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‘International community’
and the limits of external
intervention





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Introductory note

Srđan Dvornik

For a long time now, the active presence of the so-called international community has been inextricably interwoven with the life of each contemporary nation. One way or another, they participate in the international markets; they are exposed to cultural influences, and if they are lucky, they actively contribute to such exchanges; they are parties to a plethora of international treaties, agreements and other arrangements; they are also members of various international associations, ranging from 'extensive' ones like the UN, to 'intensive' ones like the EU.

When countries undergo deep systemic changes to their political, economic, and/or ideological orders, their (inter)dependence with the international environment may become much more intensive. That is, of course, what happened to almost all post-communist countries a quarter of a century ago. The drive to use internationally established models in developing systems of political pluralism and democracy and solutions for a workable rule of law, as well as the general opening which comes with the ideal of freedom, led to a deliberate openness to foreign influences. The ideological decline from the *ancien régime* was no less important, brought about by the uncritical adoption of a sort of free-market fundamentalism and abandonment of the tenets of the welfare state, distorted as it might have been under the non-democratic regimes.

However, the impact which the 'international community' has had, and has been asked to exercise, in the countries which underwent various kinds of violent transition was of a special kind. Slovenia and Croatia depended on international actors to negotiate the cessation of military violence; furthermore, Croatia, Bosnia-Herzegovina and the rump Yugoslavia (subsequently, Serbia) had to accept a prolonged presence of UN troops to maintain the status quo; even when the military occupation of major parts of Croatia and Bosnia-Herzegovina by the Yugoslav/Serbian and Croatian para/military troops was put to an end through military operations, the support and tacit approval of the international community was decisive. Kosovo underwent a direct military intervention from outside, while Macedonia managed to avoid military conflicts throughout the 90-ies thanks to the international monitoring mission under the auspices of the UN. Again, after the military operations, the continued, politically produced ethnic tensions were kept at a low intensity level by internationally brokered arrangements between parties to the conflict, such as the Dayton and Ohrid agreements, which pacified the relations, but perpetuated the structures built from the conflict, which has kept the respective countries dependent on a long-term international presence and occasional interventions.

Even on the eve of a post-conflict normalisation, the only prospect for the countries in question is joining the EU, where international integration appears not just as a subject of change, but also as its means. These changes, driven by the conditionality of accession to the EU, have occurred in legislation and institutional arrangements. What they have achieved could be summarised as improvements on the formal level, but without a change in the power relations between the societies and their states. Therein lie the crucial limits of any international intervention: It can change the rules of the game, it can partly assist in their implementation, but it cannot empower local players.

That is why the external intervening factors (the so-called international community) can to some extent further the rule of law, but not democracy, understood as the self-government of the people, because the people or *demos* is in reality the society, with all its inequalities of wealth and power, which may or may not have developed productive relations that make it autonomous and powerful enough to counter the political structure in the democratic game. It has long been established that there is a discrepancy between the fostering of emerging democracies as envisaged by various actors (both political and academic) on the international level – international here being

coextensive with "the developed democracies" – and the reality on the ground, where the many social and political factors that are together considered to constitute 'democracy' display apparently intractable undemocratic characteristics. They stem not only from ill-conceived international actions, but first and foremost from the power and weaknesses of the societies themselves.

When facing the limits of their capacity for intervention, the international agents may insist on conditionality and principles, or they may become implicated in local political games and compromises. Or they could look further to broaden their scope of potential partners and go beyond deals with national elites, opening more space for active civic participation. Such processes are perhaps just starting in countries like Bosnia-Herzegovina and Macedonia.

The articles collected in this issue of *Perspectives* tell different stories about the current challenges of international intervention in Albania, Bosnia-Herzegovina, Croatia, Macedonia and Serbia. ■■■

Aiding Democracy from Abroad

Talking the Talk and Walking the "Unlocked Path" Walk: EU, BiH and the Quality of Democracy

Tijana Cvjetićanin

The political class in BiH is notoriously unaccountable to both its citizens and its international obligations, so reports on things not getting done and compromises not being reached have been a constant in BiH's political life for a long time. But what about the EU? If this is where we are now, once again talking about deadlocks, broken deadlines and political blackmail – how come that just four months ago, the EU's highest representatives were congratulating BiH on the "impressive achievements of the country's leadership who delivered on its citizens' needs"?

The latest developments in Bosnia and Herzegovina's political life have, once again, been painful to watch. The formally adopted coordination mechanism on EU matters was "in negotiation" for months, negotiation which didn't seem to be progressing. The necessary adaptation of the Stabilisation and Association Agreement is currently blocked by the Serb member of BiH Presidency, possibly reflecting a deeper crisis within the ruling coalition, which could effectively halt any possibility that BiH's membership application will be considered by the end of Slovakia's EU Presidency. The (non)publishing of the 2013 Census results reflects the condition in which the country is.

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highest representatives were congratulating BiH on the "impressive achievements of the country's leadership who delivered on its citizens' needs"? And how has talk of a "new spirit"² and "historical moments"³ been replaced by increasingly nervous urging of the BiH authorities to *actually fulfill* the obligations they have taken upon themselves?⁴

There are two possible answers – either something essential has changed since February, when BiH applied for EU membership; or there never were any "impressive achievements" to begin with. To anyone living in BiH the answer is clear: no, there has never been a significant change of BiH politicians' ways; and yes, the EU has been overselling the progress of BiH on its accession path, ignoring numerous transgressions of democratic processes which marked every step of BiH's *unlocked path*, leading to the situation we're in today.

1 Joint statement by HR/VP Mogherini and Commissioner Hahn on the occasion of BiH submitting a membership application, 15.2.2016, <http://europa.ba/?p=40160>

2 Transcript of the press conference held in the Foreign Ministry of Bosnia and Herzegovina by Johannes Hahn, Commissioner for the European Neighbourhood Policy and Enlargement Negotiations, 8 May 2015, <http://europa.ba/?p=16871>

3 Speech by HR/VP Federica Mogherini at the BiH Parliamentary Assembly following the adoption of the joint statement on reform commitment in the EU accession process, 23.2.2015, <http://europa.ba/?p=17108>

4 See for example: International Monitoring Operation: BiH to finalise and publish Census results urgently 26 May 2016, <http://europa.ba/?p=42762>; Wigemark: Ukoliko se ne ispune zahtjevi neće biti rasprave o bh. aplikaciji, Akta.ba, 15 June 2016, <http://www.akta.ba/bs/Vijest/vijesti/wigemarkukoliko-se-ne-ispune-zah-tjevi-nece-bit-rasprave-o-bh-aplikaciji/66704>

Mixed messages and their consequences

In July 2015, a new Labor law was passed in the Federation of BiH, with protests from the trade unions and the opposition's outrage at the irregular procedure.⁵ In December, Republika Srpska followed suit, managing not just to match the chaos seen in FBiH (the parliament was also surrounded by police as the workers protested outside; the procedure was also expedited and the law was passed in the middle of the night, in true state-of-emergency fashion), but even upstage it when it comes to the mistreatment of social partners. While the president of the RS Confederation of Trade Unions was trying to voice her disagreement in the National Assembly of RS (NARS), she was ordered to leave the hall and, having refused to comply, she was physically removed by the parliament security.⁶ The images of Mišić being dragged across the floor and carried out of the assembly were among the ugliest seen in the country's post-war parliamentary life.⁷

Twenty days later, the RS Labour law appeared in the headlines yet again, this time paired with a far less intense image – that of Lars-Gunnar Wigemark and Milorad Dodik in luxurious golden chairs in Dodik's office, smiling at each other. A brief press release stated that The RS President and the Head of EU Delegation in BiH *"have agreed today that the adoption of the Labour law, which was recently passed by the National Assembly of RS, is a significant step towards activating reform packages which will expedite BiH's path towards the European Union."*⁸ The explicit mention of NARS – quite redundant, since that's where all the



"Democracy" by jellybeanz, CC-BY-NC 2.0

laws have to be passed – seemed like a subtle addition of insult to the injury.

The EU Delegation didn't make any statements about the meeting, nor had it previously reacted to the shameful events which took place in NARS. So their only message – of support – came indirectly, through a press release from Dodik's cabinet. The incident wasn't addressed, but it likely did have an effect on the (lack of) reaction by the Delegation to RS passing the Labour law. In comparison, on the day when the law in FBiH was passed, the Delegation issued a statement in full support, ending in an implicit comment on the unions' protest: "Active participation by citizens is essential for a healthy democracy, whether in elections or other democratic actions, and is also vital for the EU integration process. Everyone has the right to freedom of peaceful assembly, with the aim to publicly express certain opinions and disagreements."⁹

Had this statement been published before the law was adopted, it could have been interpreted as a reminder to the authorities that they need to keep the process open and democratic.¹⁰ Or, had it been phrased as criticism of the untransparent and irregular procedure, it could've been a demonstration of the EU upholding its own principles, particularly those on the role of civil society.¹¹ This way, it seemed detached from reality at best and offensive at worst. The citizens had no insight into what the new law will bring, let alone a chance to "actively participate"; the social partners were treated as a mere nuisance and the parliamentarians were humiliated by voting

5 The Government drafted the law on 23 July 2015, sent it into urgent procedure on July 27 and the sessions of the two houses of the Parliament of the Federation of BiH (PFBiH) were scheduled for July 30 and 31. In addition to breaking even the rules of urgent legislative procedure, the delegates in the House of Peoples were not allowed to introduce any amendments to the law. 17 of them appealed to the Constitutional court of FBiH with a claim that the procedure was unconstitutional, which the court confirmed in February 2016.

6 Ranka Mišić izbačena iz sale Narodne skupštine RS, N1, 28 December 2015, <http://ba.n1info.com/a75439/Vijesti/Vijesti/VIDEO-Ranka-Misic-izbacena-iz-sale-Narodne-skupstine-RS.html>

7 For a detailed overview of how the Labour law was passed in both entities, see: <http://istinomjer.ba/kakosmo-i-za-koga-usvajali-zakone-o-radu/> (in BHS)

8 Dodik i Wigemark složni: Usvajanje zakona o radu u RS ubrzat će evropski put BiH, Klix, 18 January 2016, <http://www.klix.ba/vijesti/bih/dodik-i-wigemark-slozni-usvajanje-zakona-o-radu-u-rs-ubrzat-ce-evropski-put-bih/160118105>

9 Statement on new Federation BiH Labour Law, 31 July 2015, <http://europa.ba/?p=35673>

10 It would, however, have had to be published significantly earlier, as the FBiH Government had been keeping the draft law secret for months.

11 See: Interview with Ambassador Peter Sørensen for EWB, 4 July 2014, <http://europa.ba/?p=11651>; Interview with HR/VP Federica Mogherini for the daily Nezavisne Novine, 23 February 2015, <http://europa.ba/?p=17114>

The message to the local authorities was that going against legal procedures, disregarding social dialogue and misleading the public is quite acceptable if it checks another box on the "reform agenda", and completely irrelevant when assessing the value and success of any political process

on the law they barely had time to read. The whole thing couldn't have been further from *healthy democracy*.

The fake adoption of the coordination mechanism was another recent example of such practice. On 9 February 2016, a local news portal published an article with the headline "The Council of Ministers secretly adopted the coordination mechanism, already published in the Official Gazette of BiH"¹² It was not an exaggeration – the CoM did hold an unannounced and undocumented session on 26 January 2016, making no public statement on the adopted document afterwards. Moreover, the CoM Chairman had been openly deceiving both the public and the Parliamentary Assembly BiH on the issue for weeks and then, after the news was published, claimed that the session wasn't secret, in the face of clear evidence to the contrary.¹³ The RS Government immediately stated that it won't recognize a unilaterally and secretly adopted mechanism, so the process of consultations and negotiations was reopened, making the initial adoption of the document meaningless.

However, it did serve its short-term purpose. It was one of the preconditions for the membership application to the EU, which was submitted – and happily accepted – only a few weeks later, despite the scandal. The issue of the *uncoordinated coordination mechanism* was treated by both BiH and the EU as a "Schrödinger's cat": it was both adopted and not adopted, on a both secret and non-secret session, making the application both credible and not credible, and so on.¹⁴

One of the state ministers described the whole farce quite bluntly: "Dragan Čović had to go to Brussels and take something with him if we wanted our application to be accepted. He had to go there and say 'We adopted the coordination mechanism', although we are aware of all the loopholes in that mechanism. If Čović hadn't said that (...), they would probably had told him he needn't bother to come to Brussels. *Our credible application was accepted, but they also knew that, so to speak, these were all tricks and this mechanism was adopted without being fully coordinated with the entities.*"¹⁵

This open confession, of everyone accepting a *pro forma* document just for the application to be submitted, shows just how comfortable BiH politicians have become with token acts, done merely in order to tick some box on the "EU path". And rightfully so – they've been rewarded for such actions before. After all, the SAA entered into force on the basis of a mere promise,¹⁶ that BiH will fulfil the conditions it should have already met for the SAA to be activated:

"The Council welcomes, in the context of its conclusions of 15 December 2014, the adoption of the Written Commitment by BiH Presidency on 29 January, its signature by leaders of political parties and subsequent endorsement in the Bosnia and Herzegovina Parliament on 23 February 2015 during the visit of HR Mogherini to Sarajevo. Having regard to the commitments thus undertaken by Bosnia and Herzegovina, and in accordance with its conclusions of 15 December 2014, *the Council notes that the necessary conditions contained therein have been met* and agrees to proceed with the conclusion and entry into force of the Stabilisation and Association Agreement with Bosnia and Herzegovina."¹⁷

Instances of EU-BiH deja vu

In both of the cases described above, the message to the local authorities was that

12 Vijeće ministara BiH tajno usvojilo mehanizam koordinacije, već objavljen u Službenom listu BiH, Klix.ba, 9 February 2016, <http://www.klix.ba/vijesti/bih/vijece-ministara-bih-tajno-usvojilo-mehanizam-koordinacije-vec-objavljen-u-službenom-listu-bih/160209130>

13 Zvizdic: Poorly coordinated story on coordination mechanism, Istinomjer, 9 May 2016. Available at: <http://istinomjer.ba/zvizdic-poorly-coordinated-story-coordination-mechanism/>

14 For example, the EP Resolution on the 2015 Report on BiH welcomes the adoption "of a decision establishing a coordination mechanism on EU matters", but calls for its improvement by harmonizing "the entities' position on the adopted coordination mechanism" – although without the "harmonized positions" there is essentially no coordination mechanism.

15 Mirko Šarović: "Neki su se potrudili da nestane 123 miliona KM i dobili kućni pritvor, a ja sam zbog 250 hiljada KM bio godinu dana u pritvoru!", 22 April 2016, <http://usk24.ba/bosna-i-hercegovina/mirko-sarovic-neki-su-se-potrudili-da-nestane-123-miliona-km-dobili-kucni-pritvor-ja-sam-zbog-250-hiljada-km-bio-godinu-dana-u-pritvoru/>

16 The Written Commitment of Bosnia and Herzegovina, http://www.europarl.europa.eu/meetdocs/2014_2019/documents/dsee/dv/0507_11/0507_11en.pdf

17 Council conclusions on Bosnia and Herzegovina, Council of the European Union, 16 March 2015,

going against legal procedures, disregarding social dialogue and misleading the public is quite acceptable if it checks another box on the "reform agenda", and completely irrelevant when assessing the value and success of any political process. After all, the reform agenda itself was created in closed sessions between BiH, EU, IMF and World Bank representatives; never discussed with either the civil society or the parliament and unavailable to the public until after it was adopted.

But such messages were neither new, nor characteristic only of the latest phase of BiH-EU relations. Moreover, it's a continuation of a disturbing pattern of EU's indifference to the demise of democratic processes in BiH. One of the more notable examples from the previous term was the EU's engagement in the famous "Sejdić and Finci" case,¹⁸ i.e. the constitutional reform required to ensure the implementation of the ECHR decision (2009) in the case.

Implementing the decision was BiH's obligation under the SAA and a condition for a credible membership application. In 2012, the question of how to amend the Constitution became a thing to be decided by six men, as all the negotiations were led between the presidents of the major political parties.¹⁹ Instead of urging for the process to return to the appropriate institutions, the EU joined in, with Štefan Füle, then a Commissioner for Enlargement, and Peter Sørensen, former Head of the EU Delegation and EU Special Representative (EUSR) to BiH, facilitating a series of party leaders' meetings. For over a year, the citizens of BiH observed as they met in different cities to discuss their future Constitution, not even knowing what it might look like, as none of the discussed models were ever made public.²⁰ The negotiations were mainly driven by complex and intense inter-party dynamics, since the ruling coalitions on both the FBiH and state level were in constant turmoil. This gave HDZ BiH significant "coalition

potential" – a leverage it used to steer the talks from implementing the ECHR decision, to resolving "the Croat question."²¹ The civil society continuously (and fruitlessly) warned against the EU legitimizing these non-transparent, party-interest driven negotiations, particularly after it became obvious that their primary focus wasn't on ending constitutional discrimination, but on finding a model that could satisfy the ambitions of HDZ's Dragan Čović without jeopardizing other parties' (ethno)political agendas.²²

During the negotiations, the EU maintained that "Sejdić & Finci" is a necessary requirement for the SAA to enter into force; even announcing that the results of the October 2014 elections won't be recognized if the condition isn't met.²³ In February 2014, Füle stated that the latest meeting in Brussels was his last effort of that kind, expressing resignation at the debacle of the negotiations.²⁴ However, there was no more talk of sanctions. Instead, the EU adopted a diametrically different approach, and took "Sejdić & Finci" off the table, announcing that it will be "temporarily replaced" with new conditions based on economic reforms (the draft of which was presented in the *Compact for Growth and Jobs in BiH*).²⁵ None of the participants in the "high level dialogue" were faced with any repercussions for its failure; however, the one who undermined it the most was, ironically, particularly well rewarded. Croatia joined the EU in 2013, and its representatives in the European Parliament generated a striking

18 The Constitution of BiH recognizes "Bosniacs, Croats, and Serbs as constituent peoples (along with Others), and citizens of Bosnia and Herzegovina" as its determiners. The court has ruled that the provisions that limit passive voting rights to the constituent peoples are in breach of the European Convention of Human Rights.

19 The BiH Parliamentary Assembly formed a joint committee to find the solution for implementing the ECHR decision, but at the end of 2011, it discontinued sessions and announced it can't reach an agreement.

20 The only exception was the model agreed between SDP and HDZ in 2012, before the EU stepped in as a facilitator. It was met with outrage from civil society, as it proposed a discriminatory ethnically based "vote value" in the cantons in FBiH.

21 The premise that Croats' political rights are not respected, the "evidence" for which is primarily found in the fact of Željko Komšić's (formerly SDP, now DF) two terms as the Croat member of BiH Presidency, to which HDZ claimed that he was "elected with the Bosniak vote".

22 See, for example: Written contribution to the 2014 Progress report: Ethnically based discrimination in BiH constitutional system, http://eu-monitoring.ba/site/wp-content/uploads/2014/06/Written-Submission_EU-Progress-Report-2014_Ethnic-based-discrimination_Coalition-Jednakost.pdf and Comparative overview of the 2014 Progress Report for Bosnia and Herzegovina by the European Commission and the 2014 Alternative Progress Report for Bosnia and Herzegovina by the Initiative for monitoring the EU integration of Bosnia and Herzegovina, http://eu-monitoring.ba/site/wp-content/uploads/2014/10/EC-report-2014_ENG1.pdf

23 Füle: Ukoliko se ne provede presuda Sejdić-Finci, naredni izbori neće biti priznati, Klix, 11 April 2013, <http://www.klix.ba/vijesti/bih/fuele-ukoliko-se-ne-provede-presuda-sejdic-finci-naredni-izbori-nejce-bitipriznati/130411042>

24 Press Conference of the European Commissioner for Enlargement and Neighbourhood Policy, Štefan Füle, during his visit to Bosnia and Herzegovina, 18.2.2014, <http://europa.ba/?p=18383>

25 <http://europa.ba/?p=17720>



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change of discourse on the "Sejdić & Finci" issue: in the European Parliament's resolution on Progress reports on BiH, previously unapologetic demands to ensure equality of "others" were replaced with terms straight out of Čović's repertoire, such as *the rights of the constituent peoples*, obstructionist *centralist forces* and commendable *principles of federalism and legitimate representation*.²⁶

In February 2015, the EU High Representative for Foreign Affairs and VP of the European Commission, Federica Mogherini, held a press conference upon the signing of BiH's Written Commitment. One part of her speech is particularly striking:

"The key element of the relationship between Bosnia and Herzegovina, or any other country, and the European Union, is not that of pupil and teacher. We do not give homework, we do not give marks. The reforms that country will decide to undertake will be determined only by the political will and political decisions of the institutions, with indications of the needs of the people in Bosnia and Herzegovina and if reforms, if, when and what kind of reforms will be taken, will depend only on the needs and interests of the people of the country.

If reforms have to be done it is not because Brussels asks, but because the people of the country ask for them. So, full ownership, no paternalizing approach at all. I don't know how it was done in the past, but this is for sure for now.

And again, this is something very serious, because we have seen not only this temptation for this path with countries that are in the EU perspective but also countries inside the European Union, whenever there is a tough reform to pass, tough or even not too tough, to justify this because 'Brussels is asking'. And this is a sort of blame game that leads to a certain unpopularity of the European Union."²⁷

If the conduct of EU representatives towards BiH held up to any part of that statement, we would certainly have received far fewer accolades from them in the past year, but perhaps there would've been more actual accomplishments on the part of BiH authorities. Perhaps we would even have a process where the people of the country would play some part, other than that of passive observers of untransparent processes. Unfortunately, all that we've seen so far has been to the contrary. The question remains what the next step will look like, since those we've been talking about mostly resembled walking in place. ■■■

²⁶ See more in: "Having an EU neighbour: How does it affect human rights in Bosnia and Herzegovina?", Tijana Cvjetičanin, Novi pogledi, 2014, <https://www.scribd.com/doc/299554426/Novi-Pogledi> p: 19-38

²⁷ Transcript of the press conference held in Sarajevo by HR/VP Mogherini, 23 February 2015, <http://europa.ba/?p=17102>

The Macedonian Political Crisis – EU Mechanisms Tested

Malinka Ristevska Jordanova

The behaviour of the Government can easily be explained by the rational choice theory. Its perspective of remaining in power based on its nationalist policies, nurtured by the blocked EU perspective, was a huge benefit gained at a low cost, compared to costly reforms needed for a non-existent EU perspective, which would bring no political gain (in an election timeframe), but would come at a high political cost.

The focus of EU foreign policy has for long slid away from Macedonia. This is due to several key reasons. The first one is common to all the countries of the region that are not already EU members – enlargement policy is no longer a priority of the EU. The second is that Macedonia can no longer be presented as a successful case of the key pillar of the EU's "fundamentals first" enlargement strategy – democracy and rule of law. Macedonia, the former frontrunner, has become a laggard. Finally, even if it were (and when it actually was) delivering precisely in the area of democracy and rule of law – it could not move a step forward in its Euro-Atlantic path, because it is being blocked by Greece, on the basis of the irrational "name dispute".

The objective of this article is not to put forward evidence that the EU conditionality policy has been compromised in the case of Macedonia. This is a rather clear-cut case: there was no carrot, the EU was reluctant to use the stick, and its leverage was falling. The Government embraced the opportunity to use the inconsistent blocking by Greece – and thus by the EU, to spur nationalism and populism. The behaviour of the Government can easily be explained by the rational choice theory. Its perspective of remaining in power based on its nationalist policies, nurtured by the blocked EU perspective, was a huge ben-

efit gained at a low cost, compared to costly reforms needed for a non-existent EU perspective, which would bring no political gain (in an election timeframe), but would come at a high political cost.¹

In this article, we are exploring the effectiveness of the mechanisms of involvement of the international community in addressing the current political crisis in Macedonia, in contrast to the key political messages sent.

For the purpose of this article, we shall focus on the current Macedonian political crisis in the timeframe from December 2012 until today, although its roots are traced earlier – to the rejection of Macedonia's NATO bid in 2008. In brief, the crises escalated when the main MPs from the main opposition party, the Social Democratic Union of Macedonia (SDUM), and the media were forcefully thrown out of a parliamentary sitting in December 2012, following an incident related to a debate on the Budget. Since then, Macedonia has entered a perpetual political crisis, with the opposition parties SDUM and DPA boycotting Parliament on several occasions, including on the basis of non-acceptance of the results of the April

¹ The main parties in the Government are the predominantly ethnic Macedonian VMRO-DPMNE (Internal Macedonian Revolutionary Organisation – Democratic Party for Macedonian National Unity, and the predominantly ethnic Albanian DUI – Democratic Union for Integration.

2014 presidential and local elections. In 2015, the SDUM revealed a huge wiretapping scandal, indicating massive corruption, election fraud, misuse of official authority and a number of other serious crimes.

Mechanisms of EU involvement – evolving or challenged?

Until early 2015, the international community was reluctant to engage more deeply in the Macedonian crisis.

By 2012, when the crisis burst out, the European Commission had been employing the mechanisms established up until that moment – the dialogue within the Stabilisation and Association Process and the previously newly-invented "High level accession dialogue".

The dialogue within the institutional structure of the Stabilisation and Association Agreement (Council, Committee, subcommittees), went on as "business as usual", with a low profile in the public and practically no specific role in addressing the crisis. The Council press releases in the midst of summer have not had a specific impact either on the Government, the other political actors, or the wider public.

The new mechanism that the Commission was heavily relying on was the so-called "High level accession dialogue" (HLAD), which had been put in place in 2010. It consisted of meetings of the Enlargement Commissioner/DG Enlargement (later DG NEAR) representatives with the Prime Minister/Government representatives, and a benchmarking exercise, intended to address the

already evident backsliding in political criteria. The focus of the benchmarking exercise collected in a Blueprint was on media freedom, the judiciary, anti-corruption, interception of communications, inter-ethnic relations, public administration reform, electoral reform, and some elements of the economic criteria. The Government had presented it as an introduction to launching the accession negotiations, which the Commission denied outright. It was initially an attempt to ensure the Commission's leverage on reforms, thus compensating for the absence of accession negotiations. The final aim was to keep the recommendation for accession negotiations alive, while in parallel the Commissioner(s) attempted to revive negotiations on the name issue with Greece. The HLAD obviously did not fulfil its objectives, as the backsliding in political criteria only kept intensifying, while there was no breakthrough on the name issue. On the contrary, the coupling of these two issues led to even further compromising the political criteria.

Following the December 2012 crisis, the HLAD started to serve as an umbrella for the direct involvement of the Enlargement Commissioner – both Füle and Hahn – in negotiations with the Macedonian political parties in an effort to reverse the already sharp backsliding in political criteria. In addition, an EU mediator was engaged (as an expert) to facilitate the negotiations between political parties.

The "game" was changed when the opposition party published the wiretapping materials (the so-called "bombs") in the beginning of 2015. In addition to a massive breach of the right to privacy, the "bombs" indicated huge corruption, election fraud and other serious crimes by the government nomenclature. Domestic pressure towards the international community increased, appealing for more intense involvement by the EU and more effective mechanisms. The proposals included the appointment of a special representative of the EU, which the EU avoided as it had in 2011 terminated the mandate of the SR who had been active in Macedonia since 2002. The EU opted for a two-tier approach: heavier engagement and pressure on the political actors in Macedonia, including involvement of more facilitators/mediators, and a new benchmarking "exercise".²



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² In addition to the Commissioner and his expert-mediator, a group of three MEPs was engaged in the negotiations with the political parties.

The Macedonian political situation is a part of the downward trend toward the so-called "illiberal democracy" or, more precisely – reversal to hybrid regimes in Europe. In fact, the Macedonian case is a test for the capacity of the EU to act on issues of democracy and rule of law that arise within itself. As for the candidate countries, the Macedonian case is pointing to the constraints of the "fundamentals first" approach of the Enlargement strategy.

The final result of the negotiations, which the EC and US representatives brokered in two rounds with heavy pressure, was the so-called Przino Agreement (or June/July Agreement). The political deal put the focus on early parliamentary elections (which were to be held in April 2016) and a "transitional government" to prepare for elections. The Agreement managed to bring the opposition back into the Parliament. Its significant achievement was the establishment of the Special Prosecutor to deal with the crimes indicated in the wiretapping scandal.

The benchmarking exercise also changed. In an effort to make the EC engagement more objective, the Commissioner for neighbourhood policy and accession negotiations Hahn engaged independent experts to produce a specific report on the state of the rule of law following the wiretapping scandal.³ The "situation" Report published in June 2015, along with the Urgent Reform Priorities issued by the Commission on the basis of the Report gave hope to the (already disillusioned) EU-reform oriented forces in Macedonia that the approach of the Commission might change and be stricter towards the political elite in power. The Urgent Reform Priorities focused on interception of communications, the judiciary and prosecution, external oversight of independent bodies,

elections and the media. The implementation of the Urgent reform priorities was integrated in the Przino Agreement.

The results of the Przino agreement almost one year later are far from a success. The early parliamentary elections were cancelled, as the international community assessed that the conditions for free, fair and credible elections have not been met. The Urgent Reform Priorities have not been implemented.⁴ The Government consistently obstructs the work of the Special Prosecutor, including through amnesty by the President of 56 persons involved in the wiretapping scandals.⁵ The Government has managed to always put new issues on the agenda and obstruct the implementation of the Agreement.

In addition, in April this year Germany decided to appoint a special envoy for the Macedonian political crisis, thus confirming the EU institutions' lack of success so far to deal with the Macedonian crisis and indicating cracks in the EU foreign policy.

Protesters of the so-called "colourful revolution" have been on the streets of the Macedonian cities for more than 40 days, fighting essentially to free the captive state and requesting accountability from those in power for the massive infringements of the rule of law.

The newly voiced requests by civil society organisations also include the formation of a technical or expert government, as well as targeted sanctions against corrupt government officials by the EU and US.

The flaws in substance

What has been largely overlooked in the reviews of the involvement of the EU and the international community in the current Macedonian political crisis is related to the substance of the political messages, in combination with the mechanisms employed.

1. The coupling of EU political conditionality with the solution of the name dispute with Greece led to compromising the political criteria. As it is largely believed that the EU can have leverage only in time of accession ne-

³ The former Yugoslav Republic of Macedonia: Recommendations of the Senior Experts' Group on systemic Rule of Law issues relating to the communications interception revealed in Spring 2015, Brussels, 8 June 2015; available at: http://ec.europa.eu/enlargement/news_corner/news/news-files/20150619_recommendations_of_the_senior_experts_group.pdf

⁴ The status of the implementation of the Przino agreement and the Urgent Reform Priorities are available at the CSO's Network 23 website: <http://www.merc.org.mk/en/level-of-realization-of-the-june-july-political-agreement> ; <http://www.merc.org.mk/en/status-on-the-implementation-of-the-urgent-reform-priorities>

⁵ He withdrew the amnesty for 26 "politically exposed" persons, but not for others that were indicted or under investigation, thus further obstructing the Special Public Prosecutor's proceedings.

- gotiations, then even crucial issues of backsliding in democratic standards are overlooked (or just presented in a "softer" language) and postponed for later – when negotiation accessions are launched. In this manner, the anti-reformists' practices are legitimised. At this point, sustainability is not even considered.
2. The key political messages sent by the EU have been largely inconsistent and sometimes counter-productive. An important political message refers to the assessment of the responsibility of domestic political actors. The official messages of the EU, even if their substance contained harsh criticism, target all the political parties/actors, thus blurring their responsibility, especially that of the parties in power. The EU General Affairs Council conclusions have consistently called on "all political parties to...".⁶ Consequently, the Government has been able to manipulate these messages to the public, especially as it controls a large part of the media spectrum. In addition, the key political party in the Government – VMRO-DPMNE – has largely exploited its associate membership of the European People's Party (EPP) to claim that the EPP has been its firm supporter in the negotiations on the political crisis. On the other hand, the EPP has taken no visible steps to disassociate from this kind of exploitation of VMRO-DPMNE's associate membership in this European political alliance. Statements by representatives of the EU (EC and Member States) constantly call on the political parties to keep the European perspective of their country open. The fact is that the Macedonian EU accession perspective has been closed since 2008. The message actually threatens that the Commission could withdraw its recommendation for accession negotiations, which cannot be effectuated anyway due to the blockage by Greece. This would be a punishment for the Macedonian society at large, but not for the key party in power – VMRO-DPMNE, which could use this fact to even further magnify

its story on "external and internal enemies against the patriots fighting for the Name". On the other hand, the EU is not embarking on targeted sanctions for individuals, as some EU MS (such as Hungary) would oppose this measure, which requires unanimity.

3. The focus of the EU on the role of the Western Balkans in the migration crisis has re-iterated the "stability before democracy" message, which was then exploited even further by the Macedonian ruling parties in their public campaigns by presenting it as implicit support to the Government.
4. The inconsistency of the very representation of the EU in Macedonia has contributed to confusion in terms of the actual distribution of competences and power within the EU in dealing with a political crisis in a candidate country. This is even more striking when compared to the portraying of the Macedonian case as an example of the success of the EU foreign policy in Macedonia in the period 2002-2006.
5. Last, but not the least, the potential for civil society involvement has not been fulfilled. The current efforts to structure the involvement of the civil society critically tested both the internal actors and the international community as to the level of will and capacity to articulate the involvement of the civil society in solving the crisis.

The Macedonian case – alarm, not to be ignored

Treating the Macedonian case as an isolated one would be a grave mistake. The Macedonian political situation is a part of the downward trend toward the so-called "illiberal democracy" or, more precisely – reversal to hybrid regimes in Europe. In fact, the Macedonian case is a test for the capacity of the EU to act on issues of democracy and rule of law that arise within itself. As for the candidate countries, the Macedonian case is pointing to the constraints of the "fundamentals first" approach of the Enlargement strategy. It is very likely that the political elites of other Western Balkan countries, aware of their countries' longterm EU perspective, will exploit the Macedonian "rational choice model", which would ultimately result in backsliding in democratic standards and the rule of law. ■■■

⁶ E.g. Council conclusions on the Republic of Macedonia, 23/06/2015; available at: <http://www.consilium.europa.eu/en/press/press-releases/2015/06/23-gac-conclusions-former-yugoslav-republic-macedonia/>

The EU's Bosnia Initiative, the Reform Agenda and the Problem with Transparency

Substantial change on the horizon or more of the same?

Bodo Weber

On March 21, the European Union Commissioner for Enlargement Negotiations Johannes Hahn visited Sarajevo, only five weeks after Bosnia-Herzegovina had applied for EU membership. In a press conference with the head of the country's Council of Ministers, Denis Zvizdić, Hahn listed a number of reform conditions for the country to meet before the European Commission would forward the membership application to the EU Council. With this list, Hahn became the first EU official to confirm, though indirectly, what had been discussed in the BH public in the weeks before – that on February 15, Dragan Čović, then President of the BH Presidency, had in fact handed in a non-credible application. This presented a remarkable turn in the country's most recent relationship with the EU, which had been characterized by mutual optimism. BH authorities had received much praise in 2015 for de-blocking the country's EU integration process in the framework of the Union's new Bosnia approach that kicked off in late 2014 and that was based on a joint UK-German initiative. Hahn's indirect admittance that BH authorities were lagging behind in reforms marked the first crisis in the new initiative and a source of confusion. In a way, this leap from praise to critique by EU officials regarding the BH authorities' fulfilment of reform conditions mirrors political observers' and BH citizens' perception of a total lack of transparency in what is happening under the new EU initiative, especially in the implementation of its centrepiece – the so-called Reform Agenda.

From the UK-German initiative to the Reform Agenda

In November 2014, the two EU member states, whose dispute over the right Bosnia policy had blocked any meaningful EU policy since 2010, published a joint initiative that was soon inherited by the EU as its official new policy. The UK-German initiative centred around two core elements: First, to unblock the country's EU integration by leaving the previous main condition – implementation of the so-called Sejdić-Finci ruling of the European Court of Human Rights – for some later stage of the process, and second, to shift the reform focus away from BH's core structural problem, its dysfunctional constitutional structure, to socio-economic issues. The latter was a reaction to the social unrest of February 2014, to citizens' demands for economic prosperity, social security and a functioning rule of law. The focus on socio-economic issues, the Berlin- and London-based authors of the initiative argued, would prevent political elites from applying their standard tool of heightened inter-ethnic rhetoric to block structural reforms. The new initiative foresaw three steps of reforms that would be rewarded with progress in EU integration: 1. A written commitment by BH political leaders to reforms that included an "initial reform agenda" focused on structural economic reforms – to be rewarded by the enactment of the country's Stabilization and Association Agreement (SAA); 2. Inviting BH to submit a membership application after "some initial progress" on implementing the reform agenda; and 3. Following

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full implementation of the initial reform agenda, the EU Council will request the Commission's opinion on the membership application, the so-called *avis*.

This approach, however, provoked doubts among some Western political actors and analysts about the logic of the new policy, doubts based on several analytical observations: The new policy initiative was surely based on the realization that domestic elites in Bosnia-Herzegovina are genuinely not interested in serious reforms because the Dayton system of patronage and fear works (only) for them. And there is surely some reason to shifting reform conditions to an area where it is harder to exploit the fear factor. Yet structural economic reforms target the core of the elites' power system – their control over public (and partly private) resources. They won't give this up without combined pressure from the outside and from below, from BH citizens. Yet the EU is traditionally weak on serious political cooperation with citizens beyond the standard PR-campaigns. At the same time, what Berlin and London completely neglected, or rather suppressed in their "new" initiative was the fact that for almost a decade, the EU itself had contributed to the obstruction of Bosnia-Herzegovina's reform and EU-integration path through its weak enforcement of conditionality. Politically unwilling to pick a fight with the political elites' resistance to structural reforms, the Union's policy was marked by continuous backing down on its own reform conditions, thus teaching the elites the lesson that the EU is weak and that resistance to reform in the end pays off. Thus, despite the fact that Berlin and London assured sceptics that this time the EU would stand strong on

conditionality and that they would finally make use of their strongest tool, financial conditionality, starting a "new initiative" with the easing of conditionality (Sejdić-Finci) presented a potentially dangerous signal.

Nevertheless, BH authorities have so far managed to move along several steps on the UK-German initiative's schedule: In February 2015, BH political leaders signed a written commitment and on June 1, the country's SAA with the EU finally entered into force. During summer and autumn that year, the so-called Reform Agenda and action plans at state and entities level were adopted. On July 31, the Federation parliament passed a new labour law, the main point of the EU's praise for the BH authorities' reform policy dynamic in the 2015 (progress) report; end of December, the Republika Srpska (RS) followed with a new labour law. In February this year Bosnia-Herzegovina accomplished what is so far the latest step in the process, the handing in of its membership application. On that occasion, the Council of Ministers (CoM) declared that the last condition has been met – an agreement among the ruling parties and the various levels of governance in BH on a so-called coordination mechanism. Yet the RS government immediately denied that such an agreement had been reached, raising doubts about the credibility of the application, that were only reinforced by Commissioner Hahn's remarks at the Sarajevo press conference in March.

These developments raise two fundamental questions: How serious are the political elites in their commitment to reforms? And will the EU really be tough on conditionality this time?

Are BH political elites ready for reforms?

The Reform Agenda lists a number of key structural socio-economic reform areas: fiscal sustainability & stabilization of public finances, improvement of business climate & competitiveness, the restructuring of public companies, reform of the ailing healthcare and pension systems, public administration reform and the establishment of a strong rule of law. Taken together, if all these reforms were to be thoroughly implemented, it would fundamentally alter the political mode of operation in Bosnia-Herzegovina and eliminate the political

The new policy initiative was surely based on the realization that domestic elites in Bosnia-Herzegovina are genuinely not interested in serious reforms because the Dayton system of patronage and fear works (only) for them. And there is surely some reason to shifting reform conditions to an area where it is harder to exploit the fear factoring. Yet structural economic reforms target the core of the elites' power system – their control over public (and partly private) resources.

elites' current power basis. Yet as this reform package was agreed between the political elites and the EU, the BH public and wider EU audience have not been explained what the individual reform measures are and what the sequencing of the implementation of the individual reform elements would be, based on which BH citizens would be enabled to judge whether BH authorities are seriously implementing the Reform Agenda or not. As implementation in most of the reform areas is still in an early stage, the passing of the two labour laws has been singled out by both domestic authorities and EU officials as the most important reform step taken so far. The labour laws of the two entities in BiH form the legal basis for labour relations in the country. It forms the foundation for a range of key aspects like work contracts, rights and duties of workers and employers, salaries, non-discrimination, the establishment of trade unions or collective bargaining. Reform of the legislation aimed at better adjusting the labour market to market economic conditions had long been a demand of the International Financial Institutions (IFIs) like the Worldbank or the IMF.

Yet a detailed analysis of the two entity laws and their potential future impact offers a much more differentiated picture. The entity governments announced the need for new laws that would bring more flexibility to the labour market by removing old laws still rooted in the socialist tradition of labour relations, thus making an important contribution towards a functioning market economy. Resistance, especially from trade

unions, was labelled as backward-looking resistance to reform. In the Federation, Prime Minister Fadil Novalić explained that the new law would also remove the privileged position of employees in the public sector vis-à-vis those in the private sector. In BiH, the "labour market" is highly distorted by the domination of the public sector.

An analysis of the provisions of the two labour laws, however, confirms none of these political announcements, but shows a rather mixed bag. The laws do indeed add some flexibility to the labour market, but whether they will have the promised effects or not does not depend on the labour laws as such, but on other remaining structural problems that cannot be solved through labour legislation: There exist no market economic conditions and no functioning rule of law in most segments of the BH economy. There is only a limited segment of the private economy that functions and successfully operates independently of the political sphere, more in the Federation than the RS. The public sector dominates the economy and the labour market, with higher salaries in public administration and public companies than in the private sector, further supported by various privileges for public employees. It is not the labour laws that guarantee the status of public employees, but certain other laws, as well as the collective branch agreements between the governments and public sector trade unions. Employment in that sector is traditionally based on the employees' party membership or their family relations. In the private sector, those companies that operate independently grant their workers higher salaries and greater rights than legally guaranteed, while most other employers widely violate labour rights. Due to the inefficient and politicized judiciary, workers have little chance to fight for their labour rights, while public servants regularly manage to successfully enforce their rights through the courts. Against that background, the traditional role of the trade unions and employers' associations is highly distorted, as is the nature of the social dialogue. Trade union associations, for example, are dominated by members from the public sector, and are thus de facto closely linked to the ruling political parties.

The adoption of the new labour laws therefore does not provide any answer to the question whether the ruling elites in Bosnia-

With this entire lack of transparency in the implementation of the Reform Agenda, BH citizens are de facto prevented from becoming an active player. Yet without a partnership with the citizens of Bosnia and Herzegovina, the European Union will hardly have enough leverage to forcefully push the country's political elites towards a substantial and sustainable reform course.

Herzegovina have really shifted towards a path of substantial reforms. The effects of the new labour laws can both move in a positive and a negative direction, depending on other structural reforms such as public administration reform or the strengthening of the rule of law. Yet these reforms are still in an early stage at best.

Yet neither the entity governments nor EU representatives have provided BH citizens with such a realistic analysis of the labour laws. Instead, both sides have praised the passing of the laws as a major reform step, proof of the ruling elites' willingness to reform and a confirmation of the new EU approach.

The EU: strict conditionality or back to point zero?

Has the EU thus fallen back to its old, bad practice of compromising over conditionality? The case of the membership application seems to confirm such fears. By the end of 2015, already late in the process, EU officials shifted from exaggerated praise of BH authorities' reform steps to careful, behind-closed-doors warnings against the announced handing in of the membership application without the fulfilment of all conditions. BH officials ignored these warnings, just as they ignored later, more direct warnings. In the end, in February, in the last days of his term as President of the BH Presidency, Dragan Čović handed in the application to the Dutch foreign minister, whose country was then presiding over the EU. According to the EU's Bosnia initiative, the foreseen procedure would have been for the EU Council to invite Bosnia-Herzegovina to apply for membership after "some initial progress" in the implementation of the Reform Agenda. In reality, neither had this progress taken off, nor had there been an invitation from the Council – BH authorities had invited themselves to hand in the application, and the EU had given in.

So are we back to point zero in the EU-BH relations, with an EU reluctant to persist on strict conditionality and lacking readiness to pick a fight with domestic elites, and the elites imitating readiness for substantial reforms by exploiting the sensed EU weakness? It is still too early to make a judgement. But what can already be identified are some serious flaws in the EU's definition of its role in the reform process, which bear the seeds of potential failure:

- 1) In the drafting process of laws that are to be a part of the Reform Agenda, the EU, as well as the IMF and the World Bank, put forward a set of conditions to the BH authorities concerning elements they want to see made part of the law. Yet as these negotiations proceed behind closed doors, those conditions remain unknown to the public. As a consequence, a differentiated assessment of the law once it is approved in relation to the set of conditions likewise remains beyond the public sphere. Instead, public reaction by the EU and the other international actors gets reduced to a general approval or disapproval. In addition, the completely intransparent negotiations between BH authorities and ruling parties and the EU and the international financial institutions promote the use of undemocratic expedited procedures to push laws through parliament, with tacit approval from the EU. In the case of the entity labour law, the Federation Constitutional Court judged that the ruling coalition in the parliament had breached the constitution and the principles of democratic legislative process, and returned the law to parliament for renewed approval. This whole approach leaves both the parliamentary opposition as well as the wider public in BH without a corrective role.

- 2) Within the framework of the set of reforms listed in the Reform Agenda, the EU leaves the sequencing of implementation of the individual reform elements and areas largely to the domestic authorities and parties, arguing for the Union's role as a "facilitator" and the principle of "local ownership." Yet leaving the sequencing of reforms to the domestic elites enables them to do what they've already done in the past – pick the reform steps that hurt them the least, then use these reforms as a basis to obtain credit agreements with the IMF. These credit agreements will lend them the funds needed to survive the next election cycle, after which their reform readiness ends. Without defining the sequencing of reforms, the EU thus remains without an instrument to assess whether the elites are serious with their reform commitments or whether they are simply pulling the wool over their eyes until pretty late in the implementation process.
- 3) Finally, with this entire lack of transparency in the implementation of the Reform Agenda, BH citizens are de facto prevented from becoming an active player. Yet without a partnership with the citizens of Bosnia and Herzegovina, the European Union will hardly have enough leverage to forcefully push the country's political elites towards a substantial and sustainable reform course. That is, unless the political class experiences a complete change of mind – a highly unlikely scenario.

One example of what such a partnership could look like is the reform of health care system. BiH's health care system is plagued with chronic underfinancing and bad service delivery. While this is partly due to a low employment rate and a weak discipline of employers in paying social contributions, it is for the larger part the consequence of systemic corruption that lies behind a non-rational network of health care institutions and an overstaffing in non-medical staff employed along party lines. The negative effects affect BH citizens as a whole. Reform of the health care system is on the list of the reform agenda – again, as it is an issue the Worldbank has dealt with in BiH for many years – with limited success. There is limited prospect the political elites are this time willing to undertake serious structural reforms, as they would thus directly cut into their patronage system. If willing, the EU Delegation in BiH could easily design an outreach and advocacy strategy to BH citizens, laying out details of reform conditionality in a way that directly links it with citizens' negative experiences in the health care system and that breaks down the effects of a reform to the benefit the individual user of the health care system would have. This would put the ruling elites on the spot and create an enormous bottom-up pressure without the EU interfering into ownership of domestic officials and policymakers. ■■■

Macedonia's Tiresome Transition Story: Euro-Atlantic Integration

Nano Ružin

During the ten-year-long rule of the rightwing VMRO-DPMNE, its leader Nikola Gruevski, assisted by the nepotism of his powerful relatives, cronies and friends that he had appointed to ministerial positions in key ministries, conscientiously used the mistake of the international community, which paid more attention to the stability and security of the country at the expense of democracy. The young technocrat Gruevski became a top national populist, practising a soft authoritarianism with full control of the media, the judiciary and administration.

Since gaining its independence, Macedonia has been the subject of numerous observations, mediations and speculations by different diplomats, foreign analysts and institutions. Immediately after gaining independence, the Republic of Macedonia faced the phenomenon of unpredictability and indecisiveness of the international community, whose hesitation created changing and unfavourable perceptions within the Macedonian political and intellectual elite. The essential question related to the international recognition of the Republic of Macedonia (RM) was brought about by the conservative mood of the international community that was heavily influenced by Greek diplomacy, irrespective of the positive report by the Badinter commission. In this context, RM was advised to *provide constitutional and political guarantees that there were no territorial claims towards Greece and to change its constitutional name and the symbols on its flag*, which Athens considered its historical and cultural heritage.

These issues blocked RM's membership in the UN until 1993, and in 1995, Macedonia and Greece signed an Interim Accord that regulated all the issues concerned, except for the issue of the name. During the nineties, while war was raging in regions of former Yugoslavia, Macedonia became – according to the metaphor of the first president of the country Kiro Gligorov – the only post-Yugoslav *oasis of peace*, regardless of a number of pessimistic scenarios by analysts, contact groups or foreign politicians. The lessons learned from the *Croatian* and *Bosnian* crises motivated the international community, especially the United Nations. The UN, with the aid of its representative Henry Sokalski, promoted *preventive diplomacy* as a model for crisis prevention.

When the rightwing VMRO-DPMNE (the Internal Macedonian Revolutionary Organization-Democratic Party for Macedonian National Unity) won the elections in 1998 together with its coalition partner *Demokratska Alternativa* (Democratic Alternative), they decided to take a very risky step in the international arena and recognised the independence of Taiwan. This Dollar diplomacy caused rage in Beijing. China referred to its *right of veto* in the Security Council with regard to the extension of the UN mission within the framework of *preventive diplomacy*. Some authors believe that this action made possible the domino effect of the destabilisation of Macedonia that came from Kosovo. There is no doubt that, by believing that the main dangers were of an external nature, the Macedonian political elite underestimated the significance of inter-ethnic relations as a destabilising factor.

NATO and EU as guarantors of security, stability and economic balance

After NATO's airborne intervention in the SRY and the withdrawal of Serbian security forces from Kosovo in 1999, the Albanian community in RM, that constitutes around 23% of the total population, was encouraged by the success of the Kosovo Liberation Army (KLA) in Kosovo and, dissatisfied with its social, political and educational status in Macedonia, decided to rebel in order to influence the Macedonian and international political community so as to realise several important claims.¹

The result of this miniature inter-ethnic civil war was the signing of the Ohrid Framework Agreement (13 August 2001). This agreement was Macedonia's first step on the path of the construction of a multi-ethnic democracy. The country was turned into a reform workshop with respect to the numerous constitutional and legal changes and amendments. (Veton Latifi – "Pregovorite za postignuvanje na Ohridskiot dogovor".² One can claim that it was at this stage that the international community started to play a more significant role in Macedonia. Several special representatives, such as Francois Leothar on behalf of the EU, James Perdue on behalf of the USA and General Secretary of NATO George Robertson himself on behalf of the Alliance, became the personification of the international community as a factor of crisis management and the establishment of peace in Macedonia.

At the same time, the international community contributed to the improvement of its own image in Macedonian public opinion, the more so as nationalist milieu started to develop various conspiracy theories, that the international community supposedly organised the KLA rebels in Macedonia. An official of the NATO International Secretariat, Mark Laity, was appointed to the work with the President Boris Trajkovski as a public relations advisor. The situation was all the more complex because in 1999 – when the 50th anniversary summit of the NATO Alliance was held in Washington – Macedonia

received Membership Action Plan status, which meant that it obtained candidate status for NATO membership. At the Summit in Istanbul, when the big-bang enlargement took place, RM did not receive invitation to NATO membership, but it was among the three Adriatic group countries aspiring to join (Albania, Croatia and Macedonia). At the 2008 Bucharest Summit, Greece blocked its membership invitation and it was stated that a *Summit is not required for Macedonia's accession to NATO, but only a regular North Atlantic Council meeting, once Greece and Macedonia have reached an agreement on a mutually acceptable name for RM.*

Parallel to the Atlantic agenda, Macedonia was also embarking on its EU integration path. Within its Western Balkans strategy, Brussels paid more attention to security and stability issues and less to the process of democratisation and reforms. Such diplomatic logic is understandable considering the Balkans' poor reputation. However, on the other hand, this was counterproductive from the point of view of adhering to European values. In this way, the political elites were given an opportunity to game the democratic flows, to usurp the Constitution and laws, to control the media and to bring the judiciary and administration under the control of parties.

The EU made effort to reward and stimulate Macedonia for its honest cooperation in reforms and development of multiethnicism, as the first country in the Western Balkan to sign a Stabilisation and Association Agreement as the crisis was still going on (9 April 2001), which entered into force on 1 April 2004. This way, RM, which became a candidate for using PHARE programme funds of the then-European Community as early as 1996, seven years later, at the 2003 Thessaloniki EU Summit, received collective support for its future EU integration, together with other Western Balkan countries. This made Macedonia a leading country in the process of Euro-Atlantic integration in the Western Balkans region. During 2004, the Government submitted the Questionnaire and in 2005, the country was awarded candidate status by the EU Commission and the Council. Finally, in 2009, the EU Commission recommended that RM start membership negotiations, which are still today being systematically blocked by Greece due to the unresolved dispute concerning the name of the country.

Regardless of the slow Euro-Atlantic process, in the last 15 years, the mood on

1 John Phillips – "Makedonija – gospodari na vojnata i buntovnici na Balkanot" [Warlords and Rebels in the Balkans], Fondacija Institut otvoreno opstestvo, 2009.

2 The Ohrid Framework Agreement Negotiations], Skopje: Fondacija Otvoreno opstestvo, 2008.

the Euro-Atlantic integration in Macedonian public opinion ranged from 85 to 90% in favour of membership in EU and NATO. The three most significant international players in Macedonia were the USA, EU and NATO, assisted by the OSCE and other international institutions. In the perception of Macedonian citizens, these actors – which at the same time comprise the greatest part of the international community – are able to change governments, bring down the system, and determine citizens' fate – in politics as in everyday life. A regular citizen of Macedonia shares the characterisation of Americans and Europeans found in Robert Kagan's well-known metaphor, that Americans act as if they were from Mars, named after the god of war, and Europeans act as if they were from Venus, named after the goddess of love. Americans are direct, brutal and efficient. Europeans are soft, unstable and inefficient.³ One gets the impression that people trust Americans more than Europeans.

The 2014 crisis – the role of the international community

Fifteen years after the implementation of the EU and NATO crisis management in the Macedonian crisis, when the 'Berlin Plus' agreement on mutual military cooperation of Brussels institutions was first implemented, the international community faced a new challenge in Macedonia. The political crisis between the leading and opposition parties reached its peak during the great migration movements through the Balkan corridor, which could have destabilised the country. Unlike in 2001, when the problem had a multi-ethnic character, this time it was about the clash between a corrupt governing elite led by VMRO-DPMNE and the Albanian coalition partner DUI on one side and the opposition block supported by the wide alliance of civic initiatives that championed respect for the rule of law, democratisation, freedom of the media, control of the government by means of checks and balances. During the ten-year-long rule of the VMRO-DPMNE, its leader Nikola Gruevski, assisted by the nepotism of his powerful relatives, cronies and friends that he had appointed to ministerial positions in key ministries, conscientiously used the mechanical mistake of the international community, which paid more



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attention to the stability and security of the country at the expense of democracy. At the same time, the young technocrat Gruevski became a top national populist, practising a soft authoritarianism with full control of the media, the judiciary and administration.

The crisis started after the eavesdropping scandal had been uncovered, when the opposition obtained millions of files on citizens who have been eavesdropped on, mostly those belonging to the opposition. However, Gruevski eavesdropped on his ministers too, even on conversations with other ministers. This scandal uncovered the depth of his party's coalescence with the state, flooding of judiciary institutions with party cadres, control over the media, rigging elections, political arrests and trials, covering up murders, etc.

The opposition left the Sobranie [the National Parliament], and the *Colourful Revolution* started in the streets when the virtual and real streets united. The disappointed and frustrated youth raised its voice against wasting the state budget on neoclassical and baroque façades, quasi-antique and other kitsch monuments in the period in which the unemployment rate reached 30%, 70% of which were young people below the age of 27. In such a tense context, despite the sluggishness and a great deal of hesitation on the part of the EU ambassador to Skopje (Aivo Orav), the international community, aided by the Assistant Secretary of State for European and Eurasian Affairs Victoria Nuland, managed to effectuate the signing of the Przino political agreement at the EU residence (located at Przino neighbourhood). It was signed by the governing coalition consisting of VMRO-DPMNE and DUI, and the opposition parties SDSM and the Albanian DPA.

The four major political parties agreed to implement all recommendations of the EU Commission related to systemic rule of law

³ Robert Kagan, *La puissance et la faiblesse*, Paris: Hachettes Littératures, 2006.

issues, after the publication of the Recommendations for systemic Rule of Law issues relating to the communications interception revealed in spring 2015, a report by the Senior Experts Group, led by Reinhard Priebe.⁴

The International Community and the Przino Agreement

The Przino Agreement consists of the *Basic Text* (2 June 2015), the *Annex to the Agreement* (19 June 2015) and the *Agreement Protocol* (2-15 July 2015). Due to the failure on June 2 to achieve agreement related to the composition of the new government in the transition period, the Annex to the agreement only confirmed the continuation of negotiations between the leaders of the four parties, with the mediation of the EU and US ambassadors to RM, Aivo Orav and Jess Bailey, set the condition that the opposition must return to Sobranie and that an agreement concerning the composition of the new government must be reached. Finally, the Agreement Protocol resolves the most controversial issues related to the composition of the Government in the transition period.

The significant role played by the international community in achieving and enforcing the Agreement does not show in its provisions. The representatives of the EU, USA and EU member states describe their contribution as *help or support in overcoming the political crisis*. "Macedonia has won", was a short comment made by Jess Bailey, who then congratulated the signatories to the Agreement. This relationship may be interpreted through the semi-sluggishness that characterised the international community up until the bloody events in Kumanovo on 9 and 10 May 2015, when they took active engagement in resolving the crisis. There were rumours about the events in Kumanovo that this raid of an Albanian gang from Kosovo was organised by the Macedonian Ministry of Internal Affairs with the aim of diverting public opinion and spinning the *disorder of the inter-ethnic relations and the need for Macedonians to unite against Albanians*.

In practice it turned out that the realisation of the Agreement mostly depended on the representatives of the international com-

In practice it turned out that the realisation of the Agreement mostly depended on the representatives of the international community applying tremendous diplomatic pressure at each critical moment of the negotiations and during their implementation.

munity applying tremendous diplomatic pressure at each critical moment of the negotiations and during their implementation. The European Union was involved in the resolution of the crisis through *Johannes Hahn*, the Commissioner for European neighbourhood policy and enlargement negotiations. *This eurocrat visited Macedonia on four occasions between June and October 2015*. On the occasion of each visit a certain solution anticipated by the Agreement was found. The European Commission appointed experts as mediators for the implementation of the Przino Agreement. Occasionally MEPs Eduard Kukan, Richard Howitt and Ivo Vajgl were involved in the negotiations usually as a kind of advance guard for Commissioner Hahn. In addition to Ambassador Bailey, the State Secretary Assistant Victoria Nuland was also involved in the negotiations on behalf of the USA.

In practice, the fundamental burden of the implementation of the Agreement by the international community was borne by the mediator *Peter Vanhaute*. Mediation included direct interference in formulating laws envisaged in the Przino Agreement. This Belgian diplomat became the most relevant source for the flow of the negotiations and the implementation of the Agreement. Although the Agreement itself does not have a particular structure and subheadings, the content makes it clear that its principles and aims are defined in the first four points, as well as the last point of the Protocol. These are the following: acting in the interest of all citizens and communities; commitment to Euro-Atlantic processes and democratic principles; respect for the democratic principles of political responsibility; inclusion of all main political parties through a consultation and coordination process; respect for the agreements and overall good will, and avoiding new obstacles to early elections. On the whole, the main aim of this Agreement was *to bring the country on to the Euro-Atlantic path*. As the agreement was the result of a compromise, numerous weaknesses of the deficient Macedonian democracy remained obscured. One of the most obvious weaknesses of the Macedonian legal and political system is *the*

⁴ http://www.balkananalysis.com/files/2016/06/20150608_recommendations_of_the_senior_experts_group.pdf; <http://telma.com.mk/vesti/shto-sodrzhi-izveshtajot-na-priebe-celosen-tekst>.

non-functional constitutional order of RM. This weakness also hides other dangers, such as the emergence of an even bigger crisis, inter-ethnic tensions and clashes.

As a therapeutic medicine, the Agreement provided for *early parliamentary elections and a "transition period" that should secure the conditions for fair and free elections in accordance with European standards.* In this sense, in the first phase, the opposition enters the Government with two ministers and two deputy ministers, while the second phase envisaged that Prime Minister Gruevski step down and be replaced as prime minister by another from the governing party. At the same time, additional changes and reforms were envisaged, such as changes in the functioning of the State Election Committee, revision of the electoral roll according to the recommendations of OSCE/ODIHR, reforms in the sphere of the media in terms of both financing and the operation of the State public broadcasting service, which had become the main media tool of the leading parties.

The establishment of the Special Public Prosecutor's Office as the most positive part of the implementation of the Przino Agreement is a new feature in the Macedonian legal system because this step finally showed courage and logical reasoning in introducing a system inspired by the principle of the rule of law.

However, beside the fact that this institution was elected by all the deputies in Sobranie, the governing party asked the Constitutional Court to give its ruling on the constitutionality of the Law, which established the Special Public Prosecutor's Office. Other Przino Agreement provisions were contested in a similar way. Different deadlines failed to be met, such as for media reforms, removal of party cadres and influence from judicial institutions and independence of the judiciary, electoral roll revision, acting on the decisions of the Special Public Prosecutor's Office by the judicial authorities, separation of the executive power from the governing party. An additional crisis factor was the decision of President Ivanov to grant pardons to some fifty incriminated politicians after the previous amendments to the law were nullified by the Constitutional Court, which gave President Ivanov the right to do so.

Epilogue

During 2015 and 2016, the international community applied strong pressure in the area of political crisis management in Mac-

edonia, just like in 2001, when the security crisis was taking place. The actions of the international community were aimed at the establishment of the rule of law, control of the system of checks and balances and implementation of other Copenhagen criteria. The ten-year authoritarian rule of Gruevski and its elaborate state-party system of control and clientelism, accompanied by massive media support of state and paid-for private media, created animosity towards the international community in members and supporters of the leading VMRO-DPMNE. Moreover, former Prime Minister Gruevski and President Ivanov stated on several occasions that *centres of foreign power* acting against VMRO-DPMNE and Macedonia are behind the Special Public Prosecutor's Office. Media barons on the payroll of the leading party went even further by making open statements against Euro-Atlantic integration, against Washington and Brussels and in favour of greater cooperation with Moscow.

In this moment, when the negotiations have entered a blocked phase, all hopes of civil society and the opposition are directed towards the international community. In the eyes of the young people, the only way out from the political crisis lies in intervention by the international community. The USA are more efficient than members of the EU, which, even after Brexit, has 27 member states without a uniform foreign political position. Maybe the European foreign policy will become more consistent and efficient after Brexit, especially when it comes to massive deviations of candidate states and member states from the liberal democracy model. For now, Gruevski stands firm even after numerous arguments regarding his involvement in many criminal affairs and scandals. It is believed that Hungary, Poland, Spain and several other EU member states support Gruevski for his rightwing orientation, irrespective of his populist, anti-democratic actions and criminal record. They justify their position by successful management of the migrant crisis that has swept the Balkan corridor. Are the rule of law and democracy going to continue to suffer in favour of safety and security? Justice may be slow, but it is clear that after this crisis, Macedonia will never again be as it used to be during the absolute rule of Gruevski's clan. ■■

International Involvement and the Rule of Law

(Mis)rule of Law

Nina Kisić

We now have laws ensuring equality of the parties (defence and prosecution) before a (presumably) independent court, laws guaranteeing fair prosecutions and trials. However, real-life equality of the parties, fairness of prosecution and trial are not characteristic of any of these countries' judiciaries. In addition, the guilty are occasionally acquitted. What went wrong?

In the past 10 years (and in some cases slightly more), all the countries of the region of former Yugoslavia have undergone a thorough change of legal system regarding criminal procedural law. The main change was that investigation in criminal cases no longer lies within the purview of the investigating judge (as it had for over 50 years), but in the hands of the prosecution.

The guinea pig in this process was Bosnia and Herzegovina, where in 2003, the Office of the High Representative, in accordance with its powers, imposed a new Criminal Procedure Act of BiH. This law has since been adopted by the BiH Parliament. Croatia and Serbia were next to adopt such an act, soon followed by Macedonia, Montenegro and Kosovo. In all these countries, the international community drove the changes to the legal system, whether through imposing it (as in BiH) or lobbying (other countries).

The main idea of this reform, that is occasionally described as changing a civil law system into an anglo-saxon one, is to ensure equality of the parties before the court. Criminal Procedure Codes of the countries of the region are extremely well written (it is impossible to write a perfect law or an all-encompassing law, as any legal professional will agree – law cannot predict life). Some say that so-called material truth was abandoned in favour of procedural

truth, meaning that the point of criminal trial is not for judges to uncover the truth, but only to rule on the evidence and arguments the parties present to them. This is not a correct understanding, as judges are entitled to ask for more evidence if some matter relevant to the case remains unclear, thus according them the power to clarify the matter independent of the parties. Additionally, prosecution has a duty to investigate both the circumstances that are to the detriment of the accused and those that favour them.

So, we now have laws ensuring equality of the parties (defence and prosecution) before a (presumably) independent court, laws guaranteeing fair prosecutions and trials. However, real-life equality of the parties, fairness of prosecution and trial are not characteristic of any of these countries' judiciaries. In addition, the guilty are occasionally acquitted. What went wrong?

Several things did: laws were merely imposed/amended (in fact, dumped on) legal professionals without preparation; laws contained provisions that logistically could not be applied immediately (facilities, equipment); at the time, countries had an incredible amount of criminal cases going into trial; law schools in all these countries failed magnificently to train new legal professionals.

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What happened is that prosecutors and defence attorneys had to start playing an extremely active role in criminal trials – something they were neither trained for nor used to. In addition, prosecutors had to start conducting criminal investigations for the first time. In contrast, judges, who used to play an extremely active role in the courtroom, were reduced to imposing procedural rules and were expected to make a factual and legal finding at the end of the trial. Obviously, no-one was ready for this and it showed then, as it does now.

Examples include prosecutors simply ignoring certain procedural aspects of the investigations (for example opening and inspection of seized objects and documents), which then leads to acquittal, as evidence obtained in this way is found illegal. Judges order special investigative measures without adhering to the letter of the law (no explanation of the grounds for suspicion and proof that obtaining the evidence in any other way would either be impossible or accompanied by disproportional difficulties), and evidence collected by the use of these measures is proclaimed illegal (with luck, that is done by the court during trial, but it can also be done by the European Court of Human Rights – the unfortunate thing here are the costs and embarrassment brought on the country due to the mistake of a judge).

Although prosecutors are somewhat improving in this sense, the root of this problem seems to be that for years, judges used to cover for prosecutors' mistakes, trying to be understanding of the (admittedly) difficult role prosecutors found themselves in – having to carry out whole investigations for the first time in their careers, and without any training or practice. This led some prosecutors to stop trying, presuming the judges will find a way to legalise their mistakes. Practice has started to show that this presumption was a costly mistake.

Direct and cross-examination of witnesses was introduced into a legal system where such forms of examination were unknown. This was linked to an additional new courtroom technique – objections. Law schools do not teach their students Advocacy, and apart from occasional and inconsistent trainings, there is no sustainable system of teaching legal professionals these new and essential skills. Additionally, defence attorneys have shown tenacious resistance towards learning new skills. This leads to improper examinations and, worst

Most of the corruption and high-level organized crime cases are connected with high-level politicians. Countries have taken different approaches – Serbia and Croatia seem to prefer to wait until someone loses power to begin prosecutions, as opposed to BiH and Montenegro, which seem to prosecute politicians regardless of their current position. In both cases, there are claims that the prosecutions are political, but none of these have so far been proved.

of all, judges find themselves in a situation where they make significant mistakes that influence the outcome of the trial. The most common mistake is the refusal to make a decision on objections regarding the legality of evidence as soon as such an objection is made, including instead such a decision in a "decision on the main issue", which is actually a ruling.

Newly introduced laws foresee certain procedures that require equipment that countries simply do not have and/or do not have personnel trained to use it (this is mostly true for certain types of cyber-analysis). Additionally, many provisions of the new laws require rulebooks that do not exist (for example, on chain of custody and safekeeping of seized objects and documentation). Some provisions required new institutions to be formed which, in most cases, took years (for example, agencies to deal with Forfeiture of property obtained by commission of a criminal offence). In some countries of the region (Croatia, for example), application of such provisions of the new law was suspended until procedures and institutions were established, and in some countries (BiH and Serbia for example) such provisions were simply ignored until procedures and institutions were established (still ongoing in some cases).

These laws were changed at a time of extreme significance for these countries – these are countries recovering from war (BiH, Croatia, Kosovo, Serbia), sanctions (Serbia), highly undemocratic political systems (all of them), high-level political murders (BiH, Serbia and Montenegro), mafia wars (all of them), high-level cor-

ruption cases (all of them). All these problems (which, in the case of BiH, include an incredible number of war crimes cases) had to be investigated and brought to trial. This is a task that is close to impossible.

In addition, in all of the countries, most of the corruption and high-level organized crime cases are connected with high-level politicians. Countries have taken different approaches – Serbia and Croatia seem to prefer to wait until someone loses power to begin prosecutions, as opposed to BiH and Montenegro, which seem to prosecute politicians regardless of their current position. In both cases, there are claims that the prosecutions are political, but none of these have so far been proved.

What has this led to? This has led to cases of acquittals of evidently guilty individuals due to illegally obtained evidence. Obviously, any such case causes embarrassment to the court and prosecution, high costs paid by taxpayers, and the general public losing trust in institutions. In other cases, courts decided to ignore blatantly illegally obtained evidence, which has led to serious human rights violations, noted by the ECHR, and countries having to pay compensation to the victims of violations and in some cases amend the relevant laws (most of these situations concerned Croatia – Lisica, Dragojević, Ajdarić, Petrina, Horvatić).

Of all countries in the region, the guinea pig (BiH) is proving to be a successful experiment. To an untrained eye and reading media reports, it would appear that BiH has an extreme problem with unfair trials. This is only a matter of perception. To paraphrase Plato, fairness is in the eyes of the affected. BiH does have the lowest number of ECHR judgments against it, and almost none regarding the fair trials. The Constitutional Court of BiH "catches" most violations and deals with them itself, within the country. Obviously, there is a great deal of space for improvement. Many bylaws are missing, more training is necessary (law schools in particular need to immediately adjust their curricula to reality), and, most importantly, courts need to start building respect in the general public.

As can be seen, there are many problems in the countries in the region regarding change in the legal system. However, what must be taken into account is that this system is now fairer. The system is working. Prosecution is getting better in conducting legal investigations, defence attorneys are getting better at protecting the rights of the accused, and judges are getting better at ensuring fair trials. This means that an ordinary citizen of the region stands a fairer chance should she ever face criminal proceedings. ■■■

Bosnia: A Constitution in Distress

A constitution born from distress will continue to be in distress – Bosnia as a never-ending story of perpetual crisis

Vedran Džihic

Translated into real language, it is obvious that the long-standing passivity and reactive behaviour of the international community and the EU have fed ethno-politics as a central means for mobilisation and the securing of power. New geopolitics, with a weakened EU, a passive USA and a strengthened Russia, and Turkey with the respective authoritarian rollback, makes a reaction of the international community to the most recent conflict almost impossible.

Before the eyes of US President Bill Clinton and his counterparts from Russia, Germany, France, Great Britain and Spain, in Paris in December 1995, then-Presidents of Bosnia and Herzegovina, Serbia and Croatia, Izetbegović, Milošević and Tudman, signed the Dayton Peace Accord and thus ended the bloody war. This historical image has burned itself into the collective consciousness of Bosnia and Herzegovina and, on account of the contradictory nature of Dayton, is still putting a deep strain on the Bosnian psyche, even 21 years after it has come to pass.

The Peace Accord and the Bosnian Constitution contained in it, guaranteed by the war commanders from the neighbouring countries, born thousands of kilometres away from Bosnian borders, not asked for by anyone in this form – Dayton indeed was not a good start to the post-war period. As the past 21 years have painfully shown, a Constitution born in distress shall continually be in distress, and with it inevitably the whole state.

The recent conflict in Bosnia and Herzegovina, revolving around the referendum in the Republika Srpska (RS) is only one in a series of many situations of distress and difficulties which Bosnia and Herzegovina has experienced since the end of the war. In this most recent conflict, the main actors are the Bosnian Constitution and the Constitutional Court. In November 2015, the Constitutional Court of BiH ruled that celebrating the National Day of Republika Srpska on an Orthodox holiday is discriminatory against non-Serbs in the RS. Thereupon, the RS National Assembly, presided by RS President Milorad Dodik, announced a referendum. It was^{*} held on September 25. One thing is clear and unmistakable – the referendum in the RS is a direct affront against the rulings of the Constitutional Court and thereby represents an attack on the BiH Constitution. Before we come to the political consequences of this decision of the RS, a short discussion of the Constitution itself is necessary.

Against the Constitution, against the country

By establishing both entities invested with high-level competencies – the Federation of Bosnia and Herzegovina and the Republika Srpska, the compromise reached in Dayton, Ohio – which no side had wanted in this form – created an unusual institutional framework.

* the article was submitted before the referendum took place (editor's note)

Yes, the Dayton Constitution is unusual, inconsistent, and has shortcomings¹. Alongside the state structure, what is especially problematic is the part of the Preamble that explicitly lists Bosniaks, Serbs, and Croats as constituent peoples. Thus, the citizen (*citoyen*) as a political subject was replaced for the most part by the ethno-nationally defined person, which thus indirectly replaced civic society with the respective ethno-national collectives (the Serbs, the Croats, and the Bosniaks) as the central political subjects. Such an explicitly ethnic concordance system leads to various kinds of discrimination based on ethnic origin, as was confirmed, not for the last time, by the decision of the European Court of Human Rights in Strasbourg in the Sejdić-Finci case. Thus, the Constitution as a legal norm violating other legal norms (Human Rights Conventions) is already highly problematic on its own. But even more problematic are the real political circumstances originating from the Constitution, which form the constitutional reality. Ethnic proportionality on all state levels exacerbated the political competition based on ethnic and national criteria, and initiated the rule of ethno-politics that has been keeping the country in a stranglehold. The essence of ethno-politics is the continuous perpetuation of a state of crisis in post-Dayton Bosnia, based on an unrestricted dominance of the ethno-national approach as a tested, and, in the eyes of ethno-national elites, highly efficient governance technique.

The Constitutional Court of Bosnia and Herzegovina, as the central institution for upholding the Constitution, has been on shaky ground since the beginning given the paradoxes and especially the (ethno)politicisation of the Constitution. It was politicised not least because of its composition. To this day, the Constitutional Court has comprised nine members; the positions are equally divided based on the ethnic principle, similar to other state institutions, with the addition of international community representatives. Four members are from the Federation (two Bosniaks and two Croats), two from the RS, and three members are appointed by the European Court of Human Rights.

Whoever Questions the Constitution, Questions the State

Despite all the weaknesses and inconsistencies of the Dayton Constitution, it remains the central legal document of the state of Bosnia and Herzegovina, at the top of the hierarchy of the legal system. Thus, regarding the recent debate concerning the referendum in the RS, there is not much room for interpretation; the equation is simple: If one deliberately, for political reasons, does not accept a decision of the Constitutional Court, one also does not accept the Constitution itself. If one questions the Constitution, one questions the whole state. At the same time, by questioning the Constitution one is also questioning the constitutionally guaranteed existence of the RS, and thereby possibly might – in this case consciously – open Pandora's box. Against the Constitution, against the country.

Back again to the current conflict. Yes, local elections are to be held this fall, Dodik and his SNSD would never win, what with the disastrous results of their long-running rule over the RS, were it not for the ethno-national card that can be played again this time. The decision of the Constitutional Court on the National Day of the RS came in handy for Dodik and became the life jacket he can cling to doggedly. His political fate and the fate of those clientelistic and corrupt circles within the economy and politics that he has established during the last ten years as a parallel universe of power in the RS, hang by a thread. Stricken, he is fighting even more eagerly and is ready to accept any form of conflict.

Internationals as Spectators

As we know from all the years that have passed since Dayton, ethno-political escalation in Bosnia only warms up when the demonised counterpart, in this case the Bosniaks, also jumps on the bandwagon. Just like Dodik and Silajdžić acted as the communicating counterparts prior to the elections in 2006, today it is Dodik and Izetbegović firing their rhetoric at each other in order to catch more votes. While the political performers are presenting daring manoeuvres high above on the rope, the spectators are breathless. In the meantime, the inter-

1 An exceptional analysis of the Dayton Constitution, characterised by a density and analytical precision that was unavailable anywhere else as of the time this text was published, can be found in the opus magnum of Bosnian constitutional lawyer Edin Šarčević, who is teaching in Leipzig (*Ustav iz nužde* [A Constitution of Necessity], Sarajevo 2010).

As unusual and inconsistent the Bosnian state construction and political reality have been since Dayton, a last – normative and real – frontline of this fragile statehood needs to be found. This can ultimately only be the Constitution. It needs to evolve, to further develop. Should the Constitution be capriciously given up, and should the new geopolitical constellation with a weakened EU and an increasingly strong Russia and Turkey leave Bosnia in a geopolitical vacuum, a break-up of the country is no longer ruled out.

national community and the EU have been banished from administrating the circus to the spectators' seats, and look on, as if paralysed. Translated into real language, it is obvious that the long-standing passivity and reactive behaviour of the international community and the EU have fed ethno-politics as a central means for mobilisation and the securing of power. New geopolitics, with a weakened EU, a passive USA and a strengthened Russia, and Turkey with its respective authoritarian rollback, makes a reaction of the international community to the most recent conflict almost impossible. What remains are warnings, appeals to reason, and lastly the hope that this time, things will once again turn out well. However, thereby Bosnia becomes more and more a collateral victim of the passivity of the international community of states.

The ethno-political game, which has been played so frequently since Dayton, and which has been recently played with the referendum, will unfortunately continue. After the referendum has taken place, this ammunition will have been used up for the moment. In the future, the stakes will have to be raised. This would therefore mean that what is striven for is a separation from Bosnia and Herzegovina, and that a further referendum would be held with that objective. That would be the last level of escalation, but would ultimately be too risky. Even with Russia's support, resistance to this would be too large. Serbia led by Vučić could not afford this on any account and would probably finally have to restrain Dodik.

Playing with fire with consequences

Either way, playing with fire regarding the referendum has served its purpose once more. The mobilisation prior to the local elections has once more been successfully executed according to a rhetorical-nationalistic pattern. The counterpart on the other side, the Bosniak SDA, will also profit from this new episode of aggressive skirmishing with Dodik and gather the majority of Bosniak votes behind them. The victims will likely remain the same: On the structural level, the damage can already be seen clearly – the already dysfunctional political system of Bosnia and Herzegovina keeps on eroding and is in danger of coming close to an absolute standstill. And the people of Bosnia and Herzegovina will be the greatest victims, kept as hostages by politics and only losing from day to day.

To come back to the Constitution once more: As unusual and inconsistent as the Bosnian state construction and political reality have been since Dayton, a final – normative and real – frontline of this fragile statehood needs to be found. This can ultimately only be the Constitution. It needs to evolve, to further develop. Should the Constitution be capriciously given up, and should the new geopolitical constellation with a weakened EU and an increasingly strong Russia and Turkey leave Bosnia in a geopolitical vacuum, a break-up of the country is no longer out of the question.

It could backfire on Europe to forget Bosnia once more after failing in the 1990ies. Fast strategies for rhetorical disarmament are needed. This can only take place if the EU takes Bosnia and its problems seriously. The increasingly meaningless EU perspective needs to be revitalised; Bosnia needs to become the core of a new, aggressive enlargement policy in the Balkans. In times when Turkey appears to be increasingly lost as a candidate, all resources should be focused on the Balkans, where the intervention should be harder and more consistent if necessary. The long-neglected constitutional order in Bosnia can only be saved with an offensive Europeanisation of the country by the EU and the international community that have themselves created it. ■■■

Macedonia: Stability Through Democracy!

Bojan Marichikj

The main features of the implementation of the Prizno Agreement have been unreasonable delays and constant obstructions by the biggest and most powerful political party, VMRO-DPMNE. The reason for this is simple: incremental but unstoppable dismantlement of the power system established by this party in the institutions and the establishment of a system of legal accountability for the wrongdoings registered in the wiretapped conversations.

Introduction

In the midst of the crisis of the EU Enlargement Policy, both the effectiveness and the principles of the EU diplomacy are being tested. This time, it is once again in (and across) the Western Balkans, and again in Macedonia. After the success of the diplomatic efforts of the EU and US back in 2001, when the country was on the edge of another large-scale inter-ethnic conflict between the Macedonian majority and Albanian minority, the country was put at an EU accession track, receiving substantial impetus from its EU candidate status alongside Croatia in 2005 and from the European Commission's recommendation for opening the accession negotiations – granted in 2009 but never actually effectuated. Since 2008, Macedonia has been officially impeded by Greece on its way to opening the pre-accession talks, saddled with the condition of the prior resolution of the bilateral 'name issue' over the right of the country to use the term 'Macedonia' and under what conditions.

However, the long-standing perception built by the EU, that the only impediment to Macedonia's bright European future is the unreasonable Greek conditionality over an unreasonable dispute, has been

transformed over the last two years by the increasing retrogression of the democratic political culture, undermined rule of law and autocratic trends established by the right-wing conservative incumbent (since 2006) political party VMRO-DPMNE, assisted by the ethnic Albanian political party DUI, a major actor despite being relatively smaller in terms of parliamentary seats, in coalition with which it has governed since 2008¹.

These trends brought the country into a continuous two-year political crisis marked by a dysfunctional Parliament, often boycotted by the opposition Social-Democrats and their coalition partners, unceasing mass civic protests of various dissatisfied groups of citizens, the revelation of a wire-tapping scandal by the leader of the opposition who published nearly 400 recordings of phone conversations, most probably produced by the State Secret Service, revealing an entire

1 Indicated in the MCET's public opinion poll Eurometer 2015: In spite of the government's propaganda and the rhetoric that Macedonia cannot join the EU because of the "Name Issue" and the Greek veto, and that the country should look for other alternatives, more than 50% of the surveyed citizens see the European Union as the best alternative that Macedonia has, while nearly 44% of the surveyed citizens don't see eye-to-eye with the Government on its rhetoric and think that it is using the name issue with Greece only as an excuse. The detailed results are available at <http://mcet.org.mk/documents/RNa7scXWHFMqG-WRpA>

First and foremost, the Priebe Report and the Urgent Reform Priorities must transform into an Urgent "Rule of law" Blueprint for Macedonia with specific tasks, duties and datelines. The implementation of this "Rule of Law" Blueprint should be treated as part of the new Approach of the European Commission for the early opening of the Pre-Accession Negotiations

system of corruption and repression under the ruling Government. In the period from February to June 2015, the opposition held a total of 36 press conferences as part of its project titled "Truth about Macedonia". In these press conferences they presented materials and evidence showing abuses and crimes perpetrated by the governing authorities. Disclosed materials *inter alia* represent a direct attack on authorities in order to completely and utterly expose and unmask the aura of honesty, humanity, frankness, closeness to the people, etc., which VMRO-DPMNE ever so ardently used for their own promotion during the last nine years². As a response, the Ministry of the Interior opened a case, entitled "Coups", convicting the opposition leader Zaev and three former Secret Service officers for a grave violation of the constitutional order.

Such escalation warranted a more serious and organized involvement of the International Community (IC) represented by EU Member States, EU Institutions and the US State Department. In this text I analyse the transformation of the approach of the IC towards the issues in Macedonia, the model of political crisis resolution they adhered to, and the outcome of the entire crisis management process. In addition, I will try to assess the achievements as much as the challenges throughout the process. These challenges should serve as lessons learned for the future stages of negotiations given that the political crisis is very far from a viable solution. Moreover, these learned lessons could be useful for other countries in the Western Balkans region that are dealing with deteriorated democracy and political culture, impaired system of rule of law and unstable institutions.

No space left under the carpet!

The changing trends in the approach of the IC towards the 'democracy and rule of law' issues in Macedonia started in February 2015, after the Opposition Leader Zoran Zaev started to publish a series of wiretapped conversations on 10 February 2015. Seven days after the announcement of bombshell no. 2, on 17 February 2015, Johannes Hahn paid his first visit to the Republic of Macedonia in his capacity as EU Commissioner for European Neighbourhood and Enlargement Negotiations.³ On meetings held with President Ivanov, Prime Minister Gruevski, Foreign Minister Popovski and SDSM's leader Zaev, Commissioner Hahn expressed serious concern on the part of the EU with the ongoing political situation in the country (see the statement issued on the occasion of Johannes Hahn's first visit to Macedonia). The key message conveyed at meetings with all representatives concerned the proposal for mediation on the part of the European Parliament to address the political crisis.⁴

The first signs of diplomatic protest occurred very soon afterwards. First, as part of this visit, he had meetings with representatives from the government and the opposition, as well as with representatives of civil society organizations and Member States' representatives in the country. Hahn's meeting with Prime Minister Gruevski did not take place in the government's building, because in the aftermath of video footage leaked to Zoran Zaev related to the "Coups" case, this building became known in public as the place where collocutors of the Prime Minister are being filmed. Second, the very first meeting between Gruevski and the President of the European Commission, Jean Claude Juncker, was scheduled for 26 February 2015. Three days earlier, on 23 February

³ <http://www.makdenes.org/archive/news/20150217/428/428.html?id=26853507>

⁴ <http://kapital.mk/han-evropratenitsi-da-ja-reshat-krizata-vo-makedonija/>

² <http://mcet.org.mk/documents/dXxfX5zfYdNE3MX7k>

2015, Juncker's deputy spokesperson Marina Andreeva announced⁵ that this meeting will be cancelled due to ongoing developments in the Republic of Macedonia, adding that the time is not yet ripe for such a meeting to take place.

During his official visit to NATO headquarters in Brussels on 11 March 2015, Prime Minister Gruevski met NATO Secretary General Jens Stoltenberg. The Gruevski-Stoltenberg meeting can be assessed as public pressure to resolve the political crisis, with clear expectations regarding respect for democratic processes in the state, which should be guaranteed by the government no matter what.

In parallel with the Prime Minister's visit to Brussels, on 11 March 2015, at its plenary session in Strasbourg, the European Parliament discussed the resolution on the progress of the Republic of Macedonia in 2014. At this session, the European Parliament (EP) adopted the Resolution on the Progress of Republic of Macedonia and, for the ninth consecutive time, invited the EU Council to set a date for the start of accession negotiations. Quite expectedly, the resolution also referred to recent events in relation to the "Coup" case, the wiretapping program and the political crisis in Macedonia. As part of its resolution, the Parliament condemned any illegal surveillance and called for all allegations to be published and freely reported and for an independent investigation to be carried out into all allegations and illegal surveillance, with full respect for the principles of transparency, impartiality and presumption of innocence. Furthermore, concerns are expressed in relation to deteriorated media freedoms, frequently practised self-censorship and political defamation in the media, as well as the media's dependence on budget funds.⁶

In the period during which he was regularly announcing bombshells within the project "Truth about Macedonia", in a public appearance on a debate show, Zoran Zaev revealed that six ambassadors of influential states have also been wiretapped.⁷ In that same debate, careful about the sensitivity of such information, Zaev briefly replied to a question that he would personally deliver the folders with wiretapped conversations

to persons under surveillance. Within one month, EU Ambassador Aivo Orav submitted a demarche to the Ministry of Foreign Affairs (MFA) on the disregard for the Vienna Convention.⁸ This demarche confirms that the wiretaps presented to ambassadors in Macedonia were authentic and that they have been captured by the surveillance program as well.

All developments referred to above were merely an announcement for the EU's enhanced presence as facilitator in finding a solution to the political crisis in the Republic of Macedonia, although the political level and method of brokering such a solution remained to be determined.

Paving the way for negotiations

In the period between 30 March 2015 and 31 May 2015, six negotiating sessions took place in Brussels, Strasbourg and Skopje under the auspices of EU Commissioner Hahn and three MEPs: Richard Howitt (S&D, UK), Eduard Kukan (EPP, Slovakia) and Ivo Vajgl (ALDE, Slovenia).⁹ These negotiations encompassed representatives of the VMRO-DPMNE (the senior party in the ruling coalition), the SDSM (the main opposition party), the DUI (the junior ruling party and the major Albanian party) and the DPA (the minor Albanian party). The US Embassy in Macedonia also took part in these talks in support of the EU efforts.

The negotiations, held behind closed doors, started with separate meetings between delegations of both political parties and the EU politicians. After each delegation presented their starting positions, a joint meeting between both delegations and the facilitators was organized. According to information presented in the aftermath of these meetings, both sides remained on their initial positions. These six meetings did not result in any specific success, although after each of the meetings the participants announced some degree of progress.

US Deputy Assistant Secretary of State for Europe and Eurasia Hoyt Brian Yee visited Macedonia on 16 April 2015¹⁰ and met with the highest political actors from both the government and the opposition. After

5 <http://www.euractiv.com/section/enlargement/news/juncker-cancels-meeting-with-macedonian-pm-over-tensions/>

6 <http://goo.gl/0Bvb0p>

7 <http://plusinfo.mk/vest/16396/rse-prislushuvani-i-stranski-diplomati-vo-makedonija>

8 <http://goo.gl/Zft4fh>

9 <http://24vesti.mk/brisel-dijalog-megju-vmro-dpmne-i-sdsm>

10 <http://www.makdenes.org/archive/news/20150416/428/428.html?id=26958686>

his meetings, Hoyt Yee stated to the press that the international community is willing to help the Republic of Macedonia in establishing dialogue and encourage the authorities to find a way out, but that it does not have ready-made solutions to the political crisis and that it is now therefore of the utmost importance for the opposition and the government to sit around the table and reach an agreement on a solution, in particular because Macedonia does not have the luxury of time as regards the country's Euro-Atlantic integration.¹¹

In the round table debate held on 27 April 2015 at the Faculty of Law in Skopje, organized by the Konrad Adenauer Foundation, Ambassador of the Federal Republic of Germany Christine Althaus expressed her views about the overall political situation in Macedonia and directed harsh criticism at the government, not only in terms of the manner in which it handled the current political crisis, but also concerning numerous problems in the state, such as: control over the judiciary, politicization of institutions and media independence. In her opinion: *"According to Western European standards, political consequences are inevitable taking into consideration the proportions and nature of these allegations. I will be as clear as my colleague from the US was last week: bearing political consequences means tendering resignations, as a precondition for launching transparent and impartial investigations"*.¹²

Immediately after the events of 9 May in Kumanovo, where a massive police intervention took place in an Albanian neighbourhood to crush a criminal group under mysterious circumstances, and during which eight police officers were killed, four ambassadors from influential EU Member States (Germany, UK, France and Italy), accompanied by the head of the EU Mission in Macedonia and the US Ambassador, held a meeting with Prime Minister Gruevski. Topics discussed behind closed doors remained secret from the public, but the joint statement given once they left the meeting contained harsh criticism for the Government of Republic of Macedonia: *"We have specifically reiterated our concerns to the Prime Minister that his government has*

not made progress towards accounting for the many allegations of wrongdoing arising from the disclosures. This continued inaction casts serious doubt on the Government of Macedonia's commitment to the democratic principles and values of the Euro-Atlantic community".¹³

Ultimately, the message sent by the ambassadors to the incumbent government concerned the fact that failure to deliver on these commitments would move Macedonia further away from its integration in the EU and NATO. The same evening, Gruevski's closest collaborators in the Government resigned: the Minister of the Interior – Gordana Jankuloska, the Minister of Transport – Mile Janakieski and the Director of the Secret Service – Sasho Mijalkov.

Przino Agreement – the way out from the deepest political crisis in Macedonia since 2001!

The Przino Agreement is the outcome of three months of painstaking negotiations to find an exit route from the political crisis that was becoming more intense with each "bombshell"¹⁴ disclosed, revealing new systemic irregularities and corruption. The signing of the so-called Przino Agreement took place at the seventh interparty meeting held on 2 June 2015 at the Przino-based residence of the EU Ambassador Aivo Orav. The first, more serious breakthrough in negotiations was achieved on 2 June 2015, after eight hours of negotiations, when Commissioner Johannes Hahn announced that the leaders of the four biggest political parties have agreed to hold early parliamentary elections in April 2016, preceded by a so-called transition period. This breakthrough in negotiations heralded the contours of a solution which, at that moment, was far from being sufficient, but most certainly marked a starting point. The final form of the Przino Agreement was reached on 15 July 2015, with two meetings taking place in the meantime: one held on June 19 and

¹¹ https://www.facebook.com/permalink.php?id=119869762156&story_fbid=10152827520152157

¹² <http://novatv.mk/index.php?navig=8&cat=2&vest=21929>
<http://micnews.com.mk/node/43127> (English)

¹³ <http://goo.gl/auKZEM>

¹⁴ "Bombs" is the popular name given to wiretapped conversations disclosed by the opposition, revealing numerous abuses and wrongdoings on the part of high government officials. Detailed overview of all wiretapped conversations is given as part of the Twenty Fifth Accession Watch Report titled "Tick-Tack: In the Nick of Time", published in June 2015 and available at: <http://mcet.org.mk/gridfs/data/id/bdbb52448e57471e95d49351>

another on June 29. On 15 July 2015, in the presence of Commissioner Hahn, the Przino Agreement was finalized. It regulates key issues related to early parliamentary elections scheduled for 24 April 2016.

The commitments assumed under the Przino Agreement include:

1. Parties to agree on the exact organization of the government preparing the elections.
2. Revision and modification of the composition of the State Election Commission (SEC).
3. Return of the opposition to the Parliament.
4. Discontinuation of further disclosures of any materials arising from interception of communications.
5. SDSM to hand over all materials from intercepted communications to the competent public prosecutor.
6. Enhanced competences and authorizations for the SEC to ensure free and fair elections, with a level playing field for all political parties.
7. Appointment of a new Special Public Prosecutor granted full autonomy to lead investigations into, and arising from intercepted communications.
8. The parliamentary committee (chaired by representative of SDSM) overseeing the work of the Directorate for Security and Counter-intelligence (UBK) and interception of communications to begin work and publish its first report.
9. Facilitated negotiations between stakeholders to ensure greater media freedoms.
10. Appointment of a new Minister of the Interior (upon nomination by the SDSM);
11. Appointment of a new Minister of Labour and Social Policy (upon nomination by the SDSM).
12. Appointment of a new Deputy Minister of Finance with veto rights (upon nomination by the SDSM).
13. Appointment of a new Deputy Minister of Agriculture, Forestry and Water Economy with veto rights (upon nomination by the SDSM).
14. Appointment of a new Deputy Minister of Information Society and Administration with veto rights (upon nomination by SDSM).
15. Submission of formal resignation by the incumbent government to the Parliament.
16. Appointment of a new Prime Minister, nominated by the VMRO-DPMNE.
17. Holding fair and democratic parliamentary elections.

Priebe Report and the Urgent Reform Priorities as an impetus for the Przino Agreement

Several days after the Przino Agreement was signed (2 June 2015) and once it became clear that its contents do not regulate all open issues, interparty negotiations arrived at the turning point. Although announced as a special report with benchmarks for the transition period¹⁵ and qualified by Deputy Prime Minister for European Integration Fatmir Besimi¹⁶ as one in a series of reports complementing the Przino Agreement, the publication of the so-called Priebe Report proved to be the actual turning point.

Published on 8 June 2015, the Senior Experts Group Report on Systemic Rule of Law Issues Relating to the Interception of Communications, known as the Priebe Report,¹⁷ completely shifted the pressure in negotiations and outlined a final format for the Przino Agreement. This report was drafted by a group of experts contracted by the European Commission that included noted individuals, such as the former President of the European Commission and former chief of the anti-mafia department in Italy and Reinhard Priebe, in capacity of team leader. It was developed on the basis of several expert missions to Macedonia, numerous interviews and insight into previously drafted documents and documents drafted for the purpose of this expert mission. Within a period of almost two months, from the third week in April until early June 2015, three expert missions had taken place as fact-finding efforts for this report. The underlying message of this report was: "Macedonian parties need to find a lasting political compromise translated into an agreement to be signed in Skopje on June 2."¹⁸

¹⁵ <http://www.libertas.mk/video-brisel-podgotvuva-spetsijalen-i/>

¹⁶ <https://www.youtube.com/watch?v=aenMjf5W9qs>

¹⁷ <http://telma.com.mk/vesti/shto-sodrzhi-izveshtajot-na-priebe-celosen-tekst>

¹⁸ <http://goo.gl/gGv6iy>

The Priebe Report offered a detailed overview of the state of affairs relating to the rule of law in the Republic of Macedonia, especially concerning interception of communications, and found "*significant shortcomings*"¹⁹ in five main areas of concern:

1. interception of communications;
2. judiciary and the prosecution services;
3. external oversight by independent bodies;
4. elections; and
5. the media.

Among the many remarks, one emerged as crucial for the resolution of the political crisis in Macedonia and can be subsumed in one sentence: "The considerable gap between legislation and practice has to be urgently addressed and overcome";²⁰ additionally explained later in the report: "Only a few recommendations refer to necessary changes in legislation; most of them concern actions and choices within the existing constitutional and legal framework."²¹

Przino Agreement Derailed Quickly!

Once the Przino Agreement was broadly distributed, the Belgian expert and former politician Peter Vanhoutte joined the inter-party negotiations in the capacity of mediator appointed by the European Commission and mandated to facilitate the implementation of said agreement. Vanhoutte is tasked to chair working groups on the implementation of the Przino Agreement, which comprise members nominated by the signatory parties.

The main features of the implementation of the Przino Agreement have been unreasonable delays and constant obstructions by the biggest and most powerful political party, VMRO-DPMNE. The reason for this is simple. This Agreement entailed incremental but unstoppable dismantlement of the power system established by this party in the institutions and the establishment of a system of legal accountability for the wrongdoings registered in the wiretapped conversations. Thus, in nearly all the categories of the Przino Agreement

all the monitoring actors noted delays of at least three months. For example, the mandate and the composition of the State Electoral Commission, the institution critical for organizing free and fair elections, were supposed to be determined by 31 July 2015. This task was completed on 16 December 2015. The ruling party was only keen to observe a single dateline – the election day scheduled for 24 April 2016. Therefore, they started to take the Agreement seriously 100 days before 24 April 2016, the day when Gruevski was supposed to resign and assign a technical Prime Minister to organize the elections.

On 14 January 2016, one day prior to meetings scheduled between Commissioner Hahn and four party leaders to discuss the date of the elections and their possible postponement, as he was leaving the meeting of his party's executive and central committee, Prime Minister Gruevski announced that on 15 January 2016, he would present Parliament Speaker Trajko Veljanoski with his written resignation, thus complying with the Przino Agreement wherein it was stipulated that the Prime Minister should withdraw from his office 100 days before elections.

According to Nikola Gruevski, his political party respected all deadlines and obligations: the appointment of a special prosecutor; new composition of the State Electoral Commission, which he claimed is favourable for the opposition; appointment of opposition-nominated ministers in the government; new laws and reforms. Within one day of Nikola Gruevski's conditional resignation, on 15 January 2016, the Enlargement Commissioner Hahn arrived to Macedonia to gain insight into the implementation of the Przino Agreement. As anticipated, he first organized bilateral meetings with leaders of the four main political parties, followed by a joint meeting with all signatory parties to the Przino Agreement.

Although this meeting extended well into early morning hours, agreement was not reached among the four party leaders. SDSM representatives requested the postponement of elections scheduled for 24 April 2016 on the grounds of insufficient time to revise the electoral register and reach agreement on media regulation, as anticipated under the Przino Agreement. This was considered unacceptable by VMRO-DPMNE representatives.²²

¹⁹ Report of the Senior Experts' Group on Systemic Rule of Law Issues Relating to the Interception of Communications

²⁰ Ibid., 16

²¹ Ibid., 16

²² <http://www.24vesti.mk/izjava-na-johanes-han>

The pressure by the civil society on the EU worked!

During Commissioner Hahn's visit of 15 January 2016, a total of 74 CSOs (including MCET) presented him with a letter in which they argued that by that point in time, crucial conditions have not been secured and a favourable atmosphere has not been created for the organization of fair, free and democratic parliamentary elections that would restore citizens' trust that free decision-making in Macedonia is possible and that the electorate's decision would be respected by institutions and by all political parties. In that, as part of their open letter, CSOs reiterated that the full implementation of the Przino Agreement should mark the exit from the deepest political crisis in the state since 2001 and result in the organization of fair, free and democratic elections. In their opinion, failure to update the electoral register and the absence of an agreement on media reforms were the main arguments why elections scheduled for April 2016 needed to be postponed. Civil activists indicated that ruling parties are the main culprits for the current situation, as they have obstructed the implementation of the agreement.²³

In the aftermath of the failed negotiations held on 15 January 2016, the unilateral decision of the ruling parties to hold the elections on 24 April 2016, reached at the Parliament of the Republic of Macedonia in the absence of opposition MPs, disturbed the spirit of consensus and agreement that had been insisted upon by the Przino Agreement. On this account, 78 CSOs published a second letter which was addressed to EU Commissioner Hahn, as well as the broader international community, demanding their support for organizing fair, democratic and free elections, and calling on the IC to: (a) *adhere to fundamental values upheld by the EU (Urgent Reform Priorities and the Priebe Report)*, (b) *remain consistent in insisting on the implementation of **true reforms for fair and free elections***. (c) *clearly condemn the unilateral, frivolous and unconstitutional decision to hold the elections on 24 April 2016, made by the Parliament of the Republic of Macedonia without the participation of a large part of the opposition*.

In the opinion of the CSOs, without the fulfilment of conditions for free, fair

and democratic elections, which inevitably implies the postponement of the date for elections, they would have no other option but to call for a boycott of the elections scheduled for April and for mass protests against the regime.²⁴

Poor Implementation of Przino Agreement acknowledged!

On 29 January 2015, for the first time after having assumed office, the Prime Minister of the Republic of Macedonia held a meeting with US Ambassador Jess Bailey and EU Ambassador Aivo Orav. At the meeting, the ambassadors presented him with a letter²⁵ listing criteria across three points that should be fulfilled for elections to be fair and democratic, as anticipated in the Przino Agreement.

The first criterion defined by the United States and the EU concerns the fact that the State Electoral Commission must be fully staffed and funded by 19 February 2016. As regards the electoral register, an initial cross-check of all relevant databases must be completed to obtain a good picture about the scope of the process for consolidating it, including field checks. Furthermore, it was listed that the SEC must have a credible program, as well as sufficient time and resources to investigate and adjudicate anomalies found during cross-checks. There must be a clear legal framework for the timely removal of names that do not belong on the electoral register, and an adequate mechanism needs to be established for flagging names that cannot be removed but require extra scrutiny.

The second criterion concerns the fact that political leaders must reach an agreement on media reforms for the purpose of enabling objective and unbiased reporting and equal treatment of political parties.

Another important and mandatory criterion listed in this letter concerned measures necessary to ensure sufficient separation of the state and party. According to this criterion, senior public officials must make clear statements and issue written instructions that no pressure on public administration workers would be tolerated

24 <http://www.fosm.mk/mk/Home/NewsAndActivity?newsID=5060&catID=7>

25 <http://europeanwesternbalkans.com/2016/01/29/joint-eu-us-letter-to-prime-minister-dimitriev/>

23 <http://www.fosm.mk/mk/Home/NewsAndActivity?newsID=5056&catID=7>

and that no public administration worker or citizen should fear for their jobs or social benefits as a result of supporting or not supporting any political party.

New Date for Elections

On 21 February 2016, Ambassadors Bailey and Orav addressed a new letter²⁶ to Prime Minister Dimitriev, indicating that sufficient conditions are not in place to hold elections on 24 April 2016. In continuation, we present the highlights of this letter:

"We note that the work of the State Electoral Commission to date and the findings of all relevant experts indicate that at this stage the necessary conditions for organising credible elections on 24 April are currently not in place, although some progress has been achieved. Equally, an arrangement has not yet been reached on media freedoms, to ensure a more level playing field. We are also concerned at initial reports on pressure and intimidation of voters and others.

All this is very much regrettable.

We strongly encourage all political leaders, majority and opposition alike, and institutions to remain fully committed to the June/July Agreement including the steps taken under the Agreement so far. If elections cannot be held at the foreseen date, political parties are expected to work to take the necessary measures to allow holding credible elections at the earliest possible date, and with full respect to the responsibilities and ongoing preparatory work of the State Electoral Commission. We understand that the party leaders have mentioned 5 June as a possible alternative. Serious efforts by all stakeholders are now required to ensure the conditions conducive to a credible electoral process in which all citizens and parties should freely participate."²⁷

Several minutes before midnight on 24 February 2016, the Parliament of the Republic of Macedonia voted to change the decision on the dissolution of the Parliament, thus indicating that the Parliament would dissolve on 7 April 2016, which means that early parliamentary elections would be held on 5 June 2016. These elections never took place, as in May 2016 the Parliament convened and cancelled the election date. However, simultaneously the Parliament

replaced the Interior Minister and the Minister of Labour and Social Policy, appointed by the Opposition, and returned the duo that were serving as ministers before the Przino Agreement was implemented.

The road to Przino 2

Though we can argue what was the moment the ruling party finally abandoned the Przino Accord, for many it was the moment when President Ivanov came to a press-conference announcing that he has personally decided to pardon all politicians and other citizens involved in cases stemming from the released wiretapped conversations and the investigations initiated by the Special Public Prosecutor. With protests being organised independently from any of the political parties, by many civic movements through the use of social media, and threatening to escalate, the eventual boycott of the opposition, and the need for a new Przino Accord grows bigger by the moment. However, this time, the negotiations cannot have the format of a political dialogue, but of actual negotiations with the involvement/participation of the civil society. Civil society involvement/participation will not only serve to let off steam from the rather emotional "Colourful Revolution"²⁸ but also as a guarantee for the full implementation of the new Accord that is to be reached.

Stability Through Democracy

The negotiations leading to Przino 2 have to start with all participants being on an equal footing; thus, meeting some preconditions is a reasonable and understandable request. The following three should be seen as such foundations for the new negotiations:

1. The decision granting blanket pardon to all persons that are under investigation and facing criminal charges by the Special Public Prosecutor to be immediately withdrawn;
2. Gjorge Ivanov to immediately submit his irrevocable resignation from the office of the President of the Republic of Macedonia;

²⁶ <http://europeanwesternbalkans.com/2016/02/22/new-joint-eu-us-letter-to-prime-minister-dimitriev/>

²⁷ http://photos.state.gov/libraries/macedonia/8573/ArchivePDFs_feb2016/orav-baily-letter-to-pm02212016eng.pdf

²⁸ For 60 days in a row, thousands of people on the streets of Skopje and 20 other towns across Macedonia protested against the decision of President Ivanov. As an expression of the protest, they painted most public institutions in various colours, hence the title "Colourful Revolution" as this cycle of protests became known.



Vanco Dzambaski, Foundation Open Society Institute Macedonia, CC BY-NC-SA 2.0

3. The decision on holding parliamentary elections on June 5, 2016, to be immediately withdrawn.

Furthermore, as we were able to read above and witness on so many occasions, the ruling party has successfully transformed many of the political agreements reached into "*toilet paper*"²⁹. Therefore, the civil society believes that none of the political leaders has the right to negotiate democracy or rule of law. Democracy and Rule of Law are absolutely non-negotiable; they are the foundation of modern society and core value of the European Union. However, seeking to resolve the crisis and reinstitute these core values in the country, the Civil Society believes that any negotiation sponsored by the EU should include the following five conditions defined by the protesters of the "Colourful Revolution":

1. The Constitutional Court to deliver its opinion and decision on the petition challenging the Special Public Prosecutor's (SPP's) constitutionality;
2. A Special Judicial Unit to be established within the Criminal Court whose remit will coincide with the SPP's jurisdiction;
3. Independent representatives of the civil society to be statutorily included in the process of crisis resolution;
4. The process of crisis resolution to take place on the territory of the Republic of Macedonia;
5. A Transitional Government to be es-

tablished and tasked with complete implementation of the urgent reform priorities listed in the Priebe Report.

Who will set the table and how?

One of the main issues is how to make irresponsible partners (political actors) honour their agreements and stick to the deadlines and obligations brokered by the EU. The EU must not refrain from both individual pressure and broader, country-wide pressure in order to make the partners take their obligations seriously.

Targeted sanctions and political isolation of the irresponsible partners should be a final step to pressure the actors that breach agreements, undermine democratic principles and the principle of the rule of law, and endorse corruptive behaviour. The wide range of targeted sanctions must put direct and personal pressure on the specific actors and their associates. These sanctions might encompass travel restrictions to the EU Member States, asset restrictions or asset freezes within the EU Member States and firm political isolation from regional and EU-level summits relevant to the Western Balkans and meetings of the European party families.

Sanctions affecting the country as a whole might involve withdrawal of the negotiation recommendation that has anyway been frozen for seven years now, exclusion of the political representatives from the EU-Western Balkans Paris Summit, suspension of some of the IPA funds (except the contracted funds). These measures will affect the country as a whole and are not very much advisable as their effect might negatively reflect on the popularity of the EU efforts.

Such political isolation, economic pressure, targeted sanctions for the politicians blocking the agreements, as well as the organization of free and fair elections would change the current approach³⁰ by the EU, which James Ker-Lindsay called "*softly-softly*", that completely undermined its credibility in delivering results in mediation efforts.

On the other hand, what is crucial for the leverage of the EU as a mediator is creating a set of benefits and incentives that will be open to Macedonia if the crisis is

²⁹ As the political crisis of Black Monday, December 24, 2012, was being resolved, participant in the Inter-Party Committee and MP for VMRO-DPMNE Ilija Dimovski called the report toilet paper: <http://goo.gl/4wKFVv>

³⁰ Ibid 28

resolved according to the agreed principles and duties, with free and fair elections as a crown of the process.

First and foremost, the Priebe Report and the Urgent Reform Priorities must transform into an Urgent "*Rule of law*" Blueprint for Macedonia with specific tasks, duties and datelines. The implementation of this "*Rule of Law*" Blueprint should be treated as part of the new Approach of the European Commission for the early opening of the Pre-Accession Negotiations for Chapter 23 (*Judiciary and Fundamental Rights*) and Chapter 24 (*Justice, Freedom and Security*) for Macedonia. This would only endorse the long-standing position of the EC to open the accession talks with Macedonia in a parallel process with the name issue resolution, instead of imposing the latter as a precondition for opening these talks. The "*Rule of Law*" Blueprint might affect the programming of the IPA II financial framework for assistance in Macedonia's EU accession and direct the assistance towards the priorities established by Priebe and the Urgent Reform Priorities.

New mediation or Przino 2 should be facilitated by several actors holding relevant influence and credibility in terms of addressing the political crisis in Macedonia. Hence, perhaps it is proper that the High Representative for Foreign Affairs and Security Policy, Federica Mogherini, is involved as sponsor to the new Accord. It is exactly her involvement that will give greater political weight to the overall process, and through her the negotiations will include two EU institutions (the Council of the EU and the European Commission). In her capacity as High Representative, she plays a specific double role as Vice-President of the European Commission and Chair of the Foreign Affairs Council, which is a standing formation of the Council where she chairs meetings of Ministers of Foreign Affairs of EU Member States.

This is a logical order of the involvement of EU institutions, having in mind that previous DG NEAR sponsorship has failed expectations and allowed the process to deteriorate and go in reverse. Furthermore, the transfer of the "Macedonian Case" from DG NEAR to the European External Action

Service (EEAS) might be explained by the deterioration of the situation, the potential for explosiveness and for the involvement of other countries from the region, as well as the impact that the refugee crisis and the fight against terror have and could have if the political crisis in Macedonia continues. In addition, the European Parliament needs to be involved through its MEPs Vajgl, Howitt and Kukan, for the purpose of creating a political climate agreeable to the negotiation format.

Having in mind the fact that in the case of Macedonia the Member States can do more, and did do more in the implementation of Przino 1 through their national influence, the most influential EU Member States need to be involved. As a result, the most influential EU member States agreed on a Special Envoy model. Namely, in the beginning of May 2016, Germany appointed Johannes Haindl, German Ambassador to Vienna, as Special Envoy for the Macedonian political crisis³¹. This experienced diplomat is tasked with overseeing the work of the Ambassadors of Germany, UK, Italy, France and the Netherlands. To complete the group, a representative of the United States of America should be added. At the moment, it seems it could be the US Ambassador to Macedonia, Jess Bailey.

Civil Society Organizations should also have a place at the negotiation table as they have demonstrated leverage (through the civic protests and the 'Colourful Revolution') and expertise (many organizations, especially those writing open letters and analyses conducted non-stop monitoring of the crisis resolution process and consistently analysed it). Moreover, a group of relevant CSOs have drafted a Blueprint for Urgent Reform Priorities as an impetus for some new transitional government to take over the organization of elections in the upcoming period. CSOs cannot participate on an equal footing with political parties, but rather as monitors and experts who will offer solutions and exert civic pressure over both the politicians and the International Community to place the public interest before the personal or partisan interests, as usually occurs ■■■

31 <http://www.balkaninsight.com/en/article/germany-appoints-special-envoy-to-macedonia-crisis-05-05-2016>

Istanbul Convention: Serbia and Croatia

Obligation that no one cares for

Jovana Gligorijević

The Istanbul Convention is the colloquial name for the "Convention on preventing and combating violence against women and domestic violence". It has been signed by 36 European countries, including Serbia and Croatia. Ever since August 2014, when the Convention entered into force, it has been ratified by all fifteen members of the Council of Europe: Albania, Andorra, Austria, Bosnia and Herzegovina, Montenegro, the Czech Republic, Italy, Portugal, Serbia, Spain, Turkey, France, Malta and Sweden. In March 2016, the European Commission ratified the Convention on the level of the entire European Union, which could be considered a big step, but only if countries committed to the implementation of the Convention were to show a little more enthusiasm in the process.

In the case of Serbia and Croatia however, there is no such enthusiasm. Serbia only ratified the Convention *pro forma*, and adopted the Action Plan of accession to the EU, which anticipated the implementation of the Convention into national legislation in 2016. The Croatian Parliament has never formally completed the ratification, but given the Croatian membership in the EU, certain steps were made in the direction of changes to existing legislation. However, it was done in a very distorted way.

But we'll deal with this later. To begin with, it is necessary to explain how and why this convention will be crucial for combating violence against women and domestic violence. The Convention requires states to be guided by the standard of due diligence / complete dedication to the prevention of, protection from, and the prosecution and punishment of acts of violence.

The impression is that decision-makers entirely lack will to set in motion a proper implementation of the Istanbul Convention, or even that they wish the implementation. The battle for the implementation of the Istanbul Convention is fought by women's rights organizations and small groups of self-organized prosecutors and lawyers. For the decision-makers in the Balkans, they are just "noise-making women." In the meantime, the victims in whose name "noise is being made" are still beaten, raped and killed only because they are women.

On the practical level, this means that each state that has committed itself has to adjust its legislation, as well as regulations and protocols on dealing with cases of acts of violence for all officials — from police and medical workers to social welfare centres. Likewise, it is envisaged that each country establish a financial compensation fund for victims of violence. Serbia has vetoed this part of the Convention. This step is understandable considering the difficult economic situation in the country, but Serbia has not yet implemented even a single word of the Istanbul Convention.

To begin with, it is necessary to introduce a category of "victim" into the criminal justice system. For now, whether it is the case of minor theft or murder, Serbian courts categorize the victim only as the "injured party". It is necessary to change the definition of rape in the Criminal Code so that it reads: "Rape is any sexual act without consent." This would be beneficial to numerous victims in the process of receiving justice and would facilitate the evidentiary procedure. For the time being,

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This would be beneficial to numerous victims in the process of receiving justice, and would facilitate the evidentiary procedure. For the time being, in Serbia rapists can get a conviction only if the victim has grievous bodily injuries. Regular practice in Serbian courts is that judges ask victims whether they resisted, and if their answer is "No", they are faced with another question: "Why not?"

the situation in Serbia is as follows: rapists can get a conviction only if the victim has grievous bodily injuries. Regular practice in Serbian courts is that judges ask victims whether they resisted, and if their answer is "No", they are faced with another question: "Why not?"

Let us remind that every piece of advice and self-defence manual states that it is advisable for women not to resist, so that they might avoid additional injuries or save their life. The Belgrade Autonomous Women's Center once had a case in which the victim resisted, the rapist hit her head against the wall, and the woman died a few weeks later due to head injuries. The possibility that the victim simply might freeze with fear is not recognized in the Serbian judiciary.

If the victim remains calm and capable to go to the police immediately, which rarely happens, she will undergo medical examination in order to take evidence. Sounds great, but in reality this means that the victim is escorted by the police to one of the few authorized medical institutions and waits for her turn while doctors are examining women with earlier appointments. The waiting can last for as much as ten or more hours. Meanwhile, injuries usually disappear or recede, swellings subside, and in case the offender left biological traces on the victim's body, they would be insufficient to constitute evidence.

Things get even worse when you add that if the offender is unknown to the victim, her health insurance will cover the cost of the medical exam. However, if a woman is raped by someone she knows, she will have to pay the amount of about 100 Euros herself. This fact betrays the attitude of the state towards marital rape, which it does not recognize as a criminal offence, while such recognition is exactly what the Istanbul Convention requires from Member States.

Apart from the introduction of the category of victim, the second most important thing that is required by the Convention is a redefinition of rape in criminal law. In that respect, Serbia has done nothing. Croatia did, but it would be better if it hadn't. Instead of changing the definition of rape, this country's Criminal Code (Article 152) has added a new criminal offence, defined exactly the same way that the Convention requires rape to be defined, but the sentences prescribed for this offence (six months to five years in prison) are more lenient than for rape (from one to ten years in prison). Rape, defined as it had been before, remained in the Criminal Code as Article 153. So to speak, Croatia didn't implement the Istanbul Convention, thus improving its legislation, but merely affixed this document to its Criminal Code, only adding to the confusion.

Apart from the new definition of rape, signatory countries are also required to redefine the concept of family, so that prosecutors can run cases even if the victim changes her mind and decides to withdraw her complaint (which is very common in cases of domestic violence). This is the way to overcome the problem which results from the fact that spouses are not obliged to testify against each other. If the Istanbul Convention was implemented, further presence and engagement of victims after having reported violence wouldn't be necessary. This would reduce the pressure on her, she would avoid secondary traumatization, and in cases of domestic violence the victim would be protected even if for reasons of a psychological nature she decides to return to the perpetrator. The Convention makes this very clear in Article 43 (Application of criminal offences): "The offences established in accordance with this Convention shall apply irrespective of the nature of the relationship between victim and perpetrator."

Key problems in both Croatia and Serbia are:

- Lack of legislation on harassment.
- There are differences in the definition of a family member in the Criminal Code and the Family Law.
- Intimate partners who don't live together are not considered family members.
- Urgent action is not required in criminal proceedings in cases of domestic violence.
- The legislation does not recognize programs for the rehabilitation of violent men.
- There are no specific regulations that would stipulate taking into account the impact of violence against women in cases where women commit a criminal offence.
- In cases of violence against women, there is no effective mechanism for protecting the victims in a situation where a state official fails to report it or take appropriate measures.

In terms of procedures, criminal prosecution is undertaken only in cases involving serious bodily injuries, criminal proceedings are drawn out, there is a lack of free legal, psychological, social and medical assistance for the victims. Moreover, for 16 years now Serbia has been unable to pass a law on free legal aid not only for victims of violence, but in general. The lack of coordination can be noticed in the fact that sometimes a number of various procedures are undertaken in a single case of domestic violence. Domestic violence is treated as an isolated event, without being linked to previous behaviour or to a broader context of violence, so proceedings against the perpetrator and against the victim who defended herself against violence are conducted separately.

Measures of protection against domestic violence are rarely imposed, they are generally not effective, and there is no adequate monitoring of their implementation. The victims are protected neither when they report domestic violence nor later during criminal proceedings. Although the prosecution of domestic violence is undertaken *ex officio*, the public prosecutor is asking the victim to support or join the prosecution.

Public prosecutors rely heavily on the testimony of victims as a source of evidence whilst ignoring other evidence, so if the victim changes her story they get angry with her, even though it is a common result of abuse. Prosecutors and judges usually refuse to attend special training on domestic violence and violence against women.

Most criminal sanctions for domestic violence consist of fines or suspended sentences, most of which do not have much of an effect. The court practice is mainly determined by the judges themselves, since there is no mechanism to harmonize the application of the law. Prejudice and lack of knowledge about domestic violence are still quite widespread among police officers, prosecutors and judges. Judges and expert witnesses lack knowledge about the battered wife syndrome.

Croatia and Serbia share an almost identical statistic—one in three women has suffered or suffers some form of violence, and more than 300 women were killed in domestic violence in the last ten years. Emergency measures stipulated by the Convention in Serbia were ignored last year when the new Police Act was passed. An amendment was submitted in accordance with the Convention: in cases of domestic violence, the police have to remove the perpetrator from the household immediately, even if he is the owner of the house or apartment. The Serbian Parliament rejected this amendment simply because it was filed by an opposition MP.

All things considered, the impression is that decision-makers entirely lack will to set in motion a proper implementation of the Istanbul Convention, or even that they wish the implementation, and any changes it may bring, to be merely illusory — the law may contain some novelties, but in reality everything remains the same. The voices against such depravedness are few and weak. The battle for the implementation of the Istanbul Convention is fought by women's rights organizations and small groups of self-organized prosecutors and lawyers. For the decision-makers in the Balkans, they are just "noise-making women." In the meantime, the victims in whose name "noise is being made" are still beaten, raped and killed only because they are women. ■■■

Expectations and Disillusion

Misty Gains from Outside: Economic Enterprises and their Magic

Ildiko Erdei

Seen from the periphery or semi-periphery, the "international community" too often seems as something that is "outside", that is "not Us", but is to be called upon in cases of need or emergency, to respond with support, help or direct action. This "outside" is sometimes imagined as a hostile environment beyond the borders of "our country", at other times as a horizon of possibilities within our reach.

Although it is widely used, the phrase "international community" is not easy to define. Its colloquial meaning refers to all the countries of the world united around the same cause or action. In a more politically charged definition, international community encompasses all countries with international influence, while a radical political understanding of the international community equates it with the geo-political and economic West, thus excluding a large part of the world from this notion. Seen from the periphery or semi-periphery, the "international community" too often seems as something that is "outside", that is "not Us", but is to be called upon in cases of need or emergency, to respond with support, help or direct action. This "outside" is sometimes imagined as a hostile environment beyond the borders of "our country", at other times as a horizon of possibilities within our reach. This is true both of the political and the economic realm.

Contrary to expectations, in an increasingly globalized, interconnected and transnational world, it is evident that the (presumably neutral) constant flow of people, objects and money still takes place in a geographic, economic and political context.

We all know too well where cheap labor is situated, which are the favorite destinations for investment capital and development projects, and also which are the usual trajectories of financial capital gains. In spite of growing connectedness brought about by the contemporary political economy, the idea that a stimulating influence or input (be it in the form of IMF or WB loans or investment policies of corporations) is coming from outside the national or regional community is still alive. Furthermore, it is used as a ground for many economic policies and endeavors. This counts for the majority of developing countries, including those that underwent post-socialist transformation.

* * *

The idea that wealth and prosperity come from outside the community has a very well-documented history in anthropology, in numerous writings about millenarian movements and cargo cults. Mythical narratives about the tremendous change of the society and about the ancestors who will return bringing wealth and prosperity, are part of the colonial experience. The most elaborate stories and rituals of the expected "cargo" of goods originate from Melanesia, and coincide with periods of rapid decline and a sense of loss that accompanies a weakening or disruption of the old social order. Beliefs in a new world that is about to come through a supernatural act have flourished in these rituals. The conviction that frustration and despair, born out of feelings of neglect and marginalization, would disappear once a strong man – a hero – comes and offers hope and prosperity, was strong. According to Melanesian myths, "the mil-

lennium would occur when the ancestors return in steamships or airplanes bringing European goods (the cargo), thus initiating a reversal of the social order". We can sense the echo of these beliefs in the specters of contemporary capitalism, in its promises of unprecedented abundance and its gospels of prosperity. Similarities between the feelings of those who are waiting for good government, prosperous life and lost "normalcy" now and those who did almost a century ago are striking. The same could be said about the role of culture, symbolism and ritual in initiating and propelling economic events and projects. For, as much as we are aware of the factual, material flow of all sorts of financial capital investments and transactions that come from "outside", "entering" the new or yet-unexplored market, we tend to overlook the conditions of their cultural and symbolic enactments – the creation of stories which use the old tropes, deeply embedded in tradition, folklore and mythology. The role of the imaginary, narrative, symbolic, expressive, in the economic endeavors of contemporary, millennial capitalism, is profound.

Sometimes creating and staging the story precedes the actual economic project; at other times the story could boost a plethora of collateral gains, even if the main project were never to be actually realized. With their carefully constructed sets, well-chosen casting, skillful directors, disciplined crew, and above all efficient PR and media services, some of the greatest economic projects that advertise themselves as deeply transformative and decisive for the economic and social destiny of the society/nation, are very much like a Hollywood set. Anna Tsing, an anthropologist working in Indonesia, has named this feature of the economy, founded on a search for financial capital, the "economy of appearances". This means that before the investment is to happen, its possibilities have to be "dramatically exposed", performed. Tsing continues: "Performance here is simultaneously economic performance and dramatic. The 'economy of appearances' I describe depends on the relevance of this pun; the self-conscious making of a spectacle is a necessary aid to gathering investment funds. (...) In speculative enterprises, profit must be imagined before it can be extracted; the possibility of economic performance must be conjured like a spirit to draw an audience of potential investors."

* * *

The art of conjuring is what we are dealing with in the "Belgrade Waterfront" project, announced as the one that will bring to Serbia investments worth several billion dollars, open thousands of jobs and give many local construction companies opportunity to win contracts. Of course, as the authorities preach, it will also thoroughly change the urban landscape of Belgrade, creating a spectacular "new city", with luxurious condos, attractive business spaces and places for entertainment and shopping, that will become a regional hub. So far, the economy of appearances has a strong hold on this project. The real construction site is carefully hidden from the public eye, and represented only through controlled media, which insist on a narrative about the prospects of the project and feature next to no actual pictures from the site. The concept of the project is performed by employing of a few key objects that represent and evoke it in the popular perception: the beautiful art nouveau building of the historical Belgrade Stock Exchange, which was renovated to become the exhibition space for a model of the Belgrade Waterfront, numerous gigantic billboards with an image of its panorama and affirmative mottos, signposts on the way from Belgrade airport that indicate how much of a landmark this urban project will be. The ubiquitousness of its imagery has been secured by extensive media coverage in state controlled media, through the use of a background graphic in a morning show on the extremely popular TV "Pink", to a special show covering the project on the "Studio B" TV station in Belgrade. This keeps the image of a future urban transformation alive in the imagination, in spite of growing accusations from all sides of the political spectrum, civil society and professional associations, of intransparent and illegal procedures that have accompanied this development project from the very beginning, when it was introduced as the brilliant idea of an investor from the UAE, who is "a great friend" of Serbia's PM, Aleksandar Vučić.

Stories about investment were introduced into other circulating narratives of wealth, power, modernity, growth and prosperity. On the "Belgrade Waterfront" website you can find various hints of these narratives, that are further elaborated through speeches, announcements, comments by the main actors, and a wide circulation of images through electronic media and the press. The project is represented as a fantastic business opportunity, written into

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the centuries-old position of Belgrade as a "place where East and West meet in a wonderful collision of culture and beauty". It is said that it will bring "a wave of new life", and become "a hub for businesses of all kinds, with a focus on technology and design"; a "magnet" for shopping, entertainment and tourism, it will "usher in a new era of prosperity for the Serbian capital". It is not only financial capital that comes from outside, but also the images of urban modernity that are associated with the "Waterfront" project: its green area "borrowing from the character of London's historic Georgian Garden Square", and the old railway bridge across the Sava river that will be refurbished is "highly inspired by New York's famous High Line Park (...), and will be an attraction in itself with its dramatic lightning and spectacular views over the river". "The Manhattan of Belgrade", as PM Vučić called the "Belgrade Waterfront" in his address to the Serbian Parliament, was conceived by the same investment conjurer who was involved in the controversial building of the Burj Khalifa in the UAE. Hence the circulating images of modernity, coming both from the East and the West, with a touch of a "distinctive southern European flavor".

"Arabian mists on Sava river" is yet another article headline in Serbian newspapers that points to the obscurity of the "Belgrade Waterfront", offering to the interested reader a glimpse into a variety of collateral gains, already won while the core of the business enterprise is still an empty shell. As Tsing has learned from her Indonesian case, companies are not "alone in the conjuring business in these times". Countries, regions, and towns follow their example and join in dramatizing their potential as places for investment. "It seems likely", concludes Tsing, "that successfully conjuring the globe is possible, at least now, only in thick collaborations with regional and national conjurings; certainly financial conjuring has been deeply implicated in promises of making regional and national dreams come true."¹

The art of conjuring thus operates on different scales, from the global/international arena, to the national and local, doing its share of producing the specters of contemporary capitalism. It helps the investor to prove that the financial investments of the globally operating firm are still economically viable and able to continue their project of "invigorating nations" and "helping countries raise their global profiles to new heights" by cooperating with a pro-European government.

On the national level, it helps the government to secure its political power by fuelling the collective fantasy of "prosperity" by creating a place "where families flourish and businesses grow", and simultaneously maintaining the space in which the allocation of resources from public funds to private accounts takes place. In exchange for promised investments, the government offers extremely favorable conditions for the business operation, fast-tracking many laws and avoiding public hearings. Together, they can "conjure the funds that allow the nation-state to produce itself as what one might call a 'miracle nation': a nation in which foreign funds support the authoritarian rule that keeps the funds safe." Tsing calls this "franchise cronyism".

On the local level, the economy of appearances makes it possible to give privileges to close associates, family members or party affiliates. This is a space in which political influence and access to the decision-making process have been traded for the economic empowerment of the few, who will, in return, support the political establishment. Therefore, whether the spectacular vision of the Belgrade for a new Millennium ever becomes concrete, or remains a model in an exhibition space and an advertising image, it is still producing some economic activity, backed by, as Tsing put it, fabulous dreams. Until the bubble bursts, and the pot at the end of the rainbow dissolves into a devastated landscape and mud as if after a flood. ■■■

1 Anna Lowenhaupt Tsing, *Friction: An Ethnography of Global Connection*, Princeton University Press, Princeton and Oxford 2005., p. 59.

Misunderstood Reality and Missed Opportunities

Zlatko Dizdarević

Immediately after the war, none of the positive experiences of post-Second World War Germany were applied: extreme nationalist political parties and ideologies were not eliminated, criminals were not quickly and efficiently brought to justice, crucial influences on the shaping of education, media and state institutions, especially justice, were not made, elections were not postponed until institutions were established, resulting in artificial "democratic elections" (without a democratic reality and institutions) that legalised further deep division of both society and state.

There are many people in Bosnia and Herzegovina these days who are, to put it mildly, restless. Just like they used to be in the nineties, before the war. Many are silent in their discomfort, waiting for "someone from the outside" to put an end to the obvious production of tensions and hatred, refusing to believe that this can and will be done by local leaders. The media usually take sides between the divided parties, thus contributing to raising the tensions. There are also quite a few of those who claim that they do not want to continue waiting "to see what would happen next" and that, at the first dramatic signal, they are ready to pack and leave for anywhere in the world. Another question is who would receive them now as they did "back then". Back then, there was no Syria, Iraq, Libya or Afghanistan. The Union was powerful and compact, looking towards the future, rather than traumatised by itself and its surroundings. After the end of the Cold War, the geostrategic context was much simpler than it is today.

Of course, in detecting the reasons for fear over growing radical political tensions, one has to take into consideration the fact that the greatest part of the population in BiH and the region belong to the

still-active "remembering" generation. The local population has gone through the pre-war "naiveté and surprise" at the war when it broke out, followed by the horrors of war and a time of hope and promises regarding the peace to come. For many years now they have been living through a period of great traumas caused by feelings of betrayal and abandonment, both for what was happening at home and for the lost trust in the international community. Today, a feeling remains that the crucial years between optimism and the beginning of the "fall" were 2004 and 2005.

The situation in BiH, on the verge of exploding due to issues that, in normal circumstances, would not be even close to being crucial for the destiny of a country, has its roots in the aftermath of the war and the Dayton Peace Agreement (we will now leave aside the reasons for this and for the breakup of Yugoslavia). This is why the current crisis regarding the referendum in the RS, in many ways artificial, may not be successfully or permanently resolved by a decision of the Peace Implementation Council (PIC) or through partial agreements in Belgrade, Sarajevo or anywhere else. Postponing the crisis is not a "solution for BiH".

Zlatko Dizdarević
Writer, diplomat and journalist,
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Every time they were postponed the crises would become more difficult and more dangerous, because they are produced consciously, with a plan and on the grounds of the real situation in the country. If the politics of the international community fail or refuse to acknowledge where the causes for this situation lie, among those who had created BiH, and the political actors in the country who have already raised a new generation that will continue the project of destruction, this will result in a very serious internal conflict with inevitable consequences for regional security and stability.

What are the key mistakes (if that is all they are) of the international community?

Capital mistakes

■ The war did not end with a clear international identification of the perpetrators and victims, in fear of establishing collective guilt, which the "conciliators" were afraid of for long-term reasons. The Hague Tribunal did not correct this mistake. On the contrary, the time and the concept that were lost have re-established the greatest war criminals as heroes and national idols. In the long run, such policies have destroyed the feeling of responsibility for crimes on the collective level, and led to frustrations among the victims. History and politics built on this could not be the ground for the establishment of an integral state on the basis of separate national collectives that were imposed upon Bosnia and Herzegovina.

■ Immediately after the war, none of the positive experiences of post-Second World War Germany were applied: the extreme nationalist political parties and ideologies were not eliminated; the criminals were not quickly and efficiently brought to justice; crucial influences on the shaping of education, media and state institutions, especially justice, were not made; elections were not postponed until the establishment of institutions, resulting in artificial "democratic elections" (without a democratic reality and institutions) that legalised further deep division of both society and state. Leaders of division were established, instead of leaders of the integral state. Finally, nothing similar to the Marshall Plan was offered to protect the surviving production, open the process of efficient reconstruction and thus maintain a social perspective.

■ A cardinal mistake was made immediately after the war in that BiH was

not more decisively and energetically invited to the Union and NATO, even if it meant turning a blind eye to the many aspects in which it was unprepared for the EU. The belief that such a decomposed BiH could be left in an empty space, a wind-swept geostrategic wasteland, was shown to be devastating. Everyone in the region joined the EU before BiH, or at least started the accession process. This created an additional feeling of the "abandonment" of a state that had undergone the greatest hardships during the war and it stimulated the dysfunctionality of the state and a complete lack of a basic nation-building spirit. Growing influences from the outside have been given free space in the zones that are significant to these interests, from a number of extremist ideologies to the influence of special, "non-European" politics. In the geo-strategy of such areas there should be no empty space whatsoever, but it was precisely into such "empty space" in BiH that many have entered uninvited.

■ The so-called privatisation, implemented under strong pressure from abroad (in order to abandon the previous, "ideological" system as soon as possible), turned into massive theft of state and social property, with a complete destruction of those parts of the economy that have survived and are functioning well. Dramatic social divisions were brought about that defied all logic. Whole segments of society were destroyed, especially its capable, productive part, with the educated middle class – the intellectual substance of the future state on the superstructure level, in education, culture...

■ The Dayton Peace Agreement has formally preserved the common external borders and international sovereignty of BiH, but internal sovereignty, as the basis of a common state identity, was completely neglected (whether consciously or due to a lack of understanding of the internal logics of a pluri-nation society). In the absence of a project of strengthening the state and its unitary sovereignty, which respects and supports specific aspects of its ethnic components in every sense, what emerged was a separate glorification of the exclusively ethnic, resulting in the constitution of governments that openly strive to create states out of each of the three nations. The logic of longing for "victory in supremacy" in the relations between the three exclusively national subjects overpowered the logic of a need for a state. Of course, the psychology

In accordance with so-called Realpolitik, the international community legalised such a division of BiH even at the formal level, the level of protocol – local partners to all officials who came from Brussels were usually the leaders of the three ethno-national parties, irrespective of their positions, rather than the parliaments, institutions and state executive authorities. This practice was perceived in BiH as a message recognising "national sovereignty" as key in creating and implementing policies in BiH.

of the "defeated" was the source of a new internal aggression. A special place was given to the search for external footholds in this rivalry. "Special connections" became important on one hand with Zagreb and Belgrade, but lately also in the aspirations to install Istanbul as the missing third link in BiH. We will leave aside the fact that for Bosniaks to seek identity in Turkey, beyond religious aspects, is absolutely misplaced and ungrounded.

The lack of a democratic corrective of the state

The leaders of the three ethnic-national parties in BiH have become established as leaders of separate collectives and politics. Their overall "task" is to defend and promote exclusively the sovereignty of their own ethnos in the "state" that is only a state in the field of what was "imposed" as common by the Dayton Peace Agreement. In accordance with so-called Realpolitik, the international community legalised such a division of BiH even at the formal level, the level of protocol – local partners to all officials who came from Brussels were usually the leaders of the three ethno-national parties, irrespective of their positions, rather than the parliaments, institutions and state executive authorities. This practice was perceived in BiH as a message recognising "national sovereignty" as key in creating and implementing policies in BiH. At the same time, the American logic of the "democratic form", legitimised at all costs only by the

"one with the greatest number of votes", regardless of their politics, was the second element that gave wings to the glorification of leaders in power "because they represent their nation".

The tendency within PIC to abandon the policy of "sticks and carrots" in order to strengthen local leaders' feeling of responsibility has proven counterproductive in this region. This did not lead to a conclusion that efforts to develop an efficient state need to be increased, but to a realisation that even actions in the field of dissolving the country on behalf of the interests of power, interests that are personal and corrupt, would not be sanctioned, and can therefore be freely continued. The international community has never understood that in the local undemocratic practice and system, the electorate is definitely divided three-way and thus splintered. It was placed under institutional and interest control of the three ethno-national centres, which prevents it from acting as a democratic corrective of the state, expected in normal conditions to positively react to the real state of affairs.

All these mistakes have led to today's serious crisis within BiH where, for the first time in twenty years, there is talk of war, war veterans' associations announce "military drills", requesting from the Armed Forces of BiH "the latest weapons that the veterans are familiar with", but also "live ammunition". In the sphere of politics, creation of animosity and hatred is promoted as the most efficient method for the preservation of power. Religious institutions have become strongly, and often extremely destructively, involved in the glorification of sovereignty of the "people and the nation", set against the "others". Political games created the "either-or" atmosphere, closing the door to compromise, dialogue and common interests. Key political agreements are made in cafés and entirely outside institutions, which thoroughly degrades even a basic sense of statehood. The emphasis on the affiliation to the "capitals" outside BiH has intensified. This is turning BiH into the touchpaper of regional destabilisation. The issues of survival, economy, growth, modernity, etc. have been completely set aside, because the situation in these spheres is depressing, and no election points can be gained there. Only hatred and fear are proven to be effective. The old EU dilemma – is there any sense in further enlargement in such a situation – further encourages

the creators of the current policies. Few are courageous enough to publicly state that the preservation of the current "status quo" is actually a political project of a part of the local oligarchy that detect great danger for themselves and their position in any serious progress of the common state and democratic institutions. Parallel to this, there is also pronounced scepticism towards the leaders when they praise the "European path". There is also disbelief that the EU enthusiastically supports those who block the European path by creating crises, no matter how strongly they praised it in words.

This is why the thesis of the Faculty of Political Science professor Nerzuk Ćurak is often repeated in Sarajevo: "BiH exists only because it cannot fall apart..." Of course, it cannot exist like this forever. A state without internal sovereignty is a mission impossible. In a politically emancipated society this might be resolved with a peaceful dissolution. However, political civilisation was eliminated here in the past two decades. What would be the result if BiH fell apart (let us not even speculate how)? Greater Serbia, greater Croatia or small Muslimania? In the middle of Europe. And what about the Badinter and Osimo agreements... nobody cares of the impossibility of changing the borders without consent. As it is, borders are being opened by force. What then about the greater "Muslimania" that quietly lurks on the margins of plans that hypothetically include Sandžak, parts of Macedonia, greater Albania... The perennially unimaginative and self-absorbed EU bureaucrats will be politely and diplomatically horrified by all this. Many felt such touching astonishment during the Nineties as well.

An important factor in all this are the larger neighbours and their role in BiH. Since the break-up of Yugoslavia, Bosnia, and especially Herzegovina, have been a special preoccupation for Croatia. During the war this was both individually, but also jointly displayed by Milošević and Tudman. After the war, the intensity and character of Croatia's interest towards BiH has varied. Recently, however, the EU was also inclined to suggest to Zagreb its preferred course of action towards BiH. Stjepan Mesić's somewhat mythical message that "The Croats' capital in BiH is Sarajevo" was never expressed by any of the Croatian offi-

cials, despite all the obligations Zagreb has towards them here (along with the right of the constitutive people of one state to vote in another!?). And why should they, if there are ever more direct calls among the Bosniaks to align with the flag of – Istanbul. To someone observing from the sidelines, from the EU, this looks ridiculous. Here, it is not ridiculous at all.

Relations with the country across the Drina river are special, even with the use of helicopters, armoured cars and parachutists in joint police drills for the fight against potential terrorists, "because for them the Drina is not a border". This is why the American "Fox News" has published the news in the context of the cooperation of the Serbian police and the "little Serb state in BiH". Why are we then surprised when meetings between Vučić and Dodik in Belgrade are seen as crucial? The EU is existentially necessary to Vučić, so there is good reason to expect Vučić to pacify Dodik. It is getting more difficult to explain this to the population on both sides of the Drina.

In essence, the current tensions surrounding the referendum as one of a series of crises show that many things were done belatedly in BiH and many things, seen from the Western perspective, were not even understood. There is no apparent readiness to open the key issues regarding the essentially wrong internal construction of BiH, which may only have been possible as an argument for ending the war, but is absolutely impossible for any kind of normal life and preservation of BiH today. The international community is paralysed by the notion that – in its own interests – BiH may not fall apart, yet it has also failed to show even a minimum of capacity and courage to take steps that would set the country on a positive course. At the current stage of the crisis, it is utterly misplaced and politically immature to expect this to be done by those back home in BiH, who have systematically and deliberately produced the crisis in their own interests only, with varying degrees of intelligence and knowledge. No wonder the old proverb: "Once bitten, twice shy" is being brought up more and more often. Ordinary people read signs around them in different ways, except for those who think that this was just the usual pre-election game. That is why they are afraid. ■■■

Skin-deep Reforms vs. Thick-skinned Structures

Vedran Horvat

While the constitutional values of the European Union were expected to diminish nationalism and exclusion, and liberalisation was expected to destroy and end the state monopolies captured by clientelist networks, moving us further to a modern – and modernised – society, it was out of our sight that the EU as our destination has fundamentally changed, losing the attributes we expected to find once we became a member.

After Slovenia, Croatia is the second ex-Yugoslav state which has become a full member of the European Union. Croatia's integration journey toward the European Union has resulted in full membership on the 1st of July 2013, a decade after it started. Although all Croatian governments have proclaimed membership in the European Union as a strategic interest throughout that period (and justified by the official referendum results), a noisy and joyful celebration was surprisingly absent in the moment Croatia joined the European family. Croatia has already been a full member for a few years now, but direct positive impacts on the country's economy are still pending, while there is still a considerable pool of accession losers, which doesn't show signs of shrinking.

Unfortunately, Croatia was not only the last country to join the European Union (the next round of accession is not on the horizon at all), but its upwards trajectory ran in the opposite direction to the downwards developments in the EU. While at the beginning of the journey, the European Union seemed an almost ideal political community to be part of, based on values of solidarity and equity, even with the possibility of creating a transnational *demos* from Europe as a political project, parallel to Croatia's accession to the EU, and with the economic

crisis of 2008, all these components were gradually eroding. In the moment of accession, Europe had for long been not a house of solidarity but rather a continent of old nations being revived again, stretched by disintegrative and disruptive social forces which introduced economic violence and new hegemonies on one side, and xenophobia and racism on the other. These last few years prior to the accession have revealed another face of Europe, probably one that was unknown even to the older inhabitants of the EU 27.

Obviously, for Croatia, one of the most evident and weakest points of the European accession process was the fact that it was an elite-driven process – precisely the component which was presented at times as the most advantageous: "enlightened" and modernised progressive economic and political elites had a special mission to take the country into the European Union. Although the democratising potential of the EU accession process had been overestimated throughout the period (due to the fact that, at any rate, democracy in the EU had already been deteriorated), citizen participation in different stages of EU development was seriously neglected and treated as an obstacle or brake in order to create an impression of a successful fast-track negotiation process. Although it took

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much longer time than initially expected, elites on both sides were engaged in a predominantly technocratic and prescriptive negotiation process that reduced most of the changes in the country to the issue of compliance with EU standards and to so-called normative optimism. The latter has by far overstretched the implications of the rule of law to compensate for the lack of a social dimension of the accession. Accordingly, agreement between the elites to join the EU has fostered the creation of an artificial arena where laws and policies are negotiated, while substantial aspects of political debate about the country's place and perspective within the EU were avoided or pushed away. This was only leveraged by the overarching narrative about EU membership as a civilisational achievement while most important debates on transformation of the European Union and the prevailing economic logic of its integration were absent or sporadic. While the constitutional values of the European Union were expected to diminish nationalism and exclusion, and liberalisation was expected to destroy and end the state monopolies captured by clientelist networks, moving us further to a modern – and modernised – society, it was out of our sight that the EU as our destination has fundamentally changed, losing the attributes we expected to find once our country became a member. Already in 2010 and 2011 it was clear that the EU as a political project was in a deep crisis and that emerging identity politics as a manifestation of discontent with establishment politics and combined with austerity measures against the poorest across the continent threatened Europe's further development around its core and constitutional values.

However, on the fringe of the developments on the European level, Croatia's EU accession and negotiations have continued in the same manner, whereas Croatia managed to play the role of the best student in the classroom (region) and – unlike its neighbours – successfully (hypocritically) control its ghosts from the past (nationalism, war crimes, fascist history). Moreover, even the

protagonists of the EU accession process were prosecuted for (the widespread) corruption in order to demonstrate that the country is not only punishing nationalism, but that it is also committed to bringing an end to corruption in high-level state structures. Only in the last few months, when it became evident that these ghosts would be released almost immediately after Croatia gained membership, have civil society and some progressive political parties suggested an introduction of monitoring mechanisms in order to maintain a level of the EU conditionality. However, both the EC and the predominantly conservative political forces that were in power at the time have rejected the proposal, giving green light to Croatia to join the European family as the 28th member country.

To those who carefully followed the accession process and later developments, it wasn't a surprise that after its accession, Croatia experienced a severe backlash. Episodes of war veterans campaigning in the street (and threatening with violence) and the neoconservative referendum against homosexual marriage were only the first signs of this regressive comeback. Not only that the first attacks against human rights, independent media and civil society funding occurred, but a repressive and revisionist agenda also started to establish itself as a new normality. Developments in Hungary, France or Poland were only encouraging this trend, whereas European values stood for a vague and empty term.

What could be done differently and by whom? Unfortunately, Europe as such, deep in crisis, was not there to help, as it might have been earlier. Already in the early 2000's it had gradually abandoned most of the values it stood for, and therefore lost the power of conditionality, as well as the legitimacy to demand and expect deeper reforms. The economic impact was appreciated more than the social, which required more time and attention. Secondly, reforms as such were predominantly led by the economic logic, which was more and more evident as the backbone and driving force of the

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accession process. The substance of the political project whose aim was a transnational demos that lives in an open, plural and democratic society was lagging behind the ambitions of economic integration. That is why it is no surprise that across Eastern Europe, countries are sliding back towards nationalism and authoritarianism, since reforms were insufficiently deep to break down the thick-skinned structures that resisted modernisation and liberalisation. Insofar as the latter two spell an increase in public debt and more inequality for the poorest in Europe, the price to be paid for the new European future, they again are not too popular.

Today, Europe is at a crossroads, and when it looks into its future, one of the images it can see is the Other – the Balkans. In its ambivalence, the Balkans can symbolise the time of disintegration, uncertainty and turmoil where nationalism survives and demos fails. But it can also be the last stage of the integration and consolidation of the European project and a chance for its survival. In the Balkans, integration has to be done in a different way, with all the lessons learnt, or it will never happen... ■■■

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Waiting for Houdini: The International Community and Bosnia and Herzegovina

Miroslav Živanović

The constitutionally protected "ethnocracy" creates a kind of vicious circle which is decorated with the widespread political patronage and clientelism, covering both the public and, to a certain degree, the private sector, having disastrous effects on the economic performance and international competitiveness of the country, perpetuating the poverty and social exclusion of the majority of citizens.

Being a former student of comparative literature, I always have an inclination toward using figures of language in attempts to define and describe realities of our society and life in Bosnia and Herzegovina. One that very often comes to my mind, is that which compares Bosnia and Herzegovina with a person immobilized in a straitjacket. Now, this upsetting picture implies several things. First of all, it implies some kind of insanity of the person, which created a situation where applying a straitjacket was inevitable. Secondly, it took somebody to apply and tighten that straitjacket. Thirdly, unless the entire thing is not the performance of a magician with the skills and talent of Houdini, somebody is needed to apply a certain therapy, which will eventually lead to an improvement in the mental condition of the person in question, and, finally, the removal of the straitjacket.

If this picture is appealing for the purpose of describing contemporary Bosnia and Herzegovina, then I would dare to say

that in our case, the straitjacket was applied by the international community, as was the therapy that followed. The fact that twenty years after Dayton, I can still picture my country as a person in a straitjacket sends a serious and somewhat disturbing message that the therapy was wrong or, even worse, that we didn't receive therapy at all. To go further with the deconstruction of this picture, I will, quite expectedly, say that the straitjacket is the Constitution of Bosnia and Herzegovina, or the famous Annex IV of the Dayton Peace Agreement.

Let's stay for a moment with our Constitution. The Dayton Peace Agreement set up a constitutional stage where collective rights – usually interpreted by ethno-national political elites as anything they decide to be of vital national interest, from the size of the letters on the passport cover to public broadcasting in certain languages – are dominating over individual rights. From that point, the constitutionally protected "ethnocracy" creates a kind of vicious circle which is decorated with the widespread political patronage and clientelism, covering both the public and, to a certain degree, the private sector, having disastrous effects on the economic performance and international competitiveness of the country, perpetuating the poverty and social exclusion of the majority of citizens. In such a social context, nationalist rhetoric and conflicts over so-called "vital national interests", false in their nature, proved to be more than useful as a method of political survival for ethno-nationalists, truly committed to defend every inch of Dayton constitutional territory. Without any reasonable doubt, one can say that ethno-national political structures in Bosnia and Herzegovina have

no interest in moving beyond Dayton or, in other words, getting out of the straitjacket.

What is the position of the international community in the given circumstances? The Crisis Group calls it the pattern of internationally-sponsored state building without local buy-in. Officially, it is committed to Bosnia and Herzegovina's development and transition in line with the highest European standards of human rights, rule of law, good governance, etc. In practice, it is heavily engaged in negotiations with almost irremovable ethno-national political elites over reforms which go directly against the obvious political and other interests of these elites. And usually they fail! From 2005 to 2007, the police reform, followed by the notorious "five + two" condition and failed attempt to negotiate constitutional changes, to the latest effort to reach an agreement on amending the Constitution and ensure compliance with the decision of the European Court of Human Rights in the case of "Sejdić and Finci vs. Bosnia and Herzegovina". Finally, Sejdić and Finci are moved aside and the name of the game is currently the Reform Agenda.

The Reform Agenda was an important political achievement from the start of 2016. Fully titled the "Reform Agenda for Bosnia and Herzegovina for the period 2015 – 2018", it contains an overview of socio-economic and related measures to be implemented by governments on all administrative levels and used as key indicators for assessing BiH progress in the EU integration process, especially its application for membership. The Agenda covers six key areas of intervention: public finances, taxation and fiscal sustainability; the business environment and competitiveness; the labour market; reform of social protection and pensions; rule of law and good governance; and public administration reform. Even a brief review of the document suffices to show that it is more elaborate when it comes to the economy and economic

expectations, while the social dimension of the Agenda is far more vague and general. Again, the Reform Agenda promotes a number of interventions which directly affect the positions of power of those who committed themselves to implement the Agenda, and it is really hard to believe that issues such as anti-corruption will be addressed properly in the foreseeable future in Bosnia and Herzegovina by those who are the main proponents and beneficiaries of political patronage and clientelism.

Again, the challenge ahead is to learn from past experiences and to ensure that domestic holders of political power and efforts of the international community work for the benefit and development of the entire society and its citizens. Usually, it is the lack of political will that is blamed when domestic actors fail to act in line with the international conditions and expectations. It is time for the international community to rethink the concept of political will in the specific context of Bosnia and Herzegovina. For the beginning, it must be acknowledged that political will is a rather complex concept, in which the political leaders' will, no matter how powerful they are, is just a part of the broader structure of will, required to implement certain policies. The key recommendation is that equal, or at least balanced, attention is to be paid to the transformation of all constitutive elements of the existing political will in the direction of real political commitment to political reform. The constitutive elements in question are those which Carmen Malena, an experienced advocate of participative government, is referring to as the political *will*, political *can* and political *must*. These three are mutually reinforcing elements of political will and can be observed in ideal situations when power holders are able to commit to act and to really act, and because they *want* to do so, they will be confident that they *can* (they possess ability and capacity) and understand that they

The short history of international engagement in Bosnia and Herzegovina is showing that the focus on political negotiations with political leaders on key socio-political and economic issues will not contribute to long-term and sustainable changes in Bosnia and Herzegovina. What is needed is a community-building approach and strong commitment of the international community to facilitate true policy-making processes in which due attention will be paid to efforts of mobilizing public support, articulating public interests, and incorporating experts.

must undertake a certain action. The presence of all three elements can be detected if individual actors connected to certain policies possess a sense of duty, knowledge and skills, but also certain values and priorities which are in line with the policy or activity in question. Furthermore, political will is strongly determined by the involvement of institutional actors. In this regard, it is important that organizations, both governmental and non-governmental, dealing with certain policies are acting in line with their own rules and regulations, with sufficient resources and tools and surrounded with the positive structure of incentives and rewards for success in delivering policies. On the level of general relations, political will always relies on binding partnership agreements, constructive relations between the civil society and the state, and their productive partnerships. Also, political will has to be viewed in the general social context, paying special attention to an enabling legal framework, existing public support and even public pressure for certain policies.

The short history of international engagement in Bosnia and Herzegovina is showing that the focus on political negotiations with political leaders on key socio-political and economic issues will not contribute to long-term and sustainable changes in Bosnia and Herzegovina. What is needed is a community-building approach and strong commitment of the international community to facilitate true policy-making processes in which due attention will be paid to efforts of mobilizing public support, articulating public interests, consulting and incorporating experts' inputs in the form of clear and sound policies resolving key social priorities of the country. In other words, the international therapy for Bosnia and Herzegovina's straitjacket situation should be real, not declarative, facilitation of participative governance.

If, by any chance, something like this were to occur in Bosnia and Herzegovina, it would be naïve to expect that political elites will peacefully watch the changing of the governance paradigm. The concept of participative governance will be strongly opposed and therapy applied by the international community could be insufficient. Even in this scenario, the struggle for getting out of a straitjacket is not lost, because there is always a Houdini approach. The trick

for getting out of the straitjacket is widely known, it is possible to google it with no trouble at all. The Houdini tutorial on how to escape from a straitjacket will advise you thus:

- While you're being buckled up, use one of your hands to inconspicuously pinch the front, giving you about **three inches of slack**. Take a **deep breath** and tighten your muscles in order to make your upper body as big as you possibly can. As your sleeves are pulled behind you, try to make sure your stronger arm is over your weaker arm.
- Loosen up. Once the straitjacket is secured, relax your upper body and **breathe out**. Make your upper body as small as possible, and let go of the slack you created in the previous step. The straitjacket should feel looser now.
- Push your **strong arm** forcefully towards the opposite shoulder. This will move the slack to where you need it for the next step.
- Bring your **strong arm up and over your head**. Keep your weak arm down. Once you've done this, you'll be able to move your arms around.
- Unbuckle the sleeve buckle with your teeth.

In the case of Bosnia and Herzegovina, I will say that our "three inches of slack" are the human rights provisions of the Dayton Constitution of Bosnia and Herzegovina, placed there thanks to the "deep breath" of the actual authors of the Dayton constitutional text. Twenty years of peaceful post-Dayton Bosnia and Herzegovina is our "breath out" and our "strong arm" will be represented through the new human rights community and grass-roots human rights movement yet to be established in the country and its strong and resolute claim for equality between the constitutional principle of constituent peoples and the constitutional principle of human rights. This demand will stand for pushing the stronger arm and bringing it up and over head and, therefore, making a crucial move for getting out of the straitjacket. In this particular situation, the role of the international community will be to make sure that nobody sabotages the process, and Houdini will do the rest! ■■

Normalisation with/out the International Community

Media System in B&H: How the International Community Intervention has Failed

Lejla Turčilo

At first, the international actors believed that increasing the number of channels available to citizens will, consequently, result in an increased amount of high-quality information, which in turn will contribute to democracy, since the well-informed citizens will better participate in political and social life. Unfortunately, that has not happened.

Bosnia-Herzegovina, as a post-war and transitional country, has experienced very complicated and turbulent media reforms and changes in the media scene in the past 25 years. First of all, transition in this country (from the former communist regime, which treated the media as a political institution serving the party and elite, into a democracy in which the media is a pillar of the democratic society, with a specific social role and responsibility) has happened in parallel with the war. That meant that after a long period of non-democratic environment, in which there were only a few media outlets in the country (most of them state-owned; the first private radio station was Radio M in 1990), there was an "explosion" of media outlets. Many of these media were established with the strong support of international organizations and the international community, which promoted the idea that media in B&H should be the pillars of developing democracy (some well-known examples were Radio ZID, Radio FERN and OBN TV). However, most of these media failed to cope with a market-oriented environment once the international support stopped and did not survive in the media market (highly dependent on external support, the local media institutions and media outlets often labelled as "independent" became vulnerable to political manipulations once donor support decreased). However, they were the

first step in the intervention of the international community in the media sector in Bosnia-Herzegovina.

In general, international support for B&H media was enormously strong during the war and the immediate aftermath, and it has continued until nowadays. Donations in equipment, money, consulting, education etc. were given by many international media (BBC, Deutsche Welle, Voice of America etc), NGOs and foundations (Open Society Fund etc) and governments (the US government for example). At the very beginning, the support was given for media infrastructure (in terms of equipment and money) and journalists' education (in terms of their additional education), but not for media management training (that is why many managers of these media failed to make their media survive in the market after donations expired). In later years, it appears that the intervention has focused on several fields:

- Media regulation
- Media organizations
- Media content
- Media training and education of media professionals
- Media literacy

The best intervention by the international community in B&H media was in the field of media laws and regulations, so we may say that, thanks to the efforts of the

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international community and local actors, B&H has the very best laws and regulations when it comes to media (for example the Defamation Law, the Law on Free Access to Information), as well as the best basis (in terms of legal documents) for the efficient functioning of the regulatory institutions (the Communication Regulatory Agency) and self-regulation (the Press Council). However, with time the efficiency of the regulator and self-regulator has weakened, and in many aspects they have not managed to achieve their original mission (the Communication Regulatory Agency is under strong political pressure and influence, and for a very long time has not been efficient in fulfilling its mission; the Press Council is doing some excellent work on lobbying for and promoting media responsibility, but its original mission of being an instrument for improving the quality of print media content through citizens' complaints mechanism has not been entirely fulfilled, since there are not that many people who view the Press Council as such an instrument and use it to register their complaints).

When it comes to intervention in the field of media organizations, different international donors have spent significant amounts of money on supporting media outlets, especially those which are not mainstream profit-oriented, but rather small alternative media. Of course, strong intervention by the – mostly European – funds was aimed at establishing a Public Broadcasting System, and may represent the biggest failure of international community intervention in the media scene. The PBS of B&H never became a functional and successful provider of quality information; until now it remains ethnically divided,

and is now facing one of the biggest crises in its history. On the other hand, the US money was mainly aimed at private media, by means of various grants, chiefly implemented via the USAID mission in B&H. The latest intervention of this kind from the US Government was through the Strengthening Independent Media Program.

At first, as mentioned above, the international community supported the media in B&H, since international actors believed that increasing the number of channels available to citizens will, consequently, result in an increased amount of high-quality information, which in turn will contribute to democracy, since the well-informed citizens will better participate in political and social life. Unfortunately, that has not happened. Once the international donations stopped, most of these media either failed to cope with the market and closed, or adopted a strictly business model, no longer operating as institutions of public interest. So we may say that one of the (many) reasons why the intervention by the international community in the media sphere in B&H failed was that this intervention actually promoted completely the opposite idea: that media are (and in B&H should be) public institutions and pillars of democracy. But, instead, media owners soon accepted the other global trend: "profit over people", as Noam Chomsky says. Media populism, trivialization of content, together with political clientelism and corruption in the media, resulted in a situation where media, instead of becoming an instrument of democracy, became an instrument of "reducing democracy", as Samuel Huntington calls them.

As for media content, most support has been oriented towards supporting inves-

investigative reporting and diversity reporting. Numerous small grants for media support, as well as project-oriented grants of big scale have been allocated to media outlets that were trying to produce investigative stories and stories about minorities. Some of the successful examples of these media are the Balkan Investigative Reporting Network, the Center for Investigative Journalism (CIN), as well as web portals <http://www.manjine.ba>, <http://www.diskriminacija.ba> and <http://www.zurnal.info>. However, one of the obstacles regarding this media content is that mainstream media are not very interested in airing such content, although these media quite often offer it for free (*Žurnal*, for example, offers its content for free, but a very limited number of stories featured there are aired in other media). This makes such content less available and less visible to citizens and, consequently, makes citizens less aware of problems addressed by such media stories.

Regarding media training and education, different forms of training were offered to journalists and students of journalism. Support was provided for formal and informal institutions and training centers. One of the first grants for formal education institutions has been allocated to the Faculty of Political Sciences, University of Sarajevo. Its Journalism Department has implemented a project of improving study programs in cooperation with the School of Communication, Information and Library Studies of the Rutgers University, supported by the US Government grant. Two informal media schools have received strong international support: the Media Center had a School of Journalism based on BBC standards and the Media Plan Institute had a School for Journalists in cooperation with the Graduate School of Journalism [École supérieure de journalisme] from Lille, France. Both schools offered very good programs and trained some excellent journalists that are working in the media scene today, but after the support of their partners expired, these schools were unable to become self-sustaining, although both the Media Center and the Media Plan Institute still do offer short-term media training. In addition, many media professionals have participated in various short-term training programs organized both in B&H and abroad, with international donors' support. This has contributed to their professionalism, and resulted in some excellent media professionals on the media scene. However, media in general were not

At the very beginning, the support was given for media infrastructure (in terms of equipment and money) and journalists' education (in terms of their additional education), but not for media management training (that is why many managers of these media failed to make their media survive in the market after donations expired).

particularly interested in raising standards and further investing in training and education of their staff (sometimes not even willing to allow journalists leave to participate in training at no cost to the media whatsoever), since after all, a skilled and well-trained professional simply costs more, and many B&H media are unfortunately just looking for cheap labor force rather than high-level professionals.

One of the new concepts that has been promoted recently and in which some international organizations (such as Internews, that is, USAID) have invested some money is media literacy, that is, training the audience for better interaction with the media. This concept is based on the assumption that a competent audience would put pressure on media to be more professional and to provide better quality content. Several trainings of trainers for media literacy have been organized, some books and other materials published (one of the most important ones is Lea Tajić's book *Medijska pismenost u BiH* (Media Literacy in B&H); another is the *Media and Information Literacy Policy Report* for B&H, which systematically discussed how media literacy is developed in B&H and what can be done more and better), some audiences trained as well. However, since this is just the beginning of the development of such a concept, it is difficult to assess how successful it has been so far.

In general, we may say that the intervention of the international donors into the media field has been only partly successful. The two biggest failures were definitely the development of the Public Broadcasting System and OBN TV. There are several reasons why international intervention has not been such a success in Bosnia-Herzegovina, but two of the most important ones seem to be the fact that projects were mainly developed ad hoc, lacking strategic approach

and coordination between various actors. The assistance lacked a coherent design, as donors of various orientations, aims and agendas failed to coordinate. International support achieved many tangible results, but, due to the lack of interplay with and support from local decision-makers, these results are continuously challenged.

As Tarik Jusić and Nidžara Ahmetašević (2013) notice, there were several shortcomings of external assistance:

- Imported models that were used as a blueprint for institutional reforms sometimes did not correspond to the local setting;
- Much attention has been given to the issue of media dependence on donors and the importance of the financial sustainability of recipient media outlets and institutions;
- To a certain extent, international actors attempted to establish cooperation with local politicians and the media community, although the combined effects of a post-conflict society along with ethnic divisions and a slow democratic transition left a very limited window of opportunity for substantial cooperation with local decision-makers;
- Scholars emphasize the importance of international actors monitoring recipient governments, criticizing them, exerting pressure on them, and using sanctions. This is confirmed by the experience of media assistance in B&H;

Finally, donor coordination has proved to be an important factor in media reforms. There were significant conceptual differences in the approaches to media assistance among donors – especially between Europeans and Americans. Donors made some attempts to coordinate their activities, but it was not an easy task to implement as they were largely unable to achieve a consensus on models of mutual cooperation (Jusić, Ahmetašević, 2013).

In the past few years we have been witnessing a decrease in the interest of the international community in the media in B&H and a decrease of international support in terms of funds. However, the media sector and media professionals still do need support. The key question is: what kind of support do the media in B&H need in order to become more efficient as pillars of democracy and tools for defending public interest in Bosnia-Herzegovina? How can the international community in the future contribute to a more professional media scene in this country? In other words: what do we need and what can the international community offer in the future? If one were to search for a key word for future media reform and intervention of the international community in Bosnia-Herzegovina, then the key word would without a doubt be: a strategy. ■■

Sources:

- Jusić T., Ahmetašević N. (2013). *International Media Assistance in Bosnia and Herzegovina: Lessons Learned*. Policy Brief No. 10, Sarajevo: Analitika – Center for Social Research.
- Tajić L. (2013). *Medijska pismenost u BiH*. Sarajevo: Internews, available also on: http://www.internews.ba/sites/default/files/resursi/Medijska%20pismenost%20u%20BiH_0.pdf
- Tajić L., Turčilo L. (2014). *Media and Information Literacy Policies in B&H*. available at: http://ppemi.ens-cachan.fr/data/media/colloque140528/rapports/BOSNIA-HERZEGOVINA_2014.pdf
- Turčilo L. (2011). *Zaradi pa vladaj: politika-mediji-biznis u globalnom društvu i u Bosni i Hercegovini*. Sarajevo: Vlastita naklada.

Remembering the Expulsions from Krajina 1991-1995

The Croatian and Serbian experience

Vesna Teršelič

More than 20 years since the beginning of the wars between, and subsequently within then-Yugoslav republics, as well as since the establishment of the International Criminal Tribunal for the former Yugoslavia (ICTY), the peace process remains unfinished. The question of how to remember more than 130,000 persons killed in the wars from 1991 to 2001 and how to finally clarify the fate of 13,000 persons who are still missing, becomes more and more pressing with the passing of time. Instead of recognition, the politics of memory recently became even more confrontational. The scapegoating of independent journalists and human rights activists reinforces the fear of challenging the dominant narrative of war.

Only part of the several millions of refugees who have had to flee from their homes in Bosnia-Herzegovina, Croatia and Kosovo returned to their towns. Most are still scattered in different countries and continents, gradually giving up hope of ever returning to their homelands.

The War in Croatia, which started in 1991 with the ethnic cleansing of non-Serbs (mostly Croats) from approximately 30% of the territory; followed by the destruction of the town of Vukovar by the fire of the Yugoslavian People's Army and Serb units, and artillery attacks by the Yugoslavian Army and Montenegrin units that seriously damaged Dubrovnik, ended in mid-1995, following the *Operation Flash* and *Operation Storm*. At the end of these operations, Croatia had reclaimed all of its territory except the UNPA Sector East, i.e. a portion of Slavonia bordering Serbia. Most of the Serb population in the reclaimed areas (around 200,000) were forced to leave, moving to Bosnia-Herzegovina and Serbia. After the cessation of

It takes great effort to promote a multi-perspective approach instead of a simplified war narration. Celebration of the victors should be supplemented with serious historical research showing a more nuanced and complex picture of war events. Unfortunately, the post-Yugoslav countries remain among the far-too-numerous states that are still struggling to deal with their violent past.

hostilities many wanted to return, but faced very serious obstacles. Thousands of them still live in Serbia as refugees¹.

This text focuses on the fate of the displaced from Krajina and their continued plight of displacement, in the context of the still-tense relationship between Croatia and Serbia. The returnees have mostly been elderly farmers whose houses were not destroyed or occupied and who receive modest pensions from the government. The

¹ Most of the 700 collection centers that offered shelter to refugees in 1996 were supposed to be closed by the end of 2016. Currently, 9 centers in Central Serbia and 8 in Kosovo are still the only home for several hundred refugees, often living in appalling conditions. Besides hundreds in collection centers, 17,000 refugee families live in Serbia in private accommodation. Some of the collection centers now also host asylum seekers. The most visited collective center, and the one closest to the newsrooms, is in "Ivan Milutinović", a former factory 10 km from the Belgrade city center; in *Kolektivni izbjeglički centar Krnjača* a few hundred refugees from Bosnia-Herzegovina, Croatia and Kosovo have lived for more than 20 years. Now it is also a temporary shelter for refugees from Syria (Al Jazeera Balkans, June 20, 2016).

lack of employment opportunities still prevents young and middle-aged refugees from returning to either urban or rural areas.

The still insufficiently efficient prosecution of war crimes and the ongoing search for the missing, accompanied by a failure to acknowledge the suffering of victims and survivors, keeps the wounds of war open. Of the 677 deaths of civilians during and after the military operation Storm that were documented by human rights organizations,² which kept warning of the consequences of this action, epitomized by arson, looting and numerous killings of civilians that remain unpunished, even systematically covered up,³ only two cases have been prosecuted by the Croatian Judiciary.⁴

Of all the ICTY judgments rendered in cases of crimes in Croatia, the Operation Storm judgment is undoubtedly the most controversial. Generals Gotovina and Markač were unanimously convicted in trial and sentenced to 24 and 18 years in prison respectively, only to be acquitted on appeal by a three-two majority of Judges Meron, Güney and Robinson against Judges Pocar and Agius. In the two judgments – relying on the same facts and the same law – the Trial and Appeals Chambers judges came to diametrically opposite conclusions on key issues contested in trial by both the Prosecution and Defence⁵.

How is the exodus from Krajina remembered? How are the survivors' stories told and retold in Croatia and Serbia? In Serbia, the narrative is focused on the suffering of families of refugees, and in Croatia on its victory.

Some of the personal memories of the violent 20th century, including memories of Operation Storm and its aftermath, are accessible on the Croatian Memories web

platform⁶. Among them is the interview with Nada Bodiřoga, who is still searching for her missing parents; she is asking herself: "Do they know how many years have passed since Operation Storm?". She spent her childhood and youth in Croatia. In 1993, she started her studies in Belgrade. Her parents remained in Croatia, in their home in Slavonsko Polje. At the outbreak of the war in the 1990s, she was in Indija, whilst most of her family spent the war in the area of SAO Krajina. Following Operation Storm, her elderly parents decided to remain in their home, hoping that no one would bother them since they had not participated in the war in any way. Very quickly, as the columns of refugees were arriving to Serbia, Nada Bodiřoga gathered from the contradictory information she received that there was a possibility that her parents might have been killed. Her search for her parents went on for years until one day in 2000, when she saw an article in the Politika daily newspaper, which mentioned the murder of her parents on the doorstep of their house in Slavonsko Polje. During her efforts to find her parents, with all the accompanying misfortune, she became ill with multiple sclerosis. Based on the information that she got from the newspaper, she started the search for her parents' remains. Thanks to her persistence, an exhumation was carried out, but the remains were burnt to such an extent that it made identification impossible. She is a member of the Association of Families of Missing and Killed Persons, 'Suza', and she still hopes that one day she will be able to bury her parents and mark their grave.

Marina Maglov, who was fired after the war, said: "I had to suffer twice, first during the war because I was a Croat, and then after the war because I was a Croat who stayed and lived with the Serbs." She lived in a mixed marriage; her husband is of Orthodox faith. At the beginning of the war in the 1990s, they decided not to leave their home and to remain in Knin. In the period from 1991 to 1995, she lived with her husband and children in the area of SAO Krajina and witnessed changing economic and social trends. At the same time, a part of her family lived in western Slavonia. During the war, Serb paramilitary units killed two of her uncles. At the time of Operation Storm, she was in Belgrade for medical treatment. Not

2 See more on the killings in: *Hrvatski helsinški odbor za ljudska prava (2001), Vojna operacija "Oluja" i poslije. Izvještaj*. Zagreb: HHO.

3 Press release on unprosecuted crimes committed during and immediately after the military operation "Storm", 13 April 2011: http://www.documenta.hr/assets/files/pdf%20za%20priopćenja/366_Press_Release_Non-prosecuted_Crimes_operation_Storm.pdf

4 Two cases processed by the Croatian judiciary which were monitored by human rights organizations were the crime in Prokljan and Mandići: <http://www.documenta.hr/en/crime-in-prokljan-and-mandi%C4%87i.html> and the crime in Grubori: <http://www.documenta.hr/en/crime-in-grubori.html>

5 See more on ICTY proceedings related to the Military Operation Storm in the internet narration by the Sense Agency called *Storm in the Hague*: <http://snv.hr/oluja-u-haagu/oluja-en.html>

6 Video memories recorded by *Documenta* are published on the web and can be searched by key words. More than 80 narrators talk about the Storm. <http://www.croatianmemories.org/en/video-search/>

knowing about the newly developed situation, she tried to return to Knin exactly at the time when Operation Storm was being carried out. She ended up in refuge in Indija, where she spent two months before returning to Knin with her children. Her husband returned to Knin in 1997. Today she lives in Knin and is unemployed.

Memories like theirs are not often publicly presented in Croatia. The mainstream narrative in Croatia was framed in the "official interpretation" of the war events in the Declaration on the Homeland War passed by the Croatian Parliament in 2000⁷ and a separate declaration on Operation Storm⁸ in 2006, underlining the heroic victory in the liberation struggle as its main characteristic. There is significant political and social pressure to stick to that interpretation. In the very intense memory wars between defenders of freedom of expression and would-be censors, some even go as far as the Zagreb County Court judge Turudić, who publicly proposed penalizing the public expression of opinions which differ from those set down in the Parliamentary Declarations⁹.

The social and political pressure to stick to only one acceptable interpretation of historical events, framed as the only truth, is nothing new. Dominant narratives, which revolved around veterans who defended the country from a powerful enemy, were characteristic of the aftermath of the WWI in the first Yugoslavia, with the heroism of mostly Serbian veterans who fought on the Solun (Thessaloniki) Front in its centre. After WWII, the official narrative in Socialist Yugoslavia was focused on the Partisans, who won the liberation war as part of the Anti-Nazi coalition. Finally, in the Republic of Croatia, the dominant war narrative has Croatian soldiers in its centre. This is not all that different from the simplified historical narratives of many other countries, with heroes as their cornerstone. It takes great effort to promote a multi-perspective approach instead of a simplified war narration. Although the need to celebrate the victors is understandable in the immediate aftermath of the war, it should be supplemented with serious historical research showing a more nuanced and complex

Instead of searching for ways to represent the complex nature of the war, in which images of military struggle would be complemented with images of the suffering of civilian population, the usual political manipulation prevailed. Besides, neither Croatia nor Serbia have legally recognized the suffering of the victims.

picture of war events as soon as possible. Unfortunately, the post-Yugoslav countries remain among the far-too-numerous states that are still struggling to deal with their violent past.

A telling example of the memory wars linked to the public representation of the military operation Storm is the failed attempt to introduce a more complex, multi-layered representation of the War of the 90's in the history textbooks. An attempt was made to reform history teaching after the expiration of the *Moratorium on history teaching on the history of former Yugoslavia and its republics in between 1989-1997*, prohibiting history teaching in Eastern Croatia (UNTAES)¹⁰ from the school year 1997/98 to 2002/03. To this purpose, the *Addendum to Textbook for newer History* was prepared by a group of historians and history teachers. Two photos, of victory and exodus, contrasting images of Croatian soldiers being welcomed in Zagreb and the Serb population leaving Croatia after Operation Storm, followed by proposed questions for discussion with pupils, that were published on the same page of the *Addendum*, have caused such fierce public debate fraught with verbal violence towards the authors of the *Addendum*, that it was never published by the Croatian Ministry of Science, Education and Sports, which had ordered its preparation. It was later published by *Documenta*¹¹.

7 Deklaracija o Domovinskom ratu, <http://narodne-novine.nn.hr/clanci/sluzbeni/274008.html>

8 Deklaracija o Oluji, <http://narodne-novine.nn.hr/clanci/sluzbeni/127530.html>

9 Croatian Law should penalise attacks on War, Judge Says, <http://www.balkaninsight.com/en/article/croatian-judge-advocates-legal-definition-of-1990s-war/1431/5>

10 The United Nations Transitional Administration for Eastern Slavonia, Baranja and Western Sirmium (UNTAES) was a UN peacekeeping mission in Eastern Slavonia, Baranja and Western Sirmium, the eastern parts of Croatia, between 1996 and 1998, established by the *United Nations Security Council Resolution 1037 of January 15, 1996*.

11 See Koren, Snježana; Najbar-Agičić, Magdalena; Jakovina, Tvrtko (2007) *Dodatak udžbenicima za najnoviju povijest. U: Jedna povijest, više historija. Dodatak udžbenicima s kronikom objavljivanja* (2007) Zagreb: Documenta – Centar za suočavanje s prošlošću.

Any hope to see a more inclusive attitude in the media coverage and remembrance events organized in July, August and September each year in Croatia and Serbia, is gradually fading away. Since the year 2015, separate official events, attended by the highest political representatives, have been organized in Knin and Belgrade. On the 20th anniversary of the Victory, a military parade held in the Croatian capital Zagreb was added to the ceremonies, even further separating the public representations of the military operation Storm. Instead of searching for ways to represent the complex nature of the war, in which images of military struggle would be complemented with images of the suffering of civilian population, the usual political manipulation prevailed. Besides, neither Croatia nor Serbia have legally recognized the suffering of the victims.

The crucial questions that remain: "Does the Croatian public want to know what happened to the victims? Does the Serbian public want to come to grips with the military victory of the Croatian forces? Do we all want to know how the refugees live now? Are we aware of their suffering? Are Croatia and other post-Yugoslav countries doing enough to support them? So far the answer is sound: "Not yet."

Unfortunately, the absence of interest in dealing with the legacy of Operation Storm "at home" in an inclusive manner will not be seriously questioned by international organisations, as long as the European Union lacks a clear institutional commitment to the right to know and the right to justice. ■■■

Literature:

- Bužinkić, Emina (ed.) (2013) *Working on Dealing with the Past*. Handbook for Civil Society Organizations, Zagreb: *Documenta* – Centar za suočavanje s prošlošću.
- Hrvatski helsinški odbor za ljudska prava (2001) *Vojna operacija "Oluja" i poslije. Izvještaj*. Zagreb: HHO.
- Kardov, Kruno; Lalić, Dražen; Teršelić, Vesna (2010) *Suočavanje s prošlošću u Hrvatskoj: Stavovi i mišljenja aktera i javnosti u poraću*, Zagreb: *Documenta* – Centar za suočavanje s prošlošću.
- Koren, Snježana; Najbar-Agičić, Magdalena; Jakovina, Tvrtko (2007) *Dodatak udžbenicima za najnoviju povijest. U: Jedna povijest, više historija. Dodatak udžbenicima s kronikom objavljivanja* (2007), Zagreb: *Documenta* – Centar za suočavanje s prošlošću.
- Žunec, Ozren (2007) *Goli život. Socijetalne dimenzije pobune Srba u Hrvatskoj. t. I and II*. Zagreb: Demetra.

Environmental Protection in Albania

Decision Makers, the International Community and the Role of Civil Society

Lavdosh Ferruni

Two years ago, the European Council granted Albania candidate status for membership in the European Union. An absolute majority of Albanian citizens, as well as 100% of politicians, welcome membership in the EU despite the problems the EU itself faces nowadays. To express that will, a lot of work has been done on adopting EU legislation in Albania, often simply by copying it. Another interesting thing is that in these 25 years, Albania has ratified each and every international convention proposed. So on paper there is good progress, in terms of the EU reports, but in terms of decision making, Albania is far from applying and reflecting good practice coming from the international community. The most fitting explanation is that decision-making is simply highly biased and clientelist.

Although corruption is not the topic of this article, it is evident that clientelist decision making is always associated with a long-term negative impact on environment. Clientelism of course is always camouflaged by the needs for the development of the economy and welfare of communities. The actors in clientelist deals might not be only businesspeople or national politicians, but also leaders of other states, international financial institutions and so on. It is proven that decision making in Albania has failed to respect EU recommendations, even now that it has the status of an EU candidate, as well as international institutions' standards and international conventions. In approaching the most adequate decision making according to good practices and the most environmentally friendly development processes, in addition to the role played by international actors, the Albanian

Clientelism is always camouflaged by the needs for the development of the economy and welfare of communities. The actors in clientelist deals might not be only businesspeople or national politicians, but also leaders of other states, international financial institutions and so on. Decision making in Albania has failed to respect EU recommendations, even now that it has the status of an EU candidate, as well as international institutions' standards and international conventions.

civil society has played an important role, particularly these last 15 years, and this role is becoming more and more important.

The case of the waste incinerator outside Tirana

In 2004, it was secretly decided to import garbage in huge quantities from Italy, to be burned in the outskirts of Tirana. The contract was signed by two ministers, and was ready for the final signatures to be added. The Italian contractor was Francesco Becchetti, who had previously also got a concession for a hydro-power plant on the Vjosa river, whose construction was started and then stopped several years ago, but he is still in the game. Now this contractor is under investigation for money laundering. The affair was detected and an immediate campaign was organized by a group of NGOs and stakeholders. Civil society organisations were joined by the media and eventually the contract was not signed.

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"The colorful buildings of Tirana" by Charles Roffey, CC-BY-NC-SA 2.0



The case of the Thermal Power Plant in Vlora

In the EU progress report ten years ago it was written that the Thermal Power Plant of Vlora should not be constructed, because it would not be economically viable. Thousands of citizens organized many protests against the TPP in Vlora, but the Government continued with the wrong decision of building it. The TPP of Vlora was finished in 2009, but is still not operational. It seems that just to justify the spectacular failure it is planned to construct a 30 km pipeline from Fier to the Vlora TPP. Indeed, up to now there has been no agreement confirming that the Trans-Adriatic Pipeline, which is going to connect Albania and Italy, passing through the coast of Fier, but not before 2019, might have to branch to Vlora. So besides the 100 million EUR spent on construction, there has been a lot of money spent on the maintenance, without knowing what the final outcome would be.

The recent case of the "epidemic" of hydro power plants in Albania and the Vjosa case

An unprecedented positive case happened when the European Parliament discussed an environmental issue in Albania, which shows that the environment cannot be neglected in Albania any more; the debate was clearly focused on a specific issue, the protection of the Vjosa river. The Vjosa is Europe's last big wild river outside Russia. Along its course of 270 kilometres – from

the Pindus Mountains to the Adriatic Sea – it flows freely without any artificial obstacles.

In mid-April this year, the European Parliament criticized the Albanian government for planning hydro-power projects and called upon them to be more considerate of protected areas and other sensitive nature areas, especially national parks. In the current Enlargement Report that was adopted by the parliament in Brussels, the Vjosa river is specifically mentioned. The European Parliament "Calls on the Albanian government to control the development of hydropower plants in environmentally sensitive areas such as around Vjosa River as well as in protected areas and to maintain the integrity of existing national parks; recommends improving the quality of environmental impact assessments, which would allow account to be taken of EU standards as established by the Birds and Habitats Directives and the Water Framework Directive; encourages the Albanian Government to increase transparency through public participation and consultation on planned projects." (No. 23 in the EU Enlargement Report). However, in contrast to this request, the government under Prime Minister Edi Rama has only recently invited tenders for a large hydropower plant on the Vjosa. Construction companies from all over the world were encouraged to apply for a concession before March 17, 2016. The Turkish company Ayen, together with construction company Cinar-San, won a tender to construct the 99.5 MW Poçem hydropower plant on Vjosa River.

"Albania is an EU candidate state and it would be disastrous if the most valuable natural treasures the country has to offer would be lost beforehand. At the very least,

All the environmental organisations in Albania are in full consensus that there is unjustified ignoring of solar and wind energy by the government on one side, and the epidemic of building dams wherever there is a stream of water in the country on the other side. The common attitude of the civil society is that the epidemic development of HPP plants should be stopped, and particularly in the protected areas.

the government must assess the project of Poçem according to EU standards before issuing a license for its construction", Ulrike Lunacek, Vice-President of the European parliament has said. And the further comment is that choosing a Turkish company means avoiding EU standards and not complying with EU directives.

More generally, as it is mentioned in the key findings of the 2015 report Albania, the country should continue work on the development of its energy network within the framework of the regional connectivity agenda. Stepping up the diversification of energy sources and the functioning of the electricity market are vital for economic development. Since Albania is a country where 100% of electricity is generated from hydropower, there is a need for solar and wind energy to help in diversifying energy sources. Practically, 0 KWh are produced from these renewable energy sources. At the same time, Kosovo generates almost 100% of its energy from fossil fuels, which precludes the need to further develop such energy sources. Because of that, the Energy community sent a reasoned request in May in 2015 on Albania's failure to submit a renewable energy action plan, in spite of the fact that Albania is considered to be a renewable energy based country, due to the fact 100% of its electricity generation comes from hydro sources. So, any further

development of hydropower should take place in conformity with EU environmental legislation. The law on energy efficiency in buildings has not yet been adopted by the parliament. Albania missed its Energy Community deadline to align its law with the 2006 Directive on Energy End-Use Efficiency and Energy Services.

All the environmental organisations in Albania are in full consensus that there is unjustified ignoring of solar and wind energy by the government on one side, and the epidemic of building dams wherever there is a stream of water in the country on the other side. The common attitude of the civil society is that the epidemic development of HPP plants should be stopped, and particularly in the protected areas. Some organisations are quite active. The campaign to have the Vjosa and Valbona rivers free of dams is intense. It is important that local communities are seriously involved to protect the environment and their rights. The movement is strengthened by the fact that it is in line with EU directives, as well as the international community in general.

Although civil society in Albania remains fragmented and overly dependent on donor funding, in many important situations in the country it has been an agent in the development processes in this long transition period. ■■■

WHO WE ARE

Fostering democracy and upholding human rights, taking action to prevent the destruction of the global ecosystem, advancing equality between women and men, securing peace through conflict prevention in crisis zones, and defending the freedom of individuals against excessive state and economic power – these are the objectives that drive the ideas and actions of the Heinrich Böll Foundation. We maintain close ties to the German Green Party (Alliance 90/The Greens) and as a think tank for green visions and projects, we are part of an international network encompassing well over 100 partner projects in approximately 60 countries.

The Heinrich Böll Foundation works independently and nurtures a spirit of intellectual openness. We maintain a world wide network with currently 30 international offices.

We gladly follow Heinrich Böll's exhortation for citizens to get involved in politics, and we want to inspire others to do the same.

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The Heinrich Böll Foundation

- is a catalyst for green visions and projects, a think tank for policy reform, and an international network
- is closely affiliated to the German Green Party
- promotes the development of democratic civil society at home and abroad
- defends equal rights and equal opportunities regardless of gender, sexual orientation, religion, ethnicity, or nationality
- supports cultural projects as part of our civic education programmes
- is mostly financed through public funds (currently around 45 million euros per year)

The primary objectives guiding our work are

- establishing democracy and human rights
- fighting against environmental degradation
- safeguarding everyone's rights of social participation
- supporting non-violent conflict resolution
- defending the rights of individuals

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