with the recommendations of the Venice Commission, primarily those that refer to the functioning of the National Assembly of the Republic of Serbia and its role in the appointment of judges; the said control of political parties over the parliamentary functions; the

provisions related to the independence of the key institutions in the country; the protection of fundamental rights; as well as data protection (European Commission, 2016). In future amendments to the Constitution, special attention should be paid to the election and composition of the High Judiciary Council and the State Prosecutorial Council. Referring to the relationship between national law and the EU, the principle of hierarchy from the position of state centrism or the position of European centrism does not provide answers to all the peculiarities of the relationship between these two legal orders. As a result, the concepts of constitutional pluralism and multilevel constitutionalism are becoming more widely accepted in theory. (Đorđević, 2013, p. 291). When it comes to the relationship between international and domestic law according to the 2006 Constitution, the wording of the constitutional provisions implies that our Constitution has fully accepted the monistic theory, according to which the Constitution of the Republic of Serbia is the highest legal act, while the ratified international treaties and generally accepted rules of international law are part of the legal order of the Republic of Serbia (Milisavljević, Palević, 2017, p. 33). In accordance with Article 194 of the Constitution, the ratified international treaties must not be contrary to the Constitution as the highest legal act (Ustav Republike Srbije, 2006). Such constitutional provisions actually imply that the Treaty of Accession to the EU, along with the obligations arising from membership, must be in accordance with the Constitution of Serbia so that the Treaty of Accession can be ratified and enter into force. Without changing the current Constitution of the Republic of Serbia, however, this will not be possible since certain obligations imposed by EU membership are not in line with the current Constitution (Međak, 2016, pp. 17-30). Finally, most authors agree that the 2006 Constitution of the Republic of Serbia does not have sufficient legitimacy since it was adopted without consulting the public and without a broader social consensus on constitutional solutions, which makes its revision necessary and certain (Tepavac, 2019, p. 29). Since the Constitution, as the highest legal act of a country, should guarantee the fundamental values of a consolidated democratic society, its illegitimacy and inconsistent implementation call into question the fundamental principles and institutions of the democratic order, the rule of law and the guarantee of basic human rights. Milan Antonijević holds a similar position, emphasizing that by the adoption of the 2006 Constitution, a system was established that fails to provide sufficient guarantees for independence in the work of the judiciary and the legislature (Antonijević, 2019, p. 37). Actually, the very fact that a large number of constitutional articles that refer to the judiciary require amendments, speaks of the need to change the

Constitution, which would give a new chance to ensure an independent judiciary, other independent bodies, and the implementation of the necessary European standards.

TYPES AND METHODS OF CONSTITUTIONAL CHANGES

The changes that are certainly awaiting the Constitution of the Republic of Serbia can be divided into two main types. The first type is changes that had to be made by all EU member states during or after their accession to the EU. These include the so-called integrative clause, which ensures that the decisions of the Union bodies and the legal norms arising therefrom are valid directly on the territory of the member state and have supremacy in relation to domestic legislation. Since Article 99 of the Constitution of the Republic of Serbia stipulates that the National Assembly adopts laws and other general acts that have wider legal effect, it is necessary to make the necessary amendments to the Constitution to ensure the implementation of the general legal acts of the EU — regulations and directives — which are not passed by the Serbian Parliament. The necessary changes in the Constitution of the Republic of Serbia also refer to the norms arising from the corpus of rights of the so-called "European citizenship". The right to vote in the Republic of Serbia is regulated by Article 52 of the Constitution and envisages that "every adult citizen of the Republic of Serbia having legal capacity has the right to vote and be elected" (Ustav Republike Srbije, 2006). The right to vote, whether active or passive, is reserved for the citizens of the Republic of Serbia and this norm is clear and unambiguous. The implementation of rights from the domain of "European citizenship" refers to the active and passive right to vote regarding the election for the European Parliament, which the citizens of the Republic of Serbia shall acquire by joining the EU. Aside from that, they will be granted all other rights under the European citizenship corpus. By joining the EU, Serbia undertakes the obligation to ensure the rights that the Union grants to its "citizens" as an organization, while "citizens of the EU" means all citizens of all the EU member states, regardless of their residence (Charter of Fundamental Rights of the European Union, 2000). All citizens of the EU member states enjoy the rights derived from this corpus. Based on the provisions of EU law, these include: the right to non-discrimination; freedom of movement and residence in the European Union; the right to diplomatic and consular protection; the right to petition the European Parliament and the Ombudsman; and the right to access documents of the EU government (Ugovor o funkcionisanju Evropske unije, 2008). In practice, the application

for European citizenship means that the Republic of Serbia will be required to ensure the right of EU citizens to vote in local elections from the moment it joins the EU because they have the right to free movement and residence. In order to ensure active and passive suffrage for the European Parliament and local elections, regardless of whether it refers to the citizens of the Republic of Serbia or EU citizens, it is necessary to pass a law which would regulate this issue, since this is a new matter unregulated by the existing legislation. According to some estimates, the citizens of the Republic of Serbia could take part in the elections for the European Parliament in 2024 at the earliest, but such a law should be passed much earlier because it is a necessary condition for the completion of negotiations between Serbia and the EU (Međak, 2019, p. 23). The second type of necessary change to the Constitution in the context of the European integration of the Republic of Serbia concerns the mentioned independence of the judiciary and also the exercise of the rights of national minorities, in accordance with European standards and norms. Given the position of the Venice Commission of the Council of Europe of 2007 and objections to the structure and organization of the judiciary, Serbia faced the need for a detailed analysis of the existing regulations, legal solutions and certain constitutional provisions in order to implement possible amendments to the Constitution and ensure the independence and accountability of the judiciary. Due to the dynamics of negotiations with the European Union, the issue of the rule of law has regained its important position and the attention of the Serbian public in recent years, especially after the opening of Chapter 23 in mid-2016. From the point of view of the European Commission, the most problematic articles of the current Constitution refer to the election of judges appointed to this position for the first time (Article 147), the competence of the Assembly to elect members of the High Judicial Council (Article 153) and the competence of the Assembly to elect members of the State Prosecutorial Council (Article 164). Based on this, Serbia tied the process of judicial reform to the process of European integration in all the documents by which it undertook to change the constitution for the purpose of the required depoliticization of the judiciary. Serbia started the necessary reform process on July 1, 2013, when the National Assembly adopted the National Strategy for Judicial Reform for the period 2013-2018. As a result of emphasizing the need for changes in the normative framework and based on the objections of the Venice Commission and the EU, independence, impartiality, professionalism, responsibility, and efficiency of the judiciary were recognized in the Strategy as the five basic principles of judicial reform (Ministry of Justice of the Republic of Serbia, 2013, July). The change of the

Constitution in the area of the judiciary was seen as a necessary step for further strengthening the rule of law as part of harmonization with the *acquis communautaire.* Based on the objections of the EC, in April 2016, the government of the Republic of Serbia prepared an Action Plan for Chapter 23 and sent it to Brussels. The decision to pay great attention to the rule of law in the Action Plan for Chapter 23 was a logical consequence of the analysis of the situation in the judiciary, while special emphasis was placed on amending the Constitution as one of the causes, i.e., obstacles to the full independence of the judiciary. In the Action Plan, answers were envisaged to the objections stated in the Screening Report for Chapter 23 (Ministry of Justice of the Republic of Serbia, 2016, July). Among the most important measures are organizing a public debate on the topic of necessary amendments to the Constitution, the wording of the amendment to the Constitution and its forwarding to the Venice Commission for an opinion. According to Vladimir Međak, it is clear from the provisions of this Action Plan that the issue of independence of the judiciary is intended to be resolved in accordance with the EU standards and recommendations of the Venice Commission, i.e., with the assessments presented in the Screening Report for Chapter 23, and since the government envisaged a public debate on this topic, civil society, the academic community, and other stakeholders should take an active part in the public debate (Međak, 2019, p. 24). The first version of the constitutional changes was presented by the Ministry of Justice of the Republic of Serbia in January 2018. Until October 2018, the Ministry changed the presented text three times under the influence of criticism from the expert public, both domestic (professors, the Supreme Court of Cassation, the High Judicial Council, the State Prosecutorial Council, the appellate courts in Belgrade and Kragujevac, and other courts, a significant part of the bar, professional associations of judges and prosecutors and civil associations advocating human rights), and international (the European Association of Judges, MEDEL, bodies of the Council of Europe – the Consultative Council of European Judges, the Consultative Council of European Prosecutors and the Venice Commission). According to Ms. Dragana Boljević (President of the Association of Judges of Serbia), despite the envisaged improvements, the draft constitutional amendments in the sphere of the judiciary of October 2018 still make it possible for the executive and legislative power *to control* the judiciary and for the National Assembly to elect half of the members of the High Judicial Council. The Council of Europe remained divided over whether this version of the constitutional amendments was in line with the European legal standards, given the opposing opinions of the two advisory bodies of the

Council of Europe. After a number of consultations, the Government of the Republic of Serbia finally received consent for the constitutional changes related to the judiciary in December 2020. In June 2021, the National Assembly of the Republic of Serbia adopted the Government's proposal to amend the Constitution in the part concerning the judiciary by a two-thirds majority. The first official version of the text was determined in September, while the second, current version of the constitutional amendments was drafted in October, based on the opinion of the Venice Commission. Despite recognizing certain improvements in relation to the current constitutional provisions, the experts believe that the main goal of the depoliticization of the judiciary is still not guaranteed. In the position of the Venice Commission on the latest version of the constitutional amendments, the general assessment is that the offered provisions are in line with the European standards, with an objection to the composition of the High Prosecutorial Council, which will include the justice minister and the Supreme Public Prosecutor. When it comes to amendments to the Constitution regarding the exercise of the rights of national minorities on the territory of Serbia, the general assessment is that the Constitution of the Republic of Serbia guarantees the rights of national minorities in accordance with all applicable international and European standards. The Serbian Government's 2016 Action Plan, on the other hand, envisages the necessary mechanisms for the implementation of national minorities' rights and possible amendments to the current Constitution in two cases (Ministry of Public Administration and Local Self-Government of the Republic of Serbia, March 3). First, it is envisaged to consider the need for amendments to certain constitutional provisions in order to strengthen the implementation of affirmative measures aimed at promoting the equality of members of national minorities, i.e., in order to remove possible ambiguities in the Constitution itself regarding this issue.[1] If it is assessed that the amendments regarding this issue are necessary, the Action Plan envisages their adoption, along with other envisaged amendments to the Constitution, as part of the reform of the judiciary in the Republic of Serbia. The second point, which refers to possible amendments to the Constitution regarding the exercise of rights of national minorities on the territory of Serbia, is the envisaged analysis, i.e., the comparative legal practice of other EU member states, primarily from the immediate environment, for the purpose of identifying the best models

[1] In its opinion, the Venice Commission asked whether the provisions of Article 76 of the RS Constitution were sufficiently clear and precise.

of participation of national minorities in the election process and their adequate representation in the representative bodies, at both national, local and provincial levels. Finally, an important issue related to the change in the Constitution is the issue of conducting a referendum on Serbia's accession to the EU. According to Article 203 of the Constitution, the organization of such a referendum is mandatory. The National Assembly shall hold a referendum on the act on amendments to the Constitution in order to confirm if the amendments refer to the preamble of the Constitution, its principles, human and minority rights and freedoms, organization of government, as well as the declaration of war and state of emergency and deviation from human and minority rights during war and state of emergency (Ustav Republike Srbije, 2006). Given the fact that the integrative clause includes amendments related to the organization of government, i.e., that it envisages the derogation of legislative power, which, according to the applicable Constitution, is exclusively within the competence of the National Assembly, it is clear that the amendment to the Constitution related to the integrative clause requires a referendum. At the Intergovernmental Conference of January 2014, the Government of the Republic of Serbia stated that the "final say", i.e., the final decision on the accession of Serbia to the EU, will be made by the citizens of the Republic of Serbia in a referendum (CONF-RS 1. Accession Document 2014, January 21). According to some authors, the necessity of holding a referendum is justified by the numerous shortcomings of the current Constitution, which exceed the needs of the process of accession to the EU. They refer to the constitutional preamble, organization of government, position of the autonomous provinces, as well as certain changes and improvements in the catalogue of human rights. In that sense, it should be noted that if a referendum is not envisaged as a mandatory phase of the procedure of changing the constitution, its holding (at the proposal of the majority of MPs or 100,000 citizens) will always be possible (Jerinić, 2019, p. 48). A successful referendum on the issue of Serbia's membership in the EU requires proper, timely, and continuous information of the citizens on the course of negotiations by the Government of Serbia. Despite the low turnout of voters at the referendum held on January 16, 2022, 59.73% of the citizens of Serbia voted in favor of the Act on Amending the Constitution in the sphere of the judiciary, which was assessed as an important step in the reform of the Serbian Constitution. Still, this is not the end of the process since a number of laws need to be amended for the efficient implementation of constitutional amendments.

POSSIBLE CONSTITUTIONAL CHANGES IN THE LIGHT OF DIALOGUE ON THE NORMALIZATION OF RELATIONS BETWEEN BELGRADE AND PRIŠTINA

At the level of foreign policy, the Republic of Serbia, as a candidate country for EU membership, is facing serious challenges, one of which is the issue of so-called Kosovo's independence. In the context of European integration, special emphasis is placed on negotiating chapter 35, within which there is a direct connection between Serbia's progress in the negotiating process on membership and the so-called comprehensive normalization of relations between Belgrade and the authorities in Priština. The main goal of the current foreign policy of the Republic of Serbia is to reach a solution regarding Kosovo and Metohija that would be a compromise in the sense of not denying *a priori* Serbia's sovereignty and territorial integrity. Still, further fulfillment of the conditions from Chapter 35 could bring the Republic of Serbia into a situation where the current foreign policy orientation comes into conflict with the current constitutional order and also with the national interests (Stanković, 2021, p.188; 2020, pp. 163-188). Such a development for Serbia would mean radical deviation from the Constitution, which obliges all institutions to the preservation of territorial sovereignty and integrity. When it comes to possible amendments to the Constitution which may occur as a result of a dialogue on the normalization of relations between Belgrade and Priština, it is important to note that the Negotiating Framework of January 2014 itself does not guarantee Serbia's full-fledged membership in the Union. According to this document, the ultimate goal of the accession negotiations is the comprehensive normalization of relations between Serbia and representatives of the Priština authorities, which would be defined in the form of a legally binding agreement. It is stated that the aim of this process is to ensure unhindered progress of both sides on the European path without mutual blocking. It is also envisaged in the document that the progress of the negotiations depends on the progress made by Serbia in its preparations for membership, within social and economic convergence, while the process includes "Continuous engagement of Serbia in accordance with the terms of the Stabilization and Accession Process, for the purpose of visible and sustainable improvement of relations with Kosovo" (CONF-RS 1. Accession Document, 2014). Public opinion has it that this does not call into question the position on the status of Kosovo, which is in line with the UN Security Council Resolution 1244/99 and the opinion of the International Court of Justice on the declaration of Kosovo's independence. On the other hand,

certain authors believe that the key impediment to the finalization of the dialogue between the official Belgrade and Priština is the "conflict" between two constitutional concepts. Namely, while according to the Constitution of the Republic of Serbia, Kosovo is an autonomous province, which is an integral part of the Republic of Serbia, according to the Kosovo Constitution, Kosovo is an independent and separate country. It is important to note here that there are currently no clear definitions of the formulation "comprehensive normalization of relations", so it is ungrateful to predict the outcomes of complex political processes, which would imply possible constitutional changes in this sphere. Finally, Serbia is facing a task to, by a serious social consensus and through the adoption of a compromise solution, come to an answer as to how it wishes to position itself before the international organizations in relation to this issue. Apart from the said formal and legal, i.e., normative elements of changing the Constitution, the issue of the Preamble of the Constitution of the Republic of Serbia can also be placed in the context of negotiations between Belgrade and Priština. In the Preamble of the Serbian Constitution and in the wording of the oath taken by the highest state officials, Kosovo is defined as an autonomous province which is an integral part of Serbia. The Preamble of the Constitution is a text which precedes the normative part and represents a solemn statement of political and programmatic nature. As such, the preamble has its specificities (it differs from the remainder of the Constitution). In legal theory, there are different opinions about the legal effect of the preamble, i.e., its legal and obligatory character (Jerinić, 2019, p. 49). Most authors believe that the preamble does not have an obligatory character and that its nature is purely formal. It precedes the constitution and contains no articles or envisaged sanctions. If we, however, adhere to the opinion of certain authors that only one part of the preamble has a legal effect – the part which establishes the constitutional obligations of "all state institutions to advocate and protect the state interests of the Republic of Serbia in Kosovo and Metohija in all internal and foreign policy relations", the conclusion is that the preamble foregrounds, i.e., emphasizes the essential autonomy of the Autonomous Province of Kosovo and Metohija (Jerinić, Kljajević, 2017, pp. 11-12). It is important to note that the Constitution itself does not define the type of this autonomy and its breadth, but leaves it to legal regulations. Consequently, such solutions leave open the issues related to the constitutional status of autonomous provinces in terms of the content, scope, and quality of their competence. The too rigid insistence on the inclusion of this provision in the highest legal act was evidently aimed at reducing room for manoeuvre in the negotiations with

representatives of the Kosovo Albanians on all the current issues in Kosovo. Since the status of Kosovo is also defined by international acts, it will be a great challenge for the political elites in Serbia to take a stand in relation to the preamble of the Constitution. Having in mind the said position, i.e., the opinion of both the Venice Commission and the domestic authors on this issue, it seems that its content does not currently create such an obstacle, especially since it is emphasized that the European integration of Serbia and so-called Kosovo are regarded as separate processes. Still, in case the EU changes its stand on this issue and possibly marks the preamble as a formal obstacle to the accession of Serbia to EU membership, there is no doubt that within the forthcoming change of the Constitution, the change of the preamble would also be necessary (Pavićević, 2010, pp.8-11).

CONCLUSIONS

Considering the issues of constitutional amendments over the last few years in the context of European integration, certain oscillations in the standing of professionals in this sphere can be noticed. From the idea that we should take into account the law of the European Union, the *acquis communautaire* of the European Union and the recommendations and standards of the Council of Europe (the National Strategy for Judiciary Reform), i.e., that we should take into account the recommendations of the Venice Commission and the European standards (the Action Plan for Chapter for 23), we came to the conclusion that the only thing important is the opinion of the Venice Commission because, as the Serbian Government says, "the position of the European Commission is such that Serbia's progress in the reform of the judiciary will be assessed in relation to the assessment of the Venice Commission" (the Proposal of the Serbian Government to change the Constitution submitted to the National Assembly on November 30, 2018). It is certain that at least two amendments to the Constitution await Serbia in the course of the Accession Negotiations with the EU. The first is envisaged by the Action Plan within Chapter 23 and it is in accordance with the recommendations of the Venice Commission and concerns the provision of full independence of the judiciary and achieving European standards regarding the exercise of rights of national minorities. Without this change, progress in the negotiations in Chapter 23 would be brought into question, and thus the entire course of the accession negotiations. The second amendment to the constitution would come at the end of the Accession Negotiations, i.e., upon the signing of the Treaty of Accession to the European Union, when all the parameters under which

Serbia becomes a member are known. At that moment, the integrative clause and amendments from the corpus of rights of "European citizenship" would have to be entered into the Constitution. These amendments to the Constitution are inevitable. Apart from them, it remains to be seen whether and in which way the issue of "comprehensive normalization of relations between Belgrade and Priština" in the form of a legally binding agreement would affect possible amendments to the Constitution, i.e., whether the said agreement would have possible implications for the Constitution of the Republic of Serbia. Also, apart from the issue of a referendum on Serbia's accession to the EU, the current preamble of the Constitution of the Republic of Serbia and its possible amendment pose a special challenge both for the political elites and professionals in this field. One of the important factors must be the very procedure of amending the Constitution, which is rather complex. These facts impose the obligation to fully consider the need for all possible changes, including the necessary consultation of the professionals in this field, which would eventually result in a comprehensive plan for the revision of the current Constitution (Lađevac, 2021, p. 5). Finally, when it comes to the Constitution itself as the highest legal act, we consider this moment to be suitable for breaking with the tradition of adopting constitutions without a wide public debate and broad social consensus, which would also be an opportunity to improve the legal and political order of the country and establish state and social foundations based on entirely democratic values.

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THE FRENCH PRESIDENCY OF THE COUNCIL OF THE EUROPEAN UNION

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Abstract: On January 1, 2022, France took over the presidency of the Council of the European Union for six months, after 13 years of waiting caused by the increase in the number of member states. One of the main priorities of the French presidency is to build a fully sovereign Europe, which will improve cooperation within its borders and achieve the status of a powerful Europe on a world scale, completely sovereign, free in its choices and the master of its own destiny. One of the ways to achieve European sovereignty is to deepen and strengthen European defense, which, in the opinion of the French president, should go into the operational phase. In that sense, Macron welcomed the establishment of the European Defense Fund. This goal of the French presidency was realized on March 21, 2022, with the adoption of the Strategic Compass by the EU ministers for security and foreign affairs. Another important goal of the French presidency is to establish a new European model of economic growth. Innovation, production, and job creation should be encouraged in the Union, which would strengthen its competitiveness against China and the United States. The European Union needs to achieve technological sovereignty and high results in the field of environmental protection (climate neutrality and carbon tax at the borders). However, the Ukrainian crisis has somewhat disturbed the program of the French presidency of the EU Council.

Keywords: European Union, EU Council Presidency, European Sovereignty, European Defense Policy, EU Strategic Compass, New Model of European Economic Growth, Ukrainian Crisis

INTRODUCTION

On January 1, 2022, France took over the presidency of the Council of the European Union for six months (Programme de la présidence, 2022,

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January 1). France is chairing the Council after 13 years of waiting due to an increase in the number of member states. Namely, when, during the 60s of the last century, the European Communities consisted of six states, France held the presidency every 2.5 years. Today, France needs to wait 13 years for the change of the representatives of 26 European Union members to be appointed to that position (Ledroit, 2022, January 19). The presidency of Emmanuel Macron differs from that of Nicolas Sarkozy in 2008, as he will not serve as president of the European Council, a body that brings together heads of state or governments of EU member states. Since the Treaty of Lisbon in 2009, this European institution has had a permanent president who is elected for 2.5 years with the possibility of renewing his mandate. Charles Michel, from Belgium, is currently in this position. Regardless of the preceding, the presidency of the Council of the European Union has its own importance, especially because of the legislative competencies of this body, which it shares with the European Parliament. The competence of the legislative initiative belongs to the European Commission. The presidents of the EU Council change every six months in the rhythm of January-June and July-December. Regardless of the shortness of the mandate, the chairman of the Council is not unprepared to perform his function because a system of *troikas* has been established. Three member states that successively perform the function of the chairman will determine long-term tasks, i.e., the topics they will deal with in the next 18 months. France is forming a *troika* with the Czech Republic, which will succeed France in July 2022, and Sweden, which will perform its duties in the first six months of 2023. Of these three countries, only France is the founder of the Union and a member of the Eurozone. At the same time, the President follows the legislative agenda and seeks to reach a compromise within the Council of the European Union that would allow a legislative act to be adopted while simultaneously cooperating with the European Parliament in the framework of legislative procedure (Simon, 2001, p. 204). The French Minister will chair each of the nine Council formations corresponding to the specific areas (general affairs; economic and financial affairs; justice and home affairs; employment, social policy, health and consumers; competitiveness - internal market, industry, research and space; transport, telecommunications, energy, agriculture and fisheries, environment, education, youth, culture and sports). The President of the EU Council has the intention of marking his presidency by giving certain guidelines and insisting on certain issues (Manin, 2005, p. 278). In this regard, at a press conference held on December 9, 2021, Emanuel Macron outlined the priorities of the French presidency of the European Union with the slogan "Renewal, strength, membership". The

emblem of the French presidency is the initials of the European Union in the color of the French flag with an arrow in the middle, which signifies an ambitious intention to move things from the deadlock (Programme de la présidence, 2022, January 1).

SOVEREIGN EUROPE - THE MAIN OBJECTIVE OF THE FRENCH PRESIDENCY OF THE COUNCIL OF THE EUROPEAN UNION

One of the main priorities of the French presidency is to achieve a completely sovereign Europe *(Ibidem).* The goal is to improve cooperation within the borders of the Union and achieve the status of a powerful European entity on a world scale, completely sovereign, free in its choices, and the master of its own destiny. One of the ways to achieve European sovereignty is to deepen and strengthen the European defense policy, which, in the opinion of the French president, should reach the operational phase. In that sense, Macron welcomed the establishment of the European Defense Fund, which should be used for the joint European production of weapons. The realization of the basic goal of the French presidency was partially achieved on March 21, 2022, through the adoption of a strategic compass by the Ministers of Defense and Foreign Affairs of the European Union, which renewed European orientations in the field of defense (Palluet, 2022, March 22). The 47-page document identifies four pillars of action. The first pillar refers to an accurate response to crises. In that sense, a unit for fast action within the Union will be formed with 5,000 soldiers. The second pillar is based on the thesis that "security and response to hybrid threats should be provided". The third pillar is based on the idea of increasing investment in the defense sector. The idea is to push all EU members to invest more in military capacity. In that sense, German Chancellor Olaf Scholz started an investment cycle of 100 billion euros in military equipment. Denmark has long believed that it should not participate in European military cooperation because its protection within the NATO pact is sufficient. However, it announces a referendum on joining the European Common Security and Defense Policy. For the first time, the Union has decided to use budget funds of 500 million euros to buy military equipment that will be delivered to Ukraine as a third country. Some member states believe that military spending should not be taken into account in the framework of the *European budget rules* (budgetary discipline), which, by the way, have been suspended in the context of the COVID-19 pandemic. The fourth pillar is called "*working in partnership*" and refers to cooperation with NATO, the OSCE, and the African Union. It is certain that the Ukrainian crisis had a great impact on

the content of this document. In this context, it should be borne in mind that Emanuel Macron wanted to revive the *Degolistic* vision of French foreign policy. Originally, the process of European integration launched in the early 1960s was supposed to serve as a multiplier of economic development for France to compensate for the loss of colonial possessions. After coming to power in 1958, President De Gaulle wanted to impose French leadership on his partners through the implementation of the Treaty on the European Economic Community (Velruise, 2014, May 7). De Gaulle's strategy consisted of achieving: 1) strong economic development by using the process of European integration; 2) installing the control of the German state, which was the French main rival in the 19th and 20th centuries; and 3) transforming the European Communities into the European Union under French domination, with expanded competencies in the fields of foreign affairs and defense, treated equally with the United States and the USSR (Zečević, 2015, p. 433). However, France failed to convince its European partners of the need to build an independent European defense. The initial plan was to use and develop the French military industry to serve as an independent European defense. In that sense, we should also have in mind the statement of President Emmanuel Macron from November 2019 that the *NATO alliance is clinically dead* (Le Figaro, 2019, November 7). The German Minister of Defense, Annegret Kramp-Karrenbauer, immediately replied that she believed there was no convincing defense of the European Union outside the framework of the NATO pact. She also underlined that she is committed to American military protection. The Ukrainian crisis has breathed new life into NATO, justifying its existence. President Biden's Administration is working to strengthen strategic ties with European partners and reinforce NATO's leading role in Europe. In this context, the thesis of the French president from 2019 seems outdated. According to the French president, European sovereignty has to be built up through better supervision of the external and internal borders of the European Union. Specifically, Macron proposes the reform of the Schengen agreements, which subject is the abolition of borders between member states. Macron also suggests political management of this area through more frequent meetings of interior ministers of the member states, as well as the creation of an Emergency Support Mechanism to deal with emergency situations at the Union's external borders. In the case of the Ukraine crisis, the large influx of refugees into the European Union has not become an acute problem because these people belong to European, Christian culture and civilization. Their integration into European societies is not questionable.

A NEW MODEL OF EUROPEAN ECONOMIC GROWTH – THE NEXT IMPORTANT OBJECTIVE OF THE FRENCH PRESIDENCY OF THE COUNCIL OF THE EUROPEAN UNION

Another important goal of the French presidency is to establish a new European model of economic growth that should transform the European economy until 2030. The EU should encourage innovation, production, and job creation, which would strengthen European competitiveness vis-à-vis China and the United States. The EU needs to achieve technological sovereignty and high environmental performance (climate neutrality and carbon tax at EU borders). The goal of the French presidency was also to create a European digital market. In that sense, an extraordinary European summit on the mentioned topics should have been held in Brussels on March 10 and 11, 2022. Instead, a summit under the French presidency was held in Versailles, a luxury suburb near Paris, because the Ukrainian crisis disrupted the European plans. At this meeting, the task of reducing dependence on Russia in the field of energy (gas, oil, and coal) was set. The goal of self-sufficiency in the fields of food production, semiconductors, and rare metals was also set. The Commission was empowered to prepare concrete proposals in this regard. On that occasion, the French president, Emmanuel Macron, underlined that his initiative on building European sovereignty was not a fantasy but a real need. At the European summit held in Brussels on March 25, 2022, the European Commission received authorization (mandate) to realize joint group gas procurement, including for the countries of the Western Balkans, whose perspective of joining the EU was recognized. According to Emmanuel Macron, that was the best way to bring down purchase prices. However, the European policy of economic sanctions against Russia was a double-edged sword policy. Sanctions imposed on Russia led to an increase in the prices of oil, gas, rare metals, and cereals, which caused an increase in the prices of almost all products in Europe in return and had negative effects on economic growth. In such crises, households are not prone to consumption, and companies refrain from investing. The globalized economy is a system of communicating vessels where the war in one part of the planet affects the economic development of all participants in the world market.

THE FRENCH PRESIDENCY OF THE EU COUNCIL IN THE CONTEXT OF THE ENLARGEMENT POLICY FOR THE WESTERN BALKANS

The program of the French presidency of the EU Council also mentions the Western Balkans countries. In that sense, President Emmanuel Macron believes that the next European Union-Western Balkans conference should be dedicated to the fight against foreign influences in this area, especially those coming from Russia, China, and Turkey. The conference should contribute to the re-engagement of the EU in our region. Macron believes that peace in Europe cannot be built in the next 50 years if the situation in the Balkans remains as it is. In that sense, the European perspective of the Balkan states should be clarified. Does that mean speeding up the process of accession of the Balkan states, especially if we have in mind the Ukrainian experience? In any case, this issue ceases to be only technical but becomes geostrategic and political. It is necessary to take a political decision about the accession of Montenegro and Serbia, and then other Balkan states, to membership in the European Union. At the same time, the EU should not renounce the right to apply in practice the new methodology of pre-accession negotiations and to insist on the application of the basic values of the European Union in the candidate member states. The experience with the accession of Central and Eastern European countries gave indications in favor of the thesis that the enlargement process has served as an incentive to strengthen European integration. Namely, the precisely defined time schedule of the accession dictated the institutional changes in the European Union. The European Communities, which had competences only in the economic sphere, with the successive reforms carried out by the Treaties of Maastricht in 1993, Amsterdam in 1999, Nice in 2003 and Lisbon in 2009, grew into the European Union, which was given wider competences. These are monetary competencies (introduction of the single currency, establishment of the European Central Bank), as well as competencies in the field of foreign affairs and security policy.

THE ISSUE OF ACCELERATED ACCESSION OF UKRAINE TO THE EUROPEAN UNION

The President of Ukraine, Volodymyr Zelensky, on March 1, 2022, in front of the members of the European Parliament, demanded an accelerated procedure for access to the European Union for his country (Giandomenico, 2002, March 10). Accelerated admission should be contained in a special

procedure that is not provided by European Union law. According to Article 49 of the Treaty on the European Union, European states may be admitted to membership if they respect the fundamental values of the EU (Manin, 2005, p.101). At the summit of the European Council in Copenhagen in 1993, the criteria for admission to membership were more precisely determined: 1) political criteria — democratic political system and respect for human rights and the rights of minorities; 2) economic criteria — a market economy capable of withstanding competitive pressure within the single European market; and 3) the candidate country should agree to the obligations arising from accession — the introduction of European legislation *(acquis communautaire)* into the national law and to express its intention to join the political, economic, and monetary Union. The fourth condition refers to the EU itself, i.e., the will and ability of its members to absorb a new member. In recent years, in the context of the accession of the Balkan states, this has been the most important obstacle. Namely, the European Union did not reform its institutional system, whose foundations were defined in the 1950s by the treaties establishing the European Communities. The system at that time was relatively efficient within the Community of six member states. In today's Union of 27 members, it is becoming cumbersome and insufficiently efficient. In the European microcosm, it is believed that the institutional system would become even more cumbersome and inefficient with the admission of new members. In this context, we should keep in mind that the ordinary legislative procedure in the EU is based on the following: the Commission, as a kind of European government, drafts a legislative act which is proposed for adoption by the European Parliament and the Council of the European Union. In this regard, it has been said for years that the number of members of the Commission should be reduced from the current 27 to 15 (Berramadane, Rossetto, 2017, p. 54). The European Commission should have a reasonable number of *ministries* to be able to work harmoniously and efficiently. The number of 705 members of the European Parliament is also not negligible. The most controversial is the way of taking decisions inside the Council of the European Union as the second branch of the legislature. One minister from each member state sits in it, bringing the total number of members of this body to 27.[2] Each minister only needs to say "good afternoon" and a few additional lines during the Council session, and discussion can be prolonged for an hour. An even bigger problem is that the Council still decides unanimously on many important areas

[1] Article16, paragraph 2 of TEU.

(Rideau, 2002, p. 336). Consensus is present in the area of harmonization of tax laws of the member states, in decision-making in the field of foreign and security policy, but also in decisions related to the enlargement of the EU. Due to the diversity of national and state interests, reaching an agreement by the consent of all member state ministers is sometimes a *mission impossible*. The arguments against the enlargement of the European Union presented above, however, have relative force. Decisions in the field of the economy are adopted by the Council of the European Union by a qualified majority, which means that 55% of ministers voted in favor of the proposal, with the additional condition that they represent member states that have 65% of the total population of the European Union (Berramadane, Rossetto, 2017, p. 66). In addition, in practice, small and medium-sized member states suffer pressure from the big ones when making decisions or joining their positions in order to achieve a certain national interest. Membership in the European Union is achieved by going through several successive phases. A country wishing to accede must address its written request to the Council of the European Union (Article 49 of the EU Treaty). The EU Council approves the candidate status after receiving an opinion from the Commission and the European Parliament. This is followed by the opening of accession negotiations, during which the Union institutions want to make sure that the candidate has incorporated European legislation into its national legal system. Finally, an accession agreement is signed, which must be ratified by all member states and candidate countries in a referendum. This procedure has a constitutional nature and often lasts more than 10 years. The European constitutional text does not provide for an accelerated admission procedure. At the same time, Ukraine is a country burdened with problems. The aforementioned is not a fully stabilized democracy and has serious problems with corruption. Ukraine is at war with Russia, which calls into question its borders. Above all, membership in the European Union provides for collective defense solidarity in the case of an attack on one of the members of the Union. So, in the case of Ukraine's accession, the European Union would practically be at war with Russia. Some member states and the president of the European Commission believe that Ukraine should be granted candidate status. This status potentially raises the level of confrontation between the European Union and Russia and moves away from a compromise, a peaceful solution to the Ukrainian crisis. Before any decision on Ukraine's European integration, it should reach a peace agreement with Russia that would stabilize the situation in Europe.

HUMANIST EUROPE

One of the objectives of the French presidency of the European Union is to reform its institutions in order to bring them closer to its citizens. Macron insists on respecting the principle of the rule of law as a fundamental value that must prevail in all EU member states. This issue should not divide the member states, and in that sense, the conditional assistance mechanism, which is granted from European Union funds, is very important. The French President believes that there are no insurmountable differences between the old members and illiberal democracies such as Hungary, at the moment. Macron assumes that Victor Orban would accept the strengthening of the sovereignty of the European Union and a new model of economic growth.

The French President wants to encourage reflection on the common history of the European Union. Namely, according to Macron, there are not only 27 national histories of member states. Independent experts should lay the foundations for a common European history. In the context of the 35th anniversary of the Erasmus program, Emanuel Macron considers that new encouragement should be given to the educational cooperation of young people. For him, the ties between European universities should be strengthened.

CONCLUSIONS

The French presidency of the Council of the European Union was marked by two events. France was to take over this function in the midst of the national presidential election, which was held in April 2022. Considering that this event could diminish the efficiency of the presidency, some member states suggested that France change its presidency mandate to that of the country that should succeed it. At the same time, there was a danger that if Emmanuel Macron lost the presidential election in April, a new president of France who came to power would not share the same European priorities and visions as Macron. This situation occurred in 1995, when Jacques Chirac succeeded François Mitterrand in office, but it had no significant impact on France's presidency of the Council of the European Union. President Macron, however, refused to replace the presidency of the European Union, probably believing that this position would give him prestige in the election campaign. Besides the point mentioned above, it is certain that the war in Ukraine has significantly affected the French presidency of the European Union. France played a double role. On the one hand, it advocated achieving full European unity in actions towards Russia by insisting on imposing harsh economic sanctions. In the Union itself, there appeared to be divisions about the intensity

of economic sanctions against Russia. Poland and the Baltic states have called for targeting the Russian energy sector as well. Germany and France were very reluctant to restrict Russian oil and gas imports. France also insisted on sending military aid to Ukraine using funds provided from the European Union budget. At the same time, President Macron wanted to maintain a permanent dialogue with the Russian and Ukrainian presidents in order to try to contribute to finding a peaceful solution to the conflict. Macron believed that the Ukrainian crisis was the best proof that it was necessary to strengthen the military and political sovereignty of the European Union. The EU has specific interests on the world stage, separate from those of the United States. This crisis has also shown how much the European Union is dominated by the United States and NATO alliance in the military-strategic and foreign-political sense. Basically, the question is whether the geostrategic conflict between the Western alliance and Russia is in the best interests of the European Union. There are indications that a European plan for Ukraine's strict neutrality existed in 2006, which would satisfy Russia's security demands, but the United States wanted to leave the door open for Ukraine to join NATO. In any case, it is the European Union that will suffer serious economic consequences due to the crisis in Ukraine. While the war in Ukraine continues, there is also a latent danger of the outbreak of a wider military conflict on the soil of the European continent, which additionally worries the members of this supranational organization.

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HUNGARIAN FOREIGN POLICY AGENDA IN RELATION TO SERBIA AND THE PROCESS OF EUROPEAN INTEGRATION

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Abstract: The paper aims to discuss several crucial issues in Hungarian foreign policy towards Serbia and the broader Hungarian-Serbian bilateral context. First, it introduces the background of the analysis with regard to the further enlargement of the European Union, which is a priority question for both countries. Second, it covers some current challenges and opportunities from a Hungarian foreign policy perspective, tackling the consecutive chapters of Global Opening, soft power, as well as pragmatism in foreign policy. Third, an overview of the growing "China Connection" is offered, followed by the fourth section with a detailed summary of Serbian-Hungarian bilateral relations since the change in the political systems at the end of the 1980s and the beginning of the 1990s. Fifth, the current state of Serbia's membership negotiations is provided, after which some concluding thoughts are presented.

Keywords: Hungarian foreign policy, Serbian-Hungarian bilateral relations, strategic partnership, EU enlargement, China–CEE relations.

INTRODUCTION

For many years, the enlargement policy of the European Union has been a controversial topic, with arguments about why, who, and how being countered by arguments about deepening. Even though the eastern enlargement has been accompanied by a number of criticisms with early good news, the Community has also had to face its first exit due to Brexit. Ignoring the lessons of previous enlargement waves, internal problems, the

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development of nationalism, and protracted discussions with the United Kingdom have all postponed the likelihood of future admission, sometimes known as the European integration of South-Eastern Europe or the Western Balkans. Six nations in the region: Serbia, Montenegro, North Macedonia, Albania, Bosnia and Herzegovina, and Kosovo, are not yet members of the European Union. But Croatia and Slovenia were included in previous rounds of eastern expansion. Four of the six nations are candidates, while Kosovo and Bosnia and Herzegovina are potential candidates, with the latter having filed for membership in the fall of 2016. Enlargement has not progressed significantly in recent years. Negotiations have been slow due to the Copenhagen criteria, and the member states are not clearly in favor of enlargement (France vetoed the opening of negotiations with North Macedonia and Albania in the first round, and only agreed to open chapters a few months later), but candidate countries are not always able or willing to meet the accession requirements. In the meantime, external players interested in the region can be or appear to be more attractive than the European Union itself, and the residents of the region are growing increasingly disillusioned with membership. The EU has responded to all this with a proposal for change, reworking the accession procedure to make accession negotiations more appealing and transparent. The European Commission has suggested a reform with four focal areas: First, a stronger political steering, with closer control and continuous summits and ministerial meetings to boost the involvement of the member states in the accession process, helping them to monitor the process (es). Second, promising a more dynamic process, clustering chapters and making it realistic to join EU policies at an earlier stage, where the fundamental requirements will play a central and primal role in the process. Third, the reform includes predictability as well, helping candidate countries with crystal clear conditions. Fourth and final, clear incentives will provide benefits for the state and its citizens to help introduce the required reforms. In any case, accession remains a highly regulated bureaucratic process where, in addition to the supervision of the Commission, the continued unanimity of the member states is essential for any further advancement.

SOME CURRENT CHALLENGES AND OPPORTUNITIES IN HUNGARIAN FOREIGN POLICY

Several of our previous publications have dealt with a number of the major dimensions and critical partnerships within the foreign policy matrix of Hungary since the change in the political system that occurred at the end

of the 1980s. We were investigating, amongst others, some new (or re-visited) items on the agenda, together with certain challenging issues and connections, such as changing foreign policy priorities in a changing global system (Tarrósy & Vörös, 2014), the policy of "Global Opening" (Tarrósy & Morenth, 2013), the increased pragmatism of Hungary in fostering relations with China, Turkey, Russia, the Gulf states, Sub-Saharan Africa and other emerging regions of the world, but also the refugee crisis and climate change, to name some crucial ones (Tarrósy & Vörös, 2020). In the context of the ongoing war in Ukraine (at the time of the writing of this paper), it needs to be highlighted that one of the most daunting foreign policy challenges for Hungary as a member state of the European Union is certainly its relations with Putin's Russia and the navigation the Hungarian government can execute upon possessing a detailed understanding of Russia's geostrategy in the region, based upon the Primakov doctrine (Lechner, 2021, pp. 20-21; Sz. Bíró, 2014, p. 41). Since 2010, Viktor Orbán's Fidesz, with its coalition partner, the Christian Democratic People's Party (KDNP), has been the confident winner of national elections. In all of the last four elections (2010, 2014, 2018, and 2022), he won by a constitutional majority regarding the total number of seats in parliament. Numerous changes in internal and foreign policies have been implemented, resulting in managing relations with an array of "non-traditional" partners as part of the new chapters of the doctrine of Global Opening (Puzyniak, 2018). While the turn towards the East (especially to Russia, Central Asia, and China) and re-engagement with the South (in particular with Sub-Saharan Africa and Latin America) have dominated priorities, the importance of minority and diaspora politics has not lost momentum, but rather has got a boost in the past decade. How to deal with the Hungarian minority communities living abroad has had several ups and downs since the early 1990s in the policy approaches of the left-wing and right-wing political parties (Kiss & Zahorán, 2007). Orbán's governments firmly institutionalized all platforms and tools to keep close contact with Hungarian communities living abroad. For instance, a "State Secretariat for Hungarian Communities Abroad within the Prime Minister's Office has been in charge of engaging with Hungarians abroad" (Kovács, 2020, p. 248). In Orbán's incumbent government, after the April 2022 national elections, this state secretariat has kept its significance and position. With more focused attention to international visibility, Hungary has been playing the "soft power card" rather successfully, in particular after the introduction of the Stipendium Hungaricum state scholarship in 2013 (Császár et al., 2022; Tarrósy & Vörös, 2019). As Katsiba concludes, "Hungarian foreign policy is becoming more and more active (...), on the periphery of Europe, Asia, and

some African countries". Also, it is spreading in neighboring countries and throughout the diaspora (Kacziba, 2020, p. 82). This, however, is not widely known across society at large; rather, emphasis is laid on the protection schemes the government provides against all odds and challenges in the form of refugee flows, energy dependency, or the ongoing war in the immediate neighborhood of the country. Pragmatism is a tangible manifestation of Hungarian foreign policy, which caters to a great deal of enhanced neighborhood policies, too. First and foremost, the security considerations of the wider macro-region (in addition to many other dimensions of a largely shared history, intercultural ties, as well as economic interests with the neighboring countries) drive a closer collaboration with Serbia, also supporting its accession to the European Union.

THE CHINA CONNECTION

The region, and Serbia in particular, is not only linked to the European Union but also to external actors and interests. In particular, Russia, the Gulf States, Turkey, and China should be mentioned. Beijing is certainly a prominent player in the region if judged only by the media reports and statements by politicians, and although there are fears of an increased Chinese presence within the EU, it could even help to build a relationship in-between Europe and across the region. Focusing on the Chinese presence, usually the infrastructure projects and not really investments we can talk about, as Szunomár notes, "while the majority of Chinese outward FDI flows to core EU countries, infrastructure projects are implemented rather in European peripheries such as CEE (Central and Eastern Europe). Similarly, within the CEE region, EU member CEE countries host relatively more Chinese outward FDI, while already implemented or ongoing infrastructure projects are more common in the non-EU CEE states" (Szunomár, 2020). The geographical position of the Western Balkans, and especially Serbia, is one of the key drivers behind their presence, connecting Central and Eastern Europe and the Mediterranean Sea, or, as Conley et al. put it, providing access from the sea to Europe's "inner core" (Conley et al., 2020, p. 3). Piraeus, a port in Greece, has been transformed by COSCO Shipping Lines Co., Ltd. into the largest port in the Mediterranean Sea since it took over management of the port in 2009. This arrival of China generates not only criticism but also fear. Addressing these, Zweers et al. and Eszterhai have already highlighted: "China could derail countries from their path towards the European Union. China's mere presence in the (Western Balkans) obstructs EU norm diffusion in political, economic, and security terms. The legal approximation of the

[Western Balkans] with the EU, as required in their path towards EU membership, requires the full adoption and implementation of EU standards on good governance, macro-economic stability, environmental protection, public procurement (transparency), corruption, human rights, privacy, and data protection. In all these fields, engagements between China and the Western Balkans have frequently caused the latter to drift away from EU-intended reforms. "As well as confronting [the Western Balkans] with deviating standards, China's increased role in the Western Balkans has furthermore undermined the mechanisms of socialization and conditionality through which the EU has sought to draw the region closer" (Zweers et al., 2020, p. 3). It was also stated by Eszterhai that infrastructure investments are not transparent, and as a result, they violate EU norms, standards, and laws (Eszterhai, 2017). As a result, the states wishing to join the EU should be aware of this potential threat, and EU officials should be aware of this possibility as well: the longer the accession talks are delayed, the more citizens in these countries will be pessimistic or critical about the accession process in general. (Vörös, 2022). What makes this criticism questionable is that the room for manoeuvre for China has opened up as a result of the EU's inactivity and passivity in the region: "Over the past decade, Beijing has successfully taken advantage of the passiveness of the EU and gained both economic and political influence with loans and major projects across the region" (Đorđević, 2021), and without changes, lack of development may open up further and further windows for China in the coming years, or even decades as well (Shopov, 2021, p. 10). Getting back to media reports and politicians, we also have to highlight that they are interested in exaggerating the influence of outsider actors such as China. Matura points out that "one of the most important findings […] is that national governments tend to offer an inflated picture of China's presence in their respective countries. Figures presented by governments tend to include investment plans previously proposed but otherwise never implemented by the Chinese side. […] It must be emphasized that infrastructure projects financed by Chinese loans do not fit into the category of Chinese foreign direct investment, rather they are investments made by the host country and merely financed by a loan that happens to come from China" (Matura, 2021, p. 7). When comparing Serbia's trade in goods with the EU and China as a percentage of total trade in 2019, it is clear that the EU is the dominant actor, accounting for 59 percent of imports and 68 percent of exports, while China accounts for 9 and 2 percent, respectively (Zweers et al., 2020). China will continue to be attractive due to the limited conditionality that the Chinese government may offer, as well as the fact that Chinese cash, investments, and loans can be used as leverage

against the EU. In addition, as the example of the Belgrade-Skopje railway (the continuation of the Budapest-Belgrade railway) demonstrates, which will be financed by the EU according to a recent decision, China's presence in the region can be viewed as an opportunity to learn from past mistakes and reconsider policies, especially in the Western Balkans region, where there is an urgent need for infrastructure that can and will shape the future of these countries rather than simply serving China's interests. In addition to providing links for China, highways and railroads have the potential to boost regional and local economies (Vörös, 2022).

HUNGARIAN-SERBIAN RELATIONS SINCE THE CHANGE IN THE POLITICAL SYSTEMS

Although today, Hungary is one of the most important international partners of Serbia, definitely among the top five most significant partners in economic, business, and trade terms for years, the two countries have "a long history of cold or openly hostile relations" (Drajić, 2020, p. 5). Stradner and Rohac (2022) point out an important dimension of historical ties when they mention that both Hungarian Prime Minister Viktor Orbán and Serbian President Aleksandar Vucic "exploit grievances about their countries' lost territories and prestige". Both countries had several instances of historical wounds and discontent as a consequence of the many armed conflicts throughout the past centuries, and therefore, constructed policies to serve the re-establishment of grandeur on both ends: for Serbia under the notion of the "Serb World", for Hungary revisiting the idea of the "Great Hungary". As Reményi et al. (2021, p. 808) confirm, "the transformation of Hungarian-Serbian relations – which need to be seen in the Western Balkans context – is a 180-degree turn: relations […] have never been so cordial". From a historical perspective, first, it is to be recalled that on August 13, 1990, Prime Minister József Antall gave a statement that he was the prime minister of 15 million Hungarians "in spirit", and as Schöpflin (1993, p. 12) underscores, this "was guaranteed to inflame suspicions that Hungary had political designs on its neighbors, that at the very least the Hungarian state would play an active role *vis-á-vis* the minorities and would thereby interfere in the internal affairs of the successor states".[1] This was particularly delicate in the

[1] The original Hungarian statement is as follows: *„kormányfőként lélekben, érzésben tizenötmillió magyar miniszterelnöke szeretnék lenni*." See: https://antalljozsef25.hu/emlektoredekek/a-rendszervaltoztato-miniszterelnok/675-lelekben-tizenotmillio-magyar-miniszterelnoke

context of Serbian-Hungarian relations, which were not at their peak in the early 1990s due to the fact that in the war in Croatia, the Hungarian government was more supportive towards Croatia and Slovenia than towards Serbia. The rather complex picture included substantial fears that the Hungarian ethnic minority in Vojvodina was in danger, especially from the extremists. The "ethnicisation of the state bore hard on the minority" (Ibid, p. 17), but Hungarian minority politicians (especially in the Democratic Community of Vojvodina Hungarians party, VMDK) could strengthen their positions in the regional, national, and federal parliaments, bearing sufficient legitimacy even to "demand territorial autonomy" (Ibid, p. 18). Three pillars were built among Hungary's foreign policy priorities right after the political system changed: European accession (as the country's number one priority), NATO membership, and neighborhood policy with a heavy focus on Hungarian communities across the Carpathian basin (and beyond). Concerning minority policy, the Hungarian government also emphasized providing sufficient democratic space for ethnic communities to establish their minority self-governments (MSGs). With reference to autonomy, a "bottom-up approach was followed by the first law adopted in 1993: the MSGs were elected at the municipality level (at the same time as the local self-governments), and the national MSGs were created by the latter through indirect elections" (Dobos, 2016, p. 6). The number of Serbian local MSGs in Hungary today is well over 40, placing the representation of the Serbian communities in the mid-range of all MSGs (again based on the work of Dobos 2016). One of the major aspects of bilateral relations has been the domain of intellectual exchanges, in particular cultural, academic, and scientific collaboration. In this respect, both national funds provided by both states as well as regional (e.g., CEEPUS) and European (e.g., first Tempus, then, Erasmus and Erasmus+) funding schemes proved to be essential to cultivating and fostering closer ties. In addition, sister city cooperation (such as, for instance, between Pécs and Novi Sad/Újvidék, or Szeged and Subotica/Szabadka), strategic-level university partnerships, and collaborative linkages between the national academies of sciences, have all offered the ground for mutually meaningful relations in the longer run. The real improvement in bilateral relations is attributable to the rise to power of Viktor Orbán as Prime Minister in 2010 and Aleksandar Vučić, first as Prime Minister President (between 2014-2017), and then as President in 2017. During this time, not only did political ties intensify, but economic cooperation also began to expand significantly, and the region, and Serbia in particular, became an important partner for Hungary. Several factors have influenced and continue to influence Hungarian interests, including those

which can solely be understood through a complex approach: Serbia and the Western Balkans region are important not only because of the expansion of MOL and OTP but also because of small and medium-sized enterprises. We must not overlook the Hungarian minority in Serbia, as well as the region's interest in joining the EU, how the incumbent Hungarian Commissioner for Enlargement, Olivér Várhelyi, can assist in this process, and the fact that Hungary took over the largest NATO mission in Kosovo in late 2021. The ongoing migration and refugee crisis, however, complicates Hungarian foreign policy toward the region. As Németh highlighted, "The economic presence of Hungary in the Western Balkans is not a new phenomenon; over the past decade, not only large Hungarian-owned companies, but also small and medium-sized enterprises with the appropriate support and knowledge, have chosen the region for their investments and, where appropriate, for their outward investments. Thus, Hungary's economic influence in each of the Western Balkan nations is on the rise. The COVID-19 pandemic caused a minor setback, but the country's recovery has put economic relations back on a positive track. Although Hungary's FDI attractiveness remains significantly higher than domestic capital inflows, Western Balkan nations have witnessed a significant increase in Hungarian FDI stock. In 2015, Hungarian FDI in the region totaled 690 million euros; by 2020, this will increase to 1.5 billion euros. From €2.1 billion in 2015 to €3.5 billion in 2021, exports of goods and services to the Western Balkans are also expanding rapidly" (Németh, 2022, p. 4). In addition, the author points out that over sixty percent of these investments are directed toward Serbia. It is of the utmost importance for Hungary to resolve the situation of Hungarians living outside of its borders, which, based on examples from recent years, can be properly addressed without causing conflict with neighboring states by introducing dual citizenship and dismantling European borders. In this regard, Serbia is a further step in a process that will allow an additional 250,000 Hungarians living across the border to maintain and strengthen their ties to their home country. It is not a coincidence that Hungary is one of the most vocal supporters of Serbia's accession, despite the parties' divergent stances on Kosovo. While Budapest is interested in recognizing Kosovo (consider the attempts at autonomy for Szeklerland), Belgrade refuses to accept its independence. In any case, Budapest's commitment is demonstrated by the fact that Hungary was able to obtain the position of Commissioner for Enlargement in the new European Commission, and the aforementioned Commission reforms, which were also prepared on the proposal of Commissioner Várhelyi, constitute a clear step toward rapid accession. As the Commissioner noted

during a meeting in Montenegro, he began his term with the objective of having "at least one Western Balkans country finalize its EU accession processes by the end of his term" (Mr. Várhelyi, 2021). Although he is advocating for Serbia, Montenegro has the upper hand in the discussion. This push is so obvious that criticism also arrives at Olivér Várhelyi. As Politico notes, "According to more than a dozen officials from multiple institutions and an analysis of internal documents, European Commissioner Olivér Várhelyi has overseen a push to play down concerns about the rule of law and human rights in candidates for EU membership. And although the Hungarian diplomat is meant to produce even-handed assessments of all would-be members, he's pushing the candidacy of one country above all: Serbia – despite the fact that Belgrade has failed to make progress on key issues and even regressed on some, according to democracy watchdogs". (Olivér Várhelyi, 2021). In addition to all these, Hungary has a significant role in NATO's current largest mission in Kosovo, with Major General Ferenc Kajári and Hungary taking over its command in 2021, firstly making it important for Budapest to solve the challenges, and secondly, linked to the potential tension in Kosovo mentioned earlier, putting Hungary in a difficult position. *The migratory events of 2015 and the unfolding "refugee crisis" in Europe changed both the political landscape and societal perceptions about international migration all across Central and Eastern Europe and basically in the entire European Union. Among the responses of the member states, despite their many different positions on numerous issues connected with migration, the question of border control and the enhanced protection of the territory of the EU gradually crept high on all political agendas (Tarrósy, 2021). The Strategic Partnership Agreement between Hungary and Serbia, signed on September 8, 2021, includes numerous bilateral agreements in various sectors ranging from technology and innovation to European integration.* "Interior Ministers, Sándor Pintér and Aleksandar Vulin, signed the Protocol on mixed patrols along the common border" (MFA Government of Serbia, 2021). This strategic partnership was reaffirmed in May 2022 after the two leaders got re-elected. Prime Minister Orbán revisited the concept of Hungary being the "bastion of Europe", protecting the continent and the European Union in particular. It was underscored that Serbia and Hungary "will have to strengthen their southernmost defense lines to stop migration" (Hungary Today, 2021). This continuous effort from the Serbian perspective will surely play a role in Serbia's EU accession talks.

THE CURRENT STATE OF SERBIA'S MEMBERSHIP NEGOTIATIONS

Serbia was recognized as a possible candidate country in 2003. It submitted an official application in 2009 and was given EU candidate status in March 2012. After monitoring the situation and preparing for the negotiations, the Council accepted the negotiating framework late in 2013, and Serbia formally launched negotiations at the beginning of 2014. As of May 2022, Serbia has opened eighteen chapters and provisionally closed two chapters (Science and Research, Education and Culture) – but the process in the first years was quite slow, and while there is an improvement with the latest accession reforms and Serbia could open four chapters simultaneously in December 2021, critical issues remain unresolved. After the 2022 elections, High Representative Josep Borrell and the Commissioner for Neighborhood and Enlargement Olivér Várhelyi, while congratulating Aleksandar Vučić, encouraged "Serbia to deliver real and tangible results, in particular in the area of the rule of law and on the normalization of relations with Kosovo through the EU-facilitated Dialogue, which determine the overall pace of EU-accession negotiations" (Serbia: joint statement, 2022). So, the rule of law and relations with Kosovo are the key areas where Belgrade is not yet performing up to expectations. The question of the rule of law is going to be essential with upcoming accession talks in all cases, given the recent problems with Poland and Hungary, and the question of the recognition of Kosovo will be a deal breaker – the then-German Chancellor Angela Merkel stated in 2021 that the Kosovo issue must be resolved prior to Serbia's entry into the EU (Merkel, 2021). The slow process and the communication of the Serbian government throughout the global pandemic did affect the opinion of citizens towards the EU. A media report (CSP, 2021) highlighted that in 2020, the COVID-19 pandemic was one of the most prominent themes, also revealing the existence of highly emotive pro-Chinese and anti-European narratives over the COVID-19 pandemic in the media: "In general, the pro-government media, and especially the tabloids, are in favor of a type of reporting that criticizes the EU with a lot of emotions and glorifies its "rival" actors in Serbia, mainly using the allegations of state officials. Thus, the European Union is an entity that often conditions Serbia and asks it to give up key identity determinants (Tesla, Kosovo), as well as its traditional friends (China and Russia) for the sake of membership in that organization, inconsistently and unjustifiably criticizes it (for buying weapons from Russia and China), and leaves it stranded in crises (COVID-19). The President of Serbia defends the Serbian people from

the attacks of Brussels and manages, despite the enormous pressures to which he is exposed from often indeterminate (Western) centers of power, to independently make the best decisions in the interest of Serbia" (CSP, 2021, p. 31). As an outcome, a poll done by Ipsos and published in April 2022 found that 44% of respondents are against membership while 35% are in favor. For the first time in twenty years, the number of Serbs opposed to joining the European Union outnumbered those in favor of the country's membership (For the first time, 2022). According to Milivojević, whereas these critical voices once dominated discussion about the EU, there appears to be a shift occurring recently. He highlighted that Vučić has expressed a positive view of the Community, which may have something to do with Putin's reference to Kosovo in connection with the liberation of the breakaway republics in Ukraine – although Serbia has not yet joined the sanctions against Russia and there are still Serbian politicians who are critical of the EU. Milivojević, quoting the Serbian president, underlined that Serbia's trade exchange with the EU makes up "62.5% of [their] foreign trade balance, that is 30+ billion euros; 300,000 people are directly or indirectly employed in companies from the EU; the biggest investments come from the EU, 1.9 billion euros last year; […] in the last 16 years, Serbia also received over 3.6 billion euros in grants from the EU. Moreover, the country receives 200 million euros annually from IPA funds" (Milivojević, 2022).

CONCLUSIONS

Even though there are some disputed questions (such as the divergent stances on Kosovo), it is evident that a multifaceted and strategic partnership has been strengthened by the governments of Serbia and Hungary since their regime changes. Both countries are driven by pragmatism in their foreign policies, which can mutually embrace viable solutions to a number of shared burning issues, ranging from enhancing interregional connectivity – in certain particular cases with the active involvement of China, e.g., with the Belgrade-Budapest railway project – to the handling of the flow of refugees across the wider macro-region, the protection of borders, as well as the enlargement of the European Union. With regard to the latest, our analysis can underscore that from a number of aspects – for instance, that of the Hungarian minority community in Serbia – it is in Hungary's interest to support Serbia's accession. Serbia, at the same time, surely needs regional support via Hungary for a successful entry into the EU. Finally, an even wider market opportunity for the entire European Union, together with an enlarged security community with a possible Serbian membership, may

seem to be of increased importance amidst growing insecurities all across Europe and beyond.

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SERBIA'S MEMBERSHIP IN THE COUNCIL OF EUROPE AND THE IMPLEMENTATION OF HUMAN RIGHTS STANDARDS

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Abstract: The paper analyzes the Republic of Serbia's accession to the Council of Europe (CoE) in 2003, focusing on its context and reasons for accession. The author also briefly presents the most important CoE conventions that Serbia has ratified, as well as the extent to which it has implemented obligations deriving from those conventions. It is discussed whether Serbia has established formal and informal mechanisms of cooperation with the bodies of the CoE, and especially whether it has a control body for monitoring the fulfillment of recommendations, similar to the Council for monitoring recommendations issued by United Nations human rights mechanisms. Special attention is given to the relationship with the European Court of Human Rights and the impact of judgments, primarily those handed down against the Republic of Serbia (the issue of enforcement), while focusing on systemic problems identified by the Court. Also, a case in which Serbia failed to comply with interim Court measures when it extradited a Bahraini citizen in January 2022 is presented. The paper assesses how this case affected the good relations between the CoE and the Republic of Serbia, especially now that Kosovo has submitted its application for membership in the organization.

Keywords: Council of Europe, Serbia, Human Rights, Monitoring bodies, European Court of Human Rights, European Court of Human Rights.

INTRODUCTION

The Council of Europe is an organization established after the Second World War with the aim of promoting human rights, democracy, and the

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rule of law, following the atrocities that happened during the global conflict. The horrors of the conflict have convinced people that international cooperation is vital for avoiding future conflicts and creating conditions for mutual cooperation among states (Benoit-Rohmer, Klebes, p. 20). The idea emerged from Winston Churchill's speech delivered in Zurich on September 19, 1946. The British statesmen and Prime Minister underlined that there was a need to unite the European States, which "would transform the whole scene and in a few years make all Europe as free and happy as Switzerland" (Council of Europe, 2022). This idea was formally initiated at the Hague Congress in 1948, gathering more than a thousand delegates from seventeen Western European countries.[1] This was one of the most dramatic postwar events, and it needed to provide a successful formula for European integration (Walton, 1959, p. 38). Observers from Eastern Europe, the US, and Canada were also present, including the Yugoslav delegation.[2] Most delegates came from France, Great Britain, Belgium, the Netherlands, Italy, and Germany (The Congress of Europe in The Hague, 1948, May 7-10). One of the three committees present was the Cultural Committee, which advocated for the adoption of the international human rights Charter and the foundation of a Supreme Court. The Treaty on the Constitution of the Statute of the Council of Europe was signed by ten states on May 5, 1949, in London.[3] The Preamble listed the basic values of European states, such as "individual freedoms, political liberty, and the rule of law, principles which form the basis of all genuine democracy" and were akin to those "of a European constitution" (Wassenberg, 2013, p. 24). The Statute in Article 1 clearly stipulates that the aim of the organization is "to achieve a greater unity between its members for the purpose of safeguarding and realizing the ideals and principles which are their common heritage and facilitating their economic and social progress". These objectives shall be pursued through the organization's organs "in economic, social, cultural, scientific, legal, and administrative matters and in the maintenance and further realization of human rights and fundamental freedoms". The idea of the

[1] Countries that were officially represented were: Austria, Belgium, Denmark, Ireland, France, West Germany, the United Kingdom, Italy, Liechtenstein, Luxembourg, Norway, the Netherlands, Sweden, Switzerland, Turkey, and Greece.

[2] Other observer states were Bulgaria, Czechoslovakia, Finland, Poland, Romania, and Spain.

[3] Belgium, France, Luxembourg, the Netherlands, the United Kingdom, Ireland, Italy, Denmark, Norway, and Sweden.

Cultural Committee was realized on November 4, 1950, when the European Convention on Human Rights and Fundamental Freedoms (European Convention) was adopted (Krstić et al., 2016a).[4] After democratic changes in Serbia, the door opened for Serbia's membership in the CoE. The State Union of Serbia and Montenegro joined the organization on April 3, 2003. Through its membership, Serbia accepted the principles of the rule of law and respect for human rights within its jurisdiction (Article 3 of the Statute). The aim of this paper is to analyze and present the relationship between Serbia and the CoE. The main premise is that Serbia increased its capacity to deal with human rights issues after joining the CoE. However, the human rights level did not significantly improve, indicating that it is a long-term process that requires coordination and cooperation from all state actors, as well as their genuine engagement.

THE MAIN BODIES OF THE COUNCIL OF EUROPE

The Council of Europe has two main organs: the Committee of Ministers and the Parliamentary Assembly. The Committee of Ministers is the decision-making body of the CoE, and Serbia, like all other states, has one representative on the Committee of Ministers, with one vote. Its representative is the current Minister of Foreign Affairs, who can be replaced by a member of the Government. The Committee of Ministers has the authority to issue the conclusion of conventions, agreements, or common policy with regard to particular matters. The conclusion can take the form of recommendations, and it can request that the member states inform it of any actions undertaken in response to those recommendations. The Committee of Ministers, as a legislative and budgetary authority, represents the first pillar of the CoE structure. Its role is to develop a dynamic partnership with parliamentary and government representatives, which means that it relies on cooperation with the Parliamentary Assembly (Kleinsorge, p. 96). The Parliamentary Assembly (before the Consultative Assembly) is the organization's deliberative organ, perceived as its "engine", which may discuss and make recommendations on any matter within the aim and scope of the organization (Article 23 of the Statute). Each member state has its own representatives, nationals of the member state, who are elected members of national parliaments. Serbia has seven assigned seats. The chairperson is Mr. Ivica Dačić, and members come from the following

[4] The Convention came into force on September 3, 1953.

parties: one from the Socialist Party of Serbia, one from the Party of Democratic Action of Sandžak, one from the Alliance of Vojvodina Hungarians, and four from the Serbian Progressive Party. The Parliamentary Assembly is the organization's second pillar, regarded as Europe's motor and conscience. The Honorary President, Edouard Herriot, who opened its first session on August 10, 1949, underlined that the role of the Assembly is to "furnish the means to governments to constantly keep in contact with European public opinion" and to constantly defend freedom and the law (Kleinsorge, p. 75). The Parliamentary Assembly also maintains external relations with international bodies and can request regular reports from them, invite observers, and direct the Secretary-General to establish official relations with the outside body (Evans, Silk, p. 323). The Secretariat consists of a Secretary-General, a Deputy Secretary-General, and administrative staff. The Secretary-General and Deputy Secretary-General are appointed by the Parliamentary Assembly on the recommendation of the Committee of Ministers, while the administrative staff is appointed by the Secretary-General. The Secretary-General is accountable to the Committee of Ministers for the Secretariat's work. Among other consultative bodies, established by consequent decisions of the Committee of Ministers, is the Congress of Local and Regional Authorities, a watchdog of the rights guaranteed by the European Charter of Local Self-Government, ratified by Serbia in 2007 (Serbia – Monitoring Report, 2017, October 18).[5] This body consists of a Chamber of Local Authorities and a Chamber of Regional Authorities, which have a total of 306 delegates each, who are elected members of local and regional political bodies in their countries. It advises the Committee of Ministers on issues relevant to local and regional governments. The main aim of the Congress is to strengthen cooperation among CoE member states and to promote human rights at the local and regional level. Serbia has seven members in this body. The Chamber of Local Authorities consists of four members: two from the Serbian Progressive Party, one from the Alliance of Vojvodina Hungarians, and one from the United Rural Party. Serbia has three members in the Chamber of Regions, all from the Serbian Progressive Party. It is the organization's third pillar.

[5] Through its ratification, Serbia accepted 25 provisions and refused to accept five. According to the second monitoring report, Serbia made significant legislative changes in order to strengthen local self-governments, but some additional efforts are needed, such as the fight against corruption and the continued implementation of the Strategy on Public Administration Reform.

Finally, the CoE's fourth pillar, and its consultative body, is the Conference of International Non-Governmental Organizations (INGOs), which respects and defends the values and principles of the CoE. This body brings together civil society representatives and is regarded as a junior partner in the CoE structure (Martyn Bond, 2012, p. 11). In 1952, the consultative status of INGOs was introduced, which allowed the CoE to develop a closer relationship with civil society. In 2003, the participatory status was introduced, which increased the participatory process of INGOs. Participatory status is granted once a year to organizations that have members in at least five of the member states of the CoE. There are over 400 INGOs with such status, and they meet in Strasbourg twice a year, during the ordinary sessions of the Parliamentary Assembly. Among them, as many as 116 organizations are geographically represented in Serbia. Their status is regulated by the Resolution of the Committee of Ministers CM/Res (2016) 3. They are organized into three committees: the Democracy, Social Cohesion and Global Challenges Committee, the Education and Culture Committee, and the Human Rights Committee. The position of Commissioner for Human Rights was not originally stipulated in the Statute of the organization. It was established in 1999 by Resolution 99 (50) as a non-judicial institution that promotes human rights education, awareness, and respect. In other words, the Commissioner's main responsibility is to increase the human rights culture in the member states and has a broad and flexible mandate to foster the effective observance of human rights in the member states (De Beco, 2013, p. 17). Ms. Dunja Milatović is the current Commissioner, elected to that position in 2018, while her predecessors were: Alvaro Gil-Robles (1999-2006), Thomas Hammarberg (2006-2012), and Nils Muiznieks (2012-2018). During his mandate, Mr. Hammarberg made two visits to Serbia in order to assess the overall human rights situation. His first visit was in October 2008. The report reveals that there were many obstacles to effective human rights implementation. Although Serbia had a strong legal framework, its implementation was inadequate. It was also noted that there is a widespread public perception of corruption and distrust of public institutions. Particular areas of concern were lengthy trials and the non-enforcement of national-level decisions. Mr. Hammarberg returned to Serbia for a second time in June 2011 and issued a report on his visit. The report recommended that authorities conduct thorough investigations into crimes committed during the war, improve the position of Roma, LGBTI people, and persons with disabilities, and promote the media's essential role in building pluralism and open-mindedness. In October 2021, the Commissioner expressed concern about the cancellation of the Belgrade Gay

Pride on grounds of public safety, stressing the importance of freedom of expression and assembly. The Ministry of Interior responded that the event was canceled due to the rise of anti-LGBTI citizen associations, civic groups, and football fan groups, and that it was not possible to guarantee their safety. In 2015, Mr. Muiznieks published a report on the third visit to Serbia, made in March 2015. It was found that there were still some issues for concern in Serbia, such as impunity for grave breaches of international humanitarian law, a lack of effective access to justice and reparations for victims of human rights violations, a lack of long-term solutions for Roma displaced from Kosovo and experiencing housing and education problems, discrimination against persons with disabilities, the unsuccessful deinstitutionalization process, and gender-based violence against women. Additionally, the Commissioner found that there is political pressure that leads to self-censorship, impunity for crimes against journalists, a non-supportive environment for investigative journalism, as well as sensationalism and non-ethical media reporting.

MEMBERSHIP IN THE COUNCIL OF EUROPE

The organization was established after hard negotiations between federalist and unionist "Europeans" at the Hague conference in May 1948 (Anita Prettenthaler-Ziegerhofer, 2010, p. 9). Its foundation represents a milestone in the European integration process (Anita Prettenthaler-Ziegerhofer, 2010, p. 13). The heads of governments of Belgium, Denmark, France, Great Britain, Ireland, Italy, Luxembourg, the Netherlands, Norway, and Sweden signed the Council of Europe Statute on May 5, 1949. The Yugoslav delegation was not invited to London in 1949 to join the Treaty constituting the Statute of the Council of Europe. Despite its primary purpose to unite the European States, the Council of Europe remained a Western European organization for a long time, focusing on the first generation of human rights (civil and political rights). Eight countries joined the Council of Europe between 1949 and 1970: Greece, Iceland, Turkey, Germany, Austria, Cyprus, Switzerland, and Malta. During the 1970s and 1980s, only a few states became members: Portugal in 1976, Spain in 1977, Liechtenstein in 1978, San Marino in 1988, and Finland in 1989. Finland's membership ended the pure Western character of the organization (Winkler, 2010, p. 22), which was seen by Eastern Europe "as the civilian arm of NATO" (Bond, 2012, 8). Since 1985, the organization has focused on central and Eastern European states. In 1989, Soviet leader Mikhail Gorbachov addressed the Assembly for the first time, mentioning the "common

European home" (Winkler, 2010, p. 23). His attitude was accepted with enthusiasm by ordinary people, while politicians were cautious and suspicious (Denis Huber, 1999, 5). In the same year, the assemblies of Hungary, Poland, the USSR, and Yugoslavia were granted special guest status. The enlargement policy was initiated by Francois Mitterrand at the first Summit of the Heads of State and Government of CoE Member States in October 1993, opening the door for the democratization process in Central and Eastern Europe.[6] The role of the CoE has grown considerably over its 70 years of existence, with enlargement not only in its membership but also in policy-making areas (Bond, 4). The Council of Europe Office in Belgrade was opened by the Secretary-General on March 16, 2001. It was opened as a contact point for cooperation with Yugoslavia, which had applied for membership. The State Union of Serbia and Montenegro became the 45th member in April 2003. After the referendum, Montenegro declared its independence from the State Union on June 3, 2006, and on June 5, 2006, the President of Serbia informed the Secretary-General that Serbia was the sole successor of the Union. The Committee of Ministers noted in its decision on June 14, 2006, that Serbia has remained a member. The Office is still in Belgrade today. It provides assistance to the Government and its institutions in conducting reforms and developing their capacities to deal with human rights issues, such as protecting human and minority rights, protecting the rule of law, etc. In March 2022, the Secretary-General, Ms. Marija Pejčinović Burić, paid an official visit to Belgrade. She visited the Office and representatives of institutions, such as the Prime Minister, Minister of Foreign Affairs, and Minister of European Integration. She expressed her support for all key reforms in Serbia concerning human and minority rights, the fight against corruption, improving the capacities of local self-governments, and strengthening regional cooperation. The Minister of Foreign Affairs, Mr. Nikola Selaković, stressed the importance of the visit for Serbia, given the political climate at the time. He also expressed his satisfaction with the cooperation between Serbia and the CoE, which supports the country in its European integration process. He also welcomed

[6] Hungary joined the CoE in 1990, Poland in 1991, Bulgaria in 1992, Estonia, Lithuania, Slovenia, and Romania in 1993, and Andorra in 1994. In 1993, the Czech Republic and the Slovak Republic replaced Czechoslovakia's accession from 1991. In 1995, several countries joined the CoE: Latvia, Moldova, Albania, Ukraine, and the former Yugoslav Republic of Macedonia. Further memberships were: Croatia in 1996, Georgia in 1999, Armenia and Azerbaijan in 2001, Bosnia and Herzegovina in 2002, Monaco in 2003, and Montenegro in 2007.

the Parliamentary Assembly's decision to send an observation mission for the presidential and parliamentary elections in Serbia, held in April 2022. Serbia has a Permanent Mission to the CoE in Strasbourg, which was established in 2003 and is currently represented by Mr. Dejan Milivojević, Delegation Secretary, and Ms. Kristina Bunić, Deputy Secretary. The Mission aims to present and promote the interests of Serbia within the organization and to link the CoE with national authorities. The CoE has also been supporting Kosovo and Metohija since 1999, but in all official documents Kosovo is marked with a *, and its status is treated in full compliance with UN Security Council Resolution 1244. Between 2014 and 2021, seven meetings with the Working Group on cooperation between the CoE and Kosovo were held. Cooperation activities were concerned with promoting human rights, anti-discrimination and diversity, ensuring justice, combating corruption and organized crime, freedom of expression and the media, as well as democratic governance and participation. In his statement concerning the visit of the Secretary-General to Serbia, Mr. Selaković stated that Serbia supports any engagement of the CoE in Kosovo and Metohija aimed at the advancement of human rights, the rule of law, and democracy, which is in accordance with Resolution 1244 and the status-neutral approach. He also clearly stated that Serbia strongly opposes Kosovo's admission to the organization, as this would undermine its unity and would be contrary to its Statute. Despite this position, Kosovo officially applied for membership on May 12, 2022. This information was confirmed by Ms. Donika Gervalla, Kosovo's Minister of Foreign Affairs. The procedure of reviewing the request will go through the Parliamentary Assembly and the Committee of Ministers, complicating Serbia's relationship with the CoE.

MAIN HUMAN RIGHTS INSTRUMENTS

Serbia became a member of the Council of Europe in 2003. Since then, it has accepted many treaties adopted under its auspices. It can be said that Serbia is among the European states least reluctant to sign international treaties. However, the issue of obligations' implementation remains complex and deserves special attention from the authorities in Serbia.

European Convention on Human Rights

The European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, ECHR)

is the main human rights instrument, adopted in 1950 and entered into force in 1953 (Krstić et al., 2016b). It is supplemented by 16 Protocols, which have extended the list of protected rights and freedoms. There is a common view that it has not ceased evolving since its first version (Petaux, 144). Its importance, however, is not only in the scope of protected rights but also in the protection system that ensures that states comply with their obligations that derive from the ECHR. The European Court for Human Rights (ECtHR, the Court) was established in 1959 and reformed in 1998, becoming the permanent human rights court in Strasbourg.[7]

Judgments against Serbia

Although the ECHR entered into force for Serbia on March 3, 2003, according to the Court's statistics, as of January 1, 2010, the number of applications against Serbia was already high — 2.7% (in total, 9th place).[8] According to the statistics of the Court from its establishment until December 31, 2021, 34,858 applications from Serbia were allocated to a judicial formation, while 32,786 were struck from the list. At least one violation of the ECHR was found in 207 out of 232 judgments. Most of the judgments concern the rights to property, non-enforcement (75), the length of proceedings (54), and the right to a fair trial (33) (Committee of Ministers, 2017, September 29).[9] The first judgment delivered against Serbia was *Matijasević v. Serbia*. In this case, the Court found a violation of Article 6 (2)

[7] Protocol No. 11 entered into force on November 1, 1998, instituting the new "court."

[8] The Statistics was as such: 28.1% Russia, 11% Turkey, 8.4% Ukraine, 8.2% Romania, 6% Italy, 4% Poland, 3.4% Georgia, 2.8% Moldova, 2.7% Serbia and Slovenia. As of this date, around 119,300 applications are pending before a decision body, with 5506 being from Serbia. On January 1, 2010, the Court delivered 40 judgments against Serbia, 38 of which found at least one violation of the ECHR, and two of which did not. The majority of cases concerned the length of proceedings (16), the right to an effective remedy (14), the right to a fair trial (12), and property protection (7), while others were related to the right to respect for private and family life (7), the right to liberty and security (4), and freedom of expression.

[9] Other judgments concern: the right to an effective remedy (18), the right to respect for private and family life (17), the right to liberty and security (11), lack of effective investigation concerning Article 3 (10), freedom of expression (7), inhuman and degrading treatment (7), lack of effective investigation concerning Article 2 (3), prohibition of discrimination (2), the right to free elections (1), and the right to be tried or punished twice (1).

of the ECHR as the "Novi Sad District Court found the applicant guilty before this was proved according to law" (*Matijasević* case, Para. 47). Many cases involving Serbia reveal systemic failures, with the length of proceedings remaining one of the main challenges. However, judgments delivered against Serbia (see, e.g., *Ristić v. Serbia*) resulted in criminal proceedings reforms, which were accelerated through several legislative amendments in 2013, including the Law on the Protection of the Right to Trial within a Reasonable Time, adopted in 2015. However, while there have been improvements in the number of confirmed breaches of this right, the length of proceedings in Serbia has not been significantly reduced (Miloševic, Knežević Bojić, p. 463). Moreover, some studies show that the law places an additional burden on judges to decide on violations. Another challenge was the enforcement of final judgments on the debts of socially owned companies or local authorities (see, e.g., *EVT Company v. Serbia,* group of 58 cases). In 2012, the enforcement proceedings were improved by amending the practice of the relevant local authorities and by introducing an effective remedy for non-enforcement of final judgments. Another case was *Grudic v. Serbia*, in which applicants claimed that their disability pensions had been suspended for more than a decade and that they had been discriminated against based on their ethnicity. The payments were collected in the Autonomous Province of Kosovo and Metohija and suspended by the Serbian Pensions and Disability Insurance Fund. Serbia was found to be responsible for implementing all laws to ensure the payment of the pensions. As many individuals were affected, the Court required the state to provide individual measures to put an end to violations and erase their consequences, as well as to introduce general measures to prevent similar violations. Following this decision, pecuniary damages were paid. Additionally, on January 20, 2013, the authorities issued a public call for those whose payments had not been paid, verified the eligibility of each applicant (3,920 cases), and payment was immediately resumed. There has been progress in terms of the execution of judgments; in 2015, the number of pending cases was around 250, while in July 2021, that number had fallen to 44. The most challenging cases concerning judgment execution were the *Kacapor* group of cases (non-enforcement of domestic decisions), the *Jevremović* group (excessive length of domestic proceedings), and the *Zorica Jovanović* case. The last was about missing babies, and was the most difficult judgment to be executed by Serbia thus far. In this case, a mother received no credible information about the fate of her son, who died three days after birth. She had never seen his body or been informed about where he was buried. The case was not investigated or officially documented. The ECtHR

found a violation of the right to respect for her family life (a violation of Article 8 of the ECHR). Although Serbia announced that it would adopt *lex specialis* to resolve all similar cases, the process has been disrupted for several years. Finally, on February 29, 2020, the Law on Determining the Facts on the Status of Newborn Children Suspected of Missing from Maternity Hospitals in the Republic of Serbia was adopted. It set up an independent investigation mechanism to determine the fate of missing babies and provide individual redress to their parents. Furthermore, Serbian authorities are preparing amendments to the law with the aim of introducing a DNA database to facilitate truth-finding in the case of missing babies.

Position of the Agent of the Republic of Serbia

The Agent before the ECtHR has an extremely important role in defending the state. Its position is mentioned in Article 35 of the Rules of the Court from 2020, stipulating that "[t]he Contracting Parties shall be represented by Agents, who may have the assistance of advocates or advisers." Its role is also to coordinate the process of execution of judgments, which usually involves several branches of power (Delovski, Rodić, 2020, p. 19).

The position of Agent can be modeled in several ways: as a separate office, as a section of a particular ministry (usually the Ministry of Justice or the Ministry of Foreign Affairs), or as part of the Office of the State Attorney General (Delovski, Rodić, 2020, p. 20). The latter model has been adopted in Serbia. As a result, the status of the Agent is regulated by the Law on the State Attorney's Office. The law contains only a few provisions that relate to the Agent, who represents the Republic of Serbia in proceedings before the Court (Article 13 (1)). The law also prescribes the duty of other state bodies and public institutions to cooperate and submit the necessary information to the Agent (Article 8). However, the execution of judgments is not mentioned in the law. More detailed provisions are stipulated in the Rules of the organization of the State Attorney's Office, but they are still not concrete and detailed enough. In reality, cooperation with different bodies can be very challenging at times and can affect the successful defense of the state. Another challenging task is overcoming the very limited human resources despite the enormous workload and very demanding tasks. In April 2013, the Government established a Council for Cooperation with the ECtHR. The Council had very important duties: to monitor cooperation with the Court; to monitor the implementation of the ECHR; to consider

important cases against Serbia and develop a defense strategy; to consider cases where Serbia can intervene; to consider the request for referral to the Grand Chamber; to consider any inter-state applications; to monitor the execution of judgments; to give proposals and expert opinions on the actions of state bodies in order to reduce the number of applications against Serbia; and to offer professional assistance in providing training for the judiciary and public administration regarding the implementation of the ECHR. The Council was established for a period of five years, and when this term expired, it was unfortunately not renewed.

Interim measures and the case of Serbia

Under Rule 39 of the Rules of Court, the ECtHR can issue, either at the request of the party or on their own motion, any interim measure that should be adopted in the interests of the parties or the proper conduct of the proceedings. Interim measures are urgent measures that apply when there is an imminent risk of irreparable harm. For example, interim measures are usually invoked when authorities decide to extradite a person within their jurisdiction. In that case, the ECtHR may grant the request if it believes that the person is facing a genuine risk of serious and irreversible harm, such as torture, and may suspend expulsion or extradition. They can also be invoked in relation to the right to a fair trial, the right to respect for private and family life, and freedom of expression. Applicants and Governments are informed of any granted interim measure. They may be discontinued at any time by a decision of the Court. Although interim measures are stipulated in the Rules of Court and not in the ECHR, they are compulsory, and states must comply with the decision of the ECtHR. It was stressed for the first time in *Mamatkulov and Askarov v. Turkey*, where the Court found that a state had violated the ECHR by failing to comply with interim measures issued under Rule 39 of the Rules of Court. Between 2019 and 2021, there were 38 "Rule 39" requests in the case of Serbia, and the Court granted nine interim measures. As many as seven of the concerned expulsions were to the United States, and one was to Turkey. Serbia complied with all interim measures issued until the beginning of 2022. Then, in November 2021, a Bahraini national, Ahmed Jaafar Mohamad Ali, was held in pre-trial detention. He stated that he intended to seek asylum in Serbia. He claimed that if he was extradited to his home country, he would be subjected to torture and political persecution. He said that the Bahraini security forces tortured him and that he sustained severe physical injuries during the protests in Manama in 2011, when the police and army killed

five and wounded around 250 people. He was sentenced in absentia to life imprisonment in trials held in 2013 and 2015, while three others were sentenced to capital punishment and executed in 2017. As a result, extradition was allowed based on an Interpol red notice request from Bahrain. The Ministry of Justice signed the decision on extradition on January 18, three days before the interim measures were granted. Serbia extradited a Bahraini national on January 24, 2022, despite interim Court measures issued in the meantime, which determined that the risk of torture in this case needed to be better assessed. This decision was condemned by international and national human rights lawyers and activists. According to many, non-compliance with the interim measures of the ECtHR impinges on its international reputation. In 2017, Serbia extradited Cevdet Ayaz, a Kurdish activist, to Turkey despite interim measures granted by the Human Rights Committee. This decision on extradition was executed despite the fact that the asylum procedure was not finalized and that there were many indications that he would be subject to torture and inhuman treatment in his country of origin. He is serving a 15-year sentence in the high-security Silivri Prison in Istanbul, where the Turkish authorities hold many political dissidents as a result of an unfair trial in absentia. These decisions on extradition by Serbian authorities lead to insecurity, violations of the rule of law and human rights, and destroy the international trust and reputation that Serbia has been trying to build.

Other relevant human rights instruments

Serbia has ratified many international treaties adopted under the auspices of the Council of Europe. It is not reluctant to accept international human rights obligations, although ratification is usually not accompanied by measures for their implementation. However, it must be noted that supervisory mechanisms established by many international conventions have led to the improvement of human rights situations in many areas. Only a few instruments will be mentioned. In 2004, Serbia ratified the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. The European Committee (CPT), established by the Convention, has the mandate to visit places of detention and assess how persons deprived of their liberty are treated in order to strengthen their protection from torture and inhuman or degrading treatment or punishment. These places include prisons, police stations, centres for refugees and migrants, psychiatric hospitals, institutions of social care, etc. So far, the CPT has made five regular and one *ad hoc* visits to Serbia,

publishing reports with recommendations for improving the treatment and conditions in places of detention. In 2005, the Convention on Action against Trafficking in Human Beings was adopted, with a comprehensive scope of application, encompassing all forms of trafficking. Serbia ratified the Convention in 2009 and has undergone three evaluation rounds by the Group of Experts on Action against Trafficking in Human Beings (GRETA), a monitoring body established by the Convention. The first report focuses on the legal and institutional framework in Serbia, the second on child victims and unaccompanied minors, while the third report focuses on trafficking victims' access to justice and effective remedies. The GRETA found that Serbian authorities have undertaken a number of measures to prevent and combat trafficking in human beings but identified some shortages that need to be overcome. In 2013, Serbia ratified the Istanbul Convention Action against violence against women and domestic violence (Istanbul Convention). A supervisory body was established under the Convention, in the form of a Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), which published a baseline evaluation report on Serbia in January 2020, as a result of the first evaluation procedure. The report proposes a number of measures to strengthen the implementation of the convention, using different words that reflect the level of importance, such as "urges," "strongly encourages," "encourages," and "invites". Serbia also accepted two conventions that protect minorities. In 2006, Serbia ratified the European Charter for Regional or Minority Languages, which aims to protect and promote languages used by traditional minorities. The Committee of Experts, a supervisory body established by the Convention, has so far received Serbia's initial report and five periodic reports, and issued recommendations on the application of the Convention in Serbia. Recommendations concern the availability of adequate teaching of certain minority languages, the facilitation of the broadcasting of public and private radio and television programs in minority languages, the increased use of minority languages in administrative and court proceedings, the strengthening of the capacity of national councils of national minorities, and the promotion of awareness and tolerance in society. Serbia also accessed the Framework Convention for the Protection of National Minorities in 2001. The Advisory Committee, the Convention's supervisory body, has so far considered four reports on the implementation of the Convention by Serbia. The most recent report from 2017 contains the assessment of many follow-up activities and recommendations for the improvement of the implementation process.

CONCLUSIONS

Serbia joined the Council of Europe on April 3, 2003, and has since then actively taken part in many activities and ratified many international human rights conventions adopted under its auspices. Serbia also cooperates with the monitoring bodies established under these conventions, allowing their visits, sending regular reports, and implementing recommendations issued by supervisory bodies. The Serbian authorities have very good cooperation with the CoE Office in Belgrade. Through its numerous ongoing projects, the Office supports many important activities, increases knowledge, skills, and attitudes toward human rights among justice professionals and law students, and promotes HELP courses with the goal of better integrating human rights standards into decision-making in many areas covered by CoE human rights conventions. The Horizontal Facility for the Western Balkans and Turkey has been implemented since 2014, after the Secretary-General of the CoE and the EU Commissioner for Enlargement and European Neighborhood Policy agreed to strengthen their cooperation in key areas of joint interest. The first phase of the program was between 2016 and 2019, while the second phase covered the period from 2019 to 2022. Programs are focused on the efficiency and independence of the judiciary, the fight against corruption, organised crime and economic crime, freedom of expression and the media, as well as anti-discrimination and protection of the rights of vulnerable groups. Despite many monitoring bodies, Serbia is primarily oriented toward the ECtHR and the execution of its judgments. However, there are many recurring cases, as well as several human rights violations, that dominate applications against Serbia, such as fair trial rights, the length of proceedings, and the right to property. The government's Council for the relationship with the ECtHR had a significant role in providing support to authorities in executing judgments, but also in building the defense before the Court in Strasbourg. The Council's term, however, expired and was not renewed. Moreover, the Agent's position before the Court weakened after it became a part of the State Attorney's Office, and its limited human capacities need to be resolved in order to regain the Agent's respect and full efficiency. Furthermore, the interim measures granted by the Court in January 2022 and later violated, endanger Serbia's international reputation, especially in times when this respect is more relevant than ever. This is the second time this has happened to Serbia after it breached interim measures issued by the Human Rights Committee in 2017. These two cases demonstrate that, despite some serious reforms and improvements in the area of human rights, there are still situations in Serbia

when political influence and friendship with autocratic regimes will prevail over international human rights obligations. Russia ceased to be a party to the ECHR and was excluded from the CoE, while Kosovo submitted an application for membership in the organization on May 12, 2022. This provoked a strong reaction from Serbia as it lost support from Russia, which would have vetoed any attempt for Kosovo to join the CoE. Kosovo's application was supported by the European Stability Initiative (ESU), a think tank from Berlin, stating that Kosovo fulfills all the conditions for CoE membership and that 34 out of 46 member states recognize Kosovo's independence. Kosovo's application will provoke a diplomatic and political fight among Serbian authorities and can potentially lead to some future dissensions within the CoE.

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THE COUNCIL OF EUROPE AND THE FIGHT AGAINST CYBERCRIME

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Abstract: The Council of Europe adopted the Convention on Cybercrime in 2001, and it entered into force on July 1, 2004. The Convention represents the first international treaty on crimes committed via the Internet and other computer networks, dealing particularly with infringements of copyright, computer-related fraud, child abuse materials, and violations of network security. The Additional Protocol to the Convention on Cybercrime, concerning the criminalization of acts of a racist and xenophobic nature committed through computer systems, entered into force on March 1, 2006. Serbia has signed and ratified both the Cybercrime Convention and the First Additional Protocol in 2009. On November 17, 2021, the Committee of Ministers of the Council of Europe adopted the Second Additional Protocol to the Convention on Cybercrime on enhanced cooperation and disclosure of electronic evidence. As a response, the Protocol provides a legal basis for disclosure of domain name registration information and for direct cooperation with service providers for subscriber information; an effective means to obtain subscriber information and traffic data; immediate cooperation in emergencies; mutual assistance tools; and personal data protection safeguards. The signing of the Second Additional Protocol will be held in May 2022, and Serbia will probably sign it. The paper analyzes the solutions achieved in the fight against cybercrime, as well as Serbia's cooperation with the Council of Europe in this area.

Keywords: Council of Europe, Cybercrime, Second protocol, evidence, international cooperation.

INTRODUCTION

The Council of Europe was the pioneer in regulating the cybercrime area (Ivanović et al., 2010; 2012a; 2021). This is due to its international position,

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the possibility not to have political or allied influences, but also the specific position this organization has. At the moment of working on drafting the convention during the 90-ties and early 2000, the world was still in the state of the post-Soviet crash, without any real shaping of multipolar influences. The OSCE and UN recognized the need to regulate this area, and some activities were initiated by the International Telecommunication Union (ITU), an international organization under the UN, but all odds were stacked against the Council of Europe (CoE). In the preamble of the CETS 185, the official title of the CoE Budapest convention, it is stated, " the aim of the Council of Europe is to achieve greater unity among its members; recognizing the value of fostering cooperation with the other States parties to this Convention; convinced of the need to pursue, as a matter of priority, a common criminal policy aimed at the protection of society against cybercrime, inter alia, by adopting appropriate legislation and fostering international cooperation; conscious of the profound changes brought about by the digitalization, convergence, and continuing globalization of computer networks; concerned by the risk that computer networks and electronic information may also be used for committing criminal offences and that evidence relating to such offences may be stored and transferred by these networks; recognizing the need for cooperation between States and private industry in combating cybercrime and the need to protect legitimate interests in the use and development of information technologies; believing that an effective fight against cybercrime requires increased, rapid and well-functioning international cooperation in criminal matters; convinced that the present Convention is necessary to deter action directed against the confidentiality, integrity, and availability of computer systems, networks and computer data as well as the misuse of such systems, networks, and data by providing for the criminalization of such conduct, as described in this Convention, and the adoption of powers sufficient for effectively combating such criminal offences, by facilitating their detection, investigation, and prosecution at both the domestic and international levels and by providing arrangements for fast and reliable international cooperation" (Council of Europe, 2001, November 23; Gergke et al., 2008; Ivanović et al., 2016). This preamble serves best to describe the status and actual odds between the parties of the treaty, in order to create new boundaries for criminal prosecution of offenders and to provide efficient tools in combating crime in the area of cyber. While building upon the existing Council of Europe conventions on cooperation in the penal field as well as similar treaties which exist between the Council of Europe member States and other States, and stressing that the present Convention is intended

to supplement those conventions in order to make criminal investigations and proceedings concerning criminal offences related to computer systems and data more effective and to enable the collection of evidence in electronic form of a criminal offence, this convention is the new and very actual legislative effort in the then modern world. This is evidenced by many accessors located outside the European continent, from America, Asia, Australia, and Africa (Ivanović, 2015a). In the preamble is also stated that "Welcoming recent developments which further advance international understanding and cooperation in combating cybercrime, including action taken by the United Nations, the OECD, the European Union and the G8; Recalling Committee of Ministers Recommendations No. R (85) 10 concerning the practical application of the European Convention on Mutual Assistance in Criminal Matters in respect of letters rogatory for the interception of telecommunications (Ivanović et al., 2012, October 8-9); No. R (88) 2 on piracy in the field of copyright and neighboring rights, No. R (87) 15 regulating the use of personal data in the police sector, No. R (95) 4 on the protection of personal data in the area of telecommunication services, with particular reference to telephone services, as well as No. R (89) 9 on computer-related crime providing guidelines for national legislatures concerning the definition of certain computer crimes and No. R (95) 13 concerning problems of criminal procedural law connected with information technology; Having regard to Resolution No. 1 adopted by the European Ministers of Justice at their 21st Conference (Prague, 10 and 11 June 1997), which recommended that the Committee of Ministers support the work on cybercrime carried out by the European Committee on Crime Problems (CDPC) in order to bring domestic criminal law provisions closer to each other and enable the use of effective means of investigation into such offences, as well as to Resolution No. 3 adopted at the 23rd Conference of the European Ministers of Justice (London, 8 and 9 June 2000), which encouraged the negotiating parties to pursue their efforts with a view to finding appropriate solutions to enable the largest possible number of States to become parties to the Convention and acknowledged the need for a swift and efficient system of international cooperation, which duly takes into account the specific requirements of the fight against cybercrime; Having also regard to the Action Plan adopted by the Heads of State and Government of the Council of Europe on the occasion of their Second Summit (Strasbourg, 10 and 11 October 1997), to seek common responses to the development of the new information technologies based on the standards and values of the Council of Europe" (Council of Europe, 2022). All of this serves to strengthen future efforts and provide a solid basis for

international regulations in this area. However, later there will be more dissonant tones about the sovereignty of states in cyberspace, which will encourage Russia not to accede to the convention and officially reject its validity on its territory. This has cast a few shadows of doubt, but the Convention is still here and is being adopted by new members and non-members of the CoE. The First Additional Protocol of the CoE CETS 185 came several years after the adoption of the Convention. The Protocol was opened for signature in Strasbourg on January 28, 2003, on the occasion of the First Part of the 2003 Session of the Parliamentary Assembly. The explanatory protocol provides reasons and grounds for drafting the additional protocol through the following. "As technological, commercial, and economic developments bring the peoples of the world closer together, racial discrimination, xenophobia, and other forms of intolerance continue to exist in our societies. Globalization carries risks that can lead to exclusion and increased inequality, very often along racial and ethnic lines. In particular, the emergence of international communication networks like the Internet provides certain persons with modern and powerful means to support racism and xenophobia and enables them to disseminate easily and widely expressions containing such ideas. In order to investigate and prosecute such persons, international cooperation is vital. The Convention on Cybercrime (ETS 185), hereinafter referred to as "the Convention", was drafted to enable mutual assistance concerning computer-related crimes in the broadest sense in a flexible and modern way. The purpose of this Protocol is twofold: firstly, to harmonize substantive criminal law in the fight against racism and xenophobia on the Internet and, secondly, to improve international cooperation in this area. This kind of harmonization alleviates the fight against such crimes on the national and international levels (Ivanović et al., 2012b; 2012, October 8-9; 2020b). Corresponding offences in domestic laws may prevent misuse of computer systems for a racist purpose by parties whose laws in this area are less well defined. As a consequence, the exchange of useful common experiences in the practical handling of cases may be enhanced too. International cooperation (especially extradition and mutual legal assistance) is facilitated, e.g., regarding requirements of double criminality" ((Explanatory Report to the Additional Protocol to the Convention on Cybercrime, 2003, January 28, p. 1). There was a task for the agencies of the CoE on preparing "the ratification of Contracting Parties to the Convention, dealing in particular with the following: 1) The definition and scope of elements for the criminalization of acts of a racist and xenophobic nature committed through computer networks, including the production, offering, dissemination or other forms

of distribution of materials or messages with such content through computer networks; 2) The extent of the application of substantive, procedural and international cooperation provisions in the Convention on Cybercrime to the investigation and prosecution of the offences to be defined under the Additional Protocol. This Protocol entails an extension of the Convention's scope, including its substantive, procedural, and international cooperation provisions, so as to cover offences of racist and xenophobic propaganda. Thus, apart from harmonizing the substantive law elements of such behavior, the Protocol aims at improving the ability of the parties to make use of the means and avenues of international cooperation set out in the Convention in this area" (*Ibidem*). This first additional protocol had as its leading intention the incrimination of acts of a racist and xenophobic nature committed through computer networks, including the production, offering, dissemination or other forms of distribution of materials or messages with such content through computer networks – and this intention was very much needed, since there were numerous activities online in the rising xenophobic and racist material and hate speech disseminated through different hubs. This was the way to stand up against that internationally, and a successful one. The second idea behind the additional protocol was to extend the extent of the application of substantive, procedural, and international cooperation provisions in the Convention on Cybercrime to the investigation and prosecution of the offences to be defined under the Additional Protocol.

THE SECOND ADDITIONAL PROTOCOL

Following almost four years of negotiations (September 2017–May 2021) and formal approval on November 17, 2021, the Second Additional Protocol to the Budapest Convention on Cybercrime is now open for signature at the Council of Europe in Strasbourg, France, starting on May 12, 2022, within the framework of an international conference on enhanced cooperation and disclosure of electronic evidence, which is scheduled to be held on May 12-13, 2022. The need for the introduction of this Second Additional Protocol came from the striving of the CETS 189 to extend the applicable provisions of the Convention, with special emphasis on the evidentiary and procedural aspects of this area of criminal and criminal procedure law enforcement internationally, or even worldwide. The title of the second protocol is as follows: The Second Additional Protocol to the Convention on Cybercrime on enhanced cooperation and the disclosure of electronic evidence. There is a strong emphasis on the enhancement of cooperation and disclosure of

electronic evidence. While cybercrime is proliferating and the complexity of obtaining electronic evidence that may be stored in foreign, multiple, shifting or unknown jurisdictions is increasing, the powers of law enforcement are limited by territorial boundaries. As a result, only a very small share of cybercrime that is reported to criminal justice authorities leads to prosecutions or court decisions. The Protocol responds to this challenge and provides tools for enhanced cooperation and disclosure of electronic evidence — such as direct cooperation with service providers and registrars; effective means to obtain subscriber information and traffic data; immediate cooperation in emergencies or joint investigations — that are subject to a system of human rights and the rule of law, including data protection safeguards. This particular area and its implementation aspects were very extensively debated at the scientific and professional community fora, and that was certainly targeted through the negotiations in the drafting of the Second Additional Protocol (Bejatović et al., 2013). The results of the negotiations and the drafted protocol are to be summarized in the following. The Drafted Protocol provides Tools for the Second Additional Protocol. They can be summarized in the following: Direct requests to registrars in other jurisdictions to obtain domain name registration information; Direct cooperation with service providers in other jurisdictions to obtain subscriber information; More effective means to obtain subscriber information and traffic data through government-to-government cooperation; Expeditious cooperation in emergency situations; and Joint investigation teams and joint investigations and video conferencing. It is stipulated that a strong system of human rights and the rule of law safeguards will be developed, including the protection of personal data in the implementation of these tools. On November 17, 2021, the Committee of Ministers of the Council of Europe adopted the Second Additional Protocol. The Protocol provides a legal basis for disclosure of domain name registration information and for direct cooperation with service providers for subscriber information; effective means to obtain subscriber information and traffic data; immediate cooperation in emergencies; mutual assistance tools; and personal data protection safeguards. The preparatory work for the Second Protocol started in 2017. At the 17th plenary session of T-CI (June 8, 2017), the preparation of this Protocol was approved based on the proposal prepared by the T-CY Cloud Evidence Group. It was decided to start the drafting of this Protocol at the initiative of T-CY under Article 46, paragraph 1.c, of the Convention. On June 14, 2017, the Deputy Secretary General of the Council of Europe informed the Committee of Ministers (1289th meeting of the Ministers' Deputies) of this T-CY initiative. The terms of reference initially covered the

period from September 2017 to December 2019, and they were subsequently extended by the T-CY to December 2020 and again to May 2021. This was, of course, due to the COVID-19 pandemic problems, which hit all institutions worldwide. Under these terms of reference, the T-CY set up a Protocol Drafting Plenary (PDP) comprised of representatives of Convention Parties as well as States, organizations, and Council of Europe bodies with observer status in the T-CY. The PDP was assisted in the preparation of the draft protocol by a Protocol Drafting Group (PDG) consisting of experts from the Parties to the Convention. The PDG in turn set up several subgroups and ad hoc groups to work on specific provisions. From September 2017 to May 2021, the T-CY held 10 drafting plenaries, 16 drafting group meetings, and numerous group meetings. Most of this Protocol was prepared during the COVID-19 pandemic. Because of COVID-19-related restrictions, from March 2020 to May 2021, meetings were held in virtual format (more than 65). Such working methods in plenary, drafting groups, and groups (*sub* and *ad hoc*) enabled representatives and experts from Parties to make significant contributions to the drafting of this Protocol and develop innovative solutions. In this work, special significance is provided by the participation of the Commission of the European Union, which participated on behalf of the States Parties to the Convention that were members of the European Union under a negotiation mandate given by the Council of the European Union on June 6, 2019. Once draft provisions had been prepared and provisionally adopted by the PDP, the draft articles were published and stakeholders were invited to provide comments. The T-CY held six rounds of consultations with stakeholders from civil society and the private sector, and with data protection experts. The specialty of these consultations was that they were in conjunction with the Octopus Conference on cooperation against cybercrime in Strasbourg in July 2018; with data protection experts in Strasbourg in November 2018; via invitation for written comments on draft articles in February 2019; in conjunction with the Octopus Conference on cooperation against cybercrime in Strasbourg in November 2019; via invitation for written comments on further draft articles in December 2020; and in May 2021 via written submissions and a virtual meeting held on May 6, 2021. The T-CY furthermore consulted the European Committee on Crime Problems (CDPC) and the Consultative Committee of the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (T-PD) of the Council of Europe. The 24th plenary of the T-CY on May 28, 2021, approved the draft of this Protocol and decided to submit it to the Committee of Ministers in view of adoption.

CORE RESULTS AND SUBSTANTIVE NORMS

The starting point was T-CY's assessment of the Convention's mutual assistance provisions (CETS 185) and an analysis of the T-CY Transborder Group and Cloud Evidence Group (2014-2017), with the main issues arising from territorial and jurisdictional puzzles related to digital or electronic evidence. Concretely, specified data needed in a criminal investigation may be stored in multiple, shifting or unknown jurisdictions *(in the cloud),* and solutions are needed to obtain the disclosure of such data in an effective and efficient manner for the purpose of specific criminal investigations or proceedings. The drafters of this Protocol have agreed to focus on the following specific issues:

1. At the time of drafting this Protocol, mutual assistance requests were the primary method to obtain electronic evidence of a criminal offence from other states, including the mutual assistance tools of the Convention. However, mutual assistance is not always an efficient way to process an increasing number of requests for volatile electronic evidence. Therefore, it was considered necessary to develop a more streamlined mechanism for issuing orders or requests to service providers in other parties to produce subscriber information and traffic data.
2. Subscriber information – for example, to identify the user of a specific e-mail or social media account or of a specific Internet Protocol (IP) address used in the commission of an offence – is the most frequently sought information in domestic and international criminal investigations relating to cybercrime and other crimes involving electronic evidence. Without this information, it is often impossible to proceed with an investigation. Obtaining subscriber information through mutual assistance is, in most cases, not effective and overburdens the mutual assistance system. Subscriber information is normally held by service providers. While Article 18 of the Convention already addresses some aspects of obtaining subscriber information from service providers, including in other Parties, complementary tools were found to be necessary to obtain the disclosure of subscriber information directly from a service provider in another Party.[1] These tools would increase the efficiency of the process and also relieve pressure on the mutual assistance system.

[1] T-CY Guidance Note on Article 18.

3. Traffic data is frequently sought in criminal investigations, and their prompt disclosure may be required for tracing the source of communication as a starting point for gathering additional evidence or identifying a suspect.
4. Similarly, as many forms of crime online are facilitated by domains created or exploited for criminal purposes, it is necessary to identify the person who has registered such a domain. Such information is held by entities providing domain name registration services, that is, typically by registrars and registries. An efficient framework to obtain this information from relevant entities in other parties is therefore needed.
5. In an emergency situation where there is a significant and imminent risk to the life or safety of any natural person, rapid action is needed either by providing for emergency mutual assistance or making use of the points of contact for the 24/7 Network established under the Convention (Article 35).
6. In addition, proven international cooperation tools should be used more widely and among all parties. Important measures, such as video conferencing or joint investigation teams, are already available under treaties of the Council of Europe (for example, the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, ETS No. 182), or other bilateral and multilateral agreements (Bejatović et al., 2013)[2]

However, such mechanisms are not universally available among the parties to the Convention, and this Protocol aims to fill that gap The Convention provides for the collection and exchange of information and evidence for specific criminal investigations or proceedings. The drafters recognized that the establishment, implementation, and application of powers and procedures related to criminal investigations and prosecutions must always be subject to conditions and safeguards that ensure adequate protection of human rights and fundamental freedoms. It was necessary, therefore, to include an article on conditions and safeguards, similar to Article 15 of the Convention. Furthermore, recognizing the requirement for many parties to protect privacy and personal data in order to meet their constitutional and international obligations, the drafters decided to provide for specific data protection safeguards in this Protocol. Such data protection

[2] Serbia signed it on July 4, 2005, and ratified it on April 26, 2007, so the instrument entered into force on August 1, 2007.

safeguards complement the obligations of many of the Parties to the Convention, which are also Parties to the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108)[3]. The amending protocol to that convention (CETS No. 223) was opened for signature during the drafting of this Protocol in October 2018.[4] It should also be noted that the drafting process of this Protocol included parties not subject, at the time, to Council of Europe instruments on data protection or to European Union data protection rules. Accordingly, significant efforts were undertaken to ensure a balanced Protocol reflective of the many legal systems of states likely to be parties to this Protocol while respecting the importance of ensuring the protection of privacy and personal data as required by the constitutions and international obligations of other parties to the Convention. Of interest here is also to include the presentation of some measures which were not included in the Protocol. The drafters also considered other measures which, after thorough discussion, were not retained in this Protocol. Two of these provisions, namely, "undercover investigations by means of a computer system" and "extension of searches", were of high interest to the parties but were found to require additional work, time, and consultations with stakeholders, and were thus not considered feasible within the time frame set for the preparation of this Protocol. The drafters proposed that these be pursued in a different format and possibly in a separate legal instrument. This is of particular value for the planning of future procedural coverage by national criminal procedural legislative initiatives. The provisions of this Protocol would add value both from an operational and from a policy perspective to all law enforcement agencies. This Protocol should significantly improve the ability of the parties to enhance cooperation among the parties and between parties and service providers and other entities, and to obtain the disclosure of electronic evidence for the purpose of specific criminal investigations or proceedings. Thus, this Protocol, like the Convention, aims to increase the ability of law-enforcement authorities to counter cyber and other crimes while fully respecting human rights and fundamental freedoms, and it emphasizes the importance and value of an internet built on the free flow of information. The protocol directly aims at furthering and enhancing cooperation on cybercrime and the abilities of law enforcement agencies in finding and

[3] Serbia signed the same on September 6, 2005, ratified it on September 6, 2005, so the instrument entered into force on January 1, 2006.

[4] Serbia signed the same on November 22, 2019, and ratified it on May 26, 2020.

collecting and sharing electronic evidence; providing additional tools in this matter and mutual legal and other assistance and other forms of cooperation between competent authorities; cooperation in emergencies (that is, in situations where there is a significant and imminent risk to the life or safety of any natural person); and direct cooperation between competent authorities and service providers and other entities in possession or control of pertinent information.

PROVISIONS

Continuing the solutions prescribed by the Convention and the First Additional Protocol, the Second Additional Protocol has foreseen some new solutions, the implementation of which could improve the situation in the fight against cybercrime. The Protocol is divided into four chapters: I. "Common provisions"; II. "Measures for enhanced cooperation"; III. "Conditions and safeguards"; and IV. "Final provisions". Chapter I of this Protocol relates to specific criminal investigations or proceedings, not only with respect to cybercrime but any criminal offence involving evidence in electronic form, also commonly referred to as "electronic evidence" or "digital evidence". This chapter also makes definitions of the Convention applicable to this Protocol and contains additional definitions of terms used frequently in this Protocol. Moreover, considering that language requirements for mutual assistance and other forms of cooperation often hinder the efficiency of procedures, an article on "language" was added to permit a more pragmatic approach in this respect. The scope of the application is defined by the area of either where the crime is committed by the use of a computer system, or where a crime not committed by the use of a computer system (for example, a murder) involves electronic evidence, the powers, procedures, and cooperation measures created by this Protocol are intended to be available. Also, it is applicable to the criminal offences established pursuant to the First Protocol. It should be envisaged that each party is required to have a legal basis to carry out the obligations set out in this Protocol if its treaties, laws, or arrangements do not already contain such provisions. This does not change explicitly discretionary provisions into mandatory ones, and some provisions permit declarations or reservations. Some of the definitions are reused from the Convention and First Protocol, but some are genuine for this protocol – like "central or competent authority" or "emergency". For instance, the very important definition of the latter "covers situations in which the risk is significant and imminent, meaning that it does not include situations in which the risk to the life or

safety of the person has already passed or is insignificant, or in which there may be a future risk that is not imminent". The reason for these significance and imminence requirements is that Articles 9 and 10 place labor-intensive obligations on both the requested and requesting parties to react in a greatly accelerated manner in emergencies, which consequently requires that emergency requests be given a higher priority than other important but somewhat less urgent cases, even if they had been submitted earlier. Situations involving "a significant and imminent risk to the life or safety of any natural person" may involve, for example, hostage situations in which there is a credible risk of imminent loss of life, serious injury or other comparable harm to the victim; ongoing sexual abuse of a child; immediate post-terrorist attack scenarios in which authorities seek to determine with whom the attackers communicated in order to determine if further attacks are imminent; and threats to the security of critical infrastructure in which there is a significant and imminent risk to the life or safety of a natural person" (Explanatory Report to the Additional Protocol to the Convention on Cybercrime, 2003, January 28, p. 7; Ivanović et al., 2015b; 2020a). An interesting solution in the Additional Protocol refers to the possibility of using English or other so-called acceptable languages such as Spanish or French. Thus, for requests in a language other than the language prescribed in domestic law or in contracts, there is a possibility of using it. But T-CY, once a year, will engage in an informal survey of acceptable languages for requests and orders. They may state that they accept only specified languages for certain forms of assistance. The results of this survey will be visible to all parties to the Convention, not merely parties to this Protocol. Chapter II contains the primary substantive articles of this Protocol, which describe various methods of co-operation available to the parties. Different principles apply to each type of cooperation. For this reason, it was necessary to divide this chapter into sections with (1) general principles applicable to Chapter II; (2) procedures enhancing direct cooperation with providers and entities in other parties; (3) procedures enhancing international cooperation between authorities for the disclosure of stored computer data; (4) procedures pertaining to emergency mutual assistance; and (5) procedures pertaining to international cooperation in the absence of applicable international agreements. Paragraphs 2-5 introduce seven cooperation measures. These sections are divided by the types of cooperation sought: Section 2 covers direct cooperation with private entities (Article 6, "Request for domain name registration information", and Article 7, "Disclosure of subscriber information"), which allows competent authorities of a party to engage directly with private entities, and it applies whether or not there is

a mutual assistance treaty or arrangement on the basis of uniform or reciprocal legislation in force; Section 3 contains forms of enhanced international cooperation between authorities for the disclosure of stored data; Article 8, entitled "Giving effect to orders from another party for expedited production of subscriber information and traffic data", and Article 9, entitled "Expedited disclosure of stored computer data in an emergency". It provides for cooperation between competent authorities, but of a different nature than traditional international cooperation, and it applies whether or not there is a mutual assistance treaty or arrangement on the basis of uniform or reciprocal legislation in force between the requesting and requested parties; Section 4 provides for mutual assistance in an emergency; there are two possibilities. When the parties concerned are mutually bound by an applicable mutual assistance agreement or arrangement on the basis of uniform or reciprocal legislation, section 4 is supplemented by the provisions of that agreement unless the parties concerned mutually determine to apply certain provisions of the Convention in lieu thereof (see Article 10, paragraph 8, of this Protocol).When the parties concerned are not mutually bound by such an agreement or arrangement, the parties apply certain procedures set out in Articles 27 and 28 of the Convention, concerning mutual assistance in the absence of a treaty (see Article 10, paragraph 7, of this Protocol) and Section 5 concludes with international cooperation provisions to be applied in the absence of a treaty or arrangement on the basis of uniform or reciprocal legislation between the parties concerned. These sections are also organized roughly in a progression from the forms of investigatory assistance often sought early in an investigation – to obtain the disclosure of domain name registration and subscriber information – to requests for traffic data and then content data, followed by video conferencing and joint investigative teams, which are forms of assistance that are often sought in the later stages of an investigation. Article 11, entitled "Video conferencing", and Article 12, entitled "Joint investigation teams and joint investigations". These provisions are measures of international cooperation, which apply only where there is no mutual assistance treaty or arrangement on the basis of uniform or reciprocal legislation in force between the requesting and requested parties. These measures do not apply where such a treaty or arrangement exists, except that Article 12, paragraph 7, applies whether or not such a treaty or arrangement exists. However, the parties concerned may mutually determine to apply the provisions of Section 5 in lieu of such an existing treaty or arrangement unless this would be prohibited by the terms of the treaty or arrangement. Chapter III provides for conditions and

safeguards. They require that parties apply conditions and safeguards similar to Article 15 of the Convention also to the powers and procedures of this Protocol. In addition, this chapter includes a detailed set of safeguards for the protection of personal data. Most of the final provisions of Chapter IV are similar to standard final provisions of the Council of Europe treaties or make provisions of the Convention applicable to this Protocol. However, Article 15 on "Effects of this Protocol", Article 17 on the "Federal clause" and Article 23 on the "Consultations of the Parties and assessment of implementation" differ in varying degrees from analogous provisions of the Convention. This last article not only makes Article 46 of the Convention applicable but also provides that the effective use and implementation of the provisions of this Protocol shall be periodically assessed by the parties.

CONCLUSIONS

It is not only that the Second Protocol is a logical and natural furthering of the Convention and the First Additional Protocol related to cybercrime, but it represents a very significant step in fortifying the structures of international combat against wider organized criminal and transnational (transnational or transborder organized crime) activities. In this very vivid and dynamic world, there is a need to have forums and international wisdom focused on specific areas of life, primarily in the cyber area. The difference in the evolution of state actors of different states in this area defines discrepancies in the levels of capabilities to resist such threats from various actors. In that sense, it is very important to have one or more centers where they would serve as intelligence and strategic hubs in the development of different levels reached by parties. The Council of Europe (CoE) is serving as one, with the respectable exclusion of the Russian Federation. In this way, the members of the CoE will have a standardized approach with respect to their sovereignties and their local and national demands in the area, but with respect for majority trends, mainstream activities, and development in the cyber area. As previously stated, the Second Additional Protocol to the Cybercrime Convention represents the normal and natural development of the norms stipulated in it, as well as the further evolution of respectable measures. It provides parties with much more qualitative solutions in the area that needs international rules in communication and realization of measures provided by the international conventions, and also ensures that all interests are taken into account and that no country or party (or their citizens) is discriminated against in the implementation of the measures. This protocol is a must for our country

since there were different problems in implementing previously designed measures in international cooperation, of which some were even nationally related. Implementation of this protocol will certainly ease procedural measures in law enforcement and will provide quick reactions to incidents and cybercrime activities, very much needed by all parties to the Convention. This will also result in quicker detection of criminal activities and criminals in the area and their bringing to justice, as well as lowering the dark figure of victims reporting the crime. Ultimately, it will take its tow on cybercrime in general, so as soon as we sign and ratify this protocol after June 2022, it will be better. Of course, it needs to be implemented fully as stipulated, and for that, we need to wait and see.

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