Founded in June 1950

THE REVIEW OF INTERNATIONAL AFFAIRS

UDK 327
ISSN 0486-6096

BELGRADE, VOL. LXII, No. 1144, OCTOBER –DECEMBER 2011

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The Review of International Affairs

ISSN 0486-6096
UDK 327
VOL. LXII, No. 1144, OCTOBER–DECEMBER 2011

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Makedonska 25, 11000 Belgrade, P.O. Box 413
Internet: www.diplomacy.bg.ac.rs/ria.htm
Published quarterly

Publisher
Institute of International Politics and Economics,
Belgrade, Makedonska 25,
E-mail: mina@diplomacy.bg.ac.rs

For the Publisher
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For information on annual subscription please contact:
BiFS doo, Books and Periodicals, Supilova 10
11000 Belgrade, Serbia
Tel/fax: +381 11 20 84 229
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Circulation
300

Printed by
"Želnid", Belgrade, Nemanjina 6

Publishing of *The Review of International Affairs* is funded by
the Ministry of Education and Science of the Republic of Serbia

The Review of International Affairs

Vol. LXII, No. 1144, October–December 2011

UDK 327 ISSN 0486-6096

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UDC: 341.485 (675.98)
Biblid 0543-3657, 62 (2011)
Vol. LXII, No. 1144, pp. 5–42
Original Scientific Paper
October 2011

Bettina Heller[1]

Favoring Retribution?

A Study on the Factors Influencing the Choice of the Transitional Justice Approach in the Aftermath of the Genocide in Rwanda 1994-1996[2]

ABSTRACT

This article inquires why Rwanda applied retributive justice in the aftermath of the 1994 genocide. Considering the devastation the country found itself in as well as the prominence of restorative approaches in Africa, it seems astonishing that Rwanda enacted extensive prosecution as the main policy to deal with the genocide. In order to account for that phenomenon, various factors are examined with regards to their influence on the choice of a particular transitional justice approach in Rwanda. The theoretical foundation of the research is derived from the transitional justice framework and existing work on the possible correlation between factors present before, during and after a transition and type of transitional justice approach pursued. The paradigms of retributive and restorative justice are introduced as values of the dependent variable, which is type of transitional justice applied. After a discussion of the theoretical framework, the article proceeds to an in-depth analysis of the Rwandan case study. Here, the particular values that the independent variables nature of the previous regime,

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[2] This article is a shortened version of a Master thesis on the same topic. It is a pleasure to thank those who made this thesis possible, especially my supervisor Prof. Dr. Bachmann, University of Wrocław, for his guidance and support.

transition type, external actors and foreign policy considerations, and values and beliefs held by decision-makers take on are explored. The choice of a retributive approach is finally explained as a result of the combination of the discussed variables.

Key Words: Transitional justice, Rwanda, genocide, retributive justice, restorative justice.

Introduction

The Rwandan genocide left the country shattered and the whole world in shock. It seems impossible to understand how thousands of people could have been slaughtered in open daylight, with the world watching but not interfering. The genocide was ended by the military victory of the Rwandan Patriotic Front (RPF), which subsequently formed a transitional government.[3] Like many countries before, post-conflict Rwanda then faced the question of how to deal with its past. This question relates to transitional justice, a field which receives increasing attention from scientific researchers and practitioners. The main transitional justice mechanism employed by Rwanda after the genocide was criminal prosecution.[4] Thus, the country chose a highly retributive approach, and this despite the huge logistical challenges it faced in doing so. Considering that retribution is a "duty-based approach, strongly influenced by Kantian and Hegelian philosophy,"[5] it seems curious at first glance that Rwanda would favor such a rather 'Western' concept over others, especially since it is often claimed that African cultures share a common perception of community assuming primacy over individualistic values:[6]

"Retributive justice is largely Western. The African understanding is far more restorative- not so much to punish as to redress or restore a balance that has been knocked askew. The justice we hope for is restorative of the dignity of people."[7]

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[3] Stephen Brown, "The rule of law and the hidden politics of transitional justice in Rwanda", in Chandra Lekha Sriram, Olga Martin-Ortega & Johanna Herman (eds), *Peacebuilding and Rule of Law in Africa: Just Peace?*, Routledge, New York, 2011, p. 179.

[4] Mark A. Drumbl, "Sclerosis: Retributive Justice and the Rwandan Genocide", *Punishment & Society*, vol. 2, no. 3, 2000, p. 291.

[5] Rama Mani, *Beyond Retribution. Seeking Justice in the Shadows of War*, Blackwell Publishers Inc., Malden, 2002, p. 33.

[6] Ibid., p. 48.

[7] Tutu in Martha Minow, *Between Vengeance and Forgiveness. Facing History after Genocide and Mass Violence*, Beacon Press, Boston, 1998, p. 82.

This article accordingly inquires why Rwanda applied retributive justice after the genocide. Transitional justice in any society is an ongoing process, however, for analytical purposes, a time period has to be demarcated here. Research is conducted on the time period immediately following the genocide, when initial decisions about transitional justice were made. This is framed as starting in 1994 because the end date of the genocide in July 1994 simultaneously marks the beginning of transitional justice becoming an issue in the country. The adoption of genocide legislation and the beginning of genocide trials in Rwandan national courts in 1996 are considered as marking the end of the period in which initial responses to the violence were established.

This research employs the transitional justice framework and its work on the possible correlation between factors present before, during and after a transition and type of transitional justice approach pursued to make sense of the Rwandan case study. Further, the categories of retributive and restorative justice are used to classify the Rwandan transitional justice approach.

The dependent variable concerns the type of response given to human rights abuses under a previous regime. It is thus the transitional justice approach employed in order to deal with suspected perpetrators of past atrocities. There exists a large variety of instruments in the field of transitional justice, accordingly also a number of dependent variables.[8] However, to consider all possible options would make the analysis too complex. Therefore, the dependent variable focused on here is the type of justice applied. The value it can take on is either retributive or restorative justice. Similarly, with regards to the independent variables, due to space limitations the analysis has to focus on a limited number of influencing factors. The independent variables to be considered are nature of the previous regime, transition type, external actors and foreign policy considerations, and decision-makers' values and beliefs. The hypotheses derived out of these variables' possible correlation with the dependent variable are to be tested.

The International Criminal Tribunal for Rwanda (ICTR) is treated as an independent rather than a dependent variable, since this research focuses on transitional justice as decided upon and implemented by the Rwandan state. Even though it is taken into consideration that Rwanda initially asked for the ICTR to be established, the analysis treats it mainly in terms of the influence its mere existence had on transitional justice options available in Rwanda.

Moreover, the Gacaca Courts are not included in the analysis. This is justified in light of the fact that Gacaca was launched in its pilot phase in 2002 as a reaction

[8] For an assortment see for example Jon Elster, "Coming to terms with the past. A framework for the study of justice in the transition to democracy", *European Journal of Sociology,* vol. 39, 1998, pp. 17–27.

to shortcomings of the initial transitional justice approach. Since the objective of the analysis at hand is to account for the initial reaction of the Rwandan transitional government, and how factors present at that time influenced its decision, alterations made later on as a form of lessons learned are not part of the research. Taking them into account risks distorting the findings because it cannot be clearly established to what part the adoption of the new approach of Gacaca was in fact influenced by the independent variables and not only a result of lessons learned from the transitional justice approach taken on until that point.

The article starts by giving an overview over the field of transitional justice. Within that, various works by theorists who have written on the possible influence of certain variables on the type of transitional justice approach chosen are discussed. The theoretical part is then completed by the concepts of retributive and restorative justice. The empirical part first shortly describes the background and history of the conflict. Further, the different policy options that were discussed after the genocide are taken into account. Subsequently, the article continues with the classification of the approach that was finally adopted according to the theoretical concepts introduced beforehand. The next part finally analyzes the factors that contributed to the choice of this particular transitional justice approach in Rwanda using the variables established in the theoretical part.

Transitional Justice

Definition

There are various definitions of transitional justice and opinions on the role it should take on diverge.[9] Broadly, it can be understood as the "response to systematic or widespread violations of human rights."[10] Teitel defines transitional justice as a "conception of justice associated with periods of political change, characterized by legal responses to confront the wrongdoings of repressive predecessor regimes."[11] The UN adopts a broader definition, stating that transitional justice is "the full range of processes and mechanisms associated with a society's attempt to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation."[12] Still

[9] "The rule of law and transitional justice in conflict and post-conflict societies. Report of the Secretary General (S/2004/616)", UN Security Council, 23 August 2004, p. 5.

[10] *What is Transitional Justice?,* ICTJ, 2008, Internet, http://ictj.org/sites/default/files/ICTJ-Global-Transitional-Justice-2009-English.pdf, 31/07/2011, p. 1.

[11] Ruti G. Teitel, "Transitional Justice Genealogy", *Harvard Human Rights Journal,* vol. 16, 2003, p. 69.

[12] UN Security Council, *The rule of law*, p. 5.

another definition reflects the increased attention given to post-conflict societies when it describes transitional justice as involving "states and societies shifting from a situation of conflict to one of peace and, in the process, using judicial and/or non-judicial mechanisms to address past human rights violations."[13] While some definitions of transitional justice focus on the pursuit of justice from a legal perspective, others take on a more holistic approach, adding moral, social, political and economic dimensions. With conflicts being increasingly of an inter-society nature, reconciliation assumes a central role in transitional justice processes. Similar to transitional justice, the concept of reconciliation is also a debated one. The way it is understood in the research at hand, reconciliation can be defined as "the rebuilding of fractured individual and communal relationships after conflict, with a view to encouraging meaningful interaction and cooperation between former antagonists."[14]

The two main goals of transitional justice are to prevent recurrence and repair damage caused. Its diverse objectives revolve around establishing justice, truth, peace, democracy, reconciliation, forgiveness and healing.[15] Transitional justice possesses both a backward and a forward looking characteristic since it revolves around the issue of how to address abuses committed under a past regime in a way that guides a society into a peaceful and stable future. The multitude of interests and needs present in such a situation make the enterprise of transitional justice a highly complex one. Tensions result out of sometimes conflicting objectives. Complexity is added since transitional justice takes places on various dimensions, namely the individual, local, national, and international one, and because an increasing number of actors have a stake in its enterprise.[16]

Given different countries' unique history, culture and circumstances, each one has to find its own way of dealing with its past. However, lessons can be learnt and one country's handling of its transition to a certain extent influences the options available to others by shaping international norms and expectations. For this reason, it is important to consider the historical background of the transitional justice movement.

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[13] Zachary D. Kaufman, "The Future of Transitional Justice", *St. Antony's International Review,* vol. 1, no. 1, 2005, p. 58.

[14] Phil Clark, "Establishing a Conceptual Framework: Six Key Transitional Justice Themes", in Phil Clark & Zachary D. Kaufman (eds), *After Genocide*, Hurst, London, 2008, p. 194.

[15] Phil Clark & Zachary D. Kaufman, "The Past is Prologue: Planning the 1994 Rwandan Genocide", in Phil Clark & Zachary D. Kaufman (eds), *After Genocide*, Hurst, London, 2008, p. 3; José Zalaquett, "Confronting Human Rights Violations Committed by Former Governments: Principles Applicable and Political Constraints", in Neil J. Kritz (ed.) *Transitional justice: how emerging democracies reckon with former regimes*, United States Institute of Peace, Washington D.C., 1995, p. 5.

[16] UN Security Council, *The rule of law*, p. 4.

History

According to Teitel, transitional justice can be said to have undergone broadly three phases in its development. Those she divides roughly into the period after the second World War, the transitions of the third wave of democratization, and the end of the 20th century.

Issues of transitional justice affected countries before 1945. However, the Nuremberg and Tokyo Trials were the point at which transitional justice became both international and extraordinary.[17] The importance of the trials derives from the fact that for the first time leaders were held accountable for crimes committed against their national subjects by the 'international community', represented by the Allied powers. Instead of relying on national trials, international criminal law was applied beyond the state to individuals on the basis of bringing them to account for crimes against humanity.[18] After a period in which the attention of most of the world revolved around the power struggle between the USA and the Soviet Union, concerns about transitional justice were revived with the end of the Cold War. The so-called third wave transitions from authoritarian rule to democracy challenged the liberal belief in the universalizing quality of certain norms. Countries emerging from authoritarian rule insisted on the primacy of sovereignty so that the focus lay on nation building and the legitimacy of national jurisdiction.[19] At the same time, post-transition governments in Eastern Europe and Latin America emphasized the preservation of peace, which was believed to be achievable not exclusively via criminal prosecution. Debates about the usefulness of different transitional justice mechanisms gained prominence and many nations adopted an amnesty policy in order to reconcile society.[20] A growing emphasis was put on establishing the truth about what happened under the authoritarian regime and goals of transitional justice now included issues such as reconciliation, forgiveness, and the healing of society. This also meant that the arsenal of transitional justice instruments grew, since approaches differing from the classical retributive one emerged.[21] Finally, in today's globalizing world, the increasing number of conflicts makes the field and practice of transitional

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[17] Teitel, *Transitional Justice Genealogy*, pp. 70-1.

[18] Ibid., p. 73; Aryeh Neier, *War Crimes. Brutality, Genocide, Terror, and the Struggle for Justice,* Times Books, New York, 1998, pp. 16-7, 22.

[19] Nicholas A. Jones, *The Courts of Genocide*, Routledge, Oxon, 2010, p. 38; Teitel, *Transitional Justice Genealogy*, pp. 74, 76.

[20] Ibid., pp. 76, 82; Naomi Roht-Arriaza, "The new landscape of transitional justice", in Naomi Roht-Arriaza & Javier Mariezcurrena (eds), *Transitional Justice in the Twenty-First Century. Beyond Truth versus Justice*, Cambridge University Press, New York, 2006, pp. 2-3.

[21] Teitel, *Transitional Justice Genealogy*, p. 77.

justice move from exception to norm.[22] This is exemplified by the establishment of a permanent International Criminal Court (ICC).[23] Transitional justice is now characterized by an interdependence of the national and international level and a great number and diversity of policy options that are available to countries.[24] New challenges arise as conflicts increasingly take place between societal groups and thus huge parts of the population are involved in criminal abuses, so that one of the main goals transitional justice has to achieve is reconciliation within a society.[25]

Dilemmas

Dilemmas of transitional justice concern those inherent in decisions made about the objectives of a certain policy, and those that arise from the post-conflict situation per se. Even though somewhat artificial dichotomies, the two main conceptual dilemmas that can be found in the literature can be summarized as 'truth versus justice' and 'peace versus justice'.[26] The peace versus justice dilemma is derived from the potential threat that an insistence on accountability can pose to peace building in fragile post-conflict societies. Whereas this debate concerns the immediate goals a policy prioritizes, truth versus justice refers to two different beliefs of how to achieve the same goal, for instance reconciliation.[27] It deals with the question of whether truth or justice should be prioritized in order to achieve long-term peace and stability. However, both dilemmas are oversimplified. Peace and justice are interrelated and with regards to truth and justice, the pursuit of one does not necessarily have to exclude the other.[28]

Different kinds of challenges arise from the specific constraints that especially post-conflict societies face. Problems like a traumatized population, destroyed

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[22] Ibid., p. 71.

[23] Ibid., p. 90.

[24] Ibid., p. 78; Kaufman, *The Future of Transitional Justice*, p. 58.

[25] Neil J. Kritz, "The Dilemmas of Transitional Justice", in Neil J. Kritz (ed.), *Transitional justice: how emerging democracies reckon with former regimes*, United States Institute of Peace, Washington D.C., 1995, p. xxi; Teitel, *Transitional Justice Genealogy*, p. 90.

[26] Chandra Lekha Sriram, "Introduction: Transitional Justice and Peacebuilding", in Chandra Lekha Sriram & Suren Pillay (eds), *Peace versus Justice? The Dilemma of Transitional Justice in Africa*, University of KwaZulu Natal Press, Scottsville, 2009, p. 1; Clark, *After Genocide*, p. 203; Roht-Arriaza, *New landscape*, p. 3.

[27] Kingsley Chiedu Moghalu, "Prosecute or Pardon? Between Truth Commissions and War Crimes Trials", in Chandra Lekha Sriram & Suren Pillay (eds), *Peace versus Justice? The Dilemma of Transitional Justice in Africa*, University of KwaZulu Natal Press, Scottsville, 2009, p. 76.

[28] Roht-Arriaza, *New landscape*, p. 8; Sriram, *Introduction*, pp. 1, 4-5.

infrastructure, lack of resources or a high level of complicity in the population broaden the gap between aspiration and capability.[29] In case the country decides to enact criminal prosecution the question of whom to put on trial arises.[30] An important dilemma underlying transitional justice is that of finding a proper balance between a 'whitewash' and a 'witch-hunt'. The post-transition government faces the task to distinguish itself from the predecessor regime while at the same time avoiding the reinforcement of old divisions within the society.[31]

Although not the same, the peace versus justice debate relates to the prosecute or pardon question insofar as justice in general is predominantly perceived in terms of legal justice, which is then regarded as achievable through prosecution, whereas amnesty is being justified on grounds of long-term stability and peace.[32] There are various arguments brought forward for as well as against prosecution as a transitional justice mechanism. One of the main dilemmas regarding this issue is the question of whether prosecution helps a society to move forward after a conflict in that it serves to distinguish the new government from the old regime, thus giving it credibility and legitimacy, or if criminal proceedings rather highlight divisions within society and prolong past conflicts.[33] Proponents of prosecution regard it first of all as a tool to reinforce moral standards and to re-establish a just moral order. It is further regarded necessary to fight impunity by officially condemning crimes that were not punished under the previous regime.[34] Another quality of court proceedings is that they establish individual accountability, which is especially of great importance in countries where conflict was fueled by tensions among groups.[35] Further, it is argued that prosecution serves as an official acknowledgment of the victims' suffering in establishing a truthful account of what happened and giving them an opportunity to voice their experiences as witnesses.[36] However,

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[29] Phil Clark, Zachary D. Kaufman & Kalypso Nicolaïdis, "Tensions in Transitional Justice", in Phil Clark & Zachary D. Kaufman (eds), *After Genocide*, Hurst, London, 2008, p. 382.

[30] Kritz, *Dilemmas of Transitional Justice*, pp. xxiii-xxiv.

[31] Kritz, *Dilemmas of Transitional Justice*, pp. xix-xx.

[32] Moghalu, *Prosecute or Pardon?*, p. 74.

[33] Kritz, *Dilemmas of Transitional Justice*, p. xix.

[34] Luc Huyse, "To Punish or to Pardon: a Devil's Choice Dealing with Human Rights Violations Committed Under a Previous Regime", in Kamal Hossain, Leonard F. M. Besselink, Haile Selassie Gebre Selassie, & Edmond Völker (eds), *Human Rights Commissions and Ombudsman Offices. National Experiences throughout the World*, Kluwer Law International, The Hague, 2000, pp. 84-5.

[35] Kaufman, *The Future of Transitional Justice*, pp. 65-6;

Alison Des Forges, *Leave None to Tell the Story: Genocide in Rwanda*, Human Rights Watch, 1999, Internet, http://www.hrw.org/legacy/reports/1999/rwanda/, 31/07/2011, *Justice and Responsibility*.

opponents argue that the formalized protocol of the court room restricts the effects wished for and can even further traumatize witnesses and harden divisions.[37] It is further criticized that trials only establish objective and factual truth, which most of the times does not clarify the causes and consequences of the violence. In comparison, it is suggested that other, more victim-oriented approaches give every person involved the opportunity to have his or her subjective experience and version of the story heard and thus offer an opportunity for polarization between groups to be overcome.[38] In addition, trials run the risk of being perceived as victor's justice. Another tension concerns the rule of law. Whereas some argue that prosecution and the punishment of abuses committed by the old regime is necessary to build up a rule of law and a democratic state, the principles of *nulla poena sine lege* and *ex post facto* make it difficult to punish acts that were not constituting a crime under national law when they were committed.[39]

Independent Variables and Hypotheses

The research problem at hand is why a particular transitional justice approach is chosen. The dependent variable is explored in more detail below; there are however some points that need to be clarified in advance. At the center of the analysis stands what Huntington calls the torturer problem, which concerns the following questions:

"How should the democratic government respond to charges of gross violations of human rights [...] committed by the officials of the authoritarian regimes? Was the appropriate course to prosecute and punish or to forgive and forget?"[40]

Huntington thus distinguishes two clear-cut options. However, as has been discussed before, prosecution is not the only transitional justice mechanism at display. If Huntington's approach is adapted to the existing variety of transitional justice instruments, the torturer problem can be reframed as follows.

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36 Neier, *War Crimes*, p. 222.

37 Drumbl, *Sclerosis*, p. 293-4.

38 Charles Villa-Vicencio, "Transitional justice and human rights in Africa", in Anton Bösl & Joseph Diescho (eds), *Human Rights in Africa. Legal Perspectives on their Protection and Promotion*, Macmillan Education Namibia, Windhoek, 2009, p. 43; Mani, *Beyond Retribution,* p. 100.

39 Kritz, *Dilemmas of Transitional Justice*, pp. xxi-xxii; Samuel P. Huntington, "The Third Wave: Democratization in the Late Twentieth Century", in Neil J. Kritz (ed.), *Transitional justice: how emerging democracies reckon with former regimes*, United States Institute of Peace, Washington D.C., 1995, p. 68.

40 Huntington, *The Third Wave*, pp. 66-7.

In a first step, a country has to decide whether it wants to address the past at all. If the country decides to address its past, the next question is how it deals with suspected perpetrators, namely whether it wants to and can punish them.[41] Options reach from passing an unconditional amnesty, forgiving without forgetting — for example in the form of a truth commission that abstains from any form of follow-up prosecution — over lustration to criminal prosecution.[42] In the following, the works of various scholars are elaborated with regards to their account for variation in the outcome of the torturer problem.

Huntington's model is derived from the transitions from authoritarian rule to democracy of the 1980s and 1990s, also referred to as the third wave of democratization. Huntington distinguishes three different modes of transition, which vary according to the distribution of power between former and incoming regime during and after transition. In the first mode, which he calls transformation, the transition is initiated from a part of the old regime, whereas in replacements the opposition gains strength and enforces the regime change. Finally, in transplacements the balance of power is roughly equal, so that both forces have to come to a negotiated compromise.[43] Huntington then uses this mode of exit of the authoritarian regime to explain variance in the outcome of the torturer problem across countries. He thus defines justice as a function of political power. Since in replacements, officials of the former regime are no longer in a position of power, those are most likely to result in prosecution and punishment. As additional variables he names the time aspect and the level of complicity of the population. Accordingly, he states that justice has to come swiftly because the population regards punishment more legitimate when the wounds from the past are still fresh and because the more time passes, the higher the probability that agents from the previous regime regain some form of political power.[44]

Welsh slightly modifies Huntington's approach. She de-emphasizes the significance of type of transition and assigns a more important role to different modes of conflict resolution between the parties involved.[45] Moreover, she emphasizes the influence that the past has on the present and future. In this regard, the history of political repression plays an important role. Like

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[41] Elster, *Coming to terms*, p. 17.

[42] Huyse, *To Punish or to Pardon*, pp. 83–4.

[43] Huntington, *The Third Wave*, pp. 65–6; Helga A. Welsh, "Political Transition Processes in Central and Eastern Europe", *Comparative Politics,* vol. 26, no. 4, 1994, p. 379.

[44] Huntington, *The Third Wave*, pp. 79-80; Nadya Nedelsky, "Divergent Responses to a Common past: Transitional Justice in the Czech Republic and Slovaskia", *Theory and Society,* vol. 33, no. 1, 2004, p. 68.

[45] Welsh, *Political Transition Processes*, p. 379.

Huntington, she also stresses the factor of time. Thus, it matters if memories of state terror are fresh or already fading at the time of transition. In addition, Welsh puts the politics of the present at the center of attention, stating that efforts directed against officials of the former regime are less likely to be taken if those regain a position of power. Therefore, she takes into account the political landscape emerging after transition.[46]

Nedelsky adopts a similar approach. She offers the level of the former regime's legitimacy as an explaining variable.[47] Drawing on a typology originally put forward by Kitschelt, Nedelsky focuses her analysis on two factors. First of all, she explores how the former regime sought societal compliance, namely either through repression or through cooptation. Secondly, she dissects the population's relationship to the regime into cooptation, internal exile and opposition.[48] Nedelsky uses this typology to account for the former regime's legitimacy while bearing possible repression of opposition in mind. She argues that support within the society for a certain transitional justice approach varies according to the perception the population has of the previous regime, thus relating to the question if people found it unjust. Both Welsh and Nedelsky identify the need to place the transitions under scrutiny into a more historical framework.[49] Whereas Welsh assigns an important role to the history of political repression of opposition forces, Nedelsky goes further. For her, the nature of the former regime influences the population's experience with it and thus perception of it. In this regard, transitional justice becomes not an elite decision but is highly dependent on societal support.[50]

Another scholar elaborating on Huntington's thesis is Moran. He tries to account for an apparent lack of a causal relationship between democratization process and outcome of the torturer problem in Eastern Europe. Moran suggests that an explanation has to be found in the differences among East European countries and proposes the variables of exit and voice as objects of analysis. Those indicate whether opposition forces were given the opportunity to leave the country or had some freedom to utter their discontent while staying in the country.[51] Moran suggests that if one or both of those options existed under the former

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[46] Helga A. Welsh, "Dealing with the Communist past: Central and East European Experiences after 1990", *Europe-Asia Studies* vol. 48, no. 3, 1996, pp. 413–414, 419–422.

[47] Nedelsky, *Divergent Responses*, pp. 65–6.

[48] Ibid., p. 100.

[49] Ibid., pp. 72, 108.

[50] Ibid., pp. 107–8.

[51] John P. Moran, "The Communist Torturers of Eastern Europe: Prosecute and Punish or Forgive and Forget?", *Communist and Post-Communist Studies,* vol. 27, no. 1, 1994, pp. 95, 97.

regime, it is more likely that the outcome of the torturer problem is to forgive and forget.[52] His argument is that if the opposition is severely repressed under the former regime, and the option to leave the country is also denied, anger adds up and it is more likely for prosecution to be asked for after a transition. This demonstrates the psychological dimension that Moran sees involved. In his opinion, people who stood by and did nothing to stop the crimes, "frustrated neutrals"[53] as he calls them, would insist on prosecution of officials of the previous regime in order to clear their own conscience. Thus, it seems that the option of prosecution and punishment here primarily serves the society to reaffirm shared values and principles that were abused in the past. The punishment of those guilty of criminal abuses thus becomes solely a means to an end.

Another variable to be considered is provided by Kaufman. He raises the question of the role that foreign policy considerations play in the conduct of transitional justice.[54] This raises two issues. First of all, attention is brought to why and how external actors get involved in another country's transitional justice conduct and thus exercise their influence on it.[55] This adds another dimension to Huntington's paradigm of justice as a function of political power, since in a globalizing world international actors increasingly influence the distribution of power in post-conflict societies. Secondly, it can be inferred that the way in which the country in transition itself employs transitional justice is influenced by foreign policy considerations. Since one priority after violent conflict is to lead the society into a stable future, an enterprise which in today's interdependent world cannot be reached in isolation, international norms and regional issues shape a country's transitional justice approach just as much as domestic considerations.[56]

Finally, a last variable can be conceived from Elster. Among others, he considers the specific constraints arising from the context of a transition, as well as the role that actors' values and beliefs play in the adoption of a particular policy. Here, the conclusions that decision-makers draw out of the situation in which they act become just as important as the constraints themselves in their impact on the choice of transitional justice instrument. Since actors' choices are highly influenced by beliefs they hold about the likelihood of a certain outcome of a policy, the points enumerated in the section about dilemmas of transitional justice also provide some explanation for why a certain policy was chosen.[57]

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52 Ibid., p. 101.

53 Ibid., p. 108.

54 Kaufman, *The Future of Transitional Justice*, p. 58.

55 Ibid., p. 61–2.

56 Sriram, *Introduction*, p. 7.

57 Elster, *Coming to terms*, pp. 29, 41–3.

Elster further refers to level of complicity as an important variable for explaining a country's response to past atrocities. According to him, there exists a causal relationship that can be illustrated as a curve. A high level of complicity of the population with the old regime correlates with a low interest in retribution. On the other end of the spectrum two options emerge. Elster distinguishes between those cases where a low level of complicity correlates with the wish for retribution and those where the independent variable takes on the same value, the desire for retribution however remains low. The latter, he argues, are people who focus on reconciliation and reconstruction, and see those objectives more likely to be fulfilled leaving the past behind. In this regard, the impact of people's values and beliefs is demonstrated.[58]

Four sets of independent variables can be inferred from the scholarly work explored above. The *nature of the previous regime* can be established as a first variable. It results out of Moran's work on exit and voice, Huntington's and Elster's level of complicity, Welsh's history of repression and Nedelsky's level of legitimacy. The second variable is the *transition type*, based on the mode of transition according to the distribution of power as suggested by Huntington and the emerging political landscape and different modes of conflict resolution as suggested by Welsh. A third variable is derived from Kaufman and concerns the role that *external actors* as well as *foreign policy considerations* play. Finally, the work by Elster provides a fourth variable, namely the *values and beliefs* held by actors that decide about transitional justice. The hypotheses arising out of this framework have to be seen as linked in the sense of a multi-causal model. This means that none of them can explain the dependent variable in isolation. Here it is important to distinguish between necessary and sufficient conditions that have to be fulfilled for the dependent variable to take on the value of retributive justice. For example, while a certain transition type on its own might be a necessary condition for retributive justice to be applied, it might not suffice in explaining why no other option was chosen. It is the combination of all of the independent variables taking on a certain value that in the end explains the particular transitional justice approach adopted by Rwanda.

The scholarly works upon which the conceptual framework is based originated within the specific circumstances of so called third wave transitions. Whereas the latter refer to a process of democratization, the Rwandan transition was from a situation of violent conflict to one of peace.[59] Moreover, Huntington frames the torturer problem as directly referring to how to deal with the *officials* of a former regime, whereas in a post-violent conflict situation like the one in Rwanda, decisions about transitional justice concern how to deal with a number

[58] Ibid., pp. 45–7.

[59] Moghalu, *Prosecute or Pardon?*, p. 75.

of perpetrators from all societal levels, possibly constituting a major part of the population.[60] Further, the crimes in Rwanda were acts of genocide.[61] Thus, violence was not only an instrument to spread terror in order to repress dissident. The primary intent was to exterminate the whole population group of the Tutsi. Another major difference between third wave transitions and the case of Rwanda is that in the latter there was no gradual replacement of an authoritarian regime involving bargaining and power struggle between the military and political elites, as will be explained in more detail below. Despite those differences, inference drawn from the scholarly works on third wave transitions can still provide important insights on the question of the choice of particular transitional justice mechanism in the case study at hand. The dilemmas and constraints faced by the country and transitional justice options available are comparable but exacerbated by the fact that Rwanda was emerging from a violent conflict.[62]

Retributive and Restorative Justice

The concept of justice includes many aspects and dimensions. In a broad sense, it can be defined as "a response to a powerful moral intuition that [...] something must be done to right the wrong."[63] Even if there exists agreement that some response to a wrong is necessary, what constitutes this 'something' that must be done is a highly debated issue. The diversity of possible reactions to a crime is reflected in the multitude of theories of justice. Those differ in their conceptualization of justice and crime, and therefore also in the processes they apply, and the objectives they try to reach.[64] Out of the various theories on justice, the two paradigms of retributive and restorative justice are chosen to complement the conceptual foundation of this research.

Retributive Justice

The retributive theory of justice is the dominating one in Western society. The paradigm is characterized by a top-down approach putting the state at the center and by a focus on guilt and punishment. The retributive justice concept is based on the underlying perception that a crime constitutes a violation of a law and is therefore an offense against the state. The focus lies on the rule that was

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[60] Roht-Arriaza, *New landscape*, p. 6.

[61] Jones, *The Courts of Genocide*, pp. 138–9.

[62] Sriram, *Introduction*, p. 1.

[63] Jennifer J. Llewellyn & Robert Howse, *Restorative Justice: A Conceptual Framework,* Law Commission of Canada, Ottawa, 1998, p. 13.

[64] Jones, *The Courts of Genocide*, pp. 34–5.

broken.[65] Hence, justice is defined as a system of "right rules."[66] It is regarded the state's responsibility to punish the offender.[67] The retributive justice approach puts the state, represented at court by its proxies, at the center of the justice process, so that adversarial relations are established between state, victim, and offender.[68] Since the state represents the community, the process that is employed to bring about justice is structured in a hierarchical and top-down manner.[69] In the retributive paradigm's understanding, accountability means that the offender owes a debt to society, and this debt is paid by offenders being punished for the crime they committed. Retributive justice as applied in the courtroom has a confrontational setting. The offender focuses on telling his story in a way that she or he thinks will result in the lowest sentence because of the *a priori* character of the process. The latter refers to the provision, known before the process even starts, that in case of guilt there is going to be some form of punishment enacted.[70] Interaction between victim and offender is kept at a minimum level.[71]

Retributive justice is based on the 'just desert' principle.[72] The term 'desert' is derived from the word 'to deserve'. The principle indicates that the punishment must fit the crime. In addition to the adherence to proportionality, this implies at the same time that punishment has to be in reaction to the crime that was committed, and cannot be primarily based on other justifications, such as for example deterrence.[73] Determining the right form of punishment is regarded as one of the main tasks in the retributive process.[74] Retributive justice

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[65] Ibid., p. 35; Howard Zehr, "Retributive Justice, Restorative Justice", *New Perspectives on Crime and Justice: Occasional Papers of the MCC Canada Victim Offender Ministries Program and the MCC U.S. Office of Criminal Justice*, vol. 4, 1985, pp. 4, 12.

[66] Zehr, *Retributive Justice, Restorative Justice*, p. 13.

[67] Ibid., p. 4.

[68] Kathleen Daly, *Restorative justice: the real story*, Paper presented at Scottish Criminology Conference, Edinburgh, 21-22 September 2000, 2001, Internet, http://www.griffith.edu.au/__data/assets/pdf_file/0011/50321/kdpaper12.pdf, 31/07/2011, p. 8.

[69] Zehr, *Retributive Justice, Restorative Justice*, p. 13; Lode Walgrave, "Imposing Restoration Instead of Inflicting Pain: Reflections on the Judicial Reaction to Crime", in Andrew von Hirsch, Julian v. Roberts & Anthony Bottoms (eds), *Restorative Justice and Criminal Justice. Competing or Reconcilable Paradigms?*, Hart Publishing, Portland, 2003, p. 67.

[70] Zehr, *Retributive Justice, Restorative Justice*, p. 2; Villa-Vicencio, *Transitional justice and human rights,* pp. 37–8.

[71] Daly, *Restorative justice*, p. 12.

[72] Jones, *The Courts of Genocide*, pp. 35–6.

[73] Oxford Dictionaries, *Deserts*, 2011, Internet, http://oxforddictionaries.com/definition/deserts, 31/07/2011; Mani, *Beyond Retribution,* pp. 33–4.

[74] Walgrave, *Imposing Restoration*, pp. 70–1.

can then be perceived as backward looking since it focuses on establishing guilt and punishing, the justification of which is found within the committed crime, which inevitably took place in the past.[75] At the same time, retributive justice is closely linked to rule of law principles. As mentioned, it is the dominant paradigm in Western societies, and thereby closely connected to democratic ideals, such as government by laws.[76] As such, pursuing prosecution is regarded as an important ingredient in the process of establishing a democratic order. The other way around, a functioning rule of law system is needed in order to pursue prosecution and conduct trials.[77]

In summary, the ontology underlying the retributive justice approach is to comprehend justice in purely legal terms. A crime is seen solely in consideration of the law that was violated.[78] As will be explained in the next point, restorative justice suggests additional dimensions.

Restorative Justice

Restorative justice gained prominence in the 1970s.[79] Having originated as a form of counter-movement to a theory that was no longer regarded adequate, there exists a lot of controversy on the restorative paradigm.[80] The overview given here tries to depict the lowest common denominator of restorative justice theorists. In general, a restorative theory of justice puts the harm that was caused by the breaking of a rule at the center. Crime is not so much regarded as a violation of a rule but more a violation of one person by another, and is perceived along the lines of the relationships that it leaves fractured.[81] Out of this particular conceptualization of crime evolves an emphasis that restorative justice puts on restoring relationships by involving all stakeholders, namely the perpetrator, the victim and the community. This includes not only those directly affected by the crime but also the society at large because it is their norms that were violated.[82] With the main objective being restoration, the process becomes just as important as the outcome.[83] It is suggested that communication between

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[75] Mani, *Beyond Retribution,* pp. 33–4; Zehr, *Retributive Justice, Restorative Justice*, p. 13.

[76] Minow, *Between Vengeance and Forgiveness,* p. 25.

[77] Mani, *Beyond Retribution,* pp. 95, 124.

[78] Zehr, *Retributive Justice, Restorative Justice*, p. 13.

[79] Mani, *Beyond Retribution,* p. 36; Jones, *The Courts of Genocide*, p. 34.

[80] Ibid., p. 35.

[81] Zehr, *Retributive Justice, Restorative Justice*, p. 12; Clark, *After Genocide*, p. 198.

[82] Walgrave, *Imposing Restoration*, p. 61; Daly, *Restorative justice*, 7.

[83] Jones, *The Courts of Genocide*, 36.

perpetrator and victim not only serves to restore their relationship but also helps the perpetrator to accept his or her guilt and take responsibility for it. As opposed to the *a priori* character of the retributive paradigm, a restorative process leaves the penalty option open for discussion between the participants. The question of adequate censure becomes secondary because restorative justice is victim-centered.[84] Emphasis is put on letting the victim tell his or her story in a setting that is favorable to that endeavor. In contrast to the just desert principle, here a specific kind of sanction is chosen with regards to how it can best serve restoration.[85] In this context, one central question is how to reintegrate the offender into the community. Justice then becomes the (re)building of relationships, with a focus on healing. Thus, even though restorative justice also considers the past in which the crime was committed, its focus on the fulfillment of obligations created by the wrongdoing gives it more of a future-oriented character.[86]

In summary, the restorative paradigm is based on an ontology that views justice not only in legal but also in moral, social, economical and political terms. Considerations from all of those fields influence the conduct of justice, and the focal point is put on a future-oriented restoration of relationships.[87]

Values of the Dependent Variable

The dependent variable in this research is the particular transitional justice approach adopted. The values it can take on in the research design at hand are either restorative or retributive justice. It has however to be born in mind that those categories are a simplification of the phenomenon, since first of all no measures are either purely restorative or retributive and secondly the spectrum of transitional justice instruments encompasses in real practice far more than two options. Nevertheless, having only two values for the dependent variable is justified since the research question deals with the general factors that lead a country to adopt a rather retributive or rather restorative mechanism, without exploring how that mechanism then looks like in detail. Thus, the research problem whether to prosecute or pardon is depicted as the choice between a retributive and a restorative strategy. The literature usually lists truth commissions as an example for a restorative transitional justice instrument. Criminal prosecution stands at the other end of the spectrum of transitional

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[84] Zehr, *Retributive Justice, Restorative Justice*, p. 13; Walgrave, *Imposing Restoration*, pp. 61, 64–6.

[85] Ibid., pp. 74–5.

[86] Zehr, *Retributive Justice, Restorative Justice*, p. 13.

[87] Loc. cit.

justice options. As "the most radical interpretation of acknowledgment and accountability,"[88] it reflects a retributive approach.

In a post-conflict situation, justice is both a function of political power and a function of political calculation. The former refers to the ability of the governing body to implement a certain kind of justice, the latter to the will to do that.[89] The following section analyzes the characteristic of both in the case of Rwanda.

Case Study Rwanda

"But is it practicable to judge some 87,000 people for genocide and related crimes, in a judicial system whose personnel have been decimated and whose material infrastructure devastated?"[90]

It seems stunning that the decision-makers in Rwanda pursued such an ambitious policy, especially when considering the specific challenges that this post-genocidal society faced. The transitional justice approach adopted by Rwanda was by no means the only viable one, thus the question of why retributive justice was applied is reinforced. In order to solve this puzzle, different factors have to be examined with regards to how they rendered retribution the approach to be chosen.

History & Implications

About 800,000 people were murdered during the Rwandan genocide, the majority of which belonged to the group of the Tutsi.[91] Various factors and actors played a role in the historical forefront of the horrible events, although it is important to keep in mind that the genocide cannot be regarded the 'logical' outcome of any factors that added up to it.[92] Nevertheless, a crucial role was played by ethnicity and its misuse as a tool to propagate mass hatred.

Historically, Rwanda's population consisted of two major population groups, the majority Hutu and the minority Tutsi, as well as the minor group of the Twa, all of which migrated to the future territory of Rwanda over the

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[88] Huyse, *To Punish or to Pardon*, p. 84.

[89] Huntington, *The Third Wave*, p. 79; Jones, *The Courts of Genocide*, p. 33.

[90] William A. Schabas, "Justice, Democracy, and Impunity in Post-genocide Rwanda: Searching for Solutions to Impossible Problems", *Criminal Law Forum,* vol. 7, no. 3, 1996, p. 529.

[91] Clark & Kaufman, *After Genocide*, p. 1.

[92] Lee A. Fujii, *Killing Neighbors. Webs of Violence in Rwanda*, Cornell University Press, New York, 2009, p. 72; HRW, *The Rwandan Genocide. How It Was Prepared*, 2006, Internet, http://www.hrw.org/legacy/backgrounder/africa/rwanda0406/, 08/08/2011, p. 2.

centuries, sharing a common history, language, and culture and mingling due to intermarriage.[93] Hutu and Tutsi initially had a social, as opposed to an ethnic, meaning within the hierarchical organization of the society. The Tutsi became known as the ruling elite group, whereas the masses were called the Hutu.[94] However, instead of being fixed categories based on ethnic origin, those more constituted political identities that fluctuated over time.[95] The concept of ethnicity was introduced during colonization. Rwanda was first colonized in 1898 by the Germans, and then passed on to Belgian rule after World War I.[96] Both colonizing states employed a 'divide and rule' strategy. In the course of an increasing centralization of power, the colonizers exercised direct control over the Tutsi only, to whom then control over the rest of the population as well as over formerly autonomous areas was granted.[97] This entailed a discrimination of the Hutu, for example in terms of access to education and good jobs, and intensified the perception of the Tutsi as a ruling elite and the Hutu as an oppressed class.[98] At the same time, the Tutsi were depicted as foreigners that had conquered Rwanda centuries ago. This laid the groundwork on which propaganda against the former would later be based on.[99] In 1933, the Belgian colonial power institutionalized the concept of ethnicity in Rwanda by the adoption of identity cards, which indicated the belonging of a person to one of the three respective 'ethnicities'. At this time, eighty-five percent of the population was identified as Hutu, fourteen percent as Tutsi, and one percent as Twa. This step made the constructed ethnic groups even more permanent in character and embedded in everyday life.[100]

In 1959, in the course of decolonization, the Tutsi elite was overthrown in what is commonly referred to as the 'Hutu Revolution'. Subsequently, in 1961, the first republic of Rwanda was established, led by the Mouvement

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[93] Jones, *The Courts of Genocide*, p. 18; Philip Gourevitch, *We wish to inform you that tomorrow we will be killed with our families*, Farrar, Straus and Giroux, New York, 1998, p. 47.

[94] HRW, *The Rwandan Genocide,* p. 3.; Jones, *The Courts of Genocide*, pp. 18-9; Gourevitch, *We wish to inform you*, p. 48; Gérard Prunier, *The Rwanda Crisis. History of a Genocide*, Columbia University Press, New York, 1995, pp. 18, 25.

[95] Mahmood Mamdani, *When Victims Become Killers: Colonialism, Nativism, and the Genocide in Rwanda,* Princeton University Press, Princeton, 2001, p. 15.

[96] Fujii, *Killing Neighbors*, pp. 62–3.

[97] Jones, *The Courts of Genocide*, pp. 20–21; Gourevitch, *We wish to inform you*, p. 54.

[98] Ibid., p. 57; Fujii, *Killing Neighbors*, pp. 64-5.

[99] Mamdani, *When Victims Become Killers,* p. 14; Des Forges, *Leave None to Tell the Story*, The Hutu Revolution.

[100] Jones, *The Courts of Genocide*, p. 21; Gourevitch, *We wish to inform you*, p. 57.

Démocratique Républicain (MDR) party under President Kayibanda.[101] Categories of the Tutsi's distinctiveness, before employed by some Tutsi themselves to institutionalize their power under Belgian rule, were now used by leading Hutu to establish solidarity among the, constructed as a supposedly united and homogeneous but actually highly diverse, Hutu group.[102] During that time, the ideology of 'Hutu power' emerged, which depicted the Hutu as the nation and the Tutsi as an alien race.[103] In the course and aftermath of the 'revolution', about 20,000 Tutsi were killed and an additional 300,000 fled the country into exile.[104] The events had serious implications for the future of the country. First of all, the violence of those years never being punished added to a culture of impunity and helped to establish a pattern and method of violence. In fact, in 1963 and 1974 two amnesty laws were passed, constituting a legal basis for the marginalization of the minority Tutsi group and ongoing violence against Tutsi citizens.[105] Secondly, the events furthered the solidification of the concept of two irreconcilable groups by providing them with diverging memories on the events, depicted as tragic in the emerging Tutsi and as heroic in the emerging Hutu memory.[106] In addition, parts of the exiled Tutsi community, which later on established the RPF, led incursions into Rwanda beginning in the 1960s. Spreading fear about the exiled Tutsi aiming at restoring the monarchy, there were reprisal attacks against Tutsi citizens in the country and the government started to build up the state structure that was later misused to orchestrate the genocide, incorporating so called civil defense units.[107] In 1973, Juvénal Habyarimana overthrew the political regime in a military coup and subsequently founded the second republic of Rwanda, governed by himself as president. Political power shifted away from the central and southern to the northwestern region. This move is representative for Rwandan politics, where

[101] ICTR, *"Prosecutor vs. Kanyabashi" (Case No. ICTR-96-15-I)*, 2000, Internet, http://www.unictr.org/Portals/0/Case%5CEnglish%5CKanyabashi%5Cindictment%5Cindex.pdf, 31/07/2011, p. 2; HRW, *The Rwandan Genocide,* pp. 3-4; Des Forges, *Leave None to Tell the Story*, History.

[102] Fujii, *Killing Neighbors*, pp. 66-9.

[103] Mamdani, *When Victims Become Killers,* p. 190.

[104] HRW, *The Rwandan Genocide,* p. 3.

[105] Linda Melvern, "The Past is Prologue: Planning the 1994 Rwandan Genocide", in Phil Clark & Zachary D. Kaufman (eds), *After Genocide*, Hurst, London, 2008, p. 24; Augustine Brannigan & Nicholas A. Jones, "Genocide and the Legal Process in Rwanda. From Genocide Amnesty to the New Rule of law", *International Criminal Justice Review,* vol. 19, no. 2, 2009, pp. 195-6.

[106] HRW, *The Rwandan Genocide,* p. 3.

[107] HRW, *The Rwandan Genocide,* pp. 3-4; Fujii, *Killing Neighbors*, p. 70.

the struggle for power was predominantly between regions. In 1975, the Mouvement Révolutionnaire National pour le Developpement (MRND) was founded as single party of the Rwandan state.[108] Habyarimana's regime stayed in power until he was killed when his plane was shot down on 6 April 1994. This event marked the beginning of the genocide.[109]

Various factors played an important role in the advance of the genocide. A collapse of Rwanda's economy in the late 1980s, the emergence of a political opposition movement demanding the introduction of a multi-party system, and a civil war, starting with the RPF's invasion of the country in October 1990, put pressure on the government.[110] Thereupon, extremist forces propagated a constructed ethnic conflict as a distraction mechanism diverting attention away from political and legitimacy problems. Actually however, regional identities and political opinions constituted the real cleavage.[111] The genocide started on 6 April 1994 and was ended 18 July 1994 with the RPF's military victory. More than half a million Tutsi and 5000 Hutu, the latter mainly members of the political opposition, as well as Twa were killed during the genocide.[112]

There are various distinct features of the Rwandan genocide that posed specific challenges in the post-conflict situation and had serious implications for the conduct of transitional justice in the country. First of all, since people literally killed their neighbors with whom they had long-standing ties, those acts constituted not only a physical but also a social violation of an extreme kind. In addition, it was large groups, not individuals, going on killing sprees. The killing was public and at close range, with mainly machetes and sticks being used as killing instruments, adding to the extreme cruelty of the Rwandan genocide.[113] There was further an enormously high number and concentration of killing and extensive use of rape. The genocide left about forty percent of the population either dead or exiled. In addition, the killings being organized in a grass-roots manner resulted in a high level of conspiracy due to massive involvement of the population at all levels of society.[114] Thus, the country's institutions were not only shattered because of the violence, but also deprived of people with

[108] ICTR, *Case No. ICTR-96-15-I*, pp. 2–3; HRW, *The Rwandan Genocide,* p. 4.

[109] Barbara Oomen, "Justice Mechanisms and the Question of Legitimacy: The Example of Rwanda's Multi-layered Justice Mechanisms", in Kai Ambos, Judith Large & Marieke Wierda (eds), *Building a Future on Peace and Justice*, Springer-Verlag, Berlin, Heidelberg, 2009, p. 185.

[110] ICTR, *Case No. ICTR-96-15-I*, p. 3; Gourevitch, *We wish to inform you*, p. 180.

[111] Melvern, *The Past is Prologue*, p. 21; Fujii, *Killing Neighbors*, pp. 45–6, 74;

[112] Ibid., pp. 53-6; Clark & Kaufman, *After Genocide*, p. 1.

[113] Fujii, *Killing Neighbors*, pp. 3, 7; Drumbl, *Sclerosis*, p. 289.

[114] Jones, *The Courts of Genocide*, p. 28; Prunier, *The Rwanda Crisis*, p. 327.

expertise, since most were either dead, in exile, or suspects of crimes related to the genocide. Accordingly, after the genocide only about twenty-five per cent of judicial personnel were left.[115] Further, most infrastructure had been destroyed during the conflict. Moreover, due to Rwanda's long-standing history of a culture of impunity, the challenge was less to rebuild institutions than rather to build them anew. Especially the rule of law had never really existed due to an inefficient and corrupt justice system that served the government as a political instrument.[116] Another point that influenced the perception of necessary actions in post-genocide Rwanda was the international community's failure to intervene to stop the massacres. Further, the necessity to stop ongoing violence and establish order put the victorious powers under serious time constraints.[117] However, the main challenge resulting from the unique situation that characterized Rwanda in the aftermath of the genocide was the absolute necessity for reconciliation, since there was no possibility for two distinct states to emerge in its territory:[118]

"Never before in modern memory had a people who slaughtered another people, or in whose name the slaughter was carried out, been expected to live with the remainder of the people that was slaughtered, completely intermingled, in the same tiny communities, as one cohesive national society."[119]

Transitional Justice Options & Classification of Mechanism Employed

Having ended the genocide by military force, the victorious RPF established the transitional 'Government of National Unity' which was consequently the main actor in the decision-making process following the regime change.[120] Discussions among a variety of national and international agents resulted in a range of transitional justice options being put forward, some of which more restorative and some more retributive in nature. The transitional government ruled out amnesty from the beginning.[121] The majority of actors, including the

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[115] Jones, *The Courts of Genocide*, p. 84.

[116] Schabas, *Justice, Democracy, Impunity*, p. 531; Jones, *The Courts of Genocide*, pp. 80–1.

[117] Jones, *The Courts of Genocide*, pp. 81–2.

[118] Drumbl, *Sclerosis*, p. 290.

[119] Gourevitch, *We wish to inform you*, p. 302.

[120] Alison Des Forges & Timothy Longman, "Legal responses to genocide in Rwanda", in Eric Stover & Harvey M. Weinstein (eds), *My Neighbor, My Enemy. Justice and Community in the Aftermath of Mass Atrocity,* Cambridge University Press, Cambridge, 2004, p. 60.

[121] Republic of Rwanda, "Genocide, impunity and accountability: Dialogue for a national and international response." *Recommendations of the conference held in Kigali from November 1st to 5th,* 1995, p. 16; Schabas, *Justice, Democracy, Impunity*, p. 529.

Rwandan government, the international community and human rights NGOs, promoted justice through prosecution and punishment, and thus a retributive approach. Another mechanism being discussed was a truth commission. Such a more restorative approach was however mainly regarded as a supplement to criminal prosecution, and discussions revolved around the possibility to only have trials for some symbolic few, namely the instigators of the genocide.[122]

In the end, Rwanda decided to pursue a policy of maximal accountability and enacted national prosecution as the main mechanism to address the genocide.[123] On 30 August 1996, Organic Law No. 08/96 was passed. The law divided perpetrators into four categories, which corresponded to the gravity of the crimes committed. The organizers of the genocide and those who committed rape were put into category one. All other perpetrators who murdered someone in the genocide were in category two, whereas those who participated but did not kill someone were placed in category three. Category four comprised those who stole or destroyed property. Each category covered a different range of penalties. Until its abolition in 2007, category one offenders could be charged with the death penalty.[124] The law further included two innovative procedures, namely confession and plea-bargaining. Whereas confession was expected to serve the goals of establishing the truth and bringing justice to victims, plea-bargaining was introduced in order to address the issue of overcrowded prisons.[125]

The dependent variable takes on a retributive value in the form of Rwanda's policy of national prosecution.[126] The first retributive characteristic is that the transitional justice approach pursued puts punishment at the center, regarding it as the proper way to bring about justice and reconciliation. Further, the process is structured in a way that can be assigned to the retributive justice paradigm. There is no emphasis on dialogue or involvement of all stakeholders. On the contrary, the process is clearly adversarial. Even though the arrangement of dividing perpetrators into four categories and the use of confession and plea-

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[122] Amnesti International, *"*A call for UN human rights action on Rwanda and Burundi*." Index Number IOR 41/002/1994*, 1994, Internet, http://www.amnesty.org/en/library/asset/IOR41/002/1994/en/2d81b5bf-eb0b-4766-a767-449d3a053e5c/ior410021994en.pdf, 27/08/2011, p. 10; USIP, *Rwanda. Accountability for War Crimes and Genocide. A Report on a United States Institute of Peace Conference*, 1995, Internet, http://www.usip.org/files/resources/SR13.pdf, 21/08/2011, pp. 16, 19.

[123] Jones, *The Courts of Genocide*, p. 29; Neil J. Kritz, Bernard Muna, Navanetbem Pillay & Theogene Rudasingwa, "The Rwanda Tribunal and its relationship to national trials in Rwanda", *American University International Law Review,* vol. 13, no. 6, 1998, p. 1486.

[124] Schabas, *Justice, Democracy, Impunity*, pp. 537–9; Brannigan & Jones, *Genocide and the Legal Process*, p. 203.

[125] Schabas, *Justice, Democracy, Impunity*, pp. 538–9.

[126] Oomen, *Justice Mechanisms*, p. 187.

bargaining renders the approach an innovative one, the main concern remains with establishing the right form of punishment, justified in light of the crime that was committed. Although charges vary according to category and involvement of confession or plea-bargaining, within those ranges they are still fixed *ex-ante*.[127] It is also typical for a retributive approach that the mechanism employed perceives justice mainly through a legal lens as can be seen in the emphasis placed on extensive prosecution and also in the fact that rendering justice was regarded to be closely connected to the building of a functioning judicial system and a rule of law.[128] The classification of the Rwandan transitional justice approach as retributive is furthered by the initial inclusion of the death penalty as sentence. A final point concerns the priorities set among different objectives and mechanisms. Right after the end of the genocide, it had been suggested to set up an authority with the sole task of producing "a definitive and objective record of this crime."[129] In 1999, Rwanda established the National Unity and Reconciliation Commission (NURC), which had already been provided for in the Arusha Accords peace agreement in 1993. Even though this could be understood as the country pursuing a more restorative approach, the fact that Rwanda, restrained by limited resources, chose to give financial and temporal primacy to establishing accountability through extensive prosecution again shows that it perceived transitional justice in a retributive manner. In addition, the NURC is not an impartial truth commission but rather a state institution that establishes a historical account according to the governments' view of events and promotes reconciliation through seminars and the like.[130]

Analysis

In the following, the four mentioned independent variables are analyzed to explain why Rwanda applied retributive justice in the aftermath of the genocide.

Nature of the Previous Regime

The first independent variable to be analyzed is the nature of the previous regime. According to the work of the several scholars elaborated before, a country is more likely to pursue a retributive approach to transitional justice if the former regime enjoyed relatively low levels of legitimacy and at the same time was very repressive, in a way that left the opposition with no opportunity

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[127] Jones, *The Courts of Genocide*, pp. 98–9.

[128] Jones, *The Courts of Genocide*, p. 81; Kritz et al., *The Rwanda Tribunal*, p. 1487.

[129] Republic of Rwanda, *Genocide, impunity and accountability*, p. 24.

[130] Oomen, *Justice Mechanisms*, p. 190.

to voice its discontent. The correlation with the dependent variable is supposed to be the stronger the less time there is between periods of repressive violence and the situation in which decisions about post-conflict policies are made. Further, a high level of complicity should result in a low desire for retribution.

The historical background of Rwanda is important when analyzing the population's relationship to the former regime. The central role that the belonging to an ethnic group assumed in societal life, constructed to distract from the real, political discrepancies, has to be born in mind.[131] Thus, it is not possible to speak of the population as one, homogeneous unit. Roughly four groups can be distinguished according to their different roles in the history of the country and their relation to the former government: Hutu within the country, Tutsi within the country, exiled Tutsi, and Hutu opposition forces within the country. The latter category refers to the regional struggle for power, mainly between Hutu elites from the southern and those from the northern provinces.[132] This is not to say that all those were homogeneous groups. However, basing the analysis on this distinction between the named groups is justified in light of the central role that ethnicity assumed in Rwandan politics, and because the interests of the respective ethnic groups were depicted as competing.[133]

As mentioned before, Rwanda was governed by two regimes following independence. Both were based on the ideology of 'Hutu power' and drew their legitimacy from a group solidarity that was build upon the constructed dichotomy of ethnic groups in the country, as well as upon hate propaganda directed against the Tutsi. Concerning the Hutu, the regime drew its legitimacy from depicting itself as an agent of achieving a better life for them. Here, memories of Rwanda's past played a role, because the Hutu had been discriminated under colonial rule, when the Tutsi held the monopoly of power over the Hutu. However, for the Tutsi, who were discriminated and marginalized after Rwanda gained independence, the regime bore no legitimacy.

To further structure the attitude held towards the former regime, the framework suggested by Nedelsky can be used. She distinguishes two ways in which authoritarian regimes seek to achieve compliance, namely cooptation and repression. In Rwanda, both were used in an interrelated manner. The Hutu Power ideology was employed to establish solidarity among the Hutu, which were accordingly co-opted to support the regime. Repression, which openly took on the form of marginalizing the Tutsi group while propagating fear of a revived Tutsi hegemony thus at the same time served to enforce cooptation

[131] Fujii, *Killing Neighbors*, p. 45.

[132] Ibid., p. 10.

[133] Brown, *The rule of law*, p. 180.

within the Hutu group: “Killing Tutsi was a political tradition in postcolonial Rwanda; it brought people together.”[134] In addition, under the guise of ethnic conflict, any emerging political opposition was repressed.[135] Nedelsky suggests in a next step to analyze the population’s relationship to the regime. In Rwanda, for both Hutu and Tutsi, cooptation as well as internal exile of mainly the latter prevailed for several reasons. First of all, historical experience from the outset of the 1959 Revolution had shown that opposition would be repressed, and massacres served to intimidate Tutsi.[136] Further, the Rwandan culture favored almost unquestioned obedience to authority, a characteristic that was reinforced by the strict hierarchical organization of the society.[137] Gourevitch stresses the importance of the Rwandan culture of obedience: “In fact, the genocide was the product of order, authoritarianism, decades of modern political theorizing and indoctrination, and one of the most meticulously administered states in history.”[138] Opposition was exercised mainly by the exiled Tutsi community, to whom the return to Rwanda was neglected, and eventually by the RPF. Internal opposition grew in the forefront of the genocide, when Rwanda’s economy broke down due to world market developments and various parties challenged the single party system enacted by the MRND.[139]

In Rwanda, transitional justice addresses the genocide and its roots. Therefore, in addition to the perception the population had of the regime, the question emerges if it saw the genocide as justified. There were of course many Rwandans who did not perceive the genocide as legitimate. Apart from the Tutsi and members of the political opposition, who were the targets of the violence, there were also Hutu who openly opposed the killings. However, a huge part of the perpetrators after being detained still did not show remorse because they regarded themselves as having acted in a situation of war and denied that genocide had taken place. Due to propaganda, many thought they were acting out of self-defense, and thus perceived the extremists’ orders as legitimate.[140]

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[134] Gourevitch, *We wish to inform you*, p. 96.

[135] Fujii, *Killing Neighbors*, pp. 10, 49.

[136] Human Rights Watch, “Genocide in Rwanda: April – May 1994”, *Human Rights Watch/Africa 6(4),* 1994, Internet, http://www.hrw.org/sites/default/files/reports/RWANDA945.PDFhttp://www.hrw.org/sites/default/files/reports/RWANDA945.PDF, 26/08/2011, p. 5; Des Forges, *Leave None to Tell the Story*, Habyarimana in Control.

[137] Mamdani, *When Victims Become Killers,* p. 200; Prunier, *The Rwanda Crisis*, p. 353.

[138] Gourevitch, *We wish to inform you*, p. 95.

[139] Fujii, *Killing Neighbors*, pp. 47–52.

[140] Gourevitch, *We wish to inform you*, p. 347; Drumbl, *Sclerosis*, p. 289- 290; Melvern 2008, 31;

Des Forges & Longman, *Legal responses to genocide*, p. 51.

Political violence varied over time and was publicly directed against the Tutsi as a group but actually aimed at the repression of any political opposition force. However, repression clearly increased in the period preceding the genocide. In fact, political violence corresponded to the decreasing level of legitimacy of the regime starting in the 1980s. It culminated in the first days of the genocide when several members of the opposition movement as well as moderate politicians from the regime's cabinet were assassinated.[141] Thus, the memory of terror was very much afresh in the period following the end of the genocide. Furthermore, decisions about transitional justice were made swiftly, right after the new regime came into power. According to the mentioned hypotheses, both those factors speak for a retributive approach to be pursued.

A last point concerns the level of complicity, which according to Huntington and Elster should be rather low for retribution to be favored. This however assumes that those complicit have the power to influence decisions made about transitional justice. In Rwanda, the level of complicity was extremely high. Estimations are that as many as 750,000 people, constituting about one fourth of the Rwandan adult population, were involved in the killings.[142] While the hypothesis might hold true in cases where broad societal support is needed after a transition, in Rwanda the post-conflict regime was relatively free to implement its vision of transitional justice, a matter which is discussed in more detail in the next part.

Transition Type

As mentioned before, the variable transition type refers to the process of regime replacement. Based on Huntington's work, the hypothesis emerges that retributive justice becomes most likely if the opposition enforces the regime change and if in the process the former regime cannot retain a position of power within the country.

It is difficult to place Rwanda, being a post-conflict society, in one of Huntington's categories, since the latter refer clearly to the context of post-communist transitions and not to a situation of genocide or civil war. However, the transition mode that Rwanda comes closest to is replacement. The RPF was the opposition force that enforced the regime change by military means. It invaded the country in October 1990. Following this, there were four years of

[141] Ibid., p. 50; USIP, *Accountability for War Crimes*, p. 4; ICTR, *Case No. ICTR-96-15-I*, p. 8.

[142] Drumbl, *Sclerosis*, p. 289; Oomen, *Justice Mechanisms*, p. 185.

[143] Brown, *The rule of law*, p. 179.

[144] Michael P. Scharf, "Responding to Rwanda: Accountability Mechanisms in the Aftermath of Genocide", *Journal of International Affairs,* vol. 52, no. 2, 1999, p. 631.

civil war. On 18 July 1994, the RPF stopped the genocide through occupation of the country and consequently replaced the extremist regime. The transition type can thus be summarized as a military victory of the opposition forces.[143] The distribution of power was clearly in favor of the RPF.

Most leaders of the former regime who planned the genocide had fled Rwanda, and therefore were in no position to influence the emerging distribution of power within the country.[144] However, many retained a power base outside the country and continued the spread of genocide ideology and recruitment of forces in refugee camps, which were full of Hutu refugees as well as soldiers from the former regime's army.[145] Inside Rwanda, the military victory was followed by massive arrests of suspected genocide perpetrators in order to stop ongoing violence and establish a situation of security and stability.[146] The thousands of people who were detained no longer posing a threat to the RPF and others staying quiet out of fear about the genocide survivors taking vengeance, added to the RPF's monopoly on political power. The context of the Rwandan transition entails that transitional justice was mainly an elite decision. Even though the post-genocide regime stressed the importance of societal reconciliation and democracy, it was relatively free to implement the policy it favored.[147] Understandably, most Hutu did not prefer retribution, since even if they were not guilty there was a risk of them being accused of crimes nevertheless, and due to the overburdened justice system even a person who was innocent or had only committed a minor assault could spend years in prison before being put on trial.[148]

The RPF had been founded among exiled Tutsi refugees in Uganda. Although the majority of RPF members were consequently Tutsi, it depicted itself as not constituting an ethnic opposition to the Hutu but a political opposition to the extremist regime.[149] After the RPF assumed control over the country it established the transitional Government of National Unity. Pasteur Bizimungu, a Hutu who had been affiliated with the RPF since 1990, became president and General Kagame vice-president.[150] Even though the government

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[143] Brown, *The rule of law*, p. 179.

[144] Michael P. Scharf, "Responding to Rwanda: Accountability Mechanisms in the Aftermath of Genocide", *Journal of International Affairs,* vol. 52, no. 2, 1999, p. 631.

[145] Schabas, *Justice, Democracy, Impunity*, p. 524; Prunier, *The Rwanda Crisis*, pp. 313–4.

[146] Jones, *The Courts of Genocide*, p. 82.

[147] Republic of Rwanda, *Genocide, impunity and accountability*, p. 7.

[148] Neier, *War Crimes*, p. 84; Brown, *The rule of law*, p. 188; AI, *Rwanda: Crying out for justice*, 1995, Internet, http://www.amnesty.org/en/library/asset/AFR47/005/1995/en/1465e54a-eb61-11dd-b8d6-03683db9c805/afr470051995en.pdf, 26/08/2011, p. 3.

[149] HRW, *The Rwandan Genocide,* p. 4; Gourevitch, *We wish to inform you*, p. 216.

[150] Prunier, *The Rwanda Crisis*, p. 329.

promoted an ideology of a unified nation, in which there was no room for ethnic antagonisms, it remained sensitive to giving every ethnic group the feeling to be represented.[151] This was regarded especially important in light of the historical experience of continuous hegemony of one group over the other, and of the violence that had resulted out of marginalization. The transitional government thus included various parties, and ministries were given to both Hutu and Tutsi. However, real power remained with the RPF.[152] The transitional government therefore had the political power to implement its favored approach, according to its objectives and believes of how to achieve those.[153]

External Actors & Foreign Policy Considerations

In addition to factors derived from the domestic context, forces from outside Rwanda also influenced the outcome of the torturer problem in the country. As mentioned before, Kaufman stresses that it is important to understand why states get involved in the transitional justice process of other countries. He suggests two criteria on which different transitional justice options are commonly judged. Subsequently, according to him, external actors' support of a country's post-conflict policy depends first of all on the latter's correspondence to domestic and/or international law, and second of all on if it is perceived to be just in terms of legitimacy, fairness and impartiality.[154] Accordingly, it is to be tested if external actors and the international climate they were operating in promoted retributive justice. Further, the influence of foreign policy considerations of Rwanda itself has to be taken into account.

In its decision to establish the ICTR, the UN, representing the international community, clearly chose a retributive approach to transitional justice after the Rwandan genocide. This can be explained by various factors. To begin with, international norms and laws have to be considered. Based on past experience rooted in the Nuremberg Trials, for the international community "criminal trials and incarceration of selected guilty individuals constitutes the preferred and often exclusive mechanism to respond to *all* situations of genocide and crimes against humanity."[155] The application of retributive justice was rendered even

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[151] Brown, *The rule of law*, p. 180; Des Forges, *Leave None to Tell the Story,* "Not Hutu, Tutsi, nor Twa".

[152] Des Forges & Longman, *Legal responses to genocide*, p. 60.

[153] Michelle Sieff & Leslie Vinjamuri Wright, "Reconciling Order and Justice? New Institutional Solutions in Post-Conflict States", *Journal of International Affairs,* vol. 52, no. 2, 1999, p. 774.

[154] Kaufman, *The Future of Transitional Justice*, p. 60.

[155] Drumbl, *Sclerosis*, p. 288.

more likely by the official finding that genocide had taken place in Rwanda, which brought the legal and political obligation to bring the perpetrators to account with it.[156] Further, acknowledging the violence as genocide had powerful moral implications.[157] Having failed to intervene to stop the massacres, the international community was highly motivated to help Rwanda to address that period and move forward, and thus clear the conscience of the international community itself.[158]

The ICTR itself can then be regarded an independent variable influencing transitional justice in Rwanda. Since the ICTR from the beginning on assumed primacy over any measures enacted on the national level, it clearly restricted the range of options that could be implemented within Rwanda.[159] The tribunal promoted a retributive approach and sought to prosecute the masterminds of the genocide.[160] Thus, it would have been difficult to establish a South African style truth commission, providing amnesty from prosecution for a full and truthful account of what happened. Further, a certain competition over custody emerged between the ICTR and the Rwandan government. This tension can provide an additional explanation for the government's swift adaption of the Organic Law No. 08/96.[161] On the other side, the restricting influence of the ICTR should not be overestimated since most of the extremist leaders had already fled Rwanda after the RPF's military victory, and there would still have been the possibility to employ a more restorative approach on the national level for those perpetrators that were further down the chain of command. Moreover, it has to be born in mind that the Rwandan government had initially asked for a tribunal to be established, even though it finally withdrew its support because of various disagreements. Thus, the ICTR can be seen as both, a restriction on the range of transitional justice options available in Rwanda as well as an expression of the retributive approach that was favored by the Rwandan government from the very beginning.

Another category of agents to be considered is that of external non-state actors. Especially human rights NGOs played an important role first of all in establishing an account of the massacres, which brought mentioned legal and

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[156] Sieff & Wright, *Reconciling Order and Justice?*, p. 764; Paul D. Williams, "The Peacekeeping System, Britain and the 1994 Rwandan Genocide", in Phil Clark & Zachary D. Kaufman (eds), *After Genocide*, Hurst, London, 2008, p. 53.

[157] Sieff & Wright, *Reconciling Order and Justice?*, p. 776; Williams 2008, p. 53.

[158] Oomen, *Justice Mechanisms*, p. 187.

[159] Jones, *The Courts of Genocide*, p. 95.

[160] Kritz et al., *The Rwanda Tribunal*, p. 1473.

[161] Drumbl, *Sclerosis*, p. 297.

moral obligations with it.[162] They further pressured the international community and reminded it of the steps that had to be taken, namely the obligation to prosecute such crimes.[163] In addition, the NGOs' work was of importance to the transitional governments' retributive approach. Due to the good reputation and impartiality of organizations such as Human Rights Watch (HRW) or Amnesty International (AI), the information they disseminate and conclusions they draw out of it are commonly accepted to be true and unbiased.[164] In Rwanda, it was not necessary to publish information about the scale and horror of the atrocities in order to put the government under pressure to take action, since the latter had the intention to address the crimes anyway. However, the reports published by NGOs provided the Rwandan transitional government with legitimacy and credibility with regards to the policies it enacted to address the genocide. The numbers established by independent and objective agents showed the enormous scale of the violence, and conclusions drawn by the NGOs, namely the necessity to address those crimes in a retributive manner, supported the government in its stance on the subject.

Next, the question arises if Rwandan foreign policy considerations were favorable to a retributive approach. The most pressing issue was the repatriation of refugees. Throughout the genocide and the RPF invasion an estimated two million people, out of a total population of about seven million, fled to neighboring countries.[165] Returning the masses of refugees, and reintegrating them into society became a crucial topic.[166] The genocide having left about forty per cent of the population either dead or in exile, there was an enormous lack in human resources.[167] Furthermore, there was ongoing conflict in the refugee camps, some of which were under the control of extremists. Therefore, the return of the refugees also became a point of interest for the RPF in terms of its political control over the population, which could only be granted if the latter was within the country's borders.[168] In addition, with infiltrations from the camps into Rwanda starting in September 1994, the refugee problem posed a serious threat to the country's security situation.[169] The main dilemma concerning the refugee issue was that the Rwandan government saw their

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162 Human Rights Watch, *Genocide in Rwanda*, p. 10.

163 Amnesty International, *Crying out for justice*, p. 11.

164 Sieff & Wright, *Reconciling Order and Justice?*, pp. 761-762.

165 Oomen, *Justice Mechanisms*, p. 186; Prunier, *The Rwanda Crisis*, p. 312.

166 Republic of Rwanda, *Genocide, impunity and accountability*, p. 6.

167 Prunier, *The Rwanda Crisis*, p. 327.

168 Ibid., p. 314; AI, *Crying out for justice*, p. 7; Gourevitch, *We wish to inform you*, p. 167.

169 Prunier, *The Rwanda Crisis*, p. 315.

repatriation as necessary in order to secure stability, whereas international organizations working in the camps as well as the refugees themselves feared that they would be subjected to acts of revenge in Rwanda.[170] Concerning the decision to apply retributive justice, the refugee problem added to the government's perception that priority was to be given to the re-establishment of security and peace within the country and that this was only possible through detention of suspects, followed by prosecution and, if guilt was proven, punishment.[171]

Values and Beliefs

This far, the analysis has taken into account factors that influence the choice of transitional justice approach in terms of political power and capacity. In addition to that, the political will to implement a certain policy has to exist. Therefore, decision-makers' beliefs about which policy is best suited to reach the objectives they prioritize also matter. According to Elster, "many regimes have based their policies on beliefs about the cathartic powers of truth and about the beneficial deterrent effects of severe punishments."[172] Since a complex analysis of individual decision-makers' beliefs and of their aggregation into a policy would exceed the scope of this research, values and beliefs are derived from the policy preferences that were officially stated. In addition, the choice of transitional justice approach is influenced by the conclusions that decision-makers draw out of the constraints under which they act. The question is whether both factors, conclusions drawn from specific constraints as well as leaders' values and beliefs, were conducive to a retributive justice approach.

Among the various, regarded as interconnected, policy objectives set by the transitional government were healing and stabilizing the society, promoting reconciliation, establishing a truthful account of the genocide, bringing perpetrators to account, combating impunity, and developing a functioning rule of law.[173] For instance, bringing individual perpetrators to account was illustrated as a way to establish individual responsibility, and thus counter the deadly Hutu-Tutsi dichotomy by preventing guilt from being ascribed to the whole Hutu group.[174] Moreover, it was taken into account that it had been the government, which had misused its power and the state apparatus to incite the

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[170] Prunier, *The Rwanda Crisis*, p. 321; Kritz et al., *The Rwanda Tribunal*, p. 1489.

[171] Kritz et al., *The Rwanda Tribunal*, p. 1489; Schabas, *Justice, Democracy, Impunity*, p. 548.

[172] Elster, *Coming to terms*, p. 43.

[173] Kritz et al., *The Rwanda Tribunal*, pp. 1487, 1492; Jones, *The Courts of Genocide*, p. 98, 183; Republic of Rwanda, *Genocide, impunity and accountability*, pp. 6–7.

[174] Des Forges, *Leave None to Tell the Story,* Justice and Responsibility.

population and to plan the genocide.[175] Therefore, establishing a functioning rule of law was regarded essential in order to avoid such an event from ever happening again.[176] Accordingly, the very needs that decision-makers in Rwanda thought transitional justice had to address corresponded to the already mentioned arguments that are commonly brought forward for prosecution.

Another point of analysis referring to the impact of decision-makers' beliefs is suggested by Sieff and Wright, who argue that "when political leaders view peace and justice as reconcilable, they are more likely to advocate prosecutions."[177] In Rwanda, the government perceived the two not only as reconcilable but even as interdependent. Justice in terms of bringing genocide perpetrators to account while at the same time establishing a rule of law in the country was regarded as absolutely necessary for a stable and secure future situation to emerge.[178] Accordingly, decision-makers' beliefs reinforced prosecution and punishment as a viable transitional justice option.

Concerning the constraints under which decision-makers acted, the situation was first of all characterized by serious time pressure. In order to stop the ongoing violence, offenders had to be detained immediately.[179] However, there were also factors that rendered a retributive approach difficult to implement. The most serious challenge was posed by the high number of suspected genocide perpetrators, coupled with the devastated state of the country's legal institutions and infrastructure. By 1996, 120,000 people were detained, and over time the number of people estimated to have participated in the genocide grew up to 750,000.[180] Even though many external actors declared it impossible to bring every perpetrator to account, the transitional government insisted on its approach of maximum accountability.[181] Thus, this specific challenge could not induce the government to move away from its highly retributive approach. However, recognizing the impossibility to try every perpetrator, the government was prompted to adjust its approach and thus categorized offenders in Organic Law No. 08/96.[182] Despite this innovative clause, Rwanda implemented a retributive process. Hence, the conclusion that decision-makers drew out of this

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175 Republic of Rwanda, *Genocide, impunity and accountability*, p. 6.

176 Kritz et al., *The Rwanda Tribunal*, p. 1492.

177 Sieff & Wright, *Reconciling Order and Justice?*, p. 769.

178 Republic of Rwanda, *Genocide, impunity and accountability*, p. 7; Kritz et al., *The Rwanda Tribunal*, p. 1487.

179 Jones, *The Courts of Genocide*, p. 82.

180 Ibid., p. 83; Oomen, *Justice Mechanisms*, p. 185.

181 Republic of Rwanda, *Genocide, impunity and accountability*, p. 7.

182 Kritz et al., *The Rwanda Tribunal*, p. 1486.

specific constraint was to find a way to still apply retributive justice to as many perpetrators as possible.

Evaluation

In summary, there were various factors that bore an influence on the choice of transitional justice approach in Rwanda. As mentioned before, none of the analyzed variables can account for the outcome of the torturer problem on its own. However, taken together the analyzed features present before, during, and after the regime change resulted in the retributive approach that the country pursued after the genocide.

As already mentioned, transitional justice can be regarded as a function of political power and political will. In Rwanda, political power after the genocide was held by the RPF. Since the latter emerged as the victorious power out of a military conflict and occupied the country there was no need to balance the interests of a multitude of actors with different agendas in the form of a compromise. This specific shape of the variable of 'transition type' had implications for the impact of the variable of 'nature of previous regime'. Power being distributed clearly in favor of the RPF, it did not depend as strongly on societal support to implement its favored policy. Thus, while experiences the population had made in the past played a certain role, the attitudes that the ones in power after the transition held towards the former regime were those that mattered most. Among the actors that made decisions about transitional justice, the previous regime enjoyed no legitimacy. This explains them favoring the application of retributive justice. Further, the former regime's employment of high levels of repression rendered a retributive approach more likely. In addition, repression grew over time, and the time span between the height of the violence and the time when decisions about transitional justice were made was very short, which according to the applied theories also points towards the enactment of prosecution and punishment. Concerning complicity, the high level of participation in the crimes constituted one of the main obstacles for the government to pursue a retributive approach. However, this had practical capability reasons, and did not depart from a lack of political power to enact prosecution. Since the decision-makers in post-genocide Rwanda were not affiliated with genocidal crimes of the previous regime, they promoted a retributive approach despite the high level of complicity within the society. The role played by external actors, who had a strong presence in post-genocide Rwanda, also explains why retributive justice was applied. The international community itself clearly pursued a retributive approach with the establishment of the ICTR. In addition, international norms promoted retributive justice. NGOs further played an important role in attaching the label 'genocide' to the

violence in Rwanda and pointing out the political, legal and moral consequences of this, and subsequently pushing for perpetrators to be brought to account. This backed the transitional government in its policies by providing its stance on the subject with credibility and legitimacy. With regards to regional stability considerations of Rwanda the central concern was the threat that the refugee issue and ongoing attacks from refugee camps abroad posed to the country's security as well as to the new regime's political power. The conclusions drawn out of this, namely the need to detain perpetrators and put them on trial, also pointed towards a retributive approach. Finally, the political will to pursue retributive justice showed itself in decision-makers' values and beliefs, expressed in the objectives the transitional government established on the base of what it saw as causes of the violence as well as objectives it set for the future. Priorities set by the government in this regard demonstrate its belief in retributive justice as the best approach. In addition, the time pressure resulting out of the need to stop the ongoing violence further reinforced the governments' belief in the necessity to put the perpetrators on trial. Finally, the most serious challenge to a retributive approach was posed by the high number of potential defendants. The fact that the government pursued a policy of maximal accountability despite this constraint reflects its strong political will to apply retributive justice.

Conclusion

This article analyzed why Rwanda chose to apply retributive justice after the genocide. In addition to analyzing the values of various variables in the Rwandan case and re-affirming the variables' validity, the research at hand demonstrated that such analysis in general has to be based on a multi-causal model that takes into account a variety of factors as well as their interaction. One of the variables on its own might constitute a necessary condition that has to be fulfilled to render a particular approach possible, but only by additionally taking into consideration other factors influencing post-conflict decision-making, it can be fully explained why a particular approach was adopted in the end. In a globalizing world where conflicts are increasingly of an inter-society nature, Rwanda serves as a valuable example for the issues at stake in a post-conflict society. Every country is unique, and faces particular challenges as well as opportunities. In most countries emerging from a period of violence the power balance is not distributed as clearly in favor of one party as this was the case in Rwanda. Further, the fact that in Rwanda genocide occurred entailed strong legal, political and moral obligations that might not be present in other cases. Accordingly, there is a need to constantly adapt the variables of the research design to conditions present. However, the underlying dilemmas as well as the basic factors influencing decision-making remain the same.

Due to the increased involvement of state and non-state external actors in the transitional justice conduct of countries, the international dimension deserves more attention in such kinds of analysis. The Rwandan genocide took place over fifteen years ago. Since then, the already considerable influence of external actors and international norms further increased. Especially the latter became more durable and the commitment made by the international community to the adherence to human rights was institutionalized in form of the ICC. Although there are nevertheless still many cases of human rights abuses, and the international community's actions are often exclusively based on power interests, the establishment of the ICC constitutes a significant step that reinforces the primacy given to retributive justice. The international dimension also gains importance due to the growing epistemic community in the field. This is manifested in a proliferation of institutes that offer consultation and advice on a variety of transitional justice instruments, many of which more restorative in character. Questions concerning which approach out of a range of transitional justice options to adopt, questions that are influenced by the very factors that were discussed in this article, will still keep countries occupied in the future.

Bibliography

1. Amnesty International, *"A call for UN human rights action on Rwanda and Burundi." Index Number IOR 41/002/1994*, 1994, Internet, http://www.amnesty.org/en/library/asset/IOR41/002/1994/en/2d81b5bf-eb0b-4766-a767-449d3a053e5c/ior410021994en.pdf, 27/08/2011.
2. Ambos, Kai, Large, Judith & Wierda, Marieke (eds), *Building a Future on Peace and Justice*, Springer-Verlag, Berlin, Heidelberg, 2009.
3. Bösl, Anton & Diescho, Joseph (eds), *Human Rights in Africa. Legal Perspectives on their Protection and Promotion*, Macmillan Education Namibia, Windhoek, 2009.
4. Brannigan, Augustine & Jones, Nicholas A., "Genocide and the Legal Process in Rwanda. From Genocide Amnesty to the New Rule of law", *International Criminal Justice Review,* vol. 19, no. 2, 2009.
5. Clark, Phil & Kaufman, Zachary D. (eds), *After Genocide*, Hurst, London, 2008.
6. Daly, Kathleen, *Restorative justice: the real story*, Paper presented at Scottish Criminology Conference, Edinburgh, 21-22 September 2000, 2001, Internet, http://www.griffith.edu.au/__data/assets/pdf_file/0011/50321/kdpaper12.pdf, 31/07/2011.
7. Des Forges, Alison, *Leave None to Tell the Story: Genocide in Rwanda*, Human Rights Watch, 1999, Internet, http://www.hrw.org/legacy/reports/1999/rwanda/, 31/07/2011.
8. Drumbl, Mark A., "Sclerosis: Retributive Justice and the Rwandan Genocide", *Punishment & Society*, vol. 2, no. 3, 2000.
9. Elster, Jon, "Coming to terms with the past. A framework for the study of justice in the transition to democracy", *European Journal of Sociology,* vol. 39, 1998.

10. Fujii, Lee A., *Killing Neighbors. Webs of Violence in Rwanda*, Cornell University Press, New York, 2009.
11. Gourevitch, Philip, *We wish to inform you that tomorrow we will be killed with our families*, Farrar, Straus and Giroux, New York, 1998.
12. Hossain, Kamal, Besselink, Leonard F. M., Selassie, Haile & Völker, Edmond (eds), *Human Rights Commissions and Ombudsman Offices. National Experiences throughout the World*, Kluwer Law International, The Hague, 2000.
13. Human Rights Watch, "Genocide in Rwanda: April – May 1994", *Human Rights Watch/ Africa 6(4),* 1994, Internet, http://www.hrw.org/sites/default/files/reports/RWANDA 945.PDFhttp://www.hrw.org/sites/default/files/reports/RWANDA945.PDF, 26/08/2011.
14. Human Rights Watch, *The Rwandan Genocide. How It Was Prepared*, 2006, Internet, http://www.hrw.org/legacy/backgrounder/africa/rwanda0406/, 08/08/2011.
15. ICTJ, *What is Transitional Justice?,* 2008, Internet, http://ictj.org/sites/default/files/ICTJ-Global-Transitional-Justice-2009-English.pdf, 31/07/2011.
16. ICTR, *"Prosecutor vs. Kanyabashi" (Case No. ICTR-96-15-I)*, 2000, Internet, http://www.unictr.org/Portals/0/Case%5CEnglish%5CKanyabashi%5Cindictment%5Cinde x.pdf, 31/07/2011.
17. Jones, Nicholas A., *The Courts of Genocide*, Routledge, Oxon, 2010.
18. Kaufman, Zachary D., "The Future of Transitional Justice", *St. Antony's International Review,* vol. 1, no. 1, 2005.
19. Kritz, Neil J. (ed.), *Transitional justice: how emerging democracies reckon with former regimes*, United States Institute of Peace, Washington D.C., 1995.
20. Kritz, Neil J., Muna, Bernard, Pillay, Navanetbem & Rudasingwa, Theogene, "The Rwanda Tribunal and its relationship to national trials in Rwanda", *American University International Law Review,* vol. 13, no. 6, 1998.
21. Llewellyn, Jennifer J. & Howse, Robert, *Restorative Justice: A Conceptual Framework,* Law Commission of Canada, Ottawa, 1998.
22. Mamdani, Mahmood, *When Victims Become Killers: Colonialism, Nativism, and the Genocide in Rwanda,* Princeton University Press, Princeton, 2001.
23. Mani, Rama, *Beyond Retribution. Seeking Justice in the Shadows of War*, Blackwell Publishers Inc., Malden, 2002.
24. Minow, Martha, *Between Vengeance and Forgiveness. Facing History after Genocide and Mass Violence*, Beacon Press, Boston, 1998.
25. Moran, John P., "The Communist Torturers of Eastern Europe: Prosecute and Punish or Forgive and Forget?", *Communist and Post-Communist Studies,* vol. 27, no. 1, 1994.
26. Nedelsky, Nadya, "Divergent Responses to a Common past: Transitional Justice in the Czech Republic and Slovaskia", *Theory and Society,* vol. 33, no. 1, 2004.
27. Neier, Aryeh, *War Crimes. Brutality, Genocide, Terror, and the Struggle for Justice,* Times Books, New York, 1998.
28. Oxford Dictionaries, *Deserts*, 2011, Internet, http://oxforddictionaries.com/definition/ deserts, 31/07/2011.
29. Prunier, Gérard, *The Rwanda Crisis. History of a Genocide*, Columbia University Press, New York, 1995.

30. Republic of Rwanda, "Genocide, impunity and accountability: Dialogue for a national and international response." *Recommendations of the conference held in Kigali from November 1st to 5th,* 1995.
31. Roht-Arriaza, Naomi & Mariezcurrena, Javier (eds), *Transitional Justice in the Twenty-First Century. Beyond Truth versus Justice*, Cambridge University Press, New York, 2006.
32. Schabas, William A., "Justice, Democracy, and Impunity in Post-genocide Rwanda: Searching for Solutions to Impossible Problems", *Criminal Law Forum,* vol. 7, no. 3, 1996.
33. Sieff, Michelle & Wright, Leslie Vinjamuri, "Reconciling Order and Justice? New Institutional Solutions in Post-Conflict States", *Journal of International Affairs,* vol. 52, no. 2, 1999.
34. Sriram, Chandra Lekha, Martin-Ortega, Olga & Herman, Johanna (eds), *Peacebuilding and Rule of Law in Africa: Just Peace?*, Routledge, New York, 2011.
35. Stover, Eric & Weinstein, Harvey M. (eds), *My Neighbor, My Enemy. Justice and Community in the Aftermath of Mass Atrocity,* Cambridge University Press, Cambridge, 2004.
36. Teitel, Ruti G., "Transitional Justice Genealogy", *Harvard Human Rights Journal,* vol. 16, 2003.
37. UN Security Council, "The rule of law and transitional justice in conflict and post-conflict societies. Report of the Secretary General (S/2004/616)", 23 August 2004.
38. USIP, *Rwanda. Accountability for War Crimes and Genocide. A Report on a United States Institute of Peace Conference*, 1995, Internet, http://www.usip.org/files/resources/SR13.pdf, 21/08/2011.
39. Von Hirsch, Andrew, v. Roberts, Julian & Bottoms, Anthony (eds), *Restorative Justice and Criminal Justice. Competing or Reconcilable Paradigms?*, Hart Publishing, Portland, 2003.
40. Welsh, Helga A., "Dealing with the Communist past: Central and East European Experiences after 1990", *Europe-Asia Studies* vol. 48, no. 3, 1996.
41. Welsh, Helga A., "Political Transition Processes in Central and Eastern Europe", *Comparative Politics,* vol. 26, no. 4, 1994.
42. Zehr, Howard, "Retributive Justice, Restorative Justice", *New Perspectives on Crime and Justice: Occasional Papers of the MCC Canada Victim Offender Ministries Program and the MCC U.S. Office of Criminal Justice*, vol. 4, 1985.

UDC: 343.9.024:336.7
Biblid 0543-3657, 62 (2011)
Vol. LXII, No. 1144, pp. 43–67
Original Scientific Paper
August 2011

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Terrorism Financing and Official Financial Institutions

ABSTRACT

The subject of this paper is the politicological aspect of the methods and techniques of preventing and combating terrorist financing through money laundering in official financial institutions, based on the application of modern achievements in the methodology of political, criminological, legal, economic, sociological and history sciences, as well as the possibility of further capacity building of the society and political subjects in the successful organisation of detecting, understanding, analysing and undertaking countermeasures.

The issue is primarily of intellectual nature and essentially refers to the area of insight in terrorist financing through money laundering, as follows: the existing knowledge on terrorism, the existing knowledge on money laundering, the existing knowledge on interrelations between these two social phenomena, the existing knowledge on the consequences of these phenomena, the existing knowledge on the methods and techniques applied in the processes of terrorist financing through money laundering, the existing knowledge on the policies and methods of implementation of the countermeasures of the international community and local communities aimed at combating these phenomena, security as a social phenomenon.

The basis for comprehensive understanding of this phenomenon is a precise scientific definition of the following: first, the phenomenon itself; second, the methodologies and techniques of its presentation, third, social significance and consequences of this phenomenon, fourth, methodologies of monitoring and measuring its effects, fifth,

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methodology, implementation and monitoring of the effects of countermeasures of the social and international community.

Terrorist financing through money laundering has been defined as a very complex process of various relations established for the purpose of attempting or successfully obtaining or raising funds or assets, aimed at their use or with the awareness that they may be used fully or partially in the performance of a terrorist act, by terrorists or terrorist organisations. The subject of study are, therefore, the relations between the elements of the process of terrorist financing through money laundering based on modern politicological and methodological knowledge.

Key words: terrorism, money laundering, terrorist financing, financing mechanisms, tax haven, Hawala, financial institutions, pan-European response, human rights.

Significance and Scope of Terrorism Financing

Over time, the concept of terrorism has often been defined in practice and theory because of its topicality and significance. According to one of more comprehensive definitions, “terrorism is a complex form of organised, individual and, less frequently, institutional political violence, marked by terrifying brachial-physical and psychological methods of political strife, by which attempts are systematically made, usually in times of political and economic crises and rarely in the conditions of economic and political stability of a society, to achieve ‘great goals’ in a manner completely inappropriate for the given conditions, primarily the social situation and historical capacities of those who use it as a political strategy.”[2]

Financial backing is also necessary in order for such activities to become operational in practice. Financial support, money, is the necessary driving force and the basis for any terrorist organisation, irrespective of its name, location and goals in carrying out its actions. Money is equally important to terrorism as the sun is to life on the planet Earth. Money is oxygen to terrorism. Terrorists cannot function without the funds they will raise and use throughout the world. Just like other interest groups, terrorist groups and organisations also have to obtain necessary financial resources for financing their undertakings. “A successful terrorist organisation or group is the one that has created such mechanisms based on which it is able to set up and maintain an efficient financial infrastructure.”[3] For the above reasons it has to design and establish the

[2] Dragan Simeunović, *Teorija politike I deo*, Nauka i društvo, Belgrade, 2002, p. 159.
Dragan Simeunović, *Političko nasilje*, NIRO Radnička štampa, Belgrade, 1989, p. 132.

[3] Financial Action Task Force on Money Laundering, FATF, *Report on Money Laundering Typologies*, Paris, 2002, p. 2.

financing sources, the ways of laundering such funds and, finally, the way of ensuring that they will be used for procuring material and other logistic items necessary for carrying out terrorist actions.

Money is clearly very important in this context. The importance of money is especially emphasised by its primary role of representing the general means of exchange. "The other two roles of money are to be the means of saving — for preserving purchasing power, and the means of calculating the "values" of all material and spiritual things. Some economists mention the fourth role of money as well — that it is the means of payment, or credit money."[4] The importance of money in this and any other context is best evidenced by the opinion of Roman Emperor Vespasian "*Pecunia non olet*"[5], meaning "money does not stink".

Money laundering has a crucial impact on successful operation of practically all forms of organised crime, transnational in particular.

Negative impact of the money laundering phenomenon on economic development and the functioning of financial sector is evident. At the same time, however, one must by no means lose sight of the impact that money laundering has on the development of other forms of crime, as well as the development of terrorism. It only depends on the interest of the state and its political establishment what kind of relations it will have with the world of organised crime, especially when it comes to money laundering. Given that organised criminal groups are moving fast towards the internationalisation of their activities, governments must prepare appropriate solutions in their national legislation and cooperate with each other in order to discourage the activities of such groups.[6]

Based on the experience confirmed in practice, it may be said with certainty that money laundering has a crucial impact on successful operation of almost all forms of organised crime, transnational in particular. At the same time, this statement certainly applies to terrorist activities as well. In addition, one should not lose sight of the fact that exactly because of the above mentioned impact "a clear understanding of the money laundering process requires a clear understanding of the fact what money is and how it functions."[7]

Apart from that, for complete insight, it also necessary to understand what criminality is. "Criminality is the totality of all crimes within a certain time and

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[4] Dragan Veselinov, *Politička ekonomija*, Faculty of Political Sciences, Čigoja štampa, Belgrade, 2008, p. 162.

[5] A statement attributed to Emperor Vespasian, when raising taxes for use of public toilets. *Concise Oxford Dictionary of Quotations*, Oxford, 1986, p. 262.

[6] Đorđe Ignjatović, *Organizovani kriminalitet – drugi deo*, Police Academy, Belgrade, 1998, p. 182.

[7] John Madinger, *Money Laundering: A Guide for Criminal Investigators*, CRC Press, Florida U.S, April 2006, p.7.

space, which, as a mass social phenomenon, adapts to contemporary social phenomena, manifesting itself in new forms.”[8] Criminal organisations, which by their nature certainly also include terrorist organisations, groups and individuals, acquire considerable financial income, property and money based on illegal activities.

Studying the terrorism financing phenomenon in literature, we may mostly come across a position, based on numerous studies, that contemporary terrorism may be easy to finance. Supporting this argument, concrete data are mentioned: that, for example, the price of explosives in the market is low and that it is available to a wider circle of potential buyers. Also, some authors and experts in this area state that suicide terrorism is very cheap, unless of course taking into account the lives of the suicide terrorist on the one hand and the victim, which generally is a civilian, on the other. A well-known terrorist operation carried out in Madrid, which resulted in over two hundred casualties, may certainly serve as the best example of the claims of low costs of terrorist actions, which in practice caused severe destruction and high civilian casualties. Based on the investigations conducted by the Spanish government authorities, it was found that the direct costs of the entire operation were as low as EUR 10,000. This terrorist attack was also mentioned by the former President of Colombia, Andrés Pastrana Arango, in whose opinion “the financing of, say, the terrorist attack in Madrid required selling two kilograms of hashish.”[9]

One of the supporters of this thesis is certainly the director of Defence Policy Studies and an expert on terrorism at the Cato Institute, Washington, Ivan Eland, who believes that terrorists are ready to take various forms of terrorist activities in Europe. This does not require much money. All that is needed is careful and detailed planning with individuals trained and ready for such actions.

The thesis of the so-called cheap terrorism is opposed in practice by another thesis which supports the viewpoint that today there is neither cheap nor expensive terrorism. According to the advocates of this thesis, terrorism has its real price, which in financial terms in practice presents significant amounts of money, even at international level. Due to the fact that terrorism in a way is certainly a unique phenomenon and, it is safe to say, hardly comparable to any other phenomenon, in considering the two theses mentioned above we should proceed from the fact that the visible terrorist act is just the tip of the iceberg. It is, in fact, the final product of the ideas of terrorism, which have their bases in much wider socio-political and socio-economic conditions at the level of global

[8] Đorđe Ignjatović, *Kriminologija*, Official Gazette, Belgrade, 2006, p. 4.

[9] Andres Pastrana, *U bankama 500 milijardi dolara od trgovine narkoticima*, Bankar, no. 7–8, Belgrade, July – August 2007, web page: http://www.emg.rs/zines/bankar/447.html, access: 17/06/2008.

community, rather than only the terrorist organisations preparing and executing it in practice. In order to execute a terrorist act itself as the final product, it is necessary to provide and invest considerable funds. These funds are necessary so that favourable conditions could be created for the emergence of terrorism itself. Terrorism as a phenomenon emerges directly from extremism, which may manifest itself in its specific forms. An example of the most obvious and nowadays the best known form of extremism is religious extremism, which certainly presents an ideal breeding ground for the emergence and development of religious terrorism.

It is thus clear that the consideration of only the cost of individual segments of a terrorist act, such as e.g. the price of the explosives used, is of no crucial importance. In considering and establishing the cost of a performed terrorist act organised by a terrorist organisation, all other financial expenses should certainly be taken into account as well. Before all, account should be taken of the costs necessary to sow the seeds from which the germ of terrorism develops as an idea itself, which in practice creates terrorist organisations themselves and their actions, whose final implementation sometimes really does not require considerable funds.

It should be mentioned at this point that it is possible in practice for terrorism to manifest itself in the form of individual terrorist acts as well, behind which there is no terrorist organisation or its financial support. However, there certainly is an idea of terrorism behind each individual terrorist act in such cases as well. We have already noted that significant funds are undoubtedly successively necessary for the emergence and fostering of such ideas.

The dimension of contemporary terrorism understood and presented in this way has an extraordinary impact in the field of full and, very importantly, proper identification of the terrorism phenomenon, or in the field of the most successful resistance to it possible.

The so far most significant, practically cult terrorist operation of the 21st century, which was carried out in the US on 11 September 2001, cost its organisers 250,000 US dollars for its preparation and execution alone, according to the official FBI estimates. The funds were needed for organising and conducting numerous trips, as well as for covering the costs of flight training, and for covering the costs of living of the terrorists during the long preparatory phase. These costs certainly could not have been covered by the personal income of the terrorists themselves.[10] As part of conducting financial investigation in connection with the terrorist act in the US, 448 individuals, 19 legal persons and 6 different associations were covered. The use of 452 accounts with commercial banks and

[10] Ulrich Kersten, *Međunarodni terorizam, doprinos policije u suzbijanju globalnog fenomena*, Pogledi, 2/2003, Police Academy, Belgrade, p. 6.

42 credit card accounts was thoroughly analysed as well. In addition to the above, comprehensive thorough analyses were also performed of other relevant clues and indications, collected based on the reports of banks and other financial institutions, which pointed to money laundering and terrorism financing through money laundering.

Are the supporters of the first thesis or of the second thesis right? How much funds are really necessary in practice to create a real basis for initiating, organising and executing terrorist actions by members of terrorist organisations? The answer to this is practically self-evident if taking into account the facts that the establishment and maintenance of terrorist infrastructure requires considerable funds for the installation and maintenance of a branched-out network of supporters organised into terrorist cells worldwide, for the rental or purchase of flats, as well as for other logistic activities. It is certainly an amount of funds that could not be deemed insignificant. Some estimates range around several billion dollars at the global level. The data alone on the Al Qaeda assets indicate that this terrorist organisation possesses assets whose value is estimated at over five billion dollars. The analysts estimate the Al Qaeda annual income alone at a sum between twenty and fifty million dollars.

It is clear from the above that, if we observe terrorism as a phenomenon, a process that has its designed rather than spontaneous initiation and emergence, as well as its development, which finally inevitably results in taking concrete terrorist actions, cheap terrorism in today's world is out of the question. Modest funds may only be sufficient for financing some segments of the entire terrorist infrastructure or concrete actions. However, all this is just a drop in the swelling ocean of the already highly developed terrorist ideology and established infrastructure, which are inexorably developing and transforming before our very eyes from one form into another, depending on various social, religious, contemporary or traditional civilisational influences.

Terrorism Financing through Official Financial Institutions

The successful performance of terrorist actions requires, among other things, stable financial support. Money is the necessary driving force and the basis for criminal and terrorist organisations, no matter how they name themselves, where they operate and what goals they set before themselves. Money for the operation of terrorist organisations has, it is safe to say, a significance that the sun and oxygen have for the survival of the living creatures on Earth. This does inevitably point to the existence of a connection between terrorism and organised crime, with which it is intertwined and one of whose forms it is, as well as transnational organised crime, all for the purpose of obtaining the financial basis for successful

organisation and execution of terrorist actions.

Simply put, there are two main sources of financing terrorist activities:

First, the provision of financial support from certain states or organisations. In this way, obtaining the necessary funds enables the creation of preconditions for the establishment, organisation and operation of terrorist organisations, groups and individuals. This form of financing is usually called "sponsor" terrorism financing.

Second, a direct, immediate provision of funds through various legal and illegal activities conducted by the terrorist organisation members themselves.

Nowadays, terrorist activities are financed in different ways, through various forms and with the help of various methods of legal as well as illegal business. Funds are also provided by perpetrating various classical, political and economic crimes.

With regard to the relations between terrorism financing and the money laundering phenomenon, it has been observed in practice that they are inextricably connected by the issue of providing the funds necessary for financing terrorist organisations and their actions.

The money acquired through crime, as well as the money used for organising and executing illegal activities creates the need for its legalisation and subsequent undisturbed use. Through money laundering, as with the assistance of catalysts in chemical reactions, criminal activities are directly initiated and increased in the financial and real sectors on the one hand, while on the other hand a necessary vital financial transfusion is given to terrorist activities.

"Money is the bloodstream of criminal activities, and in this the money laundering process may be considered the heart of the process itself because it enables money to be purified and pumped throughout the organism to ensure its survival."[11]

Today, terrorists increasingly decide to use completely legal financial channels for transferring their funds in order to ensure smooth, timely and safe financing of their activities. For this purpose, they use the services of legal financial institutions, such as commercial banks, offshore banks and other financial institutions such as savings banks, credit organisations, leasing companies, organisations specialised in electronic money transfers, insurance companies, broker companies, investment funds or auction houses.

Using their services, they perform and cover up the laundering of the money intended for the achievement of their goals. In theory and practice, it is considered that "money laundering can most directly include various financial

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[11] Toby Graham, Evan Bell, Nicholas Elliot, *Money Laundering*, Butterworth – Heinemann, London, March 2003, p. 6.

transactions with the money acquired through an organised criminal activity, in a very high total amount, in order to hide its criminal origin but also enable its further use in legal business transactions."[12] Therefore, money laundering refers to the activities of criminals attempting to clean the money acquired through criminal activities, dirty money, so that the trace of its origin would be lost. Many actors from the world of crime resort to this, from petty drug dealers to large crime syndicates, which obtain huge sums of money through numerous illegal activities."[13]

However, at the same time, it should certainly be taken into account that not only illegally acquired funds are used for the purposes of financing terrorist organisations and their actions, but also those acquired legally, which, through the money laundering process and channels, are placed at the disposal of their end users, organisers of terrorist activities and terrorists themselves.

In this, they certainly benefit from performing transactions using the services of international financial centres (IFCs), such as London, New York or Tokyo. These financial centres provide their customers with a versatile system of services, as well as an advanced payment system, which are supported by strong domestic economies with developed and liquid markets. The lay public is certainly not particularly familiar with the role of London in offshore business. However, those more familiar with these issues certainly know that, not so long ago, London was plagued by financial scandals of every sort. The collapse of the Bank of Credit and Commerce International, which performed transfers of funds of drug dealers and terrorists through its London branch, was devastating and had global consequences on the reputation of London financial circles. These events have shown London in its true colours, as an offshore financial centre serving the interests of problematic clients on the one hand, and on the other, simultaneously as a centre that emphasises that it has rules and regulations that place it among the world top onshore jurisdictions. Its status of offshore financial centre is reflected by a large number of foreign banks and their branches that placed their headquarters in the City.

The vulnerability of London to money laundering is not due to a lack of legislation or its weakness, but to the absence of its application. The authorities did not invest on time in the appointment and training of professionals in charge of regulation implementation. This happened not due to a lack of resources but for pragmatic reasons. More precisely, the UK economy did not want to give up

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[12] Dragan Simenunović, *Opšta problematika pranja novca (Uporedna iskustva)*, paper from a conference entitled *Financial Crimes and Topical Issuesof Financial Police Organisation and Operation*, Budva, 13–15 September 1995, p. 88.

[13] Đorđe Ignjatović, *Organizovani kriminalitet – drugi deo*, Police Academy, Belgrade, 1998, p. 85.

its significant income from the invisible financial sector overnight. However, a series of financial scandals changed the attitude of the authorities, resulting in the adoption of a series of anti-money laundering regulations and measures, with an intention of harmonising the financial system with the international standards in this field. "Currently there is a myth that there is one financial regulatory authority (FSA) and one legislation, the 2000 Financial Services and Markets Act, in the UK."[14] The aforementioned Financial Services and Markets Act, which was adopted in 2000 and came into force on 30/11/2001, contributed in many ways to the harmonisation of the financial system with the international standards in this area. Based on this act, a legal basis was provided for the establishment of FSA (Financial Services Authority). It started to operate in 2001. The 2002 Proceeds of Crime Act (POCA) radically increased the requirements for the financial sector to report suspicious transactions."[15] This act is considered the second pillar in combating money laundering in the UK. "The rules of procedure in the cases of suspicious transactions and the rules on their reporting are contained in the FSA Money Laundering Sourcebook."[16]

London and its financial sector implemented the provisions of these acts as did all other jurisdictions. The Financial Services and Markets Act instilled fear and suspicion in the domestic banking relating to the previous experience of doing business with the clients with bad reputation. It enabled the supervision of bank operations by the regulatory authority in order to verify the application of their procedures. The suspicion was significantly contributed by the certainty that if a bank was caught failing to implement regulations, it would have to face sanctions, such as a fine or loss of business reputation. The first among the banks that felt the severity of new regulations was The Royal Bank of Scotland, which was fined £750,000. Due to this, the banks opted for monitoring their clients and their operations, as well as reporting suspicious transactions and activities (SAR) to the National Criminal Intelligence Service (NCIS).

In addition to the aforementioned financial centres, the organisers of terrorist activities are also certainly interested in regional financial centres, which have a developed financial market, infrastructure, and brokerage funds within and outside the region, with less developed domestic economic environment.

[14] Annie Mills, *Essential Strategies for Financial Services Compliance*, John Wiley & Sons, West Sussex, England, August 2008, p. 1.

[15] Tim Gough, *Anti Money Laundering: A Guide for Financial Services Firms*, Risk Books, London, November 2005, p. 3.

[16] Stuart Bazley, Caroline Foster, *Money Laundering: Business Compliance*, Butterworth-Heinemann, Croydon UK, July 2004, p. 8.

The best known tax havens countries or territories in the world are:

– in Europe: Andorra, Cyprus, Gibraltar, Isle of Man, Jersey, Madeira and Switzerland,
– in the Middle East: Bahrain, Israel and Lebanon,
– in Africa: Djibouti, Liberia, Mauritius and Seychelles,
– in Asia and the Pacific: Cook Islands, Macao, Marshall Islands, Western Samoa, Thailand and Singapore,
– in the Western Hemisphere: Antigua, Aruba, Barbados, Belize, Netherlands Antilles, Uruguay and Puerto Rico.

This group of financial centres also includes Hong Kong with over 450 commercial banks, Singapore with over 200 commercial banks and Luxembourg with over 200 commercial banks. The general public is less aware that these important financial markets in the economically developed countries are classified into offshore financial centres, based on the benefits and services offered to their clients. More precisely, contrary to the stereotypes that all offshore financial centres are located on sunny islands such as the Caribbean and South Pacific, the basic status of non-resident clients that they are not subject to tax duties or that, if they are, these duties are a small burden to them, as well as that their account secrecy is guaranteed, classifies these financial markets among offshore financial centres. Thus, for example, few people outside the expert community know that the US is a tax haven for non-European investment funds, especially the State of Montana, which is a deposit offshore territory.[17]

Offshore Financial Centres, Tax Havens

Special attention in studying terrorism, as well as in undertaking the activities to combat terrorism financing should be paid to the so-called tax havens. Today it is common to use the term tax haven for places where taxes and all public dues are low or even non-existent and the procedures are quite simple, with a pronounced protection of financial confidentiality.

There is no single definition for tax haven countries, which are also known as Offshore Financial Centres (OFCs).[18] According to the UN definition, "a tax haven country or offshore institution is any country in the world in which the bank accepts deposits and manages assets denominated in foreign currency on

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[17] Mark Nestmann, *When is Tax Competition Harmful*? A-Letter, The Society, Vol. 1, no. 8, December 3. 1999, Washington: United Nations, Financial Havens, Banking Secrecy and Money Laundering, Bureau for International Narcotics Control Strategy Report, Washington, D.C. , 1999.

[18] OECD, *Harmful Taks Competition: An Emerging Global Issue*, Paris, 1998, p. 23.

behalf of a person whose permanent residence is in another country."[19] The definition is based on the criteria of provision of services and benefits to non-residents, while keeping in mind that the resident status is the primary element for determining the taxpayer status in most countries of the world.

The Financial Stability Forum (FSF) defined that "tax haven countries are those that have low-tax legislation in order to attract certain non-resident activities."[20]

In connection with these issues, the OECD[21] identified three key factors that are taken into account in order to consider a certain country, territory or location a tax haven:

First, the specific country should have no imposed taxes at all or have only nominal taxes for specific cases. Also, this country should offer itself as a location that non-residents use for evading tax payment in their countries. Accordingly, many tax haven countries either have no personal income taxes imposed or, if they do, these taxes are very low. At the same time, typically, no offshore centre has imposed the obligation of paying the capital gains tax or inheritance tax. These countries also have bargains on the level of tax rate, as well as other practices where the rules are not applied consistently, inadequate supervision is performed and the tax authorities and other competent authorities are unable to legally access the financial data. These are all common features of tax haven countries.

Second, there has to be a lack of transparency and data exchange with other countries.

The country should have typical legislation and administrative practice according to which business and property data are protected by strict rules of secrecy, including the protection from inspection and performance of tax investigations by tax authorities, whereby any inspection of the taxpayer data is prevented.

Emergence of Tax Haven Countries

The use of different tax legislations of countries for the purpose of avoiding or reducing tax liability is as old as the taxation itself. "The emergence of tax haven countries is mostly associated in theory and practice with the development of the tax competition concept dating from the beginning of the

[19] United Nations, *Financial Havens, Banking Secrecy and Money Laundering*, 1998.

[20] Financial Stability Forum, *Report of the Working Group on Offshore Centres*, 5 April 2000.

[21] OECD – The Organisation for Economic Co-operation and Development.

12th century although, according to some opinions, the Vatican had that tax status as the first example of tax haven back in the 8th century."[22]

The events of crucial importance for the accelerated development of tax haven countries in recent history certainly are World War I and World War II. After both the First and Second War period, there was a dramatic increase in the tax burden, due to the needs for reconstructing the devastated economy and social development. Switzerland, which had avoided these costs as a neutral country, was able to keep a low level of tax burden on businesses and households. It thereby became the leader in attracting capital. "The coincidence is that Switzerland, strengthening its legislation on banking secret in the early 1930s, predominantly with the aim of helping people hide their money in fear of the Nazi regime and later for other reasons as well, caught the eye of the people who wanted to hide their money for legal and illegal reasons."[23] In the early 20th century, Swiss banks had long been a capital haven for the people who fled the revolution and war threats, such as those in Russia, Germany and South America.

Today's modern tax haven countries went through several development phases in the period after the two world wars.

In the first phase, from 1920 to 1950, these countries were generally associated with personal income tax avoidance of mostly rich individuals.

In the second phase, however, from 1950 onwards, the number of tax haven countries increased owing to corporate groups and their interests. These groups significantly reduced their tax duties by doing business with these countries. Their strategy was generally based on the avoidance of double taxation between the legislation with a high rate of tax burden and the legislation with a low rate of tax burden. Due to the expansion of such practice, a number of countries terminated or limited the application of the agreements on avoidance of double taxation with small countries, whereby they protected their public revenue collected on the basis of payment of corporate income tax.

In the third phase, in mid-1980s, most of the tax haven countries shifted the focus of their legislation. This was done by abolishing local taxation and creating favourable conditions for non-residents and non-resident business corporations.

By adapting to the situation on the global political, economic and legislative scene, these countries have managed to get the funds necessary for their own

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22 Hasiba Hrustić, *Oblici poslovanja u zemljama poreskog raja*, Pravo i privreda, Business Lawyers of Serbia, File, Belgrade, 2008, p. 42.

23 Wouter H. Muller., Christian H. Kalin, John G. Goldsworth, *Anti-Money Laundering: International Law and Practice*, John Wiley & Sons, West Sussex, England, April 2007, p. 3.

development. The amount of funds in question is best demonstrated by the official data of reputable international institutions. Thus, the IMF presents an estimate, based on the BIS[24] data, according to which the volume of transactions of the largest offshore centres exceeded the sum of 4.6 quadrillion US dollars at the end of 1999, which at that time presented about half the total international volume of transactions generated.

Forms of Doing Business in Tax Havens

Economic activities in the offshore centres in the world consist of providing an entire range of professional services to non-residents. These services include:[25]

– provision of professional financial services,
– investment fund management,
– provision of banking services,
– insurance activities,
– activities in connection with pension funds,
– trading activities,
– agency services,
– tax planning services.

When using the services of financial brokers, the owners of free funds deposit them in offshore centres, and they are later placed through brokers in the form of loans or investments, through which they later mostly end up in the countries from which they were initially transferred. Although the taxation in the principal country is not avoided by applying this method, it enables the owner of the funds not to be the subject of additional taxation, by making use of the legislation of its home country and that of the offshore country. As for criminals and terrorists, in this way they successfully hide the origin of the funds and by placing them into legal financial channels throughout the world they enable future financing of their illegal activities.

As for using the services of offshore centres by holding corporations, significant advantages are provided to them in these countries compared to their

[24] BIS, The Bank for International Settlements, is responsible for the definition of norms and rules that determine whether a loan is risky or not. The BIS has a role of a central bank for debt settlement. It was formed in 1947 in accordance with the 1944 Bretton Woods Agreements, since when the US dollar has been used as the universal currency in international payments and for global reserve purposes.

[25] Financial Stability Forum, Working Group on Offshore Financial Centres Report, April 2000.

home country. The company owner, who is a non-resident, establishes a company in the offshore centre using the capital originating from another country. The same company is later managed from another offshore centre in which the parent company is a resident. At the same time, the holding company finances transactions of its daughter company, and the profit is eventually transferred to the home country in various ways.

A frequent method in the operations of the companies thus established is the creation of false expenses and transfer of profit from a country with a high tax burden to a country with a low tax burden. This is accomplished by invoicing false expenses based on allegedly provided consulting or insurance services, whereby the profit generated in the home country is decreased.

One of the popular methods of offshore operations is the transfer price method. In these cases, offshore companies are used for re-invoicing purposes. They simply purchase various goods or contract services in one country and then sell them in another. In the process of procurement, the goods and services are invoiced to them without any margin, without profit. The so-called transfer price is realised. Later, when selling the goods to the end buyer, the invoicing is made with profit included. Thereby the profit remains in the company established in the offshore country. The hidden profit, generated and integrated owing to the completed money laundering cycle, is later used for further operations of the company and may be used by criminals and terrorists or by their financiers for providing support to their illegal activities.

The income thus generated may easily be transferred further as well as used for possible financing of illegal activities or the terrorism itself.

Offshore corporations or international business corporations (IBCs) may serve as an example of superior organisation when operating in offshore centres. They conduct their business, issue shares and bonds, by which they enlarge their capital, in the absence of a public central register of shareholders. Today they mostly manage various investment funds. In practice, it is mostly multinational corporations that establish offshore banks, through which they manage their foreign exchange operations, as well as conduct international investments. A parent bank (onshore bank) establishes its branches in offshore centres, whereby an entire chain of parallel sister banks is created. After their establishment, the sister banks perform offshore fund administration services, practically perform supervision, accounting and fund transfers. There is no capital tax, withholding tax on dividends or interest, tax on financial transactions, corporate income tax, or capital gains tax and there is no tax audit in offshore centres. In addition to all this, few reports are required by regulatory authorities. Within such chain, the trace of the funds is easily covered; the generated profit is transferred to various other forms of property and later may legally be used around the globe for various purposes.

Wealthy individuals and multinational companies hold their capital in tax haven countries because of, among other things, the desire to protect themselves from potential inspection of the origin of funds, as well as their purpose. In addition, opening an account with an offshore financial institution presents a means of choice to them, if it is about the confidentiality of information about themselves, as well as about their funds. One of the determining factors for using the services of tax havens certainly is the fear of seizure and confiscation of property and assets and the protection provided to them in this respect in these areas.

The following data may best attest to the scale nowadays acquired by offshore business:

- The Cayman Islands became the fifth largest banking centre in the world after New York, London, Tokyo and Hong Kong, with 40,000 inhabitants and 580 banks, with over 500 billion US dollars in deposits, 2,238 investment funds, 499 insurance companies and 40,000 offshore companies,
- Nye Islands, with only 2,000 inhabitants, but with 3,000 registered international business corporations,[26]
- The Bahamas have 580 established investment funds, 60 insurance companies and 100,000 international business corporations. At the same time, the value of their business assets is estimated at over 350 billion US dollars. In addition, 418 commercial and investment banks from 36 countries are present there,[27]
- The British Virgin Islands, according to the 2000 KPMG Report 2000, present the largest offshore jurisdiction in the world by size of capital of corporations established without the obligation of physical presence when doing business,
- Austria has 24 million non-resident no-name accounts with over 100 billion US dollars in deposits,
- Luxembourg has one of the most developed financial sectors in which 90% of all accounts are non-resident accounts,
- Monaco, which has 70 financial institutions maintaining 350 thousand accounts and as few as 30,000 residents, has 44 billion US dollars in deposits.

If taking into account, in addition to all the above, the non-transparent working environment, which includes a high level of guaranteed anonymity and

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[26] U.S. Department of Treasury, *Financial Crimes Enforcement Network*, FinCEN Advisory, Washington, July 14, 2000.

[27] William Allen, *Statement by the Bahamas to the OECD Forum on Harmful Tax Practics*, OECD, Paris August 30, 1999.

elimination of provision of any information whatsoever to the criminal investigation and prosecution authorities of the non-resident's domicile country, it becomes clear why, in addition to capital owners, these countries were also chosen by financiers of terrorist organisations for their purposes. The answer is simple, tax haven countries provide both groups with the limitless possibilities of conducting suspicious operations, such as tax evasions, money laundering or terrorism financing.

At the same time, it is evident that nowadays the so-called tax havens have a multiple and very significant role in all forms and kinds of illegal activities and especially in the processes of money laundering as one of the most significant forms of terrorism financing and organised crime. Terrorist organisations use the above mentioned possibilities actively and in many ways for financing their activities in order to manage their funds and assets without any serious concern that they will be discovered and prevented and that their funds will be seized and confiscated, which would prevent or significantly jeopardise them.

The Importance and Role of Serbia and the Countries of Southeast Europe in the Efforts to Combat and Eliminate the Impact of the Phenomena of Money Laundering and Terrorism Financing

Over time, the problems of money laundering and terrorism financing came into the forefront as one of the priority issues within the international community.

The facts inexorably demonstrate that the phenomena of money laundering and terrorism financing are global problems that have a wide range of effects on economic, political, security and social structures of each country. In the contemporary theory and practice, the following are stated as the most significant consequences of money laundering and terrorism financing: undermining the stability, transparency and efficiency of the country's financial system, economic disruptions and instability, endangering reform programmes, decreasing investments, hurting the country's reputation, as well as endangering the national security.

For the purpose of countering these phenomena as successfully as possible, all this prompted all democratic countries and social communities to fight in different ways to protect their vital interests, embodied primarily in the protection of their national security. The importance of combating terrorism financing and money laundering, whose actors use all allowed and disallowed means to place the money again into legal financial flows, imposes the need for establishing an organised method of combating this widespread contemporary evil. In the process of formulating and creating a consistent, flexible, modern and efficient national security strategy, one of the important and, in all likelihood, central pillars is the formulation of the countries' national strategies

for combating money laundering and terrorism financing, i.e. countering money laundering and terrorism financing. The ultimate success of the overall strategy of national and regional security depends on the success on this front.

In its essence, countering the phenomenon of money laundering and terrorism financing presents a set of measures, actions, activities, as well as procedures undertaken by the competent government authorities with the aim of exercising the function of the state in the field of combating money laundering mechanisms and protecting its vital values and national security in both aspects, money laundering and terrorism. Protection does not represent any particular organisation that would exercise the task in the area of public or state security, but quite the contrary, through the activities of the competent government and social authorities the function of integral protection of national interests from the negative effects of money laundering and terrorism, financed through money laundering, is exercised.

Establishing the System of Countering Money Laundering and Terrorism Financing

The system of countering money laundering and terrorism financing presents one of the latest subsystems within the integral system of security, public and national. It includes a series of activities and measures within the organisation of physical and technical protection and security protection, active and passive, for preventing various criminal and other forms of jeopardising national security in the sphere of money laundering and combating terrorism at national, regional and international levels. The aim is to discover the perpetrators, as well as more effective protection of the state from the mechanisms of money laundering and terrorism, which is clearly of key importance for the security of the country, the national economy and citizens. Our country, as part of the Balkans and by that very fact of the contemporary international community, certainly has its role in establishing a system of countermeasures in relation to these two phenomena. "The Balkans are a part of Europe. In fact, we are all in the same boat. Our past and our future are closely linked. Our peoples want the same things, peace, stability, high standard and decorum in public life, freedom, prosperity and opportunities. We all have a common interest in working on combating organised crime, fighting to ensure respect for minorities and fighting to build strong states in this region, the states that will be able to protect the interests of all their citizens and that will be good neighbours on which one can rely."[28]

[28] Patten, *Strategija Evropske unije na Balkanu,* International Crisis Group, Brussels, July 2001. Web page: www.b92news.com/doc/ s01 338.sr.doc., access: 20/07/2002.

By that very fact, the so far relatively unexplored possibilities of combating money laundering clearly have great importance as part of establishing the front of national but also regional and global struggle aimed at eradicating organised crime and increasing the security level. What is very important is the realisation that combating money laundering and illegal activities from which contemporary terrorism is financed is instrumental to combating the actual foundations of terrorism. The activities of national governments are of primary importance in all this, with a rapidly increasing importance of regional and multilateral cooperation of different bodies and organisations, which is a permanent foreign-policy and security orientation of our country, the government and democratic institutions.

Adopting the Anti-Money Laundering Law is just the first step of formal nature. This entails very significant internal and external obligations that will be increasingly sharply expressed in the form of new implicit requirements and obligations that our country will have to meet in the EU stabilisation and association process, as well as reintegration into international financial institutions, the International Monetary Fund, World Bank and World Trade Organisation. For that reason, it was very important to determine in a timely manner the implications of the mechanisms and instruments for combating money laundering on the following sectors:

– banks,

– financial institutions,

– economy.

With a growing cooperation at the international level in this sphere as a precondition for the realisation of national strategy, it was very important to include in the latter the activities on improving national security and the protection of national interests, as a permanent strategic interest of a democratic society and civil institutions. The seriousness and intensity of countering money laundering, which is used for terrorism financing, will have a critical impact on the success of combating international terrorism at all levels.

The pronounced instability of the modern world in economic, political and social respect, with a unipolar world order that suppressed the traditional bloc divisions and the cold war, but did not eliminate them, brought new challenges.

The role of national governments in combating money laundering is irreplaceable. A strong national financial, banking and regulatory system and government institutions are a guarantee of efficient countering of money laundering. A modern fight against money laundering takes place on several fronts:

– national,

– regional,

– international.

At the same time, creating a national strategy of countering money laundering and terrorism financing also implies building and safeguarding human rights and freedoms, institutions of democratic society.

The Goals and Frameworks Established by the National Strategy

Based on the designed national strategy, our country opted for conducting active international cooperation in this sphere for the purpose of implementing the strategy in practice as successfully as possible. The cooperation between the countries of Southeast Europe is reflected in active participation of national governments, regional and multilateral bodies and organisations, such as the UN, EU, OSCE and the Stability Pact for South Eastern Europe in the activities of countering money laundering and terrorism financing. First of all, each of the countries of Southeast Europe, including Serbia, had to make necessary preparations in the sphere of legislative activity and regulatory measures of public financial institutions and bodies for countering money laundering and terrorism financing.

In this respect, it was necessary to initiate the following activities by the national strategy:

– conducting legislative review and harmonisation,

– establishing new institutions and strengthening the existing institutions,

– training all factors of defence.

For the purpose of leading a successful fight against money laundering and terrorism financing, it was necessary to initiate though the national strategy the establishment of an interinstitutional system for the prevention and control of money laundering. Significant results were achieved in our country by forming the institutions for the collection of relevant financial intelligence, which collects and exchanges financial intelligence at the domestic and international level for the purpose of money laundering control and prevention. However, it was necessary to initiate and establish an interdepartmental task force that would bring together all agencies and institutions involved in combating money laundering and terrorism financing in order to test and evaluate their performance on a regular basis.

At the same time, this also imposed the need for the harmonisation of the operating programmes of banks and other financial establishments and institutions, which must be complied with so that the standards for financial transaction identification would work and enable the monitoring of actual account users.

The aforementioned clearly demonstrates that the key role in this fight was assigned to banks. The greatest responsibility of banks in countering money laundering lies in preventing the actual laundering of the illegally acquired money,

as well as in preventing its subsequent introduction into legal flows. The elaboration is very important of very comprehensive and complex procedures for obtaining information on the actual activities of clients, acquiring clear and unambiguous information and insight regarding the purposes for which the funds are used and the capital is invested, with a focus on the procedures of internal control and internal audit, as well as external commercial audit according to the international and national auditing standards and accounting standards, as well as national regulations and measures relating to payment operations, internal and international.

The serious approach to this problem in our country and in the region is attested by the fact that the member countries of the Stability Pact for South Eastern Europe adopted the text of a compact with the working title: Compact and Action Plan.

"We, the members of the Stability Pact for South Eastern Europe, building on objectives identified at the Sarajevo Summit and subsequently at meetings of Working Tables I, II and III, held in Geneva, Bari and Oslo, respectively, in the autumn of 1999, acknowledge that corruption and other fraudulent and criminal activities are highly detrimental to the stability of all democratic institutions, erode the rule of law, breach fundamental rights and freedoms guaranteed by the European Convention on Human Rights and other internationally recognized standards, and undermine the trust and confidence of citizens in the fairness and impartiality of public administration, undermine the business climate, discourage domestic and foreign investment, constitute a waste of economic resources and hamper economic growth. We agree on the necessity to fight fraud and all types of corruption on all levels, including the international dimension of corruption, organized crime and money laundering. We shall sign, ratify and implement the Council of Europe Criminal Law Convention on Corruption, the Civil Law Convention on Corruption, and the Convention on Laundering, Search, Seizure and Confiscation of Proceeds of Crime. We shall apply the Twenty Guiding Principles for the fight against corruption adopted by the Committee of Ministers of the Council of Europe and participate actively in the Council of Europe's Group of States against Corruption – GRECO. We shall implement the forty recommendations of the Financial Action Task Force on Money Laundering and participate actively in the Council of Europe's Select Committee for the evaluation of anti-money laundering measures. We shall ensure that corruption and money laundering are criminalized in accordance with European standards. Legislation should clearly typify and punish corrupt behaviour in elected bodies, public administration, business and society at large, victims of corruption should be provided with appropriate remedies, and the anti-corruption legislation should be enforced effectively." [29]

[29] *Compact and Action Plan*, Stability Pact for South Eastern Europe, Oslo, August 1999, Web page:www.srbija.sr.gov.yu/video/antik-inic.doc, access: 07/10/2008.

In the beginning, the necessity of cooperation between the countries of Southeast Europe in the field of countering money laundering and terrorism financing was reflected primarily in the aspects of early detection, combating and prevention of money laundering in banks and in the payment system.

Continuous countering of money laundering contributed significantly to preventing financing of all forms of crime, including terrorism financing. The first significant step in the cooperation between the countries of this region, to which our country contributed as well, was the meeting of the Ministers of Finance, held in Belgrade on 26 March 2002. On that occasion, it was agreed to form three joint bodies: for combating smuggling, money laundering and financial crime. One of the examples of cooperation certainly is the meeting held in Belgrade on 9 April 2003, the 6th Summit of the Heads of State and Government of the South East European Cooperation Process. At the end of the summit on the South East European Cooperation Process (SEECP), the heads of state and government of nine countries of the region adopted a joint declaration stating that the objective of all countries of the region is to become members of the European Union and take part in shaping Europe. The leaders of the region called for continuous cooperation, particularly in the field of combating terrorism and organised crime.

Establishment of an Effective System of Measures

Due to the aforementioned, a common view was adopted that, for the purpose of undertaking continuous and effective activities in combating money laundering and terrorism financing, it is necessary, before all, to establish an effective system of measures, as well as identify the participants in this combat. The following are specified as the basic components of the system thus established:

– adequate legislation,

– financial intelligence service,

– regulatory bodies and supervisory authorities,

– international cooperation,

– mechanisms for detecting and prosecuting crimes of money laundering and

– terrorism financing.

According to the international standards established under the provisions of international treaties and directives, our country is also committed that criminalisation of money laundering and terrorism financing must be ensured within the legal solutions and the provisions arising from them. It was also agreed to prescribe preventive measures in the private sector, as well as provide

an efficient and comprehensive system of temporary and permanent seizure of the proceeds acquired based on criminal activities. In addition to the aforementioned, other laws regulate the areas such as the registration of companies, property register, banking system, foreign exchange transactions, payment operations, games of chance, prevention of corruption and other complementary areas, all for the purpose of reasonable reduction of potential real risks of these two phenomena.

Within the National Strategy, banks and other financial institutions are identified as the most important source of information on money laundering, terrorism financing and other forms of financial crime. At the same time, great importance is given to the collection and coordinated exchange of such information between the competent government authorities. They present a crucial element in combating these forms of crime.

Because of this, the Republic of Serbia established a specialised authority that engaging in such activities, the Administration for the Prevention of Money Laundering. Similar authorities, established in over 100 other countries, are called financial intelligence units in international conventions and other international standards. Financial intelligence service is "a central agency responsible for collecting and analysing data received from financial institutions and forwarding the data it obtained to other competent authorities".[30] Special importance is also given to the membership of the Administration for the Prevention of Money Laundering in the EGMONT group, which is an international association of financial intelligence units dedicated to the improvement of their mutual international cooperation. In the countries of the international community, four basic models of organisation of financial intelligence units have appeared in practice: the administrative, the police, the judicial and the prosecutorial model, as well as the mixed model. The Republic of Serbia opted for the adoption and implementation of the administrative model of financial intelligence unit. As a member of this association, our country also accepted the obligation to adopt during 2008 a law introducing and regulating preventive measures and international cooperation in combating terrorism financing. Otherwise, a measure of exclusion from the EGMONT group was instituted as a possible sanction for failing to comply with that obligation.

[30] *National Strategy for Combating Money Laundering and Terrorism Financing*, Official Gazette of the Republic of Serbia, No. 89/08, Belgrade, 01/10/2008.

Conclusion

After studying the phenomena of money laundering and terrorism financing, a conclusion emerges that the point itself is, to a certain extent, missed in practice, owing to the predominant bureaucratic self-sufficiency, mostly at the level of international community, regarding the implementation of standards and measures for preventing money laundering and terrorism financing.

Namely, above all, a question inevitably arises as to why the governments of countries do not provide more funds to their criminal, antiterrorist and tax police services and judicial authorities, which are necessary for combating terrorism and crime, instead of imposing obligations on individuals and the financial services industry, as well as other legal obligors to do essentially the job of those services, for which their employees are not sufficiently trained or adequately equipped and prepared.

In addition, a key question arises as to whether this position and the legislative formal set-up, although wrapped in the legislative and political form, present an unambiguous admission that the government institutions have lost this important battle and shifted their burden to the citizens, financial and other sectors.

What is even worse, many people, guided by moral and ethical principles, ask themselves with reason whether overall denunciation is generally encouraged in this way based on doubts regarding ethics, morality and professionalism of various professional profiles.

Questions, but also serious protests, have not been uncommon recently regarding the limitation of human rights and freedoms arising from the fulfilment of obligations imposed by national legislation regulating this matter.

At the same time, a conclusion inevitably emerges that today’s economies exist in a world without morality. With clear conscience, their planners and actors bring human trafficking to the same level of profitability as the smuggling of weapons, narcotics or diamonds.

If the significance of the problems we discussed here is taken into account, it results from the existing situation that the governments of the countries in the West and their intelligence services quite passively watched as criminal and terrorist groups expanded their sources of power. Countries in South America, Africa and Asia suffered a total collapse, leaving the mafia and terrorists to give an answer to the understandable question as to where they will direct their attention and activities. It is clear that part of the attention of international and local communities should be directed as soon as possible toward the loosely regulated world of offshore business, which deserves a lot more attention.

A conclusion clearly emerges from the above that, regarding this issue, the people and their system of values are those that will bring a substantial change, rather than exclusively the systems or laws applied strictly bureaucratically. If we really wish to remove dirty money effectively and permanently, to a significant and acceptable extent, primarily from the financial services sector, many professions involved, as well as other areas of economic life and social superstructure, and prevent terrorism financing on that basis, we must understand that at the same time it is necessary to fulfil many preconditions.

First, we must be aware that it is not enough just to design international standards and legal regulations relating to the prevention of money laundering and terrorism financing at the local and global level and implement them in the financial and other sectors under the threat of legal sanctions. Quite the contrary, in addition to all good will, quality regulation, modern standards and techniques, people are what we need most in this sphere. What kind of people? The kind of people that will consider the fight against these scourges of the modern society and mankind as their personal moral as well as civic obligation. In this context, it is not possible to view such people solely as individuals but, quite the contrary, as members of business entities and social communities in which these entities conduct their business.

Otherwise, if the people as individuals and at the same time as members of social community did not accept the basic values of this form of fight as their own, it would surely be possible to implement international and local norms in a technical manner, based on the society's authority, as well as based on the threat of sanctions. However, such implementation would be deprived of its basic value reflected in the presence of the element of volition in those officially charged with carrying it out.

Bibliography

1. Allen C. William, *Statement by the Bahamas to the OECD Forum on Harmful Tax Practices,* Paris, August 30, 1999.
2. Bazley Stuart, Foster Caroline, *Money Laundering: Business Compliance*, Butterworth-Heinemann, Croydon, UK, July 2004.
3. Đorđe Ignjatović, *Organizovani kriminalitet – drugi deo*, Police Academy, Belgrade, 1998.
4. Đorđe Ignjatović, *Kriminologija*, Official Gazette, Belgrade, 2006.
5. Gough Tim, *Anti Money Laundering: A Guide for Financial Services Firms*, Risk Books, London, November 2005.
6. Graham Toby, Bell Evan, Elliot Nicholas , *Money Laundering*, Butterworth – Heinemann, London, March 2003.
7. Hrustić Hasiba, *Oblici poslovanja u zemljama poreskog raja*, Pravo i privreda, Business Lawyers Association of Serbia, File, Belgrade, 2008.

8. Kersten Ulrich, *Međunarodni terorizam, doprinos policije u suzbijanju globalnog fenomena*, Pogledi, 2/2003, Police Academy, Belgrade, 2003.
9. Madinger John, *Money Laundering: A Guide for Criminal Investigators*, CRC Press, Florida, U.S, 2006.
10. Mills Annie, *Essential Strategies for Financial Services Compliance*, John Wiley & Sons, West Sussex, England, 2008.
11. Muller H. Wouter, Kalin H. Christian, Goldsworth G. John, *Anti-Money Laundering: International Law and Practice*, John Wiley & Sons, West Sussex, England, 2007.
12. Nestmann Mark , *When is Tax Competition Harmful*? A-Letter, The Societ, Vol. 1, No. 8, December 3.1999., Washington: United Nations, Financial Havens, Banking Secrecy and Money Laundering, Bureau for International Narcotics Control Strategy Report, Washington, D.C, 1999.
13. Pastrana Andres , *U bankama 500 milijardi dolara od trgovine narkoticima*, Bankar, no. 7–8, Belgrade, July — August 2007, web page: http://www.emg.rs/zines/bankar/447.html, access: 17/06/2008.
14. Patten Chris, *EU Strategy in the Balkans,* International Crisis Group, Brussels, July 2001, web page: www.b92news.com/doc/ s01 338.sr.doc, access: 20/07/2002.
15. Simeunović Dragan, *Teorija politike I deo*, Nauka i društvo, Belgrade, 2002.
16. Simeunović Dragan, *Političko nasilje*, NIRO Radnička štampa, Belgrade, 1989.
17. Simenunović Dragan, *Opšta problematika pranja novca (Uporedna iskustva*), paper from the conference entitled *Financial Crimes and Topical Issues Regarding Financial Police Organisation and Operation*, Budva, 1995.
18. Veselinov Dragan, *Politička ekonomija*, Faculty of Political Sciences, Čigoja štampa, Belgrade, 2008.

DOCUMENTS OF INTERNATIONAL ORGANISATIONS

1. OECD, *Harmful Tax Competition: An Emerging Global Issue*, Paris, 1998.United Nations, *Financial Havens, Banking Secrecy and Money Laundering*, 1998, Financial Stability Forum, *Report of The Working Group on Offshore Centres*, 5 April 2000.
2. Financial Action Task Force on Money Laundering, FATF, *Report on Money Laundering Typologies*, Paris 2002, U.S. Department of Treasury, *Financial Crimes Enforcement Network*, FinCEN Advisory, Washington, July 14, 2000.

DOMESTIC DOCUMENT

1. National Strategy for Combating Money Laundering and Terrorism Financing, Official Gazette of the Republic of Serbia, no. 89/08 of 1 October 2008.

UDC: 341.225.5(510)(520)
Biblid 0543-3657, 62 (2011)
Vol. LXII, No. 1144, pp. 68–77
Original Scientific Paper
January 2012

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International Law Regulation of Territorial Dispute in the East China Sea Between Japan and China

ABSTRACT

The present article deals principally with certain aspects concerning the possible International law regulation of the Senkaku/Diaoyu Islands dispute between Japan and China. The Senkaku/Diaoyu Islands dispute has seen sporadic flare-up over the last few decades that have led to bilateral tensions. Since rich natural and energy resources were founded in the continental shelf of the East China Sea and the contiguous area of the Senkaku/Diaoyu Islands in the late 1960s, the East China Sea started to be place of territorial disputes between Japan and China. Although both States have signed the United Nations Convention on the Law of the Sea, they go up against in their interpretations of how the Convention applies to the disputed area. The two countries have conflicting views on where the demarcation line between their respective exclusive economic zones and continental shelf's should be placed. In spite of previous efforts to institutionalize the territorial dispute, the East China Sea has remained key waters for both countries wishing to gain or preserve geopolitical influence in the region. However, since the beginning of the 21st century, the political and security environment has changed, Japan and China evaluate its territorial approaches and foster their relationship in the East China Sea, because the management of territorial dispute has great influence on regional as well as international stability.

Key words: East China Sea, Senkaku/Diaoyu Islands, Japan, China, maritime delimitation.

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Legal aspects of boundary issue

Japan ratified the 1982 United Nation Convention of the Law of the Sea in June 1996. After that, Japan adopted the Law on the territorial sea and the contiguous zone, as well as the Law on the exclusive economic zone and continental shelf, which were supplemented by procedure for implementation. It also established an exclusive economic zone around the disputed Senkaku/Diaoyu Islands. China ratified 1982 United Nation Convention of the Law of the Sea 1996. In the ratification declaration, China confirmed its sovereignty over the territories which have been mentioned in the 1992 Law on its Territorial Waters and their Contiguous Areas that included disputed Senkaku/Diaoyu Islands. At the same time, China declared the precise location of straight baselines, which is important to delineate the Territorial Sea and the Contiguous Zone. The straight baselines connecting base-points on the mainland coast and the outermost coastal islands.[2] In the Law it is set that the territorial sea extending 12 nautical miles from these baselines and from offshore islands. China's declaration of sovereignty over the Diaoyu Islands does not mean evidence of sovereignty over a continental shelf or exclusive economic zone extending from the features. That's why, the baselines for the Territorial Sea including the baseline for the disputed Islands will be announced at a future date. Japan not agrees with China's base lines.[3] Both States claim their exclusive economic zones extending 200 nautical miles from its coasts. China claims its exclusive economic zone on the basis of its continental shelf, which extends beyond Japan's declared area. From topographically, geomorphologically and geologically point of view, the continental shelf of the East China Sea is the continuity and underwater natural prolongation of the Chinese continent. The continental shelf of the Chinese continent ends at the Okinawa Trough. China holds that the Okinawa Trough, which does not follow the Japanese coast closely, proves that the continental shelves of China and Japan

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[2] Mihael W. Reisman, Gayl S. Westerman, *Straight Baselines in International Maritime Boundary Delimitation*, St. Martin's Press, New York, 1992; Park Choon-Ho, "The Yellow Sea-East China Sea Oil Disputes Revisited: New Opportunity for Joint Development," in Kim Dalchoon et al. eds., *Exploring Maritime Co-operation in Northeast Asia: Possibilities and Prospects*, Institute of East and West Studies, Yonsei University, Seoul, 1993, pp. 3–14; Liyu Wang and Peter H. Pearse, "The New Legal Regime for China's Territorial Sea", *Ocean Development and International Law*, vol. 25, No. 4,1994, p. 442.

[3] In principle, straight baselines must be drawn to satisfy several requirements: they must not be depart from the general direction of the coast, the sea areas lying within the lines must be sufficiently closely linked to the land domain to be subject to the regime of internal waters, they not be drawn to and from low-tide elevation, and shall not cut off the territorial sea of another State from the high seas of an exclusive economic zone. *Handbook on the Delimitation of Maritime Boundaries*, Division for Ocean Affairs and the Law of the Sea Office of Legal Affairs, United Nations, New York, 2000, p. 6.

are not connected, and that the Okinawa Trough serves as the natural boundary between them. Based on that approach, which allows claims up to 350 nm from the coast, China claims an area which extends from its coast up to the Okinawa Trough which is within the 350 nm limit. China's continental shelf on this way represent an area which is extending throughout the natural prolongation of its land territory to the outer edge of the continental margin, i.e., presumably to the Okinawa Trough.[4] China argues that the Okinawa Trough delineates the edge of the continental margin and that the axis of the Okinawa Trough thus serves as the boundary between the continental shelves of the two States.

Japan disputes the Chinese interpretation and considers that the Okinawa Trough basically cannot be construed to be a natural border. It argues that the Okinawa Trough is just an incidental depression in a continuous continental margin between the two States. In essence, Okinawa is sitting on the continental shelf. For this connotation Japan cited the International Court of Justice's precedent in the Case Concerning the continental shelf (Libya vs. Malta) where the Court concluded that, if be a fundamental discontinuity between the continental shelf areas between adjacent States, the boundary should lie along the general line of the fundamental discontinuity. Japan claims that the continental shelf boundary should be the line equidistant between the undisputed territories of the two countries. It argues that the continental shelf should extend only to 200 nm. It estimated that the exclusive economic zone of both sides overlap because the width of the East China Sea is less than 400 nm and therefore the median line drawn through the overlapping area westward of the disputed Senkaku/Diaoyu Islands should be the maritime border. Japan promulgated 200 nm of the exclusive economic zone from the straight baselines. It applies the median line method of delimitation, i.e., the line every point of which is equidistant from the nearest point on the baseline of Japan and the nearest point on the baseline from which the breadth of the territorial sea pertaining to the foreign coast which is opposite the coast of Japan. Japan's proclamation to the west and north of the Senkaku/Diaoyu Islands left unclear. The extent of overlap is unknown because China and Japan have not published maps or specified exclusive economic zone with coordinates the limits of their claims in the East China Sea.

In 1998, China promulgated the exclusive economic zone and continental shelf Act which did not mention any specific geographical areas. However, this

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[4] Zhiguo Gao, "China and the LOS Convention," *Marine Policy* (1991), p. 199. etc. J. R. V. Prescott, "Maritime Jurisdiction in East Asian Seas," East-West Environment and Policy Institute, *Occasional Paper* No. 4, 1987; J.R.V. Prescott, "Maritime Jurisdiction," in Joseph Morgan and Mark J. Valencia, eds., *Atlas for Marine Policy in East Asian Seas*, Berkeley, California, University of California Press, 1992, p. 25. etc.

Act opens the door for settlement with Japan on the basis of international law and in accordance with the principle of equity. In the other side, Japanese Law on the exclusive economic zone and continental shelf gives possibility for both sides to stipulate boundary which may be agreed as a substitute for median line. However, as long as a border is not agreed upon by both sides, for China the disputed area is therefore between the Japanese-proposed median line and the Okinawa Trough, and for Japan it is the overlapping area of the 200 nm exclusive economic zone.

Applicable rules to boundary delimitation

The delimitation of sea areas has always an international aspect.[5] It cannot be dependent only upon the will of the Japan and China as expressed in its municipal laws which established their exclusive economic zones and continental shelf. Territorial overlapping claims of China and Japan require maritime boundary delimitation. In principle, the validity of the delimitation with regard to other States depends upon international law. The determination of maritime boundaries is governed by international law that has evolved through and progressive development as reflected in the 1982 United Nation Convention of the Law of the Sea.[6]

According to the 1982 United Nations Convention on the Law of the Sea one of the two applicable rules for delimiting maritime boundaries in the East China Sea is possible. First one begin from interpretation of article 76 which defines a coastal state's continental shelf as comprising the seabed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured. The paragraph 6 of the same article 76 provides that, on submarine ridges, the outer limit of the continental shelf shall not exceed 350 nm from the baselines from which the breadth of the territorial sea is measured. China adheres to this rule of the natural prolongation of land territory, holding that East China Sea continental shelf is the natural extension of the Chinese continental territory. The Chinese continental-shelf claim extends all the way to the axis of the Okinawa Trough (about 350 nm from the

[5] "Fisheries Case", Judgment of December 18th 1951, International Court of Justice Reports 1951, p. 132.

[6] "Convention on the Law of the Sea with Annexes and Index, Final act of the Third UN Conference on the Law of the Sea", UN Treaty Series vol. 1833, p. 3. Etc. The 1982 United Nation Convention of the Law of the Sea, under its article 311, prevails, over the 1958 Geneva Conventions.

China coast), enclosing in essence all of the oil potential and resources in the East China Sea.

The second equally applicable rule safeguarded in the 1982 United Nations Convention on the Law of the Sea for delimiting maritime boundaries, such as in the East China is by reference to the coastal States respective exclusive economic zones. Article 57 of the 1982 United Nations Convention defines a coastal State's exclusive economic zone as area which not extending beyond 200 nm from the straight baselines from which the breadth of the territorial sea is measured. Japan and China are two States with opposite coasts, and the body of waters between them is less than 400 nm in all. The width varies from 180 nm at the narrowest points to 360 nm at the widest. It is 1,300 km (or 702 nm) in length from north to south. The exclusive economic zones present a weighty overlap problem, because this areas beyond and adjacent to their territorial sea, is subject to a specific legal regime established by the unilaterally promulgated act which is not the entire in conformity with the 1982 United Nation Convention.

The 1982 United Nations Convention contains identical provisions dealing with the delimitation of exclusive economic zone and delimitation of the continental shelf. Hypothetically a solution is given in accordance with article 74 and article 83 of the 1982 United Nations Convention which set the delimitation of the maritime zones (exclusive economic zone and continental shelf) between Japan and China as the States with opposite coast. In compliance to these rules the delimitation should be effected by agreement on the basis of international law, as referred to in article 38 of the Statute of the International Court of Justice.[7]

First and foremost, States are bound to apply equitable principles as part of international law to balance up the various considerations which it regards as relevant in order to produce an equitable solution. The goal of achieving an equitable solution when establishing the delimitation of both of continental shelf and of exclusive economic zones requires application of customary law.[8] Essentially, customary international law and the1982 United Nations Convention on the Law of the Sea require an equitable result. There is the logically prior question of whether it will be equitable solution if the continental shelf and exclusive economic zone share a common maritime boundary. From

[7] Shigeru Oda, "International Law of the Resources of the Sea", *Recueil des Cours Académie de Droit International*, 1969, vol. 127, pp. 373-401; "Exclusive Economic Zone", in *Encyclopedia of Public International Law*, R. Bernhardt ed., Vol. II, Amsterdam, 1995, pp. 305–312.

[8] "Delimitation in the Maritime Area between Greenland and Jan Mayen (Denmark v. Norway)", Judgement, *International Court of Justice Reports*, 1993, p. 59.

the recent case law there is a trend towards delimitation of single maritime boundary for all the overlapping zones between opposite and adjacent States. Most States would regard this as a pragmatic and workable solution. Whether the boundary of the continental shelf areas and the boundary of the exclusive economic zone have to be identical depend quite simply on the result of delimitation. Few principles of delimitation may be applied under the condition of equitable principles. The first one is proportionality which is based upon the relationship between the lengths of the relevant coasts of States whose maritime zones have to be delimited, on the one hand, and the area of maritime space to be allocated to each of the parties by the delimitation, on the other. The second one is principle of distance which is not opposed to principle of proportionality, *a contrario*, the both principle are complementary and both remain essential elements in the process of delimitation.[9] Application of equitable principles, including abstention from refashioning nature, non-encroachment by one party on areas appertaining to the other, respect due to all relevant circumstances and the notions that equity *(ex aeqo et bono),* which doesn't mean equality have to be referred on occasion of the delimitation of maritime boundaries between Japan and China.[10]

In the absence of equitable solution, the Japanese unilaterally drew a median line, which is rejected by China on the ground that it is giving in favour of Japan. The median line not only turns into the Chinese side but also turns to the west to enclose the disputed Senkaku/Diaoyu Islands on the Japanese side of the line. Japan considers all waters east of this unilaterally drawn median line to be Japanese territory. China argues that the delimitation should be effected only by agreement, and that agreement through consultation takes precedence over the equidistant line principle. Its representatives pointed out, that median line or equidistance line is only a method in the delimitation of the sea, which should not be defined as the method that must be adopted, still less as the principle for the delimitation.[11] The delimitation of the sea should follow the fundamental principle, i.e., the equitable principle. In some cases, if equitable and reasonable results in the delimitation may be achieved by using the method of median line or equidistance line, States concerned can apply it by agreement.[12]

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[9] "Continental Shelf Case (Libya v. Malta)", *International Court of Justice Reports*, 1985, p. 13.

[10] "Continental Shelf Case (Tunisia v. Libya)", *International Court of Justice Reports*, 1982, p.18; "Case Concerning the Continental Shelf (Libyan Arab Jamahiriya v. Malta)", *International Court of Justice Reports*, 1985, pp. 56-58.

[11] Zhu Fenglan, "The Delimitation of East China Sea Continental Shelf: Sino-Japanese Disputes from the Perspective of International Law", *China International Studies*, 2006.

[12] Gerald H. Blake, "Mediterranean Micro-Territorial Disputes and Maritime Boundary Delimitation", *Il regime giuridico internazionale del Mare Mediterraneo,* U. Leanza, Milano, 1987, pp. 111–118; P. Birnie, "Delimitation of Maritime Boundaries: Emergent

The question of delimitation of maritime border between Japan and China in East China Sea obliviously is common with dispute over the sovereign rights to the Senkaku/Diaoyu Islands. China and Japan argue that they have inviolable sovereignty over the Islands. The disagreement over the evidence of ownership can be summarized as follows. China argues that the Senkaku/Diaoyu Islands were part of its territory until April 17, 1895, when they were ceded to Japan after losing a war. The Chinese contend that the islands should have been returned under the terms of Article 2 of the San Francisco Treaty of 1951. Therefore, according to China, whatever happened after April 1895 cannot detract from China's longstanding claim? Japan bases its case on the contention that the islands belonged to no country until January 1895, when they were incorporated into Japanese territory by a cabinet decision. It argues further that since that time, Japan has maintained continuous and effective control of the islands, and therefore what happened before January 1895 cannot diminish Japan's sovereignty. For the purpose of this analyse it will be important to clarify whether these islands allow the holder State to claim an exclusive economic zone and a continental shelf. Actually, the Senkaku/Diaoyu territories administered by Japan are also claimed by China.[13] The Senkaku/Diaoyu Islands consist of five uninhabited islets and three inhospitable rocks, located just about 120 nm southwest of Okinawa. They are situated at the edge of the East Chine Sea's continental shelf fronting the Okinawa Trough to the south. The depth of the surrounding waters is about 100-150 meters, with the exception of a deep trough in the continental shelf just south and east of the islands, that separates them from the Ryukyu Islands According to article 121(3) of the 1982 United Nations

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Legal Principles and Problems", in: Gerald Blake ed., *Maritime Boundaries and Ocean Resources*, Croom Helm, London, 1987, pp. 15-37; J.I. Charney, "Progress in International Maritime Boundary Delimitation Law", *American Journal of International Law*, 1994, n° 88, p. 227.

[13] When the United States handed back Okinawa, including the Senkaku/Diaoyu Islands to Japanese sovereignty under the 1972 Okinawa Reversion Treaty, Japan had announced that United States involved in the dispute. In November 1996, Acting Deputy Assistant Secretary of Defence Kurt Campbell said that the Senkaku/Diaoyu Islands fall under the terms of the 1960 U.S.-Japan Security Treaty. Campbell also said that the treaty obligation over the disputed islands did not mean the United States recognized Japan's claims to them. "The 1972 U.S.-Japan agreement on the return of Okinawa to Japan clarifies that the Senkaku/Diaoyu islands fall under Japanese administration. This was clearly specified by the United States for security purposes," Campbell said. He made it clear that the United States was not taking sides on the islands dispute. He said he was only clarifying the extent of the 1960 U.S. - Japan Security Treaty, drawing a line between territory effectively administered by Japan and territory that was legally Japan's. This statement was interpreted to mean that the United States was conducting a balancing act between China and Japan. Mark J. Valencia, "The East China Sea Dispute: Context, Claims, Issues and Possible Solutions", *Asian perspective,* vol. 31, No. 1, 2007, p. 155.

Convention of the Law of Sea, rocks which cannot sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf. Japan and China agree that the islands generate the right to a 12 nm territorial sea and to a 12 nm contiguous zone, but whereas China applies article 121(3) and thus denies the islands the right to an exclusive economic zone and continental shelf, Japan upholds such argues. It means that Japan holds that the features are islands and are therefore entitled to have continental shelves and exclusive economic zones. It thus uses them as base points for its continental shelf and exclusive economic zone claims in the East China Sea.

If Japan's interpretation of the 1982 United Nations Convention of the Law of the Sea is accepted, then it can claim up to an equidistant line with China. If China is given the title to the islands under such conditions, it could claim a continental shelf up to the Okinawa Trough, and an exclusive economic zone to an equidistant line with the nearest undisputed Japanese island. Otherwise both countries would have an overlapping continental shelf and exclusive economic zone claims extending from their nearest undisputed territory. China has not taken yet an official position on whether the Senkaku/Diaoyu Islands are a rock or an island, which means that only in the latter case could the islands be entitled to an exclusive economic zone. The reply on question of ownership of the Senkaku/Diaoyu Islands is a prerequisite for pending to an agreement over the delimitation of the maritime border between Japan and China.

Possible options

In accordance with the United Nations 1982 Convention on the Law of the Sea, the delimitation of the sea should be conducted first through consultation and by agreement between parties concerned. It means that in the delimitation of the East China Sea the choices of the parties concerned should be respected to the greatest extent. As long as Japan and China can reach an agreement, any method of the delimitation, provided it can be accepted by the parties concerned, is reasonable. After years of dispute over gas fields in the East China Sea, Japan and China have reached an agreement, with both sides announcing on 18 June 2008. The agreement was made in a spirit of understanding and cooperation. In the current agreement, the two countries agreed to stand the border issue for the time being and promised to refrain from unilaterally exploiting the disputed areas until a resolution was found. The new agreement affects two of the disputed gas fields: Shirakaba/Chunxiao and Asunaro/Longjin. In the case of the Shirakaba/Chunxiao field, which China has already started to develop, Japan has been invited to invest in its development. As for the Asunaro/Longjin gas field, China and Japan have agreed on establishing a joint development zone. The agreement represents a milestone in

the improvement of bilateral relations between China and Japan.[14] Regarding delimitation of their maritime border, Japan and China are free to adopt whatever delimitation line they wish, whether that line is base on political, economical, geographic or any other kind of consideration. On the basis of the rule, the land dominates the sea, Japan and China have liberty to point out particular potential solutions for delimitation of the "inherited" maritime zones (continental shelves and exclusive economic zones). In fact, it means that Japan and China should be obliged to determine the existing facts on basis of the rules of international law which are fundamental for delimitation of maritime border of States with opposite coasts. In order to achieve an equitable solution, Japan and China should take a wider consideration of all facts, principles and rules within the context of general international law. It anticipates the principle of equidistance or different equitable principles of delimitation (historic titles or other special circumstances such is the geographic configuration, geomorphological and geological factors of the seabed and subsoil, economic factors, political and security factors, enviroment, present of third States, etc.). In the near future, Japan and China should make every effort to negotiate a solution on a common boundary line for both the exclusive economic zones and continental shelf's. Such boundary lines between Japan and China is crucial for East Asian security and joint development of fish, minerals, and hydrocarbon resources which depends very much on the two regional powers.[15] If no agreement be reached within a reasonable period of time, Japan and China should resort to the conciliation procedures provided for in Part XV of the 1982 United Nation Convention. Either State then may resort to compulsory procedures provided for in the Convention by submitting the dispute to the International Court of Justice, the International Tribunal for the Law of the Sea or to the Arbitration.

Summary

With regard to the delimitation of the East China Sea between Japan and China, it can be seen that there exists a grave difference in their territorial claims to the East China Sea. First, on the claim to the continental shelf, China struggle endeavours for the natural prolongation criterion, while Japan stands the distance criterion. Second, on the principle of the delimitation, Japan prefers the median line while

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[14] Ralph A. Stamm, "China, Japan: Getting sensible, finally", ISN *Security Watch,* 30 June 2008.

[15] Duško Dimitrijević, "Delimitation maritime border in the East China Sea", in: Edita Stojić Karanović, Džemal Hatibović, Ivona Lađevac, *Japan and Serbia Contemporary Issues*, Institute of International Politics and Economics, Belgrade, 2009, pp. 23-31.

China stands for the equitable principle. Third, on the issue whether the two States belong to the same continental shelf, China presumes that geographically, topographically, geomorphologically and geologically the Okinawa Trough has distinct features that separate the continental shelf and slope of the East China Sea from the Japanese Ryukyu Islands, which is an important parameter that should be taken into consideration in the delimitation process of the continental shelf. Japan holds that the Okinawa Trough is sea basin contingently formed in the course of the prolongation of the continental margin of the two States. Hence, Japan claim to the continental shelf of 200 nautical miles is not affected by this, and the legal effect of the Okinawa Trough should not be taken into consideration in the delimitation of the continental shelf of the East China Sea.

Bibliography

1. Blake Gerald ed., *Maritime Boundaries and Ocean Resources*, Croom Helm, London, 1987.
2. Blake, Gerald H. "Mediterranean Micro-Territorial Disputes and Maritime Boundary Delimitation", *Il regime giuridico internazionale del Mare Mediterraneo,* U. Leanza, Milano, 1987.
3. Charney, J.I., "Progress in International Maritime Boundary Delimitation Law", *American Journal of International Law*, 1994, n° 88.
4. Dalchoon, Kim et al. eds., *Exploring Maritime Co-operation in Northeast Asia: Possibilities and Prospects*, Institute of East and West Studies, Yonsei University, Seoul, 1993.
5. Fenglan, Zhu, "The Delimitation of East China Sea Continental Shelf: Sino-Japanese Disputes from the Perspective of International Law", *China International Studies*, 2006.
6. *Handbook on the Delimitation of Maritime Boundaries*, Division for Ocean Affairs and the Law of the Sea Office of Legal Affairs, United Nations, New York, 2000.
7. Morgan Joseph and Valencia, Mark J. eds., *Atlas for Marine Policy in East Asian Seas*, Berkeley, California, University of California Press, 1992.
8. Oda, Shigeru, "International Law of the Resources of the Sea", *Recueil des Cours Académie de Droit International*, 1969, vol. 127, pp. 373-401.
9. Prescott, J. R. V. "Maritime Jurisdiction in East Asian Seas," East-West Environment and Policy Institute, *Occasional Paper* No. 4, 1987.
10. Reisman, Mihael W., Westerman, Gayl S., *Straight Baselines in International Maritime Boundary Delimitation*, St. Martin's Press, New York, 1992.
11. Stamm, Ralph A. "China, Japan: Getting sensible, finally", ISN *Security Watch,* 30 June 2008.
12. Stojić, Karanović, Edita, Hatibović, Džemal, Lađevac, Ivona, *Japan and Serbia Contemporary Issues,* Institute of International Politics and Economics, Belgrade, 2009.
13. Valencia, Mark J. "The East China Sea Dispute: Context, Claims, Issues and Possible Solutions", *Asian perspective,* vol. 31, No. 1, 2007.
14. Wang Liyu and Pearse, Peter H. "The New Legal Regime for China's Territorial Sea", *Ocean Development and International Law*, vol. 25, No. 4, 1994.

UDC: 620.92:502.131.1
Biblid 0543-3657, 62 (2011)
Vol. LXII, No. 1144, pp. 78–96
Original Scientific Paper
July 2011

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Energy Security as a Basis for Affirmation of Environmental Policy of the European Union

ABSTRACT

Endangerment of the environment and its protection represent decades-old problem of humankind. With disappearance of the harmony between the nature and man, various and numerous dangers have appeared which degrade civilization achievements, cause great harm to people, their life and health, bodily integrity and many other values. Therefore, the significance of environmental protection imposes itself as the major global challenge of modern society. Hence, different issues in the field of the environment or in connection with it take up a substantial part of the activities of the EU, which is recently been undertaking more comprehensive and intensive political actions in this domain. The EU largely owes its own formation to energy, and energy development is acceptable only with the preservation of the environment, which is obligation of humankind in order to safeguard the future. Those countries that have managed to harmonize the following fields: environmental protection, economic growth and regular energy supply, can be rightfully regarded as safe countries in terms of energy. Bearing in mind all the above said, the position that the process of accession of

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Serbia in the field of energy, within its European integration, is substantially the most important process, is fully grounded.

Key words: environment, environmental policy, environmental protection, energy policy, energy security.

Introduction

The present time abounds in contradictions. On the one hand, contemporary urban, business, economic development and in general technological progress to unimagined proportions, with the use of new technologies, have enabled humankind better and more humane living and working conditions. However, on the other hand, these activities have drastically undermined the harmony between the nature and man, with which man, as well as all other living beings, from the beginning of his existence, has had tight and unbreakable ties. Specifically, pollution of basic natural resources, that is, industrial pollution of air and water, unplanned, i.e. uncontrolled deforestation and conversion of that space in agricultural land, global warming of the planet and climate changes, great accumulation of various waste in all three aggregate states, including radioactive, destroying of certain plant and animal species, is just one part of negative consequences of man's "suicidal" activities, which degrade to date civilization achievements, seriously endangering mankind's survival.

Having in mind all the above-mentioned, awareness of the need for environmental protection, which is manifested primarily in seeking ways and means that would harmonize man with the nature that surrounds him, increasingly prevails. This perception actually is the necessary precondition for survival of humankind, i.e. society as a whole.

Such position, as one of primary global principles of preservation of the environment, was promoted by the so-called Rio Declaration of UN on environment and sustainable development, adopted at the UN Conference in Rio de Janeiro in 1992. This Declaration unambiguously implies that structure and dynamics of human activities must comply with the structure and dynamics of the environment, in that way that satisfaction of the needs of today's generations does not endanger the right and possibility of the future generations to favourable conditions.

The importance of environmental protection, in the domain of the EU environmental policy, has been emphasized as a part of European legal heritage, since the early 1970s, by gaining in establishing treaties of the EU place in the Single European Act of 1987. Nowadays, regulations related to this issue account for almost one third of the EU acquis.

It is often being emphasized that EU largely owes its own formation to energy. There is no doubt that lately energy-related issues emerged in the forefront of

priority topics of the EU, with intensive efforts in establishing a common European energy policy. The development of clean, efficient and safe energy supply, promotion of ways of energy usage that would less pollute the environment, management of natural resources and creation of industry, services and society that have lower impact on the environment, are all important investments in European future. Many factors influence energy security in XXI century. "Every energy policy, whether national or European, must achieve three principal goals at the same time: security, fight against climate change, and economic growth. One can not choose between these three measures and favour one at the expense of other." Therefore, the situation with the EU energy security requires implementation of common EU policy in order to overcome individual interests of member countries. At the same time, the EU's political agenda gives more and more support to ecological energy resources.

Process of Serbia's accession in the energy sector, within its European integration, is essentially the most important process. Not only because the energy is currently the largest single industry in Serbia, but also in terms of efficiency of the energy sector, because, generally speaking, usage of energy determines the level of employment and competitiveness in Serbia.

1. Importance of Environmental Protection

Pollution of the environment and its protection represents decades-old issue of humankind. Lately, the facts that the environment is threatened to the verge of alarm condition, that there is no much healthy natural environment, and that once disturbed ecological relations could hardly be balanced and brought back to the former state, are becoming more and more clear.

Disturbance of ecological balance occurs as a consequence of human activity, by which man "appropriates" the nature and creates products. In addition, not only are ecological balance and ecosystem being disturbed, but the integrity of man and its survival are also threatened. In the XXI century, society is facing the following global issues: — disruption of the biosphere and its ecosystems; — huge population — more than 6 billion with estimate of doubling by 2020; — exhaustion and reduced quantities of many sources of mineral and energy raw materials; — pollution and degradation of air, water and land; — global climate change; — extinct species of flora and fauna and the further endangerment of biodiversity; — homelessness of quarter of the world population, — impairment of human health and threat to life; — large quantities of waste in all three aggregate states etc. In the past, survival of human communities was often threatened by natural catastrophes, epidemics, wars, famines and other influences, which, however, were always limited by space. Unlike the existential crises in the past, today crises are not caused by natural

disasters, which are spatially limited, but by global disbalance of the whole industrial civilization in ideological and material terms. Man has not been able to create an ideal civilization system and avoid crises of that system.[2]

Scientific and technological development reached its peak in the last decades of the past century. These revolutionary changes, on the one hand, have improved all aspects of life and work of contemporary man, and on the other hand, have created numerous and various sources of threat to the environment. Constant threats to human living and working environment cause huge damage to people, their life and health, bodily integrity, property and many other values. Furthermore, at the same time it results in threat to the survival of humankind as a whole.

Importance of environmental protection is imposing itself more and more as an issue of primary significance and imperative. The need to preserve a healthy and quality environment comes to the fore as the most important global problem of modern society. Resolving this problem is connected to, among other things, finding ways for the rational and planned use of natural resources, promotion and development of international cooperation, particularly in the fields of scientific research, transformation of contemporary working environment, and affirmation of environmental awareness.

Contemporary society needs to understand more quickly and better the warnings of scientists and experts on state of the environment, i.e. the fact that there is less and less free, pristine and unpolluted environment, and more and more endangered, degraded and devastated environment. The latter is expanding on the expense of the former faster than anyone would think, faster than science at the end of our century could determine and predict.[3]

2. EU Environmental Policy

Despite certain improvements, ecological situation in Europe shows disturbing tendencies in almost every area: quality of water, air and land, protection of species, waste, exploitation of resources, tourism, traffic etc. Therefore, protection of the environment emerges more and more to the forefront of the European Union, with clearly defined objectives: environmental protection and improvement of its quality, protection of human health, careful and rational use of natural resources, improvement of measures at international level to overcome the regional and global environmental issues.

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[2] Goran Rajović, "Ekološka svest kao osnova održivog razvoja ruralnih prostora Crne Gore", Ekologica, Naučno-stručno društvo za zaštitu životne sredine Srbije, broj 49, Belgrade, 2007.

[3] Stevan M. Stanković, "Pozitivni i negativni uticaji turizma na životnu sredinu", Glasnik SED, sv. LXXV, br.1, Beograd, 1995, pp. 47–8.

There is no doubt that today different issues in the field of the environment or in connection with it take up a substantial part of the activities of the EU. However, it was not until early 1970s that European Community began undertaking more comprehensive and intense political actions in this domain. These actions coincide with pronounced trends of raising of awareness on importance of the environment and planetary-scale threats to it.

The Treaty of Rome did not provide for jurisdiction over environmental policy. Member countries responded to environmental issues at national level. As an international issue, pollution of the environment could not be solved at national level. Besides that, as various national measures and standards of production, relevant to the environment, are imposed more and more as obstacles for trade within and outside the Common Market, the call to conduct environmental policy at Community level became louder. Immediately after the first United Nations Conference on human environment, held in June 1972, at the EU Summit held in Paris, the Commission was asked to develop an action programme for environmental protection. The general provisions from the EU Treaty have been taken as a legal basis: Article 2, which included "permanent and balanced economic progress" into the tasks of the EU —Article 100 (today Article 308 of the EU Treaty), which gave EU the power to take action in "unpredicted cases"; Article 100 (today Article 94 of the EU Treaty) which provides for harmonization of national legislation relevant to the internal market. All legal acts adopted on this basis, the Council could pass only unanimously. The necessity of common environmental policy was recognized at the very beginning of 1970s. An extensive EU legislation on the environment containing normative orders and prohibitions followed.[4]

The development of environmental policy and in general EU environmental law, can be followed through the development of place and role of these issues in founding documents of the EC, that is EU. The fact is that initially only the necessary measures were undertaken to address urgent problems in specific areas, but later, as the time passed, it was gradually moved on to the planed realisation of goals of environmental policy.

Environmental policy was incorporated in contractual structure of the Community by Single European Act in 1987, and its framework was further expanded, or in a certain way indirectly changed, by the Treaty on European Union (1992), the Maastricht Treaty (1992), the Amsterdam Treaty (1997), the Nice Treaty (2003) and finally, the Lisbon Treaty (2009). Until 1987, approximately 200 regulation have been adopted based on former Article 100 (later 115, that is 135) or based on the Article 235 of the Treaty establishing

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[4] Anita Volf-Nidermajer, "Ekološka politika", Evropa od A do Š — priručnik za evropsku integraciju, Fondacija Konrad Adenauer, Belgrade, 2004, pp. 61–2.

European Community. However, the lack of clear legal basis for Community's policy on the environment was exposed to criticism, especially by one group of members of the organization.[5]

The EC gained explicit jurisdiction over the environment by revision of the Treaty through Single European Act (SEA, 1987), by introducing a special title named "Environment" (articles 130 s-t). The Commission had the opportunity to propose, based on these provisions, the adoption of regulations in various fields in order to ensure the protection and improvement of environmental quality, rational use of natural resources and protection of human health.

The Maastricht Treaty (1992) ensured further strengthening of the place and role of Community's environmental policy, by including it among its basic goals and improving "sustainable and non-inflatory growth" respecting the environment (Article 2).[6]

Provisions of the Amsterdam Treaty (1997) contain the principle of stable economic development, where EC is obliged, generally speaking, to strive towards high level of protection and improvement of environmental quality (Article 2 of the Treaty Establishing EC), and when applying measures take into account its interests (Article 6 of the Treaty Establishing EC).

The Treaty of Nice (2003) essentially did not bring any changes to the basic provisions, but previously determined provisions relating to the environmental issues. Nevertheless, changes in the voting system (related to the system of qualified majority) can be considered as certain contribution to changes in environmental policy.

The EU action programmes in the field of the environment represent documents that in a comprehensive way determine the policy in this domain, with set out guidelines and goals. From the mentioned programmes since 1980s, at the centre of attention are the basic principles of prevention and suppression:

– the First Action Programme was adopted for the period 1973–1976;

– the Second Action Programme referred to the period 1978–1981;

– the Third Action Programme referred to the period 1982–1986;

– the Fourth Action Programme referred to the period 1987–1992 and

– the Fifth Action Programme referred to the period 1993–2000.

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[5] Dragoljub Todić, Vodič kroz EU politiku — životna sredina, Evropski pokret Srbije, Belgrade, 2010, p. 20.

[6] Already in the Preamble of the Treaty it is stated: "Determined to promote economic and social progress of their peoples, taking into account the principle of sustainable development, within the framework of creation of the internal market and strengthening cohesion and environmental protection, and to implement policies that will ensure that economic integration progress is in line with progress in other areas."

The Fifth Action Programme, known under the title “Towards Sustainability”, aimed at further progress in this direction, trying to include more global issues with long-term projections.

The Sixth Action Programme, for the period 2001–2010, focuses on protection of climate, health, nature and diversity of species, as well as management of natural resources. In addition, specific problems of countries wishing to join the EU are also addressed. “Environment 2010: Our Future, Our Choice”, as a slogan of the Sixth Programme, in the most illustrative way depicts priority direction of the strategy and development of the EU’s environmental awareness.

A number of different EU institutions have certain power in the domain of environmental protection. Some of them have general character with formally defined responsibilities, while others are primarily engaged in environmental issues, including:

– European Parliament;[7]
– Committee for Environment, Public Health and Food Safety;[8]
– Council of the European Union / Council of Ministers /;[9]
– European Commission;[10]
– European Investment Bank;[11]
– Court of justice of the European Union;[12]
– European Ombudsman;[13]
– European Environment Agency;[14]
– European chemicals Agency;[15]
– Eurostat.[16]

[7] Internet page: http://www.europarl.europa.eu/news/public/default_en.htm/ Last accessed: 16/09/2011.

[8] Internet page: http://www.europarl.europa.eu/activities/committees/homeCom.do?language =EN@body=ENVI/ Last accessed: 16/09/2011.

[9] Internet page: http://www.consilium.europa.eu/showPage.aspx?lang=EN, Last accessed: 16/09/2011.

[10] Internet page: http://ec.europa.eu/environment/index_en.htm , Last accessed: 23/09/2011.

[11] Internet page: http://www.eib.europa.eu/projects/topics/environment/index.htm?lang=en, Last accessed: 25/09/2011.

[12] Internet page: http://curia.europa.eu/jcms/jcms/Jo2_7033, Last accessed: 25/09/2011.

[13] Internet page: http://www.ombudsman.europa.eu/home/default.htm, Last accessed: 15/10/2011.

[14] Internet page: http://www.eea.europa.eu, Last accessed: 15/10/2011.

[15] Internet page: http://echa.europa.eu/home_en.asp, Last accessed: 18/10/2011.

[16] Internet page: http://epp.eurostat.ec.europa.eu/portal/page/portal/environment/introduction, Last accessed: 20/10/2011.

3. Review of EU Energy Policy

It is very often stressed that the EU largely owns its own formation to energy. In fact, the establishment of the Coal and Steal Community in 1951 was the result of unification intentions of several countries, i.e. Germany, France, Italy, Belgium, Netherlands and Luxembourg, through common control over steal and coal production and idea based on the approach of "peace through energy" in the post-war period. Subsequently, numerous treaties followed, with a step forward in 1991, when under the circumstances of absence of rules within EU, signing of the Energy Charter Treaty (ECT) was initiated. The EU Commission in 2000 firstly issued the Green, and later the White Paper on Energy, in order to initiate development of broad integrated platform for policy in this field. The more significant breakthrough occurred only at an informal meeting of the European Council in late 2005, in Hampton Court.

"The Green Paper represents a new beginning for energy policy in Europe, it marks a real change in direction and signals a realisation that energy is now truly a global issue and the challenges that we face can only be solved at the global, and thus for Europe, Community level."[17] In accordance with the above-mentioned is the text of the Green Paper, "the state of EU energy sector, presented in the Green Paper, confirms validity, bur also delay, in adoption of common energy policy".[18]

At the same time, Europe has not yet developed a rounded, competitive energy market, and only this allows security of supply and lower prices. The Green Paper pleads for sustainable, competitive and secure energy. Six key areas for action have been proposed. The first is competitiveness and development of internal energy market. The second is the diversification of energy sources with fewer adverse effects to the climate. The third is solidarity as an approach to avoid energy supply crisis. The fourth is sustainable development, which implies favourable balance of protection of the environment, competitiveness and security of supply. The fifth is the development of new technologies, and the sixth is external policy. The latter one is necessary because the Union has to speak in one voice in relation to suppliers, and act uniquely in order to diversify supply sources. Particularly highlighted is the need for development of "new partnership with neighbours, including Russia", as well as other major exporters and importers.[19]

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[17] Andris Piebalgs, "A Common Energy Police for Europe", Speech at the at the "EU Energy Policy and Law Conference", Brussels, 09/03/2006.

[18] For more see stable Internet page: Green Paper, http://ec.europa.eu/energy/green-paper-energy/doc/2006_03_08_gp_document_en.pdf.

[19] Milan Simurdić, "Energetska politika EU, Zapadni Balkan, Srbija", Internet page: http://www.eulokalnepolitike.bos.rs/materijal/Energetska%20politika%20EU,%20Zapadni %20Balkan,%20Srbija.pdf/25/09/2011/str. 4.

There is no doubt that recently energy-related issues emerged in the forefront of priority topics of the EU, with intensive efforts in forming common European energy policy. The contractual bases for policy in this domain are contained in: Article 3(1u), 94, 154-156, 175(2), 308 of the Treaty on EC. High goals that are set for implementation of new energy policy include: creation of internal market for energy distribution (electricity and natural gas); free access to network for registered consumers; support for ecological energy sources (renewable energy, connecting power plants and heating plants), safety of power plants.

In March 2007, the European Council, based on the Green Paper, adopted the Action Plan for the period 2007-2009, by adopting the majority of Commission's proposals. This is important, because the European Council, for the first time, as the first topic at the regular spring session, discussed energy policy and a comprehensive "energy package" which covers the three areas of energy policy: security of supply, environmental protection and energy market. The basic goal of package is new energy policy for Europe, and that package signified nothing less than a new industrial revolution in Europe's energy policy".[20] This package of measures is known as "20 20 20 by 2020" and implies: increase in energy efficiency by 20%, increase in use of renewable energy by 20% and reduction of emissions of "greenhouse gases" also by 20%.

The EU is definitely one of the biggest energy consumers in the world. The EU energy market is in constant development with particular exposure to flows in the world energy market. Various events that are happening in the world market have the impact on the EU internal market, and thus indirectly on the regulations that are adopted in the EU. The crisis in the supply of natural gas in January 2009, represents a characteristic example in the given context. It occurred as the result of conflicts between the Russian Federation and Ukraine, but it significantly affected the instability of the EU's natural gas market. The crisis has also had an impact on changes in the application of existing regulations and the emergence of a new one, with establishment of new rules of conduct of the EU energy market, with creation of new realities, not only for EU member countries, but also for other energy subjects and countries in Europe. It is obvious that in the coming period, the EU will face numerous challenges in this field. The problem of development of the EU energy policy to a large extent will depend on the realization of three fundamental aspects of the EU energy policy, namely: competitiveness, security of supply and sustainability.

[20] Andris Piebalgs, "Energy and Climate Change", speech in Paris, 31/05/2007, http://www.europaworld.org/week3008/speechpibalgs 1607 htm/ Last accessed: 15/09/2011.

4. Importance of Energy Security

One of the most important strategic goals of the developed countries of the world is energy supply. In this respect, energy security is very important for several reasons. Having in mind the interdependence of the world's developed countries, growth in energy prices may initiate significant economic, as well as political implications. Those countries that have managed to harmonize the following areas: environmental protection, economic growth and regular supply of energy, can be considered as safe countries in terms of energy. However, there are only a few countries like that in the world.

In the XXI century, many factors affect the energy security: wars, personal and national interests, political turmoil, and at the end all of these affects the economy. The most obvious example of how politics can affect the economic security is a dispute between Russia and Ukraine over gas transit, and because of this dispute, the whole European Union was suffering. When the opportunities for transit of energy sources are limited, as is in the case with the transport of gas from Russia through Ukraine to the EU, then the energy security is more vulnerable. Given that approximately 80% of Russian gas goes through Ukraine to the EU, and since these countries have had political disputes, only in January and February 2009 the gas transit through Ukraine was reduced by 50%. Eleven billion cubic meters of gas have passed through Ukraine, which is 53.2% less than it was the same months of 2008.[21] Therefore, in order to improve energy security, it is necessary to neutralize the political turmoil that hinders economic stability and the achievement of a broader political consensus. In this respect, it is obvious that the wars that are fought in those countries that are major exporters of oil, had a huge impact on the destabilization of energy security in the world. As a classic example, one can specify Iraq, as well as Libya, because as a result of the war production dropped dramatically. But the future that lies before us is highly uncertain, and unfortunately will not be free from wars and energy crises. This will directly affect the energy and national security by reducing energy efficiency, with lower supply and higher prices, as well as creation of deep geopolitical tensions. In these circumstances, there are no winners actually, for undoubtedly all are losers.

"Every energy policy, whether national or European, must implement the three principal goals at the same time: security, the fight against climate change and economic growth. One can not choose between these three measures and favour one at the expense of others."[22] However, the problem of energy

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[21] Zorana Z. Mihajlović Milanović, "*Energetska bezbednost zemalja jugoistočne Evrope u svetlu ruske energetske politike*", http://www.isac-fund.org/download/06-Dr%20Zorana %20Mihajlović%20-%20 Energetska %20bezbednost%20zemalja%20JIE.pdf.

[22] Claude Mandil, "Energy, Security and the European Union, Proposal for the French Presidency",21.04.2008,http://www.premier_ministre.gouv.fr./IMG/pdf/08_1005_Rapport_an_Premier_ministre_final_Eng.pdf/19/10/2011.

security, from the global point of view, refers to distortion of the already developed system of energy supply, which disturbs long-term security of energy supply in the energy sector. In addition, particular problem in planetary scale is the different availability of resources in different countries. Therefore, on the one hand, we have the countries of Middle East and Russia, which are rich in resources, and on the other hand countries that are poor in resources, such as Japan. These first countries have the opportunity to condition these second countries in terms of energy, but this at the same time does not mean that countries poor in resources do not have strong economies. A good example of this is obviously Japan.

State of the EU energy security requires the implementation of a single EU policy in order to overcome the individual interests of member states. Gas crises in 2006 and 2009 represent a warning and the necessity of finding new and appropriate solutions to ensure gas transit from Russia, because 94% of gas goes to European countries. "The one thing that should particularly concern the European Union is its direct dependence on Russian gas on the one hand, and on the other hand, its disunited policy on energy security, because countries such as Germany lead bilateral negotiations with Russians, outside the EU framework. To make matters even more complex, Europe's dependence on Russian gas will increase more and more, because the EU's dependence on Russian gas is 40% at the moment, and it is expected to increase to 80% by 2030, which suggests that their interdependence will further increase".[23]

As for the shortage of electricity in the EU, analysts point out that this problem can be solved by "renaissance" of nuclear energy and partly from renewable energy sources, however solving problems related to supplies of oil and gas will not go so fast, and improvement can be expected in the decades ahead. At the same time, the signals coming from Germany suggest that it will close its nuclear power plants, and that in addition to renewable energy sources, energy will be based on coal.

The importance of energy security is increasingly reflected in the protection from the growing trend of world terrorism, whose actions are more and more focused on refineries, oil facilities, ships. Such protection of energy facilities will certainly increase the cost of energy security, because the energy corporations, as well as governments, will need to further invest in the protection of production and transportation of energy, that is each step in the supply chain — from the place of exploitation, to the place of processing, and from there to consumer.[24]

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[23] Dragana Mitrović, *Međunarodna politička ekonomija*, Čigoja, FPN, Belgrade, 2009, p. 300.

[24] Ibid, p. 295.

In accordance with the above-mentioned, it is evident that the EU must protrude adequate policy conditioned by increase in its dependence on imported energy. It is not only one of the priority themes of foreign policy, but is definitely one of the main postulates of the European security strategy.

5. Energy Security in the Function of Environmental Protection

The development of clean, efficient and secure energy supply, promotion of energy usage that less pollutes the environment, natural resources management and the creation of industry, services and society that less affect the environment, are all important investments in the European future.[25] Thus, energy development is acceptable only with the preservation of the environment and that is obligation of the civilization in order to safeguard the future. This certainly coincides with one of the UN Millennium Development Goals. The fact is that pollution of the environment knows no borders, countries and regions, and therefore the struggle for the preservation and protection of the environment is not only struggle for our continent, but the entire planet.

Therefore, the policy on environmental protection and sustainable development has been developed within the European Union, which pervades all EU policies. The key elements of that policy are: prevention, financial responsibility of polluters, then to influence reducing of sources of environmental damage and the final division of responsibilities. When it comes to environmental damages, they usually include quantitative problems: the depletion of natural resources and destruction of ecological systems, and quality problems: toxicity of the products, production process and waste, which leads to pollution of land, water and air and increase in health risks. Energy sector is actually the greatest polluter of the human environment.[26] (See Table 1)

In the Table 1, one can see that energy security, economic development and environmental protection are interconnected goals. The EU has passed numerous regulations on energy security, environmental protection and prevention of pollution's effects on the environment. "These regulations are constantly being upgraded, and the scope of topics is constantly expanding. Energy (energy production, processing and usage) is the largest polluter of the environment. As energy consumption increases, the regulations are being developed that link the impact of energy development and environmental protection and development of energy efficiency and usage of renewable energy

[25] Stable Internet page: http://ec.europa.eu/research/eesd/leaflets/en/intro02.html.

[26] Stable Internet page: http://www.energy.community.org/portal/page/portal/ENCHOME/AREAS OF WORK/Environment.

Table 1. Department of energy-impact on the environment

From power plants using coal	**Processing of oil**	**Coal mines**	**Nuclear power**
-carbon dioxide -ash -dust -sulfur and -nitrogen oxides	-emissions of organic compounds (VOC)	-affect air and water quality and causing degradation of land	-disposal of hazardous radioactive waste -emissions of water vapor
-5.5 million tons of ash per year -secondary-emission (soil and water pollution and land degradation)	-other aromatic hydrocarbon		-security risks of accidents
-release of water leads to an increase in ambient temperature	-sludge		-political risk (terrorism)
-transformer stations and still using polychlorinated biphenyls (PCBs)	-breakdown of oil in transport		

sources."[27] These regulations are also the product of increased environmental awareness that energy security, in a broader conceptual sense, at the same time implies basis for affirmation of environmental policy, that is protection and improvement of the environment.

[27] Branislava Lepotić-Kovačević, Aleksandar Kovačević, *Vodič kroz EU politike – Energetika*, Evropski pokret u Srbiji, Belgrade, 2010, p. 100.

5.1. Importance of Supporting Environmental Energy Sources

On the political agenda of the EU, more and more prominent is the support for environmental energy sources.[28] With an increase in energy consumption in conditions of EU's energy dependence on imported energy, as well as in conditions of growth in the use of non-renewable energy sources such as fossil fuels (coal and hydrocarbons of crude oil and petroleum products, natural gas), the field of renewable energy sources is becoming increasingly important, primarily because of its characteristic features of regeneration, energy security and considerably less harmful impact on the environment.

Renewable energy sources include: solar energy (thermal and photovoltaic), wind energy, energy from hydropower, tidal energy, geothermal energy, biomass, and these energy sources are actually an essential alternative to fossil fuels. The advantage of using these fuels reflects not only in reduction of greenhouse gas emissions from production and use of electricity, but also in decrease in EU's pronounced dependence on imported fossil fuels, especially oil and gas. In this regard, the EU plans to strengthen its efforts in the energy sector, in order to implement the ambitious target of 20% share of renewable energy sources in the so-called energy mix as a whole.

The importance of renewable energy sources for the EU is reflected in the fact that in 1997 the Commission issued the White Paper on renewable sources of energy. This policy document stipulates that the EU's goal is that in electricity production renewable sources participate with 12% by 2020. The definition of renewable energy sources comprises all fuels other than that of fossil origin, namely: air, sun, geothermal sources, waves, tides, hydropower, biomass, landfill gas, gas from wastewater treatment and biogas.[29]

The connection of renewable energy usage with environmental protection, is reflected primarily in the fight against climate change and the so-called greenhouse effects. Affirmation and increase of renewable energy, in one word, decrease the use of fossil fuels, which have direct impact on environmental protection.

6. The Importance of iNTEGRATION of Serbia in the Field of Energy with an Emphasis on Energy Security

Traditionally, the EU's most important field of activity is energy. Accordingly, many other mechanisms are reflected in the energy sector.

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[28] Manfred Hebercetel, "Politika u oblasti energetike", *Evropa od A do Š – Priručnik za evropsku integraciju*, Fondacija Konrad Adenauer, Belgrade, 2004, (Serbian edition), p. 223.

[29] Branislava Lepotić – Kovačević, Aleksandar Kovačević, *op. cit*, pp. 90–1.

Therefore, regulations relating to environmental protection, consumer protection, protection of competition, property relations, human rights, rule of law etc. have their reflections in the energy sector. Equally important for the development of these areas is the very way the energy sector not only accepts, but also fulfils the obligations that originate from other regulatory areas. In short, energy is a field where many other fields overlap, so that one cannot speak about the progress of other fields if the energy sector declines or is static.

Given the above-mentioned, totally grounded is the view that the process of Serbia's accession in the energy sector, within its European integration, is essentially the most important process. Not only because the energy is currently the largest single industry in Serbia, with share of more than 20% in formation of national product and with nearly half of share in the formation of the national budget, but also in terms of efficiency of the energy sector, because generally speaking, usage of energy determines the level of employment and competitiveness in Serbia. Furthermore, Serbia is facing many challenges in this domain. In fact, energy use per unit of national product, is very large compared to the EU average, i.e. at least four times higher. In addition, the fact that, in terms of contribution to global warming, that is, greenhouse gas emissions, is several times higher per unit of national product in Serbia, compared to EU member states, is very concerning.

"Energy in the Western Balkans - the Path to Reform and Reconstruction", a study of International Energy Agency (IEA), identifies the basic challenges of countries in the region, and such evaluation can entirely refer to Serbia, in terms of: institutional capacity building and improvement of policy creation process; implementation of reforms of the energy market and its regulation, strengthening energy security; improving energy efficiency; priority which is necessary for protection of the environment and climate change; fight against energy poverty; development of trans-European infrastructure for transportation of oil and gas.[30] Of course, analysis of this situation can be considered from several aspects.

If we stick to the oil and gas, when it comes to Serbia, it is a country highly dependent on import in terms of energy. 91% of oil and 83% of gas is being imported. In terms of supply of these energy sources, Serbia is strongly influenced by the immediate regional and European environment, as well as the state on the global energy market. Without a seacoast, stable and acceptable supply of oil and gas, as the key energy sources, it depends on regional circumstances, and confirms the importance of developing regional cooperation and stable relations with neighbours. The route of the pipeline that delivers crude oil goes through Croatia. The pipeline that brings us gas from Russia

[30] IEA, *Energy in the Western Balkans:The Path to Reform and Reconstruction*, Paris, 2008.

passes through Ukraine and Hungary, while transiting through Serbia to Bosnia and Herzegovina.[31]

By supporting UEB and “South Stream” we pave the way not only to faster EU integration — because we become more attractive for Brussels — but also to much more lasting regional stability.[32] Empires come and go, but energy requirements are only as durable as the human species, and gas response to them will have long-term perspective. Whether we were in the EU or not, whether it existed or not - because not only is the question whether and in what form, after the crisis hit, the Union will survive, but whether we, when, we hope, Euro illusions dispel, would have an interest to enter it under the new circumstances — we have to build lasting bridges in our region that will allow all of us to prosper on the firm basis.[33]

It is obvious that the energy factors of security, not only in the Balkans, as part of Europe, but also the European continent as a whole, or better said in the planetary scale, are of great, if not the crucial influence for the formation of present and future geo-political, simpler said military and political strategies of the world’s most powerful countries, and propagated objectives of energy in the XXI century: accessibility, availability and acceptability, with promotion of the so-called “Concept 4E” (Energy, Environment, Economy and Efficiency), seem too optimistic from this perspective.

Conclusion

Pollution of the environment and its protection are the decades-long problem of humanity. Lately, the fact that the environment is threatened almost to the edge of alarming state, that there is almost no more healthy environment, and that once disturbed ecological balance can be difficult to balance and bring back into its original condition, becomes more and more clear. There is no doubt that today various issues related to the environment or in connection with it, take up a significant part of the EU activities. However, only in the early 1970s, the

[31] Milan Simurdić, *op. cit.*, p. 9.

[32] In 2009, the Kremlin has come out with a balanced initiative regarding the creation of a new model of European security. The draft “Treaty on Security in Europe" (TSE) was offered as a basis for the elaboration of such a model by consistently respecting international law, sovereignty and territorial integrity of states, by offering, based on these principles, universal path with respect of equality and the inadmissibility of the use of force or threat of force, for the prevention and peaceful resolving of conflicts on European territory

[33] Dragomir Anđelković, “Faktori bezbednosti Balkana: geopolitičke i energetske protivrečnosti”, *Naučni skup “Geopolitički i energetski faktori bezbednosti Balkan”*, Centar za razvoj međunarodne saradnje, Belgrade, 06/11/2010.

European Community began to take a more comprehensive and more intense political action in this area. These coincide with trends of strengthening awareness of the importance of the environment and planetary-scale threat to it

There is no doubt that in recent period energy-related issues emerged in the forefront of priority themes of the EU, with intensive efforts in forming a common European energy policy. The fact is that pollution of the environment knows no borders, countries and regions, and therefore the struggle for the protection and preservation of the environment is struggle not only for our continent, but also for the entire planet, and energy development is acceptable only with the preservation of the environment. It is evident that the energy security, economic development and environmental protection are mutually interconnected goals. It can also be seen from the activities of the EU, which has passed a number of regulations on energy security, environmental protection and prevention of pollution's impact on the environment. Therefore, the issues related to promotion of environmental energy sources are gaining increased support within the EU policy. The connection of renewable energy usage and environmental protection is reflected primarily through the fight against climate change and the so-called greenhouse effects. Affirmation and increase of renewable energy, in one word, decreases the use of fossil fuels, which have direct impact on the environment.

Energy is undoubtedly a field in which many other fields overlap, so that one cannot speak about the progress of other fields if the energy sector declines or is static. In given context, the state of energy in Serbia cannot be analyzed only from the standpoint that it is currently the largest single industry in Serbia, with share of more than 20% in formation of national product and with nearly half of share in the formation of the national budget, but also in terms of efficiency of the energy sector, because generally speaking, usage of energy determines the level of employment and competitiveness in Serbia. Therefore, it is a legitimate and established position, that the process of Serbia's accession in the energy sector, within its European integration, is essentially the most important process.

Bibliography

1. Anđelković Dragomir, "Faktori bezbednosti Balkana: geopolitičke i energetske protivrečnosti", *Naučni skup "Geopolitički i energetski faktori bezbednosti Balkan"*, Centar za razvoj međunarodne saradnje, Belgrade, 06/11/2010.
2. Hebercetel Manfred, "Politika u oblasti energetike", *Evropa od A do Š – Priručnik za evropsku integraciju*, Fondacija Konrad Adenauer, Belgrade, 2004, (Serbian edition).
3. IEA,Energy in the Western Balkans: The Path to Reform and Reconstruction, Paris, 2008.
4. Lepotić-Kovačević Branislava, Kovačević Aleksandar, *Vodič kroz EU politike – Energetika*, Evropski pokret u Srbiji, Belgrade, 2010.

5. Mandil Claude, “Energy, Security and the European Union, Proposal for the French Presidency”, 21/04/2008.
6. http://www.premier_ministre.gouv.fr./IMG/pdf/08_1005_Rapport_an_Premier_ministre _final_Eng.pdf.
7. Mihajlović Milanović Z. Zorana, “*Energetska bezbednost zemalja jugoistočne Evrope u svetlu ruske energetske politike”*, http://www.isac-fund.org/download/06-Dr%20Zorana %20Mihajlović%20-%20Energetska %20bezbednost%20zemalja%20JIE.pdf.
8. Mitrović Dragana, *Međunarodna politička ekonomija*, Čigoja, FPN, Beograd, 2009.
9. Piebalgs Andris, “A Common Energy Police for Europe”, speech at the EU Energy Policy and Law Conference, Brussels, 09/03/2006.
10. Piebalgs Andris, “Energy and Climate Change”, speech in Paris, 31.05.2007, http://www.europaworld.org/ week3008/speechpibalgs 1607 htm.
11. Rajović Goran, "Ekološka svest kao osnova održivog razvoja ruralnih prostora Crne Gore", Ekologica, Naučno-stručno društvo za zaštitu životne sredine Srbije, broj 49, Belgrade, 2007.
12. Simurdić Milan, “Energetska politika EU, Zapadni Balkan, Srbija”, http://www. eulokalnepolitike.bos.rs/materijal/Energetska%20politika%20EU,%20Zapadni%20Balkan, %20Srbija.pdf.
13. Stanković M. Stevan,"Pozitivni i negativni uticaji turizma na životnu sredinu", Glasnik SED, sv. LXXV, br.1, Belgrade, 1995.
14. Tekst Zelene knjige, http://ec.europa.eu/energy/green-paper-energy/doc/2006_03_ 08_gp_document_en.pdf.
15. Todić Dragoljub, Vodič kroz EU politiku - životna sredina, Evropski pokret Srbije, Belgrade, 2010.
16. Volf-Nidermajer Anita, "Ekološka politika", Evropa od A do Š – priručnik za evropsku integraciju, Fondacija Konrad Adenauer, Belgrade, 2004.

Internet

1. Council of EU, Stable Internet address: http://www.consilium.europa.eu/show Page.aspx?lang=EN.
2. Court of Justice, Stable Internet address: http://curia.europa.eu/jcms/jcms/Jo2_7033.
3. Energy, Environment, and Sustainable Develoment, “Environment, Energy, Europe – an Investment for Now and the Future”, Stable Internet address: http://ec.europa. eu/research/eesd/leaflets/en/intro02.html.
4. European Chemical Agency, Stable Internet address: http://echa.europa.eu/home_en.asp.
5. European Commission Environment, Stable Internet address: http://ec.europa.eu/ environment/index_en.htm.
6. European Commission, Stable Internet address: http: // epp.eurostat.ec.europa.eu/portal/ page/portal/environment/introduction.
7. European Environment Agency, Stable Internet address: http://www.eea.europa.eu.
8. European Investment Bank, Stable Internet address: http://www.eib.europa.eu/projects/ topics/environment/index.htm?lang=en.

9. European Parliament, Stable Internet address: http://www.europarl.europa.eu/news/public/default_en.htm.
10. European Parliament, Stable Internet address: http://www.europarl.europa.eu/activities/committees/homeCom.do?language=EN@body=ENVI.
11. The European Ombudsman, "The European Ombudsman investigates complaints about maladministration in the institutions and bodies of the European Union", Stable Internet address: http://www.ombudsman.europa.eu/home/default.htm.

UDC: 355.424:623.458
Biblid 0543-3657, 62 (2011)
Vol. LXII, No. 1144, pp. 97–108
Original Scientific Paper
September 2011

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Nuclear and Bioterrorism Implication on Environment

ABSTRACT

Terrorism is now a global threat, spreading its shadows over regions which were previously regarded as the exclusive domain of the military superpowers. One of the prime threats is nuclear terrorism, using nuclear or radiological agents. To assess the threat, it is important to include all factors that make it possible.

Key words: dirty bomb, IAEA, nuclear power plant, radiological contamination, radiological weapon, risk assessment, biological agents, bioregulators, medical treatment, protection, decontamination, toxin agents, warfare.

Introduction

Terrorism is not a new phenomenon. However, today's terrorists, be they international cults like Aum Shinrikyo or individual nihilists like the Unabomber, act on a greater variety of motives than ever before. More ominously, terrorists may gain access to weapons of mass destruction, including nuclear devices, germ dispensers, poison gas weapons, and computer viruses. Also, new is the world's dependence on a nearly invisible and fragile network for distributing energy and information.

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A Nuclear terrorism denotes the use, or threat of the use, of nuclear weapons or radiological weapons in acts of terrorism, including attacks against facilities where radioactive materials are present.[2]

In legal terms, nuclear terrorism is an offence committed if a person unlawfully and intentionally "uses in any way radioactive material … with the intent to cause death or serious bodily injury; or with the intent to cause substantial damage to property or to the environment; or with the intent to compel a natural or legal person, an international organization or a State to do or refrain from doing an act", according to 2005 United Nations International Convention for the Suppression of Acts of Nuclear Terrorism.[3]

The notion of terrorist organizations using nuclear weapons (especially very small ones, such as suitcase nukes) has been a threat for long and it is considered plausible that terrorists could acquire a nuclear weapon. In 2011, the British news agency, *the Telegraph*, received leaked documents regarding the Guantanamo Bay interrogations of Khalid Sheikh Mohammed. The documents cited Khalid saying that, if Osama Bin Laden is captured or killed by the Coalition of the Willing, an Al-Qaeda sleeper cell will detonate a "weapon of mass destruction" in a "secret location" in Europe, and promised it would be "a nuclear hellstorm".[4]

Bioterrorism is terrorism involving the intentional release or dissemination of biological agents. These agents are bacteria, viruses, or toxins, and may be in a naturally occurring or a human-modified form. Bioterrorism is a criminal act against unsuspecting civilians using pathogenic biological agents, such as biological warfare agents.[5]

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[2] A **nuclear weapon** is an explosive device that derives its destructive force from nuclear reactions, either fission or a combination of fission and fusion. Both reactions release vast quantities of energy from relatively small amounts of matter.
A **radiological weapon** or **radiological dispersion device** (**RDD**) is any weapon that is designed to spread radioactive material with the intent to kill, and cause disruption upon a city or nation.
It is primarily known as a dirty bomb or salted bomb because it is not a true nuclear weapon and does not yield the same explosive power. It uses conventional explosives to spread radioactive material, most commonly the spent fuels from nuclear power plants or radioactive medical waste.
Internet: www.absoluteastronomy.com.

[3] Internet: http://untreaty.un.org/cod/avl/ha/icsant/icsant.html.

[4] Hope, Christopher. "WikiLeaks: Guantanamo Bay terrorist secrets revealed". http://www.telegraph.co.uk/news/worldnews/wikileaks/8471907/WikiLeaks-Guantanamo-Bay-terrorist-secrets-revealed.html. Retrieved April 27, 2011.
Gould, Martin. "WikiLeaks: Al-Qaeda Already Has Nuclear Capacity". http://www.newsmax.com/Newsfront/WikiLeaks-GuantanamoBay-al-Qaida-terrorist/2011/04/25/id/393982. Retrieved April 27, 2011.

[5] Garth L. Nicolson, *Bioterrorism, Bioterrorism and Biological Warfare Agents*, http://www.immed.org/illness/bioterrorism.html.

According to the U.S. Centers for Disease Control and Prevention (CDC):[6]

> A *bioterrorism attack* is the deliberate release of viruses, bacteria, toxins or other harmful agents used to cause illness or death in people, animals, or plants. These agents are typically found in nature, but it is possible that they could be mutated or altered to increase their ability to cause disease, make them resistant to current medicines, or to increase their ability to be spread into the environment. Biological agents can be spread through the air, water, or in food. Terrorists tend to use biological agents because they are extremely difficult to detect and do not cause illness for several hours to several days. Some bioterrorism agents, like the smallpox virus, can be spread from person to person and some, like anthrax, cannot.[7]

Bioterrorism is an attractive weapon because biological agents are relatively easy and inexpensive to obtain, can be easily disseminated, and can cause widespread fear and panic beyond the actual physical damage they can cause. Military leaders, however, have learned that, as a military asset, bioterrorism has some important limitations; it is difficult to employ a bioweapon in a way that only the enemy is affected and not friendly forces. A biological weapon is useful to terrorists mainly as a method of creating mass panic and disruption to a state or a country.[8]

Brief Overview

Brief overview of relevant historical events can aid in our understanding of nuclear terrorism threats. Development of nuclear weapons began in the 1940s.[9] In 1941, the British began a nuclear weapons' research program.[10] Fearing German production of nuclear weapons during World War II, the United States and allied nations joined efforts and the Manhattan Project began.[11] In 1945, the United States dropped an atomic bomb on Hiroshima, Japan, and created the world's first radiologic public health emergency, resulting in 60,000-70,000 immediate deaths.[12] When this failed to persuade the Japanese to surrender, the United States dropped a second bomb on Nagasaki, Japan, 3 days later, resulting

[6] Stable Internet address: http://www.bt.cdc.gov/bioterrorism/.

[7] *Bioterrorism Overview*, Centers for Disease Control and Prevention, 12/02/2008, http://www.bt.cdc.gov/bioterrorism/overview.asp retrieved 22/05/2009.

[8] Stable Internet address: http://en.wikipedia.org/wiki/Bioterrorism.

[9] Stable Internet address: http://jnm.snmjournals.org/content/47/10/1653.full#ref-6.

[10] Ibid.

[11] Ibid.

[12] Ibid.

in another 40,000 deaths. The Japanese surrendered within 5 hours of the second bombing. Within 5 years, an estimated 340,000 Japanese, mostly civilians, had died as a result of the 2 bombs.[13]

In 1949, the Cold War began with the Soviet Union's first nuclear test.[14] The United Kingdom, France, and China also joined the United States in nuclear weapons' testing.[15] Since 1949, approximately 2,000 nuclear test explosions have taken place around the world.[16]

Throughout history, warriors have sought to devise more effective means of mass destruction. Biological weapons have been of interest for centuries and have been utilized in numerous battles. State-sponsored programs have intensively researched optimal organisms and techniques for their dissemination. Recent advances in molecular biology have allowed successful manipulation of bacteria and viruses to provide resistance to conventional treatments. Large stockpiles of such altered bioweapons now exist and are available for terrorist use.

U.S. President Barack Obama calls nuclear terrorism "the single most important national security threat that we face".[17] In his first speech to the U.N. Security Council, President Obama said that "just one nuclear weapon exploded in a city — be it New York or Moscow, Tokyo or Beijing, London or Paris — could kill hundreds of thousands of people".

In 1969, President Richard Nixon sought to end proliferation of biological weapons, signing an executive order prohibiting any use of biological agents under any circumstances. Broader efforts followed in 1972. with the Biological Weapons Convention (BWC), signed by many members of the United Nations (including the US, the USSR, and Iraq) to prohibit "the development, production, and stockpiling of chemical and bacteriological (biological) weapons."[18] Nevertheless, the Soviet Union felt the BWC was meaningless and in the 1970s embarked on a much broader program that involved over 60,000 individuals.[19]

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[13] Stable Internet address: http://jnm.snmjournals.org/content/47/10/1653.full#ref-7.

[14] Ibid.

[15] Ibid.

[16] Ibid.

[17] Graham Allison (January 26, 2010). "A Failure to Imagine the Worst". *Foreign Policy*. Retrieved: 25/02/2011 http://www.hks.harvard.edu/index. php/newsevents/news/commentary/failure-to-imagine-worst.

[18] Stable Internet address: http://www.unog.ch/80256EE600585943/%28httpPages%29/04FBBDD6315AC720C1257180004B1B2F?OpenDocument.

[19] Wolfinger K. "Interviews with Biowarriors. Bioterror", Nova Online Web Site. Available at: http://www.pbs.org/wgbh/nova/bioterror/biowarriors.html. Accessed June 19, 2010.

Biopreparat, the civilian arm of the Soviet bioweapons program, focused its efforts on the development of mixed agents, combining multiple viruses in one novel genome (the Hunter Project) and developing bacteria resistant to all known antibiotics and vaccines (Project Bonfire). The inclusion of viruses inside bacteria to form so-called "superbugs" was also a focus, according to Sergei Popov, a former senior Soviet scientist.[20] The official activity of Biopreparat significantly decreased with the collapse of the Soviet Union in 1991, although continued research likely continued until the late 1990s. Moreover, the whereabouts of many of its scientists and their products are unknown.[21]

NUCLEAR TERRORISM SCENARIOS

Nuclear terrorism could include:

1. Acquiring or fabricating a nuclear weapon
2. Fabricating a dirty bomb
3. Attacking a nuclear reactor, e.g., by disrupting critical inputs (e.g. water supply)
4. Attacking or taking over a nuclear-armed submarine, plane or base.[22]

Nuclear facilities, including nuclear reactors and fuel storage depots, are potential terrorist targets.[23] Modern commercial nuclear reactors are well secured and protected, contained by walls of steel and concrete that are several meters thick. These barriers prevent dispersal of radioactive material should "melt down" from the heat produced by the radioactive fission products occur. The barrier secondarily protects the reactor from air or other outside explosive attack, and even high-level explosives would be unlikely to significantly penetrate the protective barrier.

Only a reactor that is being refuelled, with its containment structure open, would be at risk for releasing radioactive material into the surrounding environment.[24] However, in this scenario, the reactor would be shut down, and much less radioactive material would be present compared with active operation (since fission

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[20] Ibid.

[21] Lewis S. History of Biowarfare. Bioterror: Nova Online Web Site. Available at: http://www.pbs.org/wgbh/nova/bioterror/history.html. Accessed June 19, 2010.

[22] Ruff, Tilman (November 2006), *Nuclear terrorism*, http://energyscience.org.au/FS10 Nuclear Terrorism.pdf.

[23] *National Council on Radiation Protection and Measurements. Management of Terrorist Events Involving Radioactive Material. Bethesda, MD: National Council on Radiation Protection and Measurements; 2001:138.*

[24] Ibid.

products quickly decay to low levels during shutdown). The Nuclear Regulatory Commission has stated that the likelihood of a direct attack on a reactor, resulting in both direct damage to the reactor and the release of radioactive materials, is low.[25] If a terrorist attack on a nuclear facility were able to penetrate a reactor and breach containment, release of radioactive material and subsequent health effects would likely be on a smaller scale than Chernobyl, because efficient and effective dispersal of source materials requires an explosion with significant energy.[26] Depending on the nature of the explosives used and material attacked, the area at risk for health effects would range from a few city blocks to several miles.[27]

Nuclear facility fuel storage depots are less well protected than nuclear reactors, but spent fuel contains much less radioactive material. A terrorist attack on spent fuel would be unlikely to expose a population to significant amounts of radiation.[28] However, as with an RDD, though the mortality and level of radiation exposure resulting from a terrorist attack on a nuclear facility would be relatively low, the psychological impact, even of an unsuccessful attack, might be severe. An analysis of the Three Mile Island incident has demonstrated that mental health issues were one of the main public health consequences of the event.[29]

The successful use of a nuclear weapon by terrorists would require significant technical and financial resources for planning; access to fissile material; expertise to construct a weapon; the ability to covertly transport and place the weapon; and the motive, will, and ability to detonate the weapon without detection.

A weapon constructed *de novo* by a terrorist group would likely be much larger than a stolen weapon and would, therefore, be easier to detect. Weapons with increasing nuclear yield potential would be larger and more detectable, not only because of size but also because of increasing radiation signature.[30]

Detonation of a nuclear weapon, resulting in an initial air blast and the release of radiation, produces pressure and heat waves causing the greatest amount of destruction. Radiation from the first minute after detonation, or initial radiation, accounts for only about 5% of the total energy release, whereas the fallout from longer-lived radionuclides, or residual radiation, represents only an additional 10% of the total energy.[31]

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[25] Stable Internet address: http://jnm.snmjournals.org/content/47/10/1653.full#ref-18.

[26] Stable Internet address: http://jnm.snmjournals.org/content/47/10/1653.full#ref-8.

[27] Ibid.

[28] Stable Internet address: http://jnm.snmjournals.org/content/47/10/1653.full#ref-15.

[29] Stable Internet address: http://jnm.snmjournals.org/content/47/10/1653.full#ref-6.

[30] Internet page: http://jnm.snmjournals.org/content/47/10/1653.full#ref-8.

[31] Internet page: http://jnm.snmjournals.org/content/47/10/1653.full#ref-19.

In 1987, a non-terrorism–related radiological emergency in Brazil involved health effects and radioactive material mirroring what might be expected in a radiation terrorism scenario. In this incident, a group of men seeking scrap metal dismantled an abandoned teletherapy unit at the Goiania Institute of Radiotherapy, exposing the unit's platinum core containing 137 Cs.[32] The purchaser of this scrap metal then unknowingly distributed the radioactive material among relatives, friends, and children, resulting in contamination of 249 people and 4 deaths.[33] The well-documented physical, economic, and psychosocial impacts on the area were significant.[34]

More recently, threats of radiological terrorism from al Qaeda were raised in 2002 when 31 year old Jose Padilla was detained on suspicion that he intended to deploy a radiological dispersal device (RDD) in the United States[35]; detailed plans for RDDs were uncovered after the destruction of an al Qaeda training camp in Afghanistan.

Problems in Serbia

There are no nuclear power plants in Serbia yet, but the problem is that domestic coal reserves, excluding Kosovo, with the current level of electricity production, is sufficient only for the next 50 years, and therefore we should think about developing potentials for gas and nuclear power plants. The first obstacle to the construction of nuclear power plants in Serbia is the so-called "moratorium" which was passed after the Chernobyl tragedy — the Law on Prohibition of Construction of Nuclear Power Plants, which was adopted in June 1989 by the Assembly of SFRY, which is still in force in Serbia.

Experts from the Vinča Institute point out that a nuclear power plant of 1,000 MW spends about 50 tons of fuel a year and produces approximately 500 cubic meters of low and medium radioactive waste. A power plant of the same power consumes about 2.5 million tons of coal a year and produces eight million tons of carbon dioxide, 40 million tons of sulfur dioxide, six million tons of dust and a half million tons of fly ash.[36]

Each year, 326 kilograms of sulfuric acid fall on every hectare in the radius of 100 kilometers around the power plant "Nikola Tesla". World scientific experts believe that 30 kilograms of sulfuric acid per hectare per year leads to

[32] Internet: http://jnm.snmjournals.org/content/47/10/1653.full#ref-5.

[33] Ibid.

[34] Ibid.

[35] Internet: http://jnm.snmjournals.org/content/47/10/1653.full#ref-5.

[36] Internet page: http://www.astrozmaj.com/system/izborposla/aktuelnosti/ekologija/nuklearnapostrojenja.html, Retrieved 25/05/2011.

environmental disaster, and therefore, in the radius of 100 kilometers around the power plant Nikola Tesla, eleven environmental disasters are happening at the same time.[37]

Although the authorities in Serbia are against the construction of nuclear power plants, Croats are planning to build one in the near future near Erdut, almost on the border with Serbia, while Hungarians are planning one in Pécs, and should seek the consent of the neighboring country. The decision on these locations is not yet definitive, but the decision on building new nuclear power plant "Belene" near "Kozloduy" in Bulgaria is. At approximately one hundred kilometers from our border are two nuclear power plants – "Kozloduy" at Bulgarian-Romanian border and "Paks" in Hungary, and little further, on the Black Sea in Romania is "Cherna Voda", while at the Croatian-Slovenian border is "Krsko".[38]

Program — recovering lost weapons and material

In August 2002, the United States launched a program to track and secure enriched uranium from 24 Soviet-style reactors in 16 countries, in order to reduce the risk of the materials falling into the hands of terrorists or "rogue states". The first such operation was *Project Vinča*, "a multinational, public-private effort to remove nuclear material from a poorly-secured Yugoslav research institute." The project has been hailed as "a nonproliferation success story" with the "potential to inform broader 'global cleanout' efforts to address one of the weakest links in the nuclear nonproliferation chain: insufficiently secured civilian nuclear research facilities."[39]

In order to reduce the danger of attacks using nuclear waste material, European Union Commissioner Loyola de Palacio suggested in November 2002 the creation of common standards in the European Union, especially in the new member states operating Soviet-era reactors, for subterranean nuclear waste disposal.

[37] Ibid.

[38] Ibid.

[39] Deborah Block. US Military Practices Medical Response to Nuclear Attack *Voice of America*, 26 July 2010. http://www1.voanews.com/english/news/usa/US-Military-Practices-for-Nuclear-Attack-99269609.html.

Radioactive Waste

Miroslav Pajić, from the Ecological Movement of Bor, says that there is a strong suspicion that nowadays, as well as before, radioactive waste is being imported, which is then processed in the Bor Smelter, and that that is the main reason of endangered health of population living nearby. Specifically, in Bor, within blending down of domestic concentrates, other imported concentrates are also blended down, deriving from nuclear power plants.

In countries that have nuclear power plants, there is waste originating from parts of these power plants, made of copper. These parts are then brought to our country and processed as crumbled copper, which is radioactive because it originates from radioactive environment.

When the instruments registered a significant increase in radioactivity over Belgrade in August 1989, and when it was established that the wave came from the East, cargo from the ship Barbara Blomberg, which was cruising in Serbian waters on Danube, as well as cargo from the ship Union, which was stationed in the Bar port, were under suspicion.

By blending down the concentrate from the ship Union, more than 500 kilograms of mercury, arsenic and thallium fell on Bor.

The sole existence of the said amounts of highly-enriched uranium proves that Vinča still has extremely privileged position in this country, which provides excellent opportunities for abuse. Everything that is being imported for the needs of Vinča, is exempted from regular customs and other mandatory controls. A complete insight into all that's there has only a small number of people, and they, due to fear or, which is much worse, personal gain, keep everything under a veil of secrecy. One thing is certain: having failed to make an atomic bomb, as was originally conceived, and since it is not engaged in solar energy, wind and other useful things for mankind, Vinca has converted into its own contradiction and stores nuclear waste of Europe, at an air distance of only 7 km from Belgrade!

Conclusion

Terrorism dates back to antiquity, but our understanding of it as a public health threat is still in its nascent stages. Focusing on radiation and nuclear terrorism, we apply a public health perspective to explore relevant physical health and psychosocial impacts, the evolving national response infrastructure created to address terrorism, and the potential roles of nuclear medicine professionals in preparing for and responding to radiological and nuclear terrorism.

The 1968 Treaty on the Non-Proliferation of Nuclear Weapons sought to promote nuclear disarmament and prevent the development of additional nuclear weapons and the spread of nuclear weapons' technology.[40] At present, 187 countries have signed the treaty.[41] However, several countries continue to have active nuclear weapons' programs, and the concern exists that terrorist organizations have or may obtain nuclear weapons.[42]

A nuclear terrorist attack can be conducted in three basic ways, by detonation of a nuclear weapon, by sabotage or diversion of a nuclear facility or by dispersion of radioactive material into the environment (radiological weapon). Each possibility is specific and with different consequences.

Nuclear terrorism can be prevented by establishing a global system that requires from all countries to strictly follow international rules of trading, storing and using nuclear and radioactive materials and to produce an efficient national legislation. The United Nations have provided a basis for such legislation in the form of the International Convention for the Suppression of Acts of Nuclear Terrorism.

The use of biological agents and toxins in warfare and terrorism has a long history. Human, animal and plant pathogens and toxins can cause disease and can be used as a threat to humans, animals and staple crops. The same stands for biological agents. Although the use of biological agents and toxins in military conflicts has been a concern of military communities for many years, several recent events have increased the awareness of terrorist use of these weapons against civilian population. A Mass Casualty Biological (Toxin) Weapon (MCBTW) is any biological and toxin weapon capable of causing death or disease on a large scale, such that the military or civilian infrastructure of the state or organization being attacked is overwhelmed. A militarily significant (or terrorist) weapon is any weapon capable of affecting, directly or indirectly, that is, physically or psychologically, the outcome of a military operation. Although many biological agents such as toxins and bioregulators can be used to cause diseases, there are only a few that can truly threaten civilian populations on a large scale. Bioregulators or modulators are biochemical compounds, such as peptides, that occur naturally in organisms. They are a new class of weapons that can damage nervous system, alter moods, trigger psychological changes and kill. The potential military or terrorist use of bioregulators is similar to that of toxins. Some of these compounds are several hundred times more potent than traditional chemical warfare agents. Important

[40] http://jnm.snmjournals.org/content/47/10/1653.full#ref-6.

[41] http://jnm.snmjournals.org/content/47/10/1653.full#ref-6.

[42] http://jnm.snmjournals.org/content/47/10/1653.full#ref-6.

features and military advantages of new bioregulators are novel sites of toxic action; rapid and specific effects; penetration of protective filters and equipment, and militarily effective physical incapacitation. This overview of biological agents and toxins is largely intended to help healthcare providers on all levels to make decisions in protecting general population from these agents.

On 22nd of August 2011, a substantial amount of weapons-grade uranium was removed from a nuclear reactor in Serbia to a site in Russia. Details of the operation were provided by the US State Department on August 23. In this highly successful cooperative project, officials from the United States, the Republic of Serbia, and the Russian Federation successfully transferred a quantity of highly-enriched uranium (HEU) from the Vinča nuclear reactor near Belgrade — enough for two nuclear weapons — to a facility in the Russian Federation where it will be blended down for use as a conventional nuclear fuel. The transfer of 48 kg of highly-enriched uranium in about 5000 rods. Still, in Serbia we have low level of coal reserves and high level of electricity production. We still do not have ideas of should and where to put nuclear power plants. But on the other side on a small we will be surrounded with maybe 8 nuclear plants. And we still have a problem with terrorist organization.

Bibliography

1. Absolute astronomy www.absoluteastronomy.com.
2. Astrozmaj http://www.astrozmaj.com/system/izborposla/aktuelnosti/ekologija/nuklearna postrojenja.html Retrieved 25/05/2011.
3. Biological Weapons Convention, http://www.unog.ch/80256EE600585943/%28http Pages%29/04FBBDD6315AC720C1257180004B1B2F?OpenDocument.
4. *Bioterrorism Overview*, Centers for Disease Control and Prevention, 12/02/2008, http://www.bt.cdc.gov/bioterrorism/overview.asp retrieved 22/05/2009.
5. Centers for Disease Control and Prevention http://www.bt.cdc.gov/bioterrorism/.
6. Deborah Block. US Military Practices Medical Response to Nuclear Attack *Voice of America*, 26 July 2010. http://www1.voanews.com/english/news/usa/US-Military-Practices-for-Nuclear-Attack-99269609.html.
7. Federation of American Scientists. "Special Weapons Primer: Biological Warfare Agents." (2002) Available from http://www.fas.org/nuke.
8. Garth L. Nicolson, *Bioterrorism, Bioterrorism and Biological Warfare Agents*, http://www.immed.org/illness/bioterrorism.html.
9. Gould, Martin. "WikiLeaks: Al-Qaeda Already Has Nuclear Capacity". http://www.newsmax.com/Newsfront/WikiLeaks-GuantanamoBay-al-Qaida-terrorist/2011/04/25/id/393982. Retrieved April 27, 2011.
10. Graham Allison (January 26, 2010). "A Failure to Imagine the Worst". *Foreign Policy*. Retrieved: 25/02/2011 http://www.hks.harvard.edu/index.php/news-events/news/ commen tary/failure-to-imagine-worst.

11. Hope, Christopher. “WikiLeaks: Guantanamo Bay terrorist secrets revealed”. http://www.telegraph.co.uk/news/worldnews/wikileaks/8471907/WikiLeaks-Guantanamo-Bay-terrorist-secrets-revealed.html. Retrieved April 27, 2011.
12. Jeffersonian Institute http://www.jeffersoninst.org/sites/default/files/serbia_policy_paper_0.pdf.
13. Klare, Michael T.*Resource Wars: The New Landscape of Global Conflict.* New York: Henry Holt, 2001.
14. Lewis S. History of Biowarfare. Bioterror: Nova Online Web Site. Available at: http://www.pbs.org/wgbh/nova/bioterror/history.html. Accessed June 19, 2010.
15. Makhijani, Arjun; Hu, Howard; and Yih, Katherine, eds. *Nuclear Wastelands: A Global Guide to Nuclear Weapons Production and Its Health and Environmental Effects.* Special Commission of International Physicians for the Prevention of Nuclear War and the Institute for Energy and Environmental Research. Cambridge, MA: MIT Press, 2000.
16. *National Council on Radiation Protection and Measurements. Management of Terrorist Events Involving Radioactive Material. Bethesda, MD: National Council on Radiation Protection and Measurements; 2001:138.*
17. New York State Department of Environmental Protection. (2001). “Statement on Water Supply Security.” Available from http://www.nyc.gov/html.
18. Ruff, Tilman (November 2006), *Nuclear terrorism*, http://energyscience.org.au/FS10 Nuclear Terrorism.pdf.
19. The Journal of Nuclear Medicine http://jnm.snmjournals.org.
20. United Nations http://untreaty.un.org/cod/avl/ha/icsant/icsant.html.
21. Wikipedia http://en.wikipedia.org/wiki/Bioterrorism.
22. Wolfinger K. “Interviews with Biowarriors. Bioterror”, Nova Online Web Site. Available at: http://www.pbs.org/wgbh/nova/bioterror/biowarriors.html. Accessed June 19, 2010.

UDC: 327:342.4(73)
Biblid 0543-3657, 62 (2011)
Vol. LXII, No. 1144, pp. 109–126
Original Scientific Paper
September 2011

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United States Ideological Legacy in the flat World

ABSTRACT

This article argues change of image of fundamental US principles in modern international relations. While the creators of USA had not had any kind of agenda regarding spreading American values outside the borders of the Union, shift in foreign policy from the beginning of 20th century till today made completely different narrative about US basic principles. On one hand this approach was necessary in the period of the Second World War and Cold War that followed, representing strong ideology of freedom against Soviet bloc. On the other, in American global military and economically overstretching in last twenty years, narrative about US mission in promoting freedom and democracy is no longer accepted as a justification for a number of steps taken in the field of foreign affairs.

Key words: Founding Fathers, fundamental principles, US foreign affairs, flat world, democracy.

Now and then

American state and American nation are founded on a few basic principles which have never changed. Throughout its history, all the way from the War for Independence up till now, the ideology of political system and mythology of US birth have prevailed as the very same narrative. Each president elected called upon Founding Fathers and their ideas and principles that are kept alive in the two vital political document of American birth, Declaration of Independence and US

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Constitution.[2] It seems without reasonable doubt that each president strongly believed in those principles and ideals, regardless of differences in the expression of those inherited values. That fact is one of the pillars of US system strength and, in a broader sense, strength of American nation. Those principles are rights to life, liberty and pursuit of happiness, representative government, religious freedom, freedom of speech, republican system, Constitution as supreme law of the land.[3]

In terms of international relations, Founding Fathers were extremely precise about possible involvement in other countries affairs. For creators of US, interfering with other societies was justified only in terms of precise economic interests. Every other relationship abroad had been considered as a threat to heavily gained independence and freedom. In a world of XVIII century, European empires were main chessboard players in global politics.[4] Leaders of the young nation were well aware that fragile republic could easily found itself in the crossfire of their big interests and agendas. At the moment of leaving the Office, George Washington, the Supreme Founding Father, said to his compatriots "that the essence for US should be in extending our commercial relations to have with them as little political connection as possible. Our detached and distant situation invites and enables us to pursue a different course. Why quit our own to stand upon foreign ground? Why, by interweaving our destiny with that of any part of Europe, entangle our peace and prosperity in the toils of European Ambition, Rivalship, Interest, Humor or Caprice?"[5] In a very similar way Thomas Jefferson confirmed the legacy of the Father of the Nation. In his first Inaugural Address as the third US president elected, Jefferson said that "peace, commerce and honest friendship with all nations, entangling alliances with none" should be among essential principles of the US government in international affairs.[6]

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[2] Founding Fathers is common name for people who participated in the creation of United States. The most prominent names, such as those of George Washington, Thomas Jefferson, John Adams, James Madison, Benjamin Franklin, Alexander Hamilton and Jon Jay are well known as part of general history education. However, in this group of people belong all men who participated in the War for Independence (1765 – 1783) and signed fundamental political documents, The Declaration of Independence, Articles of Confederation or US Constitution.

[3] *Constitution of United States*, Article VI, Section 2.

[4] Referring the global political relations, Zbigniev Brzezinski created this expression, using it as for a title for his famous book.

[5] George Washington, *Writings*, The Library of America, 1997, Farewell Address, p. 974-5.

[6] Besides those principles, Jefferson numbered also "equal and exact justice to all men, or whatever state of persuasion, religious or political; the support of the State governments in all their rights, as the most competent administrations for our domestic concerns and the surest bulwarks against anti-republican tendencies; the preservation of the General Government in its whole constitutional vigor, as the sheet anchor of our peace at home and safety abroad", in Thomas Jefferson, *Writings*, The Library of America, 1984, First Inaugural Address, p. 494.

America has changed since those times. Nowadays she doesn't look like at all to the country established in the struggle against British Empire, after which she emerged as a first modern representative democracy. But, from the end of World War II until today US has been recognized by international community as one of the modern empires. Through the Cold War America had USSR as her major opponent. Dead heat of two titans held the world in a fear of the final destruction. After the historic Berlin's breakthrough in 1989 and dissolution of Soviet Union two years later, America was left at the scene as the one and only global superpower and probably the last one.[7] United States were left alone and Charles Krauthammer's unipolar moment took place. Developments that followed in last two decades, however, created an unprecedented odium towards United States. From the relatively acceptable narrative of superpower the story of US image ended up with the idea of American imperialism and hegemony.[8] Savior and protector of the free world somehow transformed in unloved and sometimes almost hated, but inevitable participant of all significant political events and processes, in such extent that even the strongest allies sometimes had been reluctant in supporting US foreign policy. Yet, from the dissolution of USSR, Yugoslavia crisis, Somalia and all the way to the Second Gulf War, intervention in Afghanistan or Iran nuclear crisis — in every situation US leadership relied on rhetoric of the Uncle's Sam obligation and call to be savior, protector and supplier of democracy and freedom.

Story about American mission in the world is not modern idea. In early 17th century, John Winthrop said that the very first settlers in Massachusetts "shall be as a city upon a hill. The eyes of all people are upon us".[9] Official history of American exceptionality was created around this very idea and the lack of this knowledge is common mistake in process of understanding some basic mechanisms in American activities abroad. But the first puritan colonists were obsessed by creating the New Zion, a land of perfect harmony between their

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[7] See in Zbigniew Brzezinski, *The Grand* Chessboard (American Primacy and Geostrategic Imperatives), Basic Books, 1997, p. 209.

[8] The term *superpower* doesn't always include explicit negative meaning. It does imply exceptional and privileged position in international community (politically and military at the first place), but doesn't have a certain unclear discourse regarding whether the country which is recognized as superpower really is that or not. Considering the fact of two block and tensions between them, the term superpower had a certain positive psychological impact at allies of US and USSR, whenever it was referred to the country on the particular side of Iron Curtain.

[9] John Winthrop (1588-1649) was a colonial leader and founder of Massachusetts Bay Colony. He was second governor of New England and one of the Boston founders.

John Winthrop, *A Model of Christian Charity* (1630 on board Arbela), Internet page: http://religiousfreedom.lib.virginia.edu/sacred/charity.html.

religious beliefs and political community.[10] Idea of mission, however, had prevailed through time. United States entry on the global scene after WWII as a leader of the free world made this myth globally engaged and ever-present till today. Since the victory of Allied forces in 1945 to this day, guided by deeply rooted idea of mission, United States had started to act like some kind of world government, a government with limited authorities but with no risk of reelection.[11] It is necessary to emphasize that US acted like world government randomly, skipping many regions and territories, regarding their geostrategic end economic interests, and very often basic founding principles had been put aside.[12] In all foreign political engagements of American leadership narrative of spreading democracy and freedom was the leading ideological discourse. Even though all presidents and administrations have relied on the ideological concept US system had been established on, discrepancies and gaps between now and then are huge and significant. Never before US has been so engaged globally and unpopular as it has been in last ten years. The problem that emerged in the period between 1945 and 2011is the huge gap between the US ideas about its mission in the world regarding protection of liberty, freedom, democracy and market economy on one side, and the global economic and political reality in the world on the other, including US itself.

Founding Fathers, on the other hand, had significantly different idea of leadership in comparison to the manner it has been implemented by 20th and 21st century administrations. They were against political alliances with other nations and reluctant to put strong emphasis on foreign relations. Even today they have almost mythological aura on which American national identity has been constantly revised. Present day presidency is reversed mirror image of above mentioned. United States is so engaged in international relations that idea of backing off seems not only impossible, but dangerous and highly risky. Justifications for many actions taken since WWII, beginning with Korean War (1950-1953) were direct consequence of changed position of United States in international system after the victory in 1945 and growing economic needs in the same time. During the Cold War the main goal of US administrations was containment of USSR and its allies, holding them out of Europe and under most possible control in Eurasia. United States permanent military presence in

[10] Puritan cultural heritage in US history is well elaborated in David Hackett Fisher's book, *Albion Seeds, Four British Folkways in America,* Oxford University Press, New York, Oxford, 1989.

[11] Michael Mandelbaum explans the term in his book *The Case of Goliath (How America Acts as the World's Government in the Twenty-First Century),* Public Affairs, New York, 2005.

[12] In the same time, many actions, like interfering in South American political processes during 70's and 80's were led by everything else than corpus of universal ideas based in the Declaration of Independence.

Europe and engagements in South America and Middle East were not in accordance with Founding Fathers legacy. But justification was found in the new narrative which was made on those principles — from taking care of republic and rights of man at home, ideology shifted towards the mission of protection of similar political systems abroad in the name of rights of man and free world. After the end of Cold War some practices have remained by default, such as military presence in Europe and surviving of NATO with controversial interpretation of Article 5. Some recent US foreign policy objectives are consequences of new political geostrategic and economic changes that took place in last twenty years, such as economic development of China, India, Brazil, global terrorism, Euro-Atlantic integration, transition of former socialistic countries etc.[13] Heavily burdening, confused and overstretching, US presence on the global scene causes more and more negative reactions and growing resistance. One of the reasons for US controversial position in the contemporary world that made fundamental principles not as strong ideological background as they had been before is the process of alignment of the world.

The World is flat

Thomas Friedman's thesis about the flat world which replaced Christopher Columbus round world at the first glance seems to refer only to economy.[14] Economic globalization caused by IT revolution in last twenty years led to the third great revolution which has started in 2000 and for the first time in history allowed individuals to cooperate and compete with each other globally.[15] That is so at the first glance. Summarizing his conclusions about global networking of capital, workforce, working processes and technological changes that led to the new economic environment, Friedman claims that winners in the flat world would be only countries which adopt following three principles:

1. Infrastructure (technology) for connecting with the rest of the world
2. Educated individuals who can compete in that world
3. God management, inspirational leadership[16]

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[13] Engagement in Iraq, South American economic development, Iran nuclear program, sensitive bilateral realtions with Pakistan.

[14] Thomas Friedman (born 1953) is American journalist, columnist and author. He is one of the most prominent and influential intellectuals in US, predominantly occupied with foreign affairs, three times Pulitzer Prize winner.

[15] First revolution, by Friedman, came in 1492 with the discovery of America, while the second took place between 1800 and 2000. The first one made the world from large to middle, and the second one made it from middle to small. See in Thomas L. Friedman, *The World is Flat (A Brief History in Twenty First Century),* Farrar, Straus and Giroux, New York, 2005.

[16] See in Friedman, Op. cit, Chapter 2, "America and the flat world (Silent Crisis)", pp. 250-70.

Vast number of contemporary political events and processes were caused primarily by economic interests of big multinational corporations and finance. The most recent examples are demonstrations in US and throughout European Union and political changes in several Arab countries. There is no mechanism of media spinning strong enough to explain these phenomena other than question of money that some have and others do not. If you have Google, you are not gated — it is the basic message of Egyptian revolution and clear evidence that the periphery is not what was used to be just a decade before. Arab spring was surprise for the public in developed countries, unaccustomed to see Arabs as politically awakened citizens. Civil protests in Egypt and other counties affected by that process have explicit political agenda, representing breakthrough point in establishing civil societies in that region. The cause of current phenomena in Arab world, in US or in EU does not originally come from the demand for broader political, but for economic rights. Political agenda appears as the consequence, rather as mechanism which is necessary for exercise of better economic conditions. Arab renaissance directly has risen from global economic turmoil. Who comprehended whole vision and power of the Web and Netscape in the moment they had been created, he could predicted that interesting times are about to come. Thanks to IT revolution educated young elite in those societies have become leaders of political processes. General awareness about possibilities of better life for ordinary people arises rapidly, even though the final outcome is not clear yet. Many problems and opposite political forces are at the scene, guaranteeing only heavy road to law — regulated society.[17]

Simultaneously, economic crisis which affected the western societies, increasing expenses and decreasing incomes of the citizens, led to mass demonstrations, suspicions and resistance towards the their own system they live in. While Arab youth accepted electronic media as a strong political tool, highly developed capitalism of Western world and US especially faces with the boomerang effects of technological development.[18] Internet and social networks revolution had caused particular problem of 21st century that had never existed before — visibility of the huge gap between rich and the poor. Now everyone can see enormous economic and therefore political discrepancies

[17] Poverty, civil rights issues, natural resources, education, religious fractions and conservatism, undeveloped institutions are only part of the list. It would be hard to predict in what direction the processes would go, let alone huge differences between those countries among themselves.

[18] The term West in the flat, globalized world lost his economic, political meaning and cultural meaning had during the Cold War. Development of East Asian countries such as China or India and rise of Russia in economic sense made the meaning of the West fade away as paradigm of only developed part of the globe. Every serious attempt to deal with contemporary interdependent world should start with changing vocabulary.

between people, regions and countries. Even though average people in developed and middle developed countries live much better than their ancestors had lived just few decades ago, distribution of wealth has become irritating and unbearable. Millions of people who have to work longer for less and less money, with permanent fear of losing a job, or not having it at all transformed from silent to loud majority. The problem extremely difficult for apprehension is the fact "the communication and transportation revolution not only changes conditions in the periphery; it also modifies the center. It makes center life not only more visible but also more accessible, at least for the spectators. It is less shrouded in mystery, more available for everybody to see in mass media and on close inspection through travel..."[19]

Problem of visibility in highly developed countries is the fact that majority of citizens have realized their own situation as undemocratic. Crisis in Eurozone is one of the main threats to global economic structure. Massive demonstrations in US, under the title Occupy Wall Street (OWS), are the first civil movement at such extent established explicitly on economic issues. Ironically, it seems that this mass political awakening could be the biggest problem developed countries faced with, because noncooperation and civil disobedience could seriously jeopardize economic, but ultimately political structures. Even though other global challenges are still present „in a highly developed society, the establishment cannot survive without the obedience and loyalty of millions of people who are given small rewards to keep the system going. These people — the employed, the somewhat privileged — are drawn into alliance with the elite. They become the guards of the system, buffers between the upper and lower classes. If they stop obeying, the system falls."[20] Economic contradictions which constantly make political problems growing worldwide are discrepancies between growth and distribution of goods, between real economy and financial elite and between high production and pollution with limited natural resources. Being leading economic and political power US is facing with those problems simultaneously at home and abroad. In such environment it is highly unlikely that majority would easily accept fundamental principles narrative without actual benefit in everyday life.

While the world was round, United States was not an empire, but only a big country across the ocean. In the round world main chees players on the global chees board were European empires and kingdoms that have been in constant state of war with each other over territories, natural resources or religion. In those times political factors were limited, countable and therefore accessible to

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[19] Johan Galtung, *The Fall of the US Empire – And Then What? (Successors, Regionalization or Globalization? US Fascism or US Blossoming?)*, Kolofon Press, 2009, p. 181.

[20] Howard Zinn, *The Twentieth Century*, Perennial, 2003, p. 418.

deal with. In the flat world, however, US have to deal with numberless players and factor upon many hot topics, under permanent exposure to mass media and global Internet network. Problem of visibility that had emerged in the flat world considering US image is serious. Altogether with world transformation from round to flat, the nature of US imperial position has changed itself. The structure of the power became dispersed but not fluid. The political power is decentralized which is a democratic mechanism against arbitrary power, but problem is that one part of the power flows not only through huge number of political agencies but through global business and financial interdependence. The dispersion of the political power had happened in such manner that part of the power shifted in the area of economy. The profit of multinational corporations, the biggest American companies and most of all financial sectors are often generators of many political tactical steps. US — China bilateral relations or military industrial complex are just two biggest examples. While the assumption that decentralized power emphasis limitation of government is true, the problem with contemporary decentralization, rather dispersion lies in paradox that follows: dispersion did not happen within political area only.[21] High politics partly went into the economy area. There has been an outflow of political power. The title of the massive demonstrations in US — Occupy Wall Street — clearly indicates where the real threat is coming from according to those who demonstrate. The correlation of economy and politics is a basic mechanism how human civilization functions, but acceleration and augmentation of the capital and, most of all, financial sector at the end of 20th century faces the whole world with particular and serious situation: history changing people are not members of political elite any more, but rather of economic centers of power. Reducing and alignment of the world created reverse pyramid of political power at the expense of political structures. Increasing number of politicians resulted in all the less statesmen. And it doesn't have much with personal qualities but with the power and where it is located.

If we compare American beginning and foreign policy agenda of Founding Fathers, we will see peculiar, rather contradictory situation: smaller country and smaller agenda went altogether with greater personalities. USA officially became an independent state in 1781.[22] At the beginning there were thirteen British former colonies united in fragile republic with enormous territory

[21] First American political thinkers on the subject were two Founding Fathers, James Madison and John Adams. Madison elaborated issue of the ruling of majority as a dangerous in Federalist Papers, especially concentrated on the problem in his famous Federalist No. 10, while Adams insisted on bicameral legislation body as essential mechanism in limitation of arbitrary government.

[22] Independence was declared in 1776 with the Declaration of Independence, and Treaty of Paris in 1783 was official end of the War for Independence.

surrounded with European empires.[23] But what they had it was political elite and leadership unprecedented in modern history, where one of pledges was "an inflexible determination to maintain peace and inviolable faith with all nations, and that system of neutrality and impartiality among the belligerent powers of Europe which has been adopted by this Government and so solemnly sanctioned by both Houses of Congress and applauded by the legislatures of the States and the public opinion, until it shall be otherwise ordained by Congress".[24]

Today, time of the hierarchy in such manner in politics has gone. Power structures are no longer based on up & down model with special emphasis on personality, but rather on horizontal interconnections between political and financial elite, media, international organizations and civil society. Does the pyramid of power somehow lost its top, or is it just upside down and what this change in political discourse really means sociologically? It is not a question of quality of the people. After a long time current US president came to the Office on the wings of change and vision of US rebirth that inspired so many people, many of whom were not Americans. But just during only three years Barack Obama's administration has faced with huge problems — two war engagements with enormous budget and costs, deadlock in Israel-Palestinian negotiations, economic crisis, Wikileaks scandal, Osama bin Laden death and vast number of domestic issues, only some of which are taxes, mid-term elections, health care debate and economy crisis.

Ideological Legacy in the flat World

Highlighting foreign affairs as a basic area of presidential interest in USA was made by Theodor Roosevelt. Ambitiously seeking for the zone of authority that had not been loaded with attention of US senators, Roosevelt established international relations as one of the pillars of US policy, anticipating future US ambitions outside of Western hemisphere. In his Inaugural Addres, delivered in March 4th, 1905 he emphasised that "Our relations with the other powers of the world are important; but still more important are our relations among ourselves".[25] Woodrow Wilson inherited and expanded his legacy, with his

[23] At the end of War for Independence, young American republic was surrounded with Britain, France and Spain on the North America continent. France was superseded by Louisiana purchase 1803, made by Thomas Jefferson. Great Britain remained in Canada and Spain was slowly.

[24] John Adams, *Inaugural Address,* http://avalon.law.yale.edu/18th_century/adams.asp. Last accessed 20/10/2011.

[25] Theodor Roosevelt, Inaugural Address, http://avalon.law.yale.edu/20th_century/troos.asp.

mission in saving the world from the hell of WWI and project of the League of Nations. Delivering his speech regarding his historical 14 points, he concluded that " An evident principle runs through the whole program I have outlined. It is the principle of justice to all peoples and nationalities, and their right to live on equal terms of liberty and safety with one another, whether they were strong or weak. Unless this principle be made its foundation no part of the structure of international justice can stand. People of the United States could act upon no other principle; and to the vindication of this principle they are ready to devote their lives, their honor, and everything they possess.[26]

After three not so distinct presidents, came Franklin Delano Roosevelt completely shaping strong presidency as model to last till present days.[27] After Jefferson maybe the strongest president, Franklin Delano Roosevelt created and confirmed image of US as savior of the world, torch of democracy and unquestionable world power. Historical circumstances in which he found himself, Great Depression and horror of WWII, were dificult and chalenging. Upon the legacy of Founding Fathers and Theodor Roosevelt, Franklin Delano Roosevelt clearly understood influence of the media, which he used for easier implementation of economic reforms and political education of the nation concerning necessity to enter the war in 1941.[28] In dealing complex task that history had faced him with, Franklin Delano Roosevelt used narrative that already existed:" We are working toward a definite goal, which is to prevent the return of conditions which came very close to destroying what we call modern civilization. The actual accomplishment of our purpose cannot be attained in a day. Our policies are wholly within purposes for which our American Constitutional Government was established 150 years ago.[29] "And in the difficult hours of this day — through dark days that may be yet to come — we will know that the vast

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[26] Woodrow Wilson, speech delivered in Joint Session of US Congress, January 8th, 1918, http://wwi.lib.byu.edu/index.php/President_Wilson%27s_Fourteen_Points. Last accessed 15/10/2011.

[27] Warren Harding, Calvin Coolidge and Herbert Hoover.

[28] Using a radio broadcast he delivered his famous ***fireside chats*** to the air, reaching every single American citizen. Chats were a series of thirty evening radio addresses given between 1933 and 1944. Founders, however, also used media for advocating idea of resistance to the Britain colonial politics. The colonies had a multitude of local publications and political mobilization of the American population toward independence was carried out by several-year long influence of the press. See author's article, Gordana Bekčić Pješčić, *Creation of the United States of America – the first media aided political campaign*". http://www.cultural diplomacy.org/culturaldiplomacynews/index.php?en_participants-papers_symposium-on-cd-usa-2011. Last accessed 15/10/2011.

[29] Franklin Delano Roosevelt, Outlining the New Deal http://www.mhric.org/Franklin Delano Roosevelt /chat2.html. Last accessed 15/10/2011.

majority of the members of the human race are on our side. Many of them are fighting with us. All of them are praying for us. But, in representing our cause, we represent theirs as well — our hope and their hope for liberty under God."[30]

Post-war division of the world and establishment of two military alliances established strong executive as a paradigm of US political reality. Nuclear and thermonuclear threat made the presidents who came after Franklin Delano Roosevelt leaders of the free world, pledged to defend civilization against those who would threaten it. In the world were balance of power had been proclaimed for only effective mechanism for saving global peace, forefathers legacy in political discourse again possesed the same insirational strenght because „the world is very different now. For man holds in his mortal hands the power to abolish all forms of human poverty and all forms of human life. And yet the same revolutionary beliefs for which our forebears fought are still at issue around the globe — the belief that the rights of man come not from the generosity of the state, but from the hand of God. We dare not forget today that we are the heirs of that first revolution."[31] The US presidency became something it had never previously been, but the construction rested on foundation laid by Theodore Roosevelt and Woodrow Wilson, each in his own way were man determined to enhance the office granted them by a kindly fate.[32] During second half of 20th century together with George W. Bush, with expanding of presidential prerogatives and expanding foreign affairs issues and military engagements abroad, American image has been declining. John Quincy Adams prediction about all the dangers of US emerging in international scene as an actor in affairs abroad today sounds as a prophecy.[33] He pointed out that America "well knows that by once enlisting under other banners than her own, were they even the banners of foreign independence, she would involve herself beyond the power of extrication, in all the wars of interest and intrigue, of individual avarice, envy, and ambition, which assume the colors and usurp the standard of freedom. The fundamental maxims of her policy would insensibly change from liberty to force.... She might become the dictatress of the world. She would be no longer the ruler of her own spirit...."[34] Putting this

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[30] Franklin Delano Roosevelt, *On the Declaration of War with Japan*, http://www.mhric.org/Franklin Delano Roosevelt /chat19.html. Last accessed 15/10/2011.

[31] John F. Kennedy, *The Inaugural Address*, http://avalon.law.yale.edu/20th_century/kennedy.asp.

[32] Stephen Graubard, *The Presidents* (The transformation of the American Presidency from Theodore Roosevelt to George W. Bush), Allen Lane, Penguin Books, 2004, p. 8.

[33] John Quincy Adams (1767-1848) was the sixth president of United State. He was a son of the second president John Adams (1735-1826).

[34] John Quincy Adams, *Speech to the U.S. House of Representatives*, July 4,1821 http://www.fff.org/comment/AdamsPolicy.asp. Last accessed 15/10/2011.

statement into the context of US foreign relations since the 1945 till today, it's easy to make conclusions there is a truth in those words that have been said so long ago. The question is: how the paradoxical twist that never had been wanted actually emerged?

Trojan horse of so-called American imperial position is embedded in the fact that US became global power after the WWII, in the dawn of globalization processes which have led to merging of capital, strengthening and merging many other political systems and factors. In the same time, state apparatus was affected by fragmentation in order to effectively cope with increasing number of goals and objectives. Although accused of numerous unilateral actions, since the atomic engagement against Japan till the Second Gulf War, in the same time US was among the biggest advocates of multilateralism. From Woodrow Wilson's idea of the League of Nations, Franklin Delano Roosevelt 's Atlantic Charter, through Marshall Plan and establishing number of international organizations starting with UN, America and her leadership had been always engaged in multilateral processes.[35] Numerous challenges and problems administration have faced called for an increasing number of players in American team, simultaneously networking with external factor such were UN, MMF, WTO, NATO, regional organizations such as NAFTA and sovereign counties. United States has always been and still is the main propagator of multilateralism. But considering herself as a first among *relatively* equal, however, America allowed herself to react unilaterally in situations in which she had found her own vital interests, justifying all taken actions as her right to protect fundamental principles of liberty, peace and republican values: "Today, we utter no prayer more fervently than the ancient prayer for peace on Earth. Yet history has shown that peace will not come, nor will our freedom be preserved, by good will alone. There are those in the world who scorn our vision of human dignity and freedom."[36]

Together with alignment of the world as a negative surrounding for US ideological legacy, development of mass media also in a way contributed to that process. Political structures through 20th century relied great part of their power on media impact. Their 21st century ancestors on the main political positions, however, altogether with endless options for global media influence, have

[35] Even though Atlantic Charter initially was drafted as an informal statement of two leaders regarding WWII, FRANKLIN DELANO ROOSEVELT and Churchill in August 1941, it became a list of goals set for postwar world to achieve. In a year after it was drafted, numerous countries signed the Charter, making in that way initial coalition against Axis alliance.

[36] Ronald Regan, *Second Inaugural Address*, http://www.bartleby.com/124/pres62.html. Last accessed 15/10/2011.

become collateral damage of the same thing. New, electronic media are not in the hands of power structures as traditional media were and still are in great extent. Every single person who has access to the Internet can be creator of media message and free to share it with whole world. As much as political elites have been able to exploit traditional media in order to exercise their interests and goals, all others, those without political power can use and abuse the very same or even more subversive tools in propagating their individual or group attitudes, interests or critiques of official policies. Visibility of economic differences is not the only side effect of the globalization process. Visibility of political actions and decisions represents a sum of several weaknesses of contemporary political systems, two of them particularly interesting: flat world that we live in erased history and created reality without magic of any profession. In a situation of global and rapidly growing access to information, knowledge and 24/7 media coverage everything we surrounded with, even the greatest and serious political events, fast become yesterday news. Democratization of access to the large number of information has created certain overdose of information and too close approach to those who run the world.

Lack of history led to the death of historical personas. History is going *on the air* and people of 21st century are nothing but spectators. Flat world abolished the category of time, leaving only space. The world watched terrorist attack to New York almost in real time, just like we have been watching political revolution in Arab world day to day. Everything significant is presented almost instantly and every eventually important person can be seen on TV in all day news. Woody Allen said that 80% of success is showing up. In the terms of serious problems the world is facing with overdose of showing is necessary to self- promotion and concern of political factors to get into the political arena. But in a long run it creates too familiar approach on both sides: from the top to bottom and *vice versa*. Too much showing up ended in the situation that personalities in charge are not statesmen in eyes of the public, regardless their vision, plans of actions and even results, if there are some. To close and to fast — there is no distance to the event or to those who manage them. Considering the number of political factors to deal with — own government, other countries government, international organizations, financial sectors, media, all that makes first people of the country, in US especially but in other counties as well, nothing more than managers of the imposed processes. And it's not the consequence of lacking the quality of people, but it has with the flat world. As Thomas Friedman said, "the world has gotten messier and America has lost leverage".[37]

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[37] Thomas Friedman, *Barack Kissinger Obama,* article published in New York Times, October 25th, 2011 http://www.nytimes.com/2011/10/26/opinion/barack-kissinger-obama.html?_r =1&ref=thomaslfriedman. Last accessed 10/10/2011.

How to deal with that?

The ideological legacy of American Revolution is unquestionable. If it is not have been the case, whole story about American dream, values and attractiveness would have vanished long time ago. There is no doubt American mythology and principles are still alive. Faith in liberty, democracy and happiness are still deeply rooted into American culture, and current president confirmed inherited legacy saying “at these moments, America has carried on not simply because of the skill or vision of those in high office, but because we, the people, have remained faithful to the ideals of our forebears and true to our founding documents”.[38] Problem with the image of America lies in the atmosphere of lacking confidence in and out of US that those values are not engaged in foreign policy any more strongly as much as they had been in previous periods of history.

Yet, even in proclamation of its own principles, US should let others to “read” that narrative in their own way. Exclusive US pretension on those values and principles is irritating. If we have accepted as a fact that life, liberty and pursuit of happiness are universal rights, than any particular understanding of those three is equally legitimate. All major religions and ancient teachings since the beginning of written history have been searching for the answer of basic human values and necessities. It is fair to say that US founders made effective system for obtaining those needs. Searching for the best solution, however, they carefully explored political history and theory. They searched from ancient Greece and Rome to Venice, finally realized they have to make the republic on their own, the one which would be perfectly shaped upon basic needs, values and habits of American people. If it was right thing to do, and various spectacular US achievements are the best proofs of that decision, then in the best manner of fundamental principles should be to greet others on their path to better political system. Getting to the end of road is one thing, journey is much more. Founding Fathers were searching and tested republic during six unsuccessful years of Confederation. After half of a century US ended up in the blood of Civil War. US system survived illnesses, but there were some imperfections which have cost a lot. But that was the journey.

If we have to define in which direction these trends of flat world will lead the international community and US, the best answer we have to offer follows: very same ideological discourse but different implantation of proclaimed principles. Universal values doesn’t need special interpreter with the monopoly above them. There is no reason to suspect that Wall Street demonstrators are not struggling for the very same things written in the Declaration of Independence.

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[38] Barack Obama, *The Inaugural Address*, http://www.whitehouse.gov/blog/inaugural-address/. Last accessed 15/09/2011.

On that base the question of democracy also should be seriously reconsidered relativizing its definition only by western model of society. The fact is that „most of the world loves the USA, but not its foreign policy. Change the latter and love will sprout“, because people love to love USA.[39]

Fundamental American principles are basic human values — that's the secret of their attractiveness. Would it be in years to come something similar that president Eisenhower said, contemplating about his own time, in a period of Cold War and massive proliferation of WMD that "this is not a way of life at all, in any true sense? Under the cloud of threatening war, it is humanity hanging from a cross of iron".[40] Much of this dark prediction, although based on rational and statistical data and facts of that time, could have been avoided in our own time by changing perspective of leadership of rich and politically significant counties at the first place. USA is not the only country which should have to make the shift from the contemporary approach of international relations into something new. But, having the ambition to still be a leader of the world, first step should be made there. It's easy to accept Joseph Nay's prediction about US as a most influential country in 21st century and that fact, according to him, justifies preservation of current international system.[41] However, flat world could easily turn the whole system upside down in a way that could easily be converted to global threat. Proliferation of nuclear weapons, serious climate changes, economic decline of developed world, political processes throughout less developed regions, growing unemployment, all of that together with the spectacular breakthroughs in science and technology are serious problems of our time. New age demands new views and new approaches and glorification of US decline is nothing than shortsighted perspective and political illiteracy in interdependent world. Therefore American involvement in global issues should not be considered only as a problem. But in US rejection of learning from history and assumption that everyone and nations as well could always start from the very beginning could jeopardize certain realistic approach in US foreign policy[42] in the future. Fast but serious rethinking "what the role of the government ought to be"[43] should be carefully considered in order to deal with this century problems. Because, "if we continue to think of our

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[39] Johan Galtung, *The Fall of the US Empire – And Then What? (Successors, Regionalization or Globalization? US Fascism or US Blossoming)*, Kolofon Press, 2009, p. 135.

[40] Dwight D. Eisenhower, *The Chance for Peace*, April 16, 1953, http://www.edchange.org/multicultural/speeches/ike_chance_for_peace.html. Last accessed 15/10/2011.

[41] Joseph Nye, *The Paradox of American Power* (Why the World's Only Superpower Can't go it Alone), Oxford University Press, 2002.

[42] The subject is well elaborated in Henry Kissinger's *Diplomacy,* chapter "The New World Order Reconsidered", Simon and Shuster Paperbacks, NY, London, Toronto, Sidney, 1995.

[43] Ron Paul, *The Revolution, (A Manifesto)*, Grand Central Publishing, New York, Boston, 2008, p. 158.

government as the policeman of the world and as the Great Provider from cradle to grave, our problems will grow worse and worse and our downward economic spiral, the first signs of which we now witnessing, will only accelerate."[44] United States should go back to its foundation period and rethinking Founding Fathers legacy in the context of global, interdependent world without conviction that those inherited values have only one interpretation. Maybe in a new way to embrace *E Pluribus Unum* as universal principle of the same magnitude. That approach is risky, highly complex and tough and leaders do know that. Unfortunately, today's world is not safe place for anyone of us and that is the saddest and most ironic truth of the flat world.

Elementary truth about free and democratic societies is that government should be agency of the citizens. But if the people in high offices are only managers of their expensive governments, who then would be statesmen and political visionaries capable to make those visions real? It is impossible for today's leaders to be at the same time history changing people with 24/7 task in answering the questions from all over their countries and world? When history is made every day, it is almost impossible to determine what is historically significant and what steps are right to be made in order to confirm system of values and principles set up in the days of Founding Fathers?[45] In days of Franklin Delano Roosevelt or Wilson, no matter what others thought about their actions in particular, all of their allies would had agree upon proclaimed ideas of US leadership. During the period of Cold War, USSR seemed to the West Europe to serious threat not to take advantage of American presence and engagement. If that means that only with real global danger American ideology was accepted as a leading policy, regardless ways of implementation, it is about time to reconsider our common historic legacy of our recent time. Today even Europe is not always happy to follow and there are two main reasons for that. First one is political developments of European region, breakdown of military blocs, the rise of Russia and integration of EU. All that caused the expansion of purely European interests within its exclusive sphere of influence. The second one is the fact that Euro-Atlantic world is not lonely in running the world economy any more. As Friedman vividly pointed had pointed out, the third globalization that we are living in, is led by non-western, rather, non-white groups of individuals. Huge number of highly educated Indians and Chinese are the source of economic development of their own countries. Multiplied by a huge population and the rate of its further growth represents political and economic power that the world has to accept and adjust.

[44] Ibid.

[45] The main advertising message on History Channel.

It seems that acceleration of time in the flat world confirms Fukuyama's thesis about the end of history in one anthropologically dangerous sense: living in the media generated present, our civilization is lacking in great personalities who should be the visionaries of tomorrow. It doesn't mean there are no great leaders and personalities. Quite contrary, contemporary access to education, knowledge, skills and information technologies are most solid foundation for making great people, much more than it was possible in earlier periods. But, political agenda, number of problems, expanding of political factors and media coverage — all together are too difficult to deal with. Something has to be changed in approach to idea of leadership. People would voluntary follow only if at least two things are fulfilled. First one is overlapping leader's interest with the interest of the followers in significant extent. The other is deep respect of those on the top of the pyramid. International relations rely on the organic connection between money and power, but respect is deeply rooted in anthropology. It has to be taken into account. Alignment of the world is also made from the individuals political participants, just by having a mobile phone and wireless Internet. Voting once in a while is only the outcome of permanent political exercise.

Status and role of the US presidency has been changing during the 20th century almost from one president to another. Since Theodor Roosevelt to Barack Obama, US interests, her international position and global political and economic circumstances have shaped and directed each presidency, together with personal specificity of the particular chief executive. Presidency has become overwhelmed by international relations because the list of foreign policy goals has grown. At the moment when economy took over part of position the politics and international relations once held, possibility to have history changing people such as were Founding Fathers is greatly reduced. And this is not a case only with United States but in a world as a whole. Opposition and critical approach are common perspective the public would look and observe members of political elite, especially presidents and prime ministers. Problem with US that whole world represents that critical majority. This is almost unbearable burden for current president and his administration, who inherited so many problems with global economic crisis on the top. His vision and call for change came after a decade of lost illusions, despair and fear. President Obama, like many others before him in the White House, clearly understood legacy and obligation toward history, saying "Founding Fathers faced with perils that we can scarcely imagine, drafted a charter to assure the rule of law and the rights of man — a charter expanded by the blood of generations. Those ideals still light the world, and we will not give them up for expedience sake."[46] According to Obama's agenda and global

[46] Barack Obama, *The Inaugural Address*, http://www.whitehouse.gov/blog/inaugural-address/ Last accessed 15/10/2011.

problems he has been facing as 44th president of US, seems that his task are as tough as those of Washington, Jefferson, Franklin and other founders of the American republic.

Literature

1. Brzezinski, Zbigniew, *The Grand* Chessboard (American Primacy and Geostrategic Imperatives), Basic Books, 1997.
2. Friedman, Thomas L., *The World is Flat (A Brief History in Twenty First Century),* Farrar, Straus and Giroux, New York, 2005.
3. Galtung, Johan, *The Fall of the US Empire – And Then What? (Successors, Regionalization or Globalization? US Fascism or US Blossoming)*, Kolofon Press, 2009.
4. Graubard, Stephen, *The Presidents* (The transformation of the American Presidency from Theodore Roosevelt to George W. Bush), Allen Lane, Penguin Books, 2004.
5. Jefferson, Thomas. *Writings*, The Library of America, 1984, First Inaugural Address.
6. Mandelbaum, Michael, *The Case of Goliath (How America Acts as the World's Government in the Twenty-First Century),* Public Affairs, New York, 2005 .
7. Nye, Joseph, *The Paradox of American Power* (Why the World's Only Superpower Can't go it Alone), Oxford University Press, 2002.
8. Paul, Ron, *The Revolution, (A Manifesto)*, Grand Central Publishing, New York, Boston, 2008
9. Washington, George, *Writings*, The Library of America, 1997, Farewell Address.
10. Zinn, Howard, *The Twentieth Century*, Perennial, 2003.

UDC: 343.9.02
Biblid 0543-3657, 62 (2011)
Vol. LXII, No. 1144, pp. 127–146
Original Scientific Paper
February 2011

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Social Dimenzions of the Theoretical New Types of Organized Crime

ABSTRACT

The study take a systemic and qualitative approach. The research is founded on long-term authors survey based on the statistical indications and 37 in-depth interviews with officials.

The findings of this article are: Five types of organized crime were identified. Besides well-known types of organized crime, this study found two new types of organized crime; institutional and institutionalized organized crime. This new typology distinguish from the previous typologies because criteria were taken are not only by organizational shapes, but also criteria such as: social connections, establishment of the organized crime in the state-political structures, a high rate of damage which has been made in the society.

The key point of this research is founded on authors capability of abstract perception for resolving the social control of institutional organized crime. The statistical indications and data collection by the in-depth interviews are very important. However, original visions and new ideas of the authors for resolving the greatest problems in the society always has been a key factor of each relevant idea in the field of natural and social science.

The practical implications of this article represent a useful guidelines for governments to deal with institutional organized crime: foundation of optimal independent agency; new operational tactics and methods. Of course, this solution needs political will for appropriate legal changes.

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The scientific value and one of the main point of this study is finding solution for exceeding a high rate of institutional organized crime. For that purpose, this study found that the problem might be resolved if in the legal system will be foreseen foundation of optimal independent institution against institutional type of organized crime which is inseparably linked with high type of corruption. Optimal independent institutions means independent from the government, but not from the wide social control. This solution is guided by the knowledge that all governments in the world has a huge power, but the governments in the fragile societies has a quite huge concentration of power. The developed countries with traditional democracy, political culture and law awareness can be dealing with this problem. But in the transitional and undeveloped countries there is lack of such determinative factors and the governments are really dominant source of institutional organized crime.

Key words: institutional organized crime, corruption, government, independent agency

Introduction

In the frames of the generic term for organized crime, among the different types, shapes and kinds, there can be differences in organizational, methodological, teleological and territorial sense.[2] Depending on the political, social, economical and other positioning in institutional hierarchy in one or more states, the players in organized crime, as well as their connection with social structures, we can look into different situations and contexts in committing organized crime.

1) Organized crime is committed immediately by organized criminal groups (criminal underground) with partial, instable or in some cases without any support of the state and political representatives of whatever rank in the levels of the state and political hierarchy of one or more countries.
2) Organized crime as well is committed in cases when (in)directly involved representatives of lower or higher levels of authorities; even the highest representatives of state and political hierarchy of one or more countries.
3) Organized crime is committed by teams between criminal underground, political and business elites.
4) Organized crime is committed immediately between political and business-elites.

[2] Miodrag Labović & Marjan Nikolovski, *Organized crime and corruption*, Faculty of security, Skopje, 2010, pp. 59-60.

5) Organized crime is committed immediately between political elites and criminal underground.
6) Organized crime is committed immediately between business-elites and criminal underground.
7) Organized crime is organized by the highest state level as a consequence of the general concept of systematically corrupted politics, with strong impact on the international economical and political relations in the function of accomplishing long term geo-strategic and geo-economic interests of the gross capital which originates in the most powerful countries in the world.

Types of Organized Crime

The types of organized crime can be distinguished by the following criteria:

Social connections established in the system;

Organizational shapes, or the level of organizational postulation and hierarchical structure inside organized criminal groups;

The scope of the non-material and material harmful consequences which come from different types of organized crime.

For the complex and contradictory term of organized crime, from scientific and theoretical reasons, as well as because of practical and operative value of use it can be thought about consequent optimality of the question:

- Whether in the frames of the unique term for organized crime we should distinguish different organizational levels, regarding the use of only one of the criteria as such the organizational form and consequently the organizational typology of organized crime, or
- Different types of organized crime should be distinguished as separate terms.

In determining the need for appropriate organizationally functional placement of competent bodies it should be stressed in the normative and institutional structure of certain countries, with a state hierarchy of the systems of fragile transitional and poor societies, the organizationally functional placement of these bodies depends mostly on the efficiency and, most important, their effectiveness in the fight against organized crime. By all means that would reflect on specific methods, especially tactics which are not and can not be the same for detecting and proving of different types of organized crime.

In that sense we could differentiate the following types of organized crime:

- Group organized crime;
- Network organized crime;

– Mafia type organized crime;
– Institutional organized crime in which representatives of the middle-upper or upper levels of the state authorities are directly involved;
– Institutional organized crime in which highest state and political officials (from the actual state authority or political opposition) are directly involved due to accomplishing of personal and close fitting interests of the political party;
– Institutionalized type of organized crime is the most perfidious type in the context of general concept of a systematically corrupted foreign policy, continuously lead by the most powerful countries in the world in order to achieve geo-strategic and geo-economic long-term interests of a gross capital. It is about an old practice of imperialism and today's ex-territorial neo-colonialism. Novelty is that the author has shaped theoretically the level of organized crime, with scientifically valid arguments.[3]

Moreover, in order to implement such policies, all multilateral political, security and financial organizations, and even the international courts have been used as instruments. This policy of the most powerful countries in the world today has a dominant influence on the international political and economic relations. *Ultima ratio* of this policy are military intervention, with or without approval of the UN Security Council, as well as the secret logistics of organizing civil wars, inter-ethnic conflicts and other various armed riots, state putsch and terrorist attacks on sovereign states that are thousands of miles away from the aggressor country. Nevertheless, we are witnessing notorious empirical examples from the contemporary international reality of applied methods of "double criteria" for the same or similar occurrences, harsh interference in the internal affairs of sovereign countries whose governments do not converge with the global politics of the dominant power. It is a flagrant violation of principles of international public law, even its full suspension. To rationalize these attacks, various excuses are used for alleged prevention of humanitarian disasters, protection of human rights and freedoms and so on.

Not even the citizens of great power countries are protected from subtle directed terrorist attacks in whose territory the attacks are conducted, if it is in the interest to fabricate public opinion in order to undertake further steps in the context of the general concept of a systematically corrupted politics. There are indisputable scientific evidences that by methods of mathematics, physics and chemistry prove that the alleged terrorist attacks on September 11, 2001 in New York could not be organized without the logistics of the American secret

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[3] This theoretically new concept, launched for the first time in: Miodrag Labović *"The Authority Corrupts*", De Gama, Skopje, 2006, pp. 85-87.

services.[4] Collateral damage of all these violent "export of democracy" and state terror, expressed in thousands of murdered children, women and older people, goes beyond any damages that might be done by any other type of organized crime. On the contrary, the institutionalized type of organized crime in the form of aggressive war or state terror remains a "grey zone" of legal sanctions in the international documents and national legislative of the countries in the world.

This type excludes the individual criminal-legal liability, among other things, since these acts are not treated as an execution of criminal acts by the highest representatives of those countries, but as a legitimate conduct of foreign policy. Even more, unseen precedent is sought in order to exempt the commanders from any criminal responsibility as well as the other representatives of the armed forces of the United States in front of the International Criminal Court, by which all the other parties involved in armed conflicts around the world are found to be in a very unequal position. From that point of view, this type of most perfidious organized crime so far represents a sociological, hidden crime, and not a crime in the criminal-legal meaning of the word. Therefore, this crime is unrecognizable, not only for ordinary citizens, but also for the great part of the expert's and scientific community.[5] The way out of this situation, cannot be found in the apocalyptically fatalistic predictions or expectations for spontaneous reallocation of historical dominant world power in the new multi-polar or bipolar world. The way out must be sought in the neutralization of the causes that led to the general concept of a systematically corrupted politics whose consequences is institutionalized organized crime and the rapid growth of international terrorism. In that context, the new avant-garde scientific thought should play an important role, by strengthening the awareness and by creating pressure on all levels for new and fairer international order, distribution of work and incomes.

According to the above mentioned criteria, organizational form is not the only criterion in forming typology of the organized criminal groups. In the year 2002 The UN published the results of one research carried out in 16 countries which differentiates the organizational forms of organized criminal groups in the world. The results from the research lead to organizational typology, which distinguished five ideal types of criminal organizations: standard hierarchy, regional hierarchy, clustered hierarchy, core group and criminal networks. This typology has certain scientific relevance, but only from the aspect of organized forms of organized crime. It does not take into consideration the other criteria

[4] Kevin Bareth, *Wisconsin state journal*, Wisconsin University, 2006. This interview is published by the daily newspaper *"Utrinski Vesnik"* 5/6 august, Skopje, 2006.

[5] Miodrag Labović & Marjan Nikolovski, op. cit. pp. 92-7.

for typology of organized crime.[6] Namely, for each separate type of organized crime in reality there exist adequate organizational forms, which do not always need to be the same for one type. That depends on more factors. Among the most important are the socio-political and economical conditions in the country where it takes place. For example, institutional organized crime can be expressed through various organizational shapes and various shapes of organized criminal activities etc.

All types of organized crime can be elaborated more concretely. In this occasion, because the space does not allow, we will elaborate only on institutional type of organized crime. Particularly interesting is the new theoretical concept of institutionalised type of organized crime. For the other types we will mention only the lowest type of organized crime — group organized crime, the most referent definition is according to the Convention of trans-national organized crime of UN, Palermo, 2000. Here in fact the term organized criminal group is defined, where the minimum number of constant elements must be fulfilled if it is to talk about organized crime regardless of its type. As the mafia type of organized crime is extensively written in literature, we will not discuss it any further here but, we will continue with the determination of the notion of network organized crime.

Network organized crime represents horizontally organized scheme for committing serious criminal offences by multiple subjects, with strictly defined roles for each concrete criminal action, by which, except for a core of the small criminal group, the other co-involved are continuously changed depending on the type of the concrete criminal activity. For that, some of the co-executors are hired ad hoc in the execution of the "dirty" criminal jobs, other co-involved are hired without their knowledge of being part of a criminal chain, executing completely legal transactions in order to launder money, acquire illegal financial or other benefit.

2.1. Institutional Type of Organized Crime

The difference between group, network and mafia type of organized crime on one side and the institutional type of organized crime on the other side, along with its theological nature, is reflected in the method of execution as well as the organizational structure. Institutional organized crime is a bit looser, which implicates a loose style of governing and discipline in the small but dynamically operative criminal groups. In the cases of institutional type of organized crime where the highest officials of state and political structures are directly involved as organizers, when they are discovered, those cases can not be proven and

[6] Michael Layman & Garry Potter, *Organized Crime*, Magor, Skopje, 2009, pp.11-6.

criminally processed for many reasons. One of the basic reasons is due to the fact that all competent state institutions for detecting, proving and prosecuting of the perpetrators of criminal offences in the field of organized crime and corruption are both under direct control and depend upon the highest state officials, who at any time can remove or dismiss the law enforcement officers. Namely, in the institutional type of organized crime it is not about the symbiotic link and co-operation between organized crime (criminal organizations, whatever form they have), on one side and the representatives of the state (politics) on the other, as is mentioned by many contemporary authors in the world. The most referent authors in the world do not incorporate the connection of the highest state and political officials in committing criminal offences as a basic, constitutive element in all these definitions. Alternatively they incorporate the elements into definitions such as "in team between the criminal organization and the state"; "or with corruption"; "or with using the special social position" and so on.

On the contrary, in this type of organized crime, the organized crime originates and is organized by the highest representatives in the organizational hierarchy of state and political structure of one country (which does not exclude the possibility in specific cases instead of them, to involve other high or middle-high representatives of the state without their consent). That consists of the "devil" of institutional organized crime for which colloquially, as metaphors are used with syntagmas: political mafia, political underground and similar. Each state has its own mafia or mafias, but in Macedonia the political mafia has its own state. In this maxim in few words a big part of the truth is told for the complex conglomerate of the emerging shapes of organized crime in the Republic of Macedonia.[7] That is a diametrically different empirical and real state of organized crime in RM, especially in relation to the conditions of organized crime in the developed Western World.

Namely, the essential difference between the representatives of the wider approach and the author of this paper is in the following:

I. The representatives of the wider approach talk about close connections (relation bond, symbiotic link, immediate cooperation) between the criminal organization and the state or the politics, police, judiciary, public administration, media etc. Some of the authors input corruption as an element in the definition of organized crime but, only alternatively, as one of the elements or methods through which organized crime is accomplished.

The author of this paper opens a new term of the institutional (political) type of organized crime (which will be discussed more concisely in the text below). This new theoretical concept existing in the practice of institutional type of

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[7] Robert Hislop, *Calm before Storm,* FIOS, Skopje, 2002, pp. 3.

organized crime, is not only about the close connection (relation bond, symbiotic link, immediate cooperation) between organized crime and political power but, the fact that representatives of different levels of the state and political institutional hierarchy (who can be the most important and highest officials in a state) are in fact, the main bosses, organizers and command-givers of this new theoretical type of organized crime.

II. For the representatives of the wider approach, without exception, corruption is one of the methods of organized crime without which it cannot function over a long term with stability.

For the author of this paper, corruption is not just one of the methods of organized crime without which it cannot function in the long term but, corruption is the basic, constitutive element of the term institutional organized crime. Namely, the corruption in the institutional organized crime is expressed as abuse of public authority, not only in one of the elements, or the methods through which organized crime is accomplished but it are its imminent, obligatory component which presents, in fact, its most important constitutive element. I claim this because the representatives of state and political structures, in the frames of this new theoretical type of organized crime, are not only helpers, associate collaborators and "tool" — of organized crime for which they are usually bribed or are corrupted through different manners and forms. On the contrary, the representatives of state and political structures organize the specific organizational structure of the institutional type of organized crime. They, as organizers or main bosses, in the division of the crime profit take the biggest part for themselves and the rest is given to the other accomplices. They dictate who is to do what and how much he will get at the end, or whether he will maintain a certain position which was given to him from the political top.

The term institutional (political) organized crime is a brand new theoretical term which implies a lot of concrete practical consequences in the fight against organized crime, with specific characteristics for certain countries.[8] Here the corruption exists in a very subtle way, through abuse of the institutional hierarchy which is legally governed under the veil of conveying a legitimate policy. Of course, the institutionalised type of organized crime does not mean that all individuals in one numbered institution are involved, but it does mean that this is the most dangerous type of organized crime. In the social problems that it provokes, it comes from the top of certain institutions, abusing the key parts of that institution or institutional hierarchies in many state institutions.

That is a diametrically opposite and essential difference between the theoretical new type of institutionally organized crime and all the other types,

[8] Miodrag Labović & Marjan Nikolovski, op. cit. pp. 53, 80-92.

that is to say, the organizational forms of different groups of organized crime that are mentioned by the leading authors in the world who deal with this problem. From this diametric contradiction come a lot of different consequences because, I believe you will agree with me, it is not the same when the state is on one side and organized crime is on the other, even if the highest representatives of the state were indirectly involved, or were helping organized crime. Namely, during the indirect correlation of the politicians with organized crime, as much as their connection is tightly knit (closely, symbiotic etc.), and the relatively long term co-operation (not to mention the incidental and ad hoc connections and similar), those relations are not stable because they do not originate from the politicians and, most importantly, they do not dictate the rhythm. When the conjunctional political interests of the state authorities are added to all this (who easily go through metamorphosis under pressure from the public in democratic societies and the danger of losing political points), they easily can refuse the co-operation, especially if it was performed by conspiracy and without leaving compromising materials.

There are important differences in a situation when the highest state officials are directly involved as organizers, main bosses around who the main core of the organized crime spins around. From here, in fact comes the corruption as unchangeable, constant and constitutive element in the term of the institutional organized crime. In institutional organized crime the corruption does not come through conventional ways of bribery, even when it comes to millions in convertible currency toward the highest state officials in their eventual help in the elections (financing political campaigns) or other type of conventional corruption transactions. The corruption here is expressed in its essence as abuse of the public authorisations of the directly involved highest officials as organizers and main bosses. Of course, they do that through their close associate collaborators, and when they have to communicate directly, they do that subtly, in perfidious ways in order not to leave any evidence behind them. However, it is important to understand that when it comes to institutional organized crime, politicians have the final word and hold all the leashes in their hands, which is not the case when eventually the highest state officials have connections or co-operate in some way with the criminal organization, which decides on the priorities of their criminal activities. As far as the politicians are concerned about giving help with or without agreement, the criminal organization can decide how much of the criminal profit will be given to them. The help is essential from the highest state officials for the criminal organization and is needed because of the stability and long-lasting highly profitable criminal activities. Nevertheless, criminal organizations with or without help from the highest state officials continue with their work executing it more or less successfully with the help of other methods and establishing co-operation with other criminal groups, organizations and on other levels of the state and political structures.

In the transitional and undeveloped countries in the world, where the institutional type of organized crime is the most specific, its diversity from the other types gains in weight. This is due to the fact that in those fragile societies without democratic tradition there is a weak and low qualitative normative and institutional structure, legal awareness and political culture. The lack of professional standards shown through incompetence and without respect to a "merit" system in the key institutions authorized to fight against organized crime, as well as the constant suspicions in regard to the independence of the judiciary and public prosecution, lead to the conclusion that for this special type of organized crime in these countries qualitatively radical reforms are needed. Deep reform incisions are required, rather than the standards for the countries of the developed world with democratic tradition.

Consequently, I consider that critical trait as an obligatory, constitutive element of the term for the newly launched type of institutional (political) organized crime is:

– Directly involved representatives of the state and political structures as organizers or main bosses of organized crime.

Besides this specific element of the institutional type of organized crime, at least a minimum of the other most characteristic, constant elements for organized crime, as a generic term, need to be fulfilled:

– Organized criminal activity of three or more persons according to (non) formal contract/ plan for committing the tasks;
– Relatively longer period;
– Perpetration serious criminal offences and
– Gaining financial and/or material benefit or gaining and/or maintaining of political and/or social power.

According to the author, without the existence of this critical, constitutive element, regardless of the fact that cumulatively there may exist other most characteristic elements, there is no institutional organized crime. It can be discussed for group, network or mafia types of organized crime, which organizational structure may be on the higher level rather than in the institutional crime, however the danger to society in every aspect is incomparable in regard to the other types of organized crime. Institutional organized crime is the most sophisticated and softest according to the methods of acting, but with the most destructive and incomparably higher material and non-material harmful consequences in the undeveloped and transitional countries. This type of organized crime in its different shapes and variants existed, exists and will exist in different countries of South-Eastern and South-Western Asia, Central and North Africa, South and Central America, and of course in South-Eastern Europe. In these countries in parallel with the existence

of the institutional organized crime, the corruption perception index is the highest in the world.

Political elites in the transitional countries in South-Eastern Europe, with their relation towards the national and natural resources, state capital, foreign help in form of donations, "soft" credits and the abuse of European Foundations, only confirm the cruel reality for the existence of the theoretical new-launched type of institutional organized crime. The author nevertheless considers that the scientific level does not correspond with the level of trivial details of stories which are narrated by Michael D. Layman as Garry V. Potter for the relations and the co-operation of almost all presidents of the USA in the last seven decades. For these affairs there are no verdict, except operatively "confirmed" knowledge.[9] However, I consider that we must respect the constitutional guaranteed right of presumption of innocence, therefore no name shall be publicly exposed before verdict. Secondly, the science cannot rely on sensational and spectacular information even in cases where those were checked operatively, because the suspicion about the reasons for delivering such information always remains. Sensationally-spectacular approach of Michael D. Layman and Garry V. Potter, is best described as in the ocean of a multitude, one can be "drowned" in the waters of positivistic-empirical hyper-informing, without coming to scientifically-theoretical valid generalisations and conclusions.[10] With a lack of an epistemological and theoretical developed system, much useful information and data for concrete events and characters from the underground of the organized crime, as well as their relations with prominent corporations, businessmen and the highest state officials in The USA is lost.

In all reports of the relevant international factors, organized crime literally is stressed as the biggest problem for the Euro-Atlantic integration of the countries from the western wing of South-Eastern Europe. In the past years because of the wrong perception and the wrong therapy that was used there are still no essential signs for improvement of the condition. Thus, (if we take as an example The Republic of Macedonia), except in scope, the number of detected and processed cases increased, but nothing changed regarding the structure of the reported and convicted individuals. That is in direct co-relation with the non-existence of cases against the highest officials of actual authority and their conviction with effective prison sentence, as well as confiscation of huge amounts acquired property by crime. Namely, we are witnesses of multiple arrests but seldom, if ever is there a judicial verdict for some the highest ranking officials. However, that usually happens to the oppositional officials. By

[9] Michael Layman & Garry Potter, op. cit., pp. 426-74.

[10] Michael Layman. & Garry Potter pp. 96-143 and 426-74.

exception, we have rare examples of arrests and criminal charges for some renegade state secretary, mayor, and in only one case a minister of the actual authority. All the others who are arrested are lower clerks, who are sacrificed in contribution of the supposedly increased fight against organized crime and corruption. In fact, that means "throwing ashes in the face of people" and creating a fake picture in front of the international factor. On the contrary, empirical examples are numerous from the past 18 years in The Republic of Macedonia for unseen robbery of social and state capital. On the level of operative-police processing, most of these cases were proven, and the number exposed by the media was even larger but, almost no one is resolved with a verdict, in the above mentioned sense.[11]

2.2. Practical Consequences of the new definition of the Institutional Organized Crime

These theoretical elaborations have exclusively significant practical consequences, because it does not suit the befogging of the definition for priorities of supreme national interest in the fight against institutional organized crime in the transitional and non-developed countries. Besides this, we should not forget that in the Convention of the UN a definition for organized criminal group is given, which contains the four constant elements that must be fulfilled for each of the different types of the organized crime. Nevertheless, new working definition is needed for internal, operatively-functional use in the context of specific national interest, taking into consideration the differences in the causes, conditions, aims, shapes and the types through which organized crime is executed in the transitional and undeveloped countries, and those in developed countries.

Practical consequences of the new definition are seen in the key solutions for social control of institutional organized crime, which must be systematically postulated in a general, coherent systematically strategic approach in the fight against the organized crime and corruption.[12] Here shortly some of them will be displayed:

I. The need of new organizationally-functional postulation of the optimal independent institution authorized in the fight against the institutional organized crime and with it inextricably linked high type of corruption. With rational confrontation of the arguments for and against the concept for security community opposed to the concept for unified and optimally independent institution, which will unite the scattered authorizations and competences

[11] Miodrag Labović, op. cit., pp. 274-325.

[12] Miodrag Labović, op. cit., pp. 325-428.

among the split and non co-ordinated state bodies in the field of fight against organized crime and the high type of corruption, the second concept is chosen. This takes into consideration the specific determining factors in The Republic of Macedonia and other similar countries, which are significantly different from the factors in the leading countries in Western Europe.[13] For that purpose, I suggest the following possible solutions:

1. Namely, from the in-depth analyses it can be concluded that an optimally independent institution is necessary. This institution should be competent for the fight against the organized financial crime and high type of corruption. Also, this institution needs to be with the concept that it will be independent from the executive authority, which by definition is the fireplace of the corruption everywhere in the world regardless of the fact at what level those societies are corrupted. However, this institution does not mean to be free of the system of the social control established through crossing series of controlled mechanisms. It is important to mention that the formation of an optimally independent institution for detecting and preventing of organized financial crime and a high type of corruption does not mean total undertaking of authorizations of the institutions that already work on the problem. The title determines the competence and the authorizations of the institution. Classical functions (competences and authorizations) furthermore are subject to the already existing institutions.

The need of an optimal independent institution comes, among other things, from the need to design specific tactics in the fight against the institutional type of organized crime, as well as their professional operative specialisation. This will take into consideration the difference, not only in the tactics of undertaking certain operative-tactical measures and actions but, also certain activities according to different types of organized crime, as well as the different types of crime. The method for detecting and proving is almost the same for the different types of organized crime of the same shapes, as well as the other kinds of crime (classical, conventional and unconventional).[14]

2. Formation of an autonomous organizational unit for detection and prevention of organized financial crime and a high type of corruption, whose director will be directly responsible to the Government, with the same or similar internal organization, competences and authorizations, as the above mentioned institution.

3. Autonomous organizational unit within the frames of the Ministry of Internal Affairs, with equal hierarchical level as the Directorate of State Security

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[13] Miodrag Labović & Marjan Nikolovski, op. cit. pp. 259-68.

[14] Ibid, op. cit. pp. 105-7.

and Contra-espionage and the Bureau of Public Security in the organizationally-functional postulation of the Ministry of Internal Affairs, with concrete defined functions (competences and authorities), organization and systematisation.

The last two are the minimal requirements, especially in fragile societies for successful institutional and organizationally functional postulation of the bodies authorized for immediate operatively-detecting work, without which it can not come at all for judgement and prosecution against the perpetrators of criminal acts of high type of corruption and organized financial criminal. Not to be forgotten, the two most mentioned problems on the way towards the Euro-Atlantic integrations of the transitional countries of the Western Balkans are the true core of the cancerous tissue with metastases towards the other parts of weak and sick societies. In situation, when different agencies are formed as independent bodies in the state administration. If for the most serious problems as such organized crime and corruption, normatively-institutional assumption has not been created for realisation of one of these minimal variants (which in fact represent recommended standards in the international documents), that in the slightest sense will be one of the biggest and safest indicators for not having real political will in resolving this problems. Of course, in the frames of these solutions diverse modifications are possible which correspond with the specific conditions in each country concretely.

II. State public prosecutor needs to be elected by an independent body, not as it is done according to the present constitutional solution in The Republic of Macedonia. The State public prosecutors have been appointed and dismissed by the Assembly, on proposal of the Government, after prior consent of the Council of public prosecutors, which is legally binding for the Government. That independent and professional body, for example, the Council of public prosecutors, according to the manner of its constituting in The Republic of Macedonia provides minimal independence from the executive authority. It is known that in large number of countries the Public prosecution represents part of the executive authority and consequently the Governments have certain competence in terms of the election and dismissal of the officials in the Public prosecution's office.

However, taken into consideration the specific determining factors of the transitional and non-developed countries, as well as the level of political culture, legal consciousness, absence of democratic tradition, specific mentality and similar, it is necessary to emancipate this extremely important state institution by the Government, with the aim for effective functioning of the legal system. Namely, when it comes to cases of high type of corruption and organized crime, in which except for the charges of ex-officials (present representatives of the opposition), involving current high governmental officials, it is suspected by the public that the law is selectively applied. Due to the fact that the Public

prosecution functions according to the principle of hierarchy and subordination, State public prosecutor (for example in RM) has discretional right to order that one case should be given from one to another prosecutor in the frames of the same prosecution office or some other public prosecution office; to reject the case (reject criminal charges), judging according to personal conviction that there are insufficient amount of elements for crimes or there is a lack of valid evidence for the criminal responsibility of the convicted persons. Beside this, State public prosecutor of RM, as a member by function in the Council of public prosecutors has influence on this body for election and dismissal of public prosecutors on all levels.

With the aim to elevate the efficiency and effectiveness in the field against organized crime, as well as to clear all suspicions for the tendentious acts, the most optimal solution is for the State public prosecutor to be elected and dismissed by the Council of public prosecutors, as a competent and independent body, emancipated from the Government. The Council of public prosecutors in RM, in fact, elects all the other public prosecutors. Therefore there is not more serious cause, why the same is not done for the General public prosecutor. This solution is extremely important taking into consideration the fact that lately the Public prosecution has the leading and coordinative role in conducting the pre-investigative procedure, in the inquiry and prosecution during the entire criminal procedure.

III. Independent, efficient and effective judiciary. The judiciary, although it is formally-legal emancipated from the executive authority, in practice still feels the influences of the executive authority on the judiciary, through different non-legal channels and causes (as an example Republic of Macedonia to be taken, with the constitutional amendments of 2005). Therefore it needs to be continued with reinforcement of the independence of the judiciary and elimination of all those elements which contribute to its loose, fragile emancipation from the executive authority. After that, when all the formally-legal points will be terminated and possibilities for applying directly, sophisticated pressures, it will depend entirely on the personal integrity of the judges and the public prosecutors whether they will resist falling under the influence. Because of the direct pressures on the dependent institutions, judges and public prosecutors, it will not be possible to talk about such pressures.

IV. One of the main reasons for organized crime and corruption in the countries of South-East Europe is the huge concentration of political power in the hands of the Government. From here, one of the basic solutions has to be the deconcentration of this enormous political power. Politically responsible Government that is elected in free and democratic elections in the legitimate way, has to be given the leadership of all current economical, social, defensive, ecological, educational, health care and other policies. However, in the

transitional and undeveloped countries the enormous power that the Government achieves through its influence on all the personnel policies in all key positions in the state apparatus and the society, has to be deconcentrated. Moreover, mixed parliamentary bodies for control of executive authority have to be established.

V. Providing qualitative legal frame for complete professionalization of the personnel which act on the problem of detecting, proving and prosecuting criminal offences in the field of organized crime and corruption. This solution brings successful results in the countries of the Western World. However, in the transitional and undeveloped countries, because of the lack of democratic tradition, low level of legal awareness and political culture, the attempts for introduction of "merit" system referring to professionalization of the state and public administration, for example in Republic of Macedonia, has not brought the expected results. That is because when top institutional officials are political elected officials (and that cannot be different in one parliamentary democracy of plural political system), then there are always modules of how to trick the law on behalf of the rationalisation of the needs from the vertical and horizontal redeploying of the personnel. In whatever case, in lack of other more optimal solutions, this one would be fine.

3. Conclusion

According to all that has been elaborated with arguments so far, the most important question is posed: is there a way out for the transitional and undeveloped countries in this state? If there is, which and what are those solutions? In the context of one of the basic cybernetic roles that there is no problem that can not be solved, there certainly is a way out. Upon the basis of the total previous contexts and the principally defined solutions, the way out is in the concrete solutions of one universal, coherent, complementary and consistently developed national strategy against organized crime and corruption. In all these years there has been a lack of general conceptual view, a vision for a coherent, universal and complementary national strategy in the fight against organized crime and corruption. We are witnesses to constant making of partial solutions, which are not enough qualitatively and if they were, we would not have any use for them if they are not in agreement with the systemically-strategic approach for the connection of the different segments with the basic aim of the strategy. The police and the other competent institutions relatively successfully manage to deal with classical crime with the mono-dimensional approach they are using. Taking into consideration the multidimensional nature of organized crime and corruption, fundamental reforms should be simultaneously made in seven crucial sectors of society, in

which about 40 sub-systems would have to be embraced. Of course, we want transitional societies to move straight forward and to hope that we will get full membership of the EU and NATO. Also, we have to pay attention to the methodology for realisation of the one and the same idea, because the different methodological approach in the realisation of one idea in reality changes the same idea.Namely, the new qualitative proposal of the strategy against organized crime and corruption has to cover in a qualitative-radical way the most crucial sectors of society, through a system of inter-dependent and complementary measures founded in the universal and coherent legal system, as opposed to the shallow and palliative solutions.[15] That is the difference among real deep (basal) reforms and the cosmetic, or to say, shallow reforms ("reformation illusionism" or "reforms due to reforms"). For accomplishing successful strategic reforms the most optimal methodological approach is the systemically-strategic approach. According to that, systematically-strategic approach means that:

A) In the frames of the universal social system key sectors (systems) have to be taken into consideration together with about forty sub-systems. Through this approach, cohesion and complementation of the measurements and the solutions pointing to one unique goal have been achieved, avoiding the contradiction of the system. (See the scheme at the end of this part).

B) Reforms have to be performed relatively simultaneously or with small temporal distance in each of the systems together with their sub-systems. If not like that, for example the reform of the criminal-justice system as is performed now, and the reforms of the political system after five years, failures and non-optimal effects will be present. Mainly because interaction can not be achieved by the complementary measurements and the solutions of different systems in the frames of the unique anti-corruption system. This especially refers to the balanced approach for reforms, not only in all the systems (sectors), but also fields and institutions (sub-systems), which have authorization in prevention and fighting of organized crime and corruption. Reform in only one institution, for example the police, will not mean visible improvement of the conditions in the field of justice and internal affairs. The improvement of the conditions in only one segment may mean greater efficiency but not greater effectiveness regarding the fact that in the process are included more subjects which have to function in a coordinative way.

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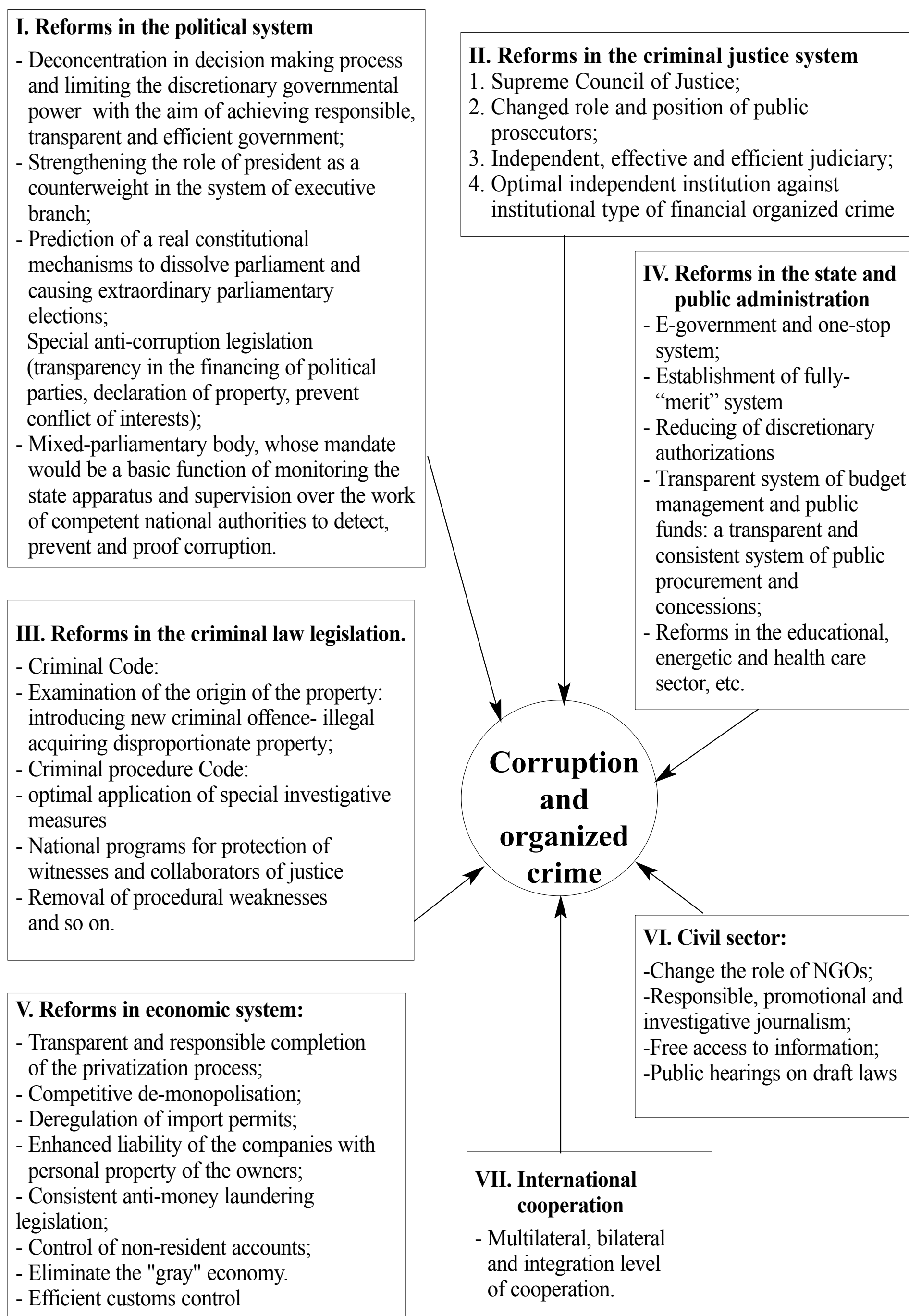
[15] Miodrag Labović, op. cit., pp. 325-428.

Although there is huge progress in adopting international instruments, and many new laws are adopted, while the existing ones have been changed, there are still important and essential legislatives left empty. Because of this if the same are not overcome – every serious fight against organized crime and corruption will not be successful. It is like that only because technically to satisfy the "bench-marks" given by the EU but, it does not systemically and in-depth give meaning to the real needs which come from the specific factors and conditions (for example Macedonia). Also, the mechanical rewriting and in best variant eclectic adopting of different laws, cannot contribute to the country to achieve the standards and the practice of conveying of the implementation laws in the frames of the EU.

In that way it needs to be stressed that neither approach by itself is enough to prevent the organized crime and corruption. Namely, the laws (legal norms), as much as they are universal and synchronised, have limited value, if they are not supported by the political elite with firm and strong will, and if they are not supported by the legal mechanisms which will implement all of that. Many of the unsuccessful anti-corruption campaigns and campaigns against organized crime went downhill not only because of the legal approach but also because of the "exclusive" support of the sterile moral appeals. These isolated and helpless appeals, if they were enough *eo ipso*, without being treated with appropriate programmes, organized crime and corruption would have been a forgotten topic.

Figure 1: Draft – National Strategy against Organized Crime and Corruption



Bibliography

1. Bareth, Kevin, "*Wisconsin state journal"*, Wisconsin University, 2006 (this interview is published by the daily newspaper *"Utrinski Vesnik"* 5/6 august, Skopje, 2006.
2. Hislop, Robert, *Calm before Storm*, : FIOS, Skopje, 2002.
3. Labović, Miodrag & Nikolovski, Marjan, *Organised Crime and Corruption*, Faculty of Security, Skopje, 2010.
4. Labović, Miodrag, *The Authority Corrupts,* De Gama, Skopje, 2006.
5. Layman, Michael & Potter, Garry, *Organised Crime*, Magor, Skopje, 2009.

BOOK REVIEWS

RUSSIA AND EUROPE

Monographic studies of Dragan Petrovic, Ph.D., *Russia and Europe* (Institute for International Politics and Economics, Belgrade, 2010, p. 348) is a kind of study on diplomatic, economic, military and cultural relations between Russia and Europe, or the Russian Federation and european countries. The author starts from the hypothesis that Russia is in the geographical, historical and civilizational terms of Europe, and its not so small and insignificant part. Geographical pronounced: Imperial Russia is the largest part of the new century territorial represented more than half of the continent. The same holds true for the USSR especially after World War II and afterwards when the largest part of the territories that had been lost in the period after World War I, this including the Revolution and the civil war, was returned. The present Russia occupies a bit less than a half of the European continent (4.6 square kilometres or about 46 per cent of the continent). In a historical sense, Russia was included in the system of European powers since the time of Kiev Russia and afterwards with some interruptions (in the period when it fought for the emancipation from the Mongol-Tatar invasion from approximately the mid-13th to the mid-15th century) it has been a part of it up to the present days. In a civilisational sense, with all specific features of this Euro-Asian country Russia is basically a leader of the European civilisation code, which due to the size of its territory is spread all over to the Pacific coasts that cover a considerable part of Asia.

This paper analyzes the the most important directions in the policy of contemporary Russia on its European path taking into consideration the fact that it is a bi-continental (Euro-Asian) country and the biggest one by the size of its territory. At the same time, Russia is also a world power (since the break-up of the USSR it has ceased to be a superpower) that has been on continuous rise for ten years by practically all parameters of power. This has also made an impact on its foreign policy position in Europe and in the world.

The Commonwealth of Independent States determines Russia's immediate interests in Europe. They are even more turned to Belarus with which it has created a state union (not completed in practice) and to Ukraine that is culturally and politically divided, so approximately its southeastern part gravitates towards Russia while the northern-western part opposes to it, gravitating towards the West. In the early 2010, Viktor Yanukovich won the presidential elections and formed the new government with the Party of Regions as the

leading party in the coalition, while Nikola Azarov was appointed new Prime Minister. All this made the government in Kiev turn to Russia for the most part. The core of Russian interests is the Customs Union whose members are Russia, Belarus and Kazakhstan, while it is expected that Ukraine will join it in time. All those four countries are already members of the Common Economic Space. Other integration processes where Russia also participates in are more turned to the Asian continent. These are, for example, the Collective Security Treaty Organisation and especially the Shanghai Cooperation Organisation and BRIC.

Contemporary Russia is a part of the European continent. It is largely imbued and connected with Europe in a civilisational, historical and economic sense. The rest of Europe is especially interested in the Russian resources of which energy resources are of primary significance and they particularly include oil and gas, and then metal and non-metallic ores. During the 21st century, the role of Russian resources will especially grow and these include clean drinking water, arable lands, unthreatened environment, etc. Russia endeavours to raise the level of industrial production so that it could export more manufactured good and less raw materials and semi-manufactures.

In a political sense, Russia has developed relations with the most important EU countries and EU itself. With some of them, it has even established strategic relations. For Russia, Germany and France are very important strategic partners that are the most significant countries in Europe, although these two European powers are, *inter alia*, NATO members. Possibly, together with Italy they would make a framework for the so-called *Old Europe*. Actually, it would consist of the European continental powers that in a way are striving to emancipate themselves from Washington. Taking into consideration their interests, they commit themselves to establishing strategic co-operation with Russia. Opposite to them are smaller East European countries that are largely under the influence of the American policy, also being historically distanced from Russia. These are Baltic countries and Poland and they can be called *New Europe*. The conflict of interests of the Russian and American policies is obvious in Europe and it is especially prominent in the Russian disagreement with further NATO enlargement to the East and the missile shield (likely to be based in Romania and perhaps also in some other East European countries). The web of globally significant Russia's and USA's interests, which have the chance to be brought into accord as well as the victory of Barack Obama are a kind of indication that gives optimism concerning the overcoming of big disputes between the two powers in the following several years. Russia is not opposed to the European Union where the most important member countries are Germany and France. On the other hand, NATO is regarded as a potential rival since its most significant member states are USA and Great Britain. Considering by several important principles they are Russia's traditional rivals.

The political future of Russia is closely connected with the modality for bringing into accord its interests and strategic co-operation with other European countries, especially the big ones including its overall relationship with EU. Russia's victory in the Caucasus area in August 2008 and especially the big economic crisis in the West with USA and Great Britain in its epicentre will considerably accelerate the rate of transition of the contemporary world to multipolarity where Russia is increasingly becoming important as a rising power.

The book Ph.D. Dragan Petrovic has successfully defended the study of international, diplomatic and cultural relations on the relationship between Russia and Europe, or the Russian Federation and European countries. Therefore, it is highly recommended to read.

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RESEARCH GUIDE

Vujo Ilić[1]
Nemanja Džuverović [2]

Research Guide for Peace and Conflict Resolution Studies

1. Networks, Universities, Institutes, Centers and Think Tanks

Accord: Conciliation Resources: Website with information about conflict resolution, with information about various conflicts and The Accord Peace Agreement Index.
http://www.c-r.org/resources/peace-agreements.php

Aktuelle Kriege und bewaffnete Konflikte, AKUF, Arbeitsgemeinschaft Kriegsursachenforschung, Hamburg Universitat
http://www.sozialwiss.uni-hamburg.de/publish/Ipw/Akuf/kriege_aktuell.htm

Armed Groups Project: University of Calgary, ”Dedicated to analyzing armed organizations but maintains a special focus on Latin America”
www.armedgroups.org

Berghof Handbook for Conflict Transformation, Berghof Research Center for Constructive Conflict Management – comprehensive and cumulative website resource.
http://www.berghof-handbook.net

Beyond Intractability: ”A Free Knowledge Base on More Constructive Approaches to Destructive Conflict”
www.beyondintractability.org

Bonn International Center for Conversion: BICC, non-profit organization around the topics of arms, peace building, and conflict. Incl. BICC Global Militarization Index.
www.bicc.de

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Carnegie Endowment for International Peace: private, nonprofit organization dedicated to advancing cooperation between nations and promoting active international engagement by the United States. Founded in 1910.
www.carnegieendowment.org

Center for Systemic Peace: Center for Global Policy at George Mason University, Research and analysis on conflict and violence, "research on the problem of political violence within the structural context of the dynamic global system"
www.systemicpeace.org

CITpax, Toledo International Centre for Peace: an independent, non-profit foundation, geared toward prevention and resolution of conflicts, management of crises and consolidation of peace within a framework of respect of basic human rights and democratic values.
http://www.toledopax.org/in/

European Peace Research Association
http://eupra.org/

FRIDE: Think tank based in Madrid that aims to provide the innovative thinking on Europe's role in the international arena. Incl. working papers, backgrounders, activity briefs and books on Conflict & Security.
http://www.fride.org/homepage_english

Global Partnership for the Prevention of Armed Conflict (GPPAC) is a global civil society-led network which seeks to build an international consensus on peace building and the prevention of violent conflict.
www.gppac.net

Global Peace Index - Economist Intelligence Unit, it is the first time that an Index has been created that ranks the nations of the world by their peacefulness and identifies some of the drivers of that peace.
http://www.visionofhumanity.org/gpi/home.php

Households in Conflict Network: "micro level analysis of the relationship between violent conflict and household welfare."
www.hicn.org

Human Security Report and Briefs: Simon Fraser University, Human Security Report, Human Security Brief series and miniAtlas of Human Security look at trends in armed conflict and examine related issues.
www.humansecurityreport.info/ www.humansecuritygateway.info -research resources on human security.

INCORE: Resources about various conflicts in the world.
http://www.incore.ulst.ac.uk/services/cds/countries/index.html

Internal Displacement Monitoring Centre: leading international body monitoring conflict-induced internal displacement worldwide + IDP Database
www.internal-displacement.org

International Center for Transitional Justice " works to redress and prevent the most severe violations of human rights by confronting legacies of mass abuse"
www.ictj.org/en/index.html

International Crisis Group: Updated information and reports about conflict situations around the world. Incl. ICG Reports & Briefings; CrisisWatch.
www.crisisgroup.org

International Institute for Strategic Studies: "world's leading authority on political-military conflict." Incl. *The Military Balance* -annual assessment of the military capabilities and defence economics of 170 countries world-wide.
www.iiss.org
http://www.iprafoundation.org/

Peace and Collaborative Development Network PCDN: a free professional networking site (with over 22,500 members from around the world) to foster dialogue and sharing of resources in international development, conflict resolution, gender mainstreaming, human rights, social entrepreneurship and related fields. www.internationalpeaceandconflict.org

PRIO International Peace Research Institute, Oslo: Norwegian research institute, Also: CSCW – Centre for the Study of Civil War. www.prio.no

Relief web: UN site for information about humanitarian situations and complex emergencies.
www.reliefweb.int

Small Arms Survey: principal source of public information on all aspects of small arms. It serves to monitor national and international initiatives, dissemination of best practices in the field. www.smallarmssurvey.org

Stockholm Peace Research Institute: Swedish research institute studying peace and conflict. Incl. SIPRI Yearbook, Policy Papers, Insights on Peace and Security, Facts on International Relations and Security Trends, Arms Industry Database, Arms Transfers Database, Multilateral Peace Operations Database, Military Expenditure Databas www.sipri.org

Swiss Peace: practice-oriented peace research institute in the area of conflict analysis and peacebuilding. www.swisspeace.ch

TFF, The Transnational Foundation, Sweden: is an independent think tank, a global network and a website for peace by peaceful means. (Jan Oberg) www.transnational.org/index.html

Transcend international: Peace network dedicated to more peaceful world by using action, education/training, dissemination and research to handle conflicts with empathy, nonviolence and creativity. (Johan Galtung) www.transcend.org/

UN Peacebuilding Commission (PBC) intergovernmental advisory body of the UN that supports peace efforts in countries emerging from conflict. www.un.org/peace/peacebuilding/

UN Peacemaker is an online mediation support tool for international peacemaking professionals and an extensive databank of modern peace agreements. http://peacemaker.unlb.org/ (registration required)

UNDP Department of Crisis Prevention and Recovery:
www.undp.org/cpr/

resolution, including access to many peace agreements.
www.usip.org

University of Bradford Department of Peace Studies: The world's largest university department dedicated to peace studies.
www.bradford.ac.uk/acad/peace

University of Maryland Center for International Development and Conflict Management: Houses the Correlates of War and Minorities at Risk projects. Peace and Conflict Series.
http://www.cidcm.umd.edu/

Uppsala Conflict Data Program UCDP collects information on a large number of aspects of armed violence since 1946. Peter Wallensteen.
www.pcr.uu.se/research/UCDP

World Bank Conflict Prevention and Reconstruction Unit: Country reports and statistics.
www.worldbank.org/conflict

2. Academic Journals
Canadian Journal of Peace Studies
http://www.peaceresearch.ca/

Cooperation and Conflict
http://cac.sagepub.com/

International Journal for Peace Studies
http://www.gmu.edu/programs/icar/ijps/

International Journal of Conflict and Violence
http://www.ijcv.org/index.php/ijcv

International Peacekeeping
http://www.tandf.co.uk/journals/titles/13533312.asp

Journal of Conflict Resolution
http://www.uk.sagepub.com/journalsProdDesc.nav?prodId=Journal200764&crossRegion=eur

Journal of Conflict Studies
http://journals.hil.unb.ca/index.php/JCS

Journal of Conflict and Security Law
http://jcsl.oxfordjournals.org/

Journal of International Peacekeeping
http://www.brill.nl/journal-international-peacekeeping

Journal of Peace Research
http://www.uk.sagepub.com/journalsProdDesc.nav?prodId=Journal200751&crossRegion=eur

Journal of Peacebuilding and Development
http://www.journalpeacedev.org/

Journal of Religion, Conflict and Peace (online, open-access)
http://www.religionconflictpeace.org/

Peace and Change: A Journal of Peace Research
http://www.wiley.com/bw/journal.asp?ref=0149-0508

Peace, Conflict and Development: An interdisciplinary Journal
http://www.peacestudiesjournal.org.uk/

Peace and Conflict: Journal of Peace Psychology
http://www.tandf.co.uk/journals/titles/10781919.asp

Peace Research Abstracts Journal
http://www.ebscohost.com/academic/peace-research-abstracts

Peace Review: A Journal of Social Justice
http://www.tandf.co.uk/journals/titles/10402659.asp

Third World Quarterly
http://www.tandf.co.uk/journals/titles/01436597.asp

3. Databases and Datasets

Africa Research Program @ Harvard U. ”Original and detailed data on political institutions and violence in 46 sub-Saharan countries between 1970 and 1995” http://africa.gov.harvard.edu/

Correlates of War Project More than 15 important datasets. David Singer/U. of Michigan
http://correlatesofwar.org/

IMF Data and Statistics, ”A range of time series data on IMF lending, exchange rates and other economic and financial indicators. Manuals, guides, and other material on statistical practices at the IMF, in member countries, and of the statistical community at large are also available.” http://www.imf.org/external/data.htm

IQSS Dataverse Network ”world's largest collection of social science research data”
http://dvn.iq.harvard.edu/dvn/

Kristian Gleditsch Data
http://privatewww.essex.ac.uk/~ksg/data.html

Minorities at Risk Project / Ted Robert Gurr / University of Maryland, MAR tracks 283 politically-active ethnic groups throughout the world from 1945 to the present - identifying where they are, what they do, and what happens to them. http://www.cidcm.umd.edu/mar/data.asp

OECD Statistics Portal
http://www.oecd.org/statsportal/0,3352,en_2825_293564_1_1_1_1_1,00.html

Penn World Table, Center for International Comparisons of Production, Income and Prices ”provides purchasing power parity and national income accounts converted to international prices for 188 countries for some or all of the years 1950-2004. ” http://pwt.econ.upenn.edu/

their own lives to their views about the current state of the world and important issues of the day.”
http://www.pewglobal.org/database/

PITF — Political Instability Task Force, Internal Wars and Failures of Governance, 19552008, Monty G. Marshall, GMU
http://globalpolicy.gmu.edu/pitf/

PRIO CSCW Data on Armed Conflict, Governance, Geographical and Resource, Economic and Socio-Demographic Datasets
http://www.prio.no/CSCW/Datasets/

Polity IV Project: Political Regime Characteristics and Transitions, 1800-2008, Monty G. Marshall. ”Continues the Polity research tradition of coding the authority characteristics of states in the world system for purposes of comparative, quantitative analysis.”
www.systemicpeace.org/polity/polity4.htm

Research Unit Peace and Conflict Studies, Freie Universitat Berlin, ” Research agenda focuses on the conditions and processes of collective violence, especially: types and dynamics of armed conflict, forms of military interventions in civil wars, privatization of security, distributional conflicts, and social construction of gender and identity politics in conflicts.”
http://www.polsoz.fu-berlin.de/en/polwiss/forschung/international/frieden /forschung/index.html

SEDLAC Stats, Socio-Economic Database for Latin America and the Caribbean (CEDLAC and The World Bank), ” The section presents statistics on poverty, inequality, income and other socio-economic variables for the 25 countries of Latin America and the Caribbean included in the SEDLAC database.”
http://sedlac.econo.unlp.edu.ar/eng/statistics.php

SSRN, Social Science Research Network, ”network is devoted to the rapid worldwide dissemination of social science research and is composed of a number of specialized research networks in each of the social sciences.”
http://www.ssrn.com/

World Income Inequality Database, World Institute for Development Economics Research of the United Nations University (UNU-WIDER). ”The Income Database collects and stores information on income inequality for developed, developing, and transition countries.”
http://www.wider.unu.edu/research/Database/en_GB/wiid/

WB Development Data & Statistics: ”High quality national and international statistics, and global statistical programs”, Research – ”Cross-country, cross-sector, thematic research outputs from the World Bank's main research unit.”
http://data.worldbank.org/

DOCUMENTS[*]

Official Journal C 376, 22/12/2011 P. 0025 – 0031

Opinion of the European Economic and Social Committee on "Rural development and employment in the Western Balkans" (own-initiative opinion)

(2011/C 376/05)

Rapporteur: Cveto STANTIČ

At its plenary session held on 19-20 January 2011, the European Economic and Social Committee, acting under Rule 29(2) of its Rules of Procedure, decided to draw up an own-initiative opinion on

Rural development and employment in the Western Balkans.

The Section for External Relations, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 8 September 2011.

At its 474th plenary session, held on 21-22 September 2011 (meeting of 21 September), the European Economic and Social Committee adopted the following opinion by 166 votes to 1 with 4 abstentions.

1. Conclusions and recommendations

1.1 Data on socio-economic characteristics of rural areas in the EU as well as in the Western Balkan countries[i] are inconsistent and not comparable, and this is partly due to the lack of a unified definition of rural areas. Therefore, the EESC supports the idea of harmonising the criteria for defining rural areas at EU level, which would allow better comparison of rural areas, as well as policies and measures applied.

[*] In view of fact that the text in this section are an official nature, no alternations of any kind have been made to them by the editor of the *Review of International Affairs*.

[i] Albania, Bosnia and Herzegovina, Croatia, the former Yugoslav Republic of Macedonia, Kosovo under UN Security Council Resolution 1244/99, Montenegro and Serbia.

1.2 Rural areas of the Western Balkans face numerous structural and socio-economic problems, to which solutions can be found in the framework of EU rural development policy and the common agricultural policy (CAP). The EESC strongly recommends that Western Balkan countries bring EU experience to bear in rural development policy-making, taking into account specific national problems and priorities.

1.3 Huge rural areas of the Western Balkans remain depopulated and their resources unutilised, while urban centres record a disproportionate concentration of population and economic activity. This trend is having a negative impact in economic, social, spatial and ecological terms. Thus, specific area-based measures should be designed and applied to trigger sustainable economic growth in those areas.

1.4 Prevalence of subsistence and semi-subsistence agriculture, a high unemployment rate, hidden unemployment and poor labour force mobility characterise the rural economies of the Western Balkans. The only competitive advantages of rural areas are low labour costs and high-quality natural resources. Development of entrepreneurship is limited by factors such as underdeveloped infrastructure, lack of skilled labour, limited access to markets and to finance, lack of investment support and low entrepreneurial potential.

1.5 Extensive agriculture is still an essential driver of the rural economy and a major source of employment in rural areas in the Western Balkans. However, it needs to modernise and raise its productivity, which will lead to surpluses of agricultural labour. The solution lies in diversification of the rural economy in order to reduce the income risks of rural households.

1.6 Rural development policies which should assist the diversification of the rural economies are still inadequate and not in line with EU rural development policy. Even when certain national policies are in place, political instability and frequent changes of government prevent continuity and hamper implementation. Funds for rural development do exist in most of the countries but, in comparison with the EU, they are still low.

1.7 Pre-accession support for agriculture and rural development (IPARD) remains the major source of financial assistance in rural areas. Most of the countries have difficulties in adopting the current EU rural development model due to its complexity and demanding implementation procedures. Therefore, the EU should consider the possibility of simplifying the IPARD management and control principles and procedures to facilitate effective use of funds and measures available.

1.8 A major difficulty in accessing IPARD instruments appears to be inadequate administration and institution capacity at national and local levels, and low capacity of potential beneficiaries. The national governments are urged to put more efforts into institution-building and capacity-building of potential beneficiaries.

1.9 The EESC would also recommend greater flexibility in the use of pre-accession aid for rural development, in particular by abolishing differentiation between candidate and potential candidate countries in accessing assistance in agriculture and rural development. As the situation differs from country to country, individual assessment of administration and absorption capacity should be given more weight.

1.10 To be more effective in combating rural unemployment, poverty and exclusion, better coordination between different policies and various funds available is needed. Regional policy can provide important complementary support for rural development policy if the two are properly combined and applied in a coherent manner.

1.11 National policies and measures that should be strengthened and better coordinated include:

– policies for active inclusion: better access to information and advice about public benefits;

– labour market policies: a higher employment rate and smaller regional disparities could be achieved by increasing active measures on the labour market;

– education and training: providing education at all levels, tackling early school leaving and strengthening young people's skills and qualifications, providing tailor-made training in order to reduce the mismatches between jobs and skills;

– rural development policy: more attention should be devoted to Axis II and Axis III, while Axis I measures already exist in most countries.[ii]

1.12 Civil society does not play an important role in rural areas, due to lack of entrepreneurial and organisational skills, demographic problems and poor-quality social infrastructure compared to cities. A possible solution could be to create networks of local civil society organisations in order to reach a critical mass of population and area covered. In this respect the LEADER[iii] approach is a potentially useful tool for improving the participation of civil society.

1.13 To improve the quality of life and encourage young people to remain in rural areas, a more diversified rural economy is required. The main challenges in achieving this goal continue to be investment in rural infrastructure, knowledge-based agriculture integrated with the food industry, better human capital, a good environment for entrepreneurs and improved social services.

[ii] Axis 1 – improving competitiveness of agriculture, Axis 2 – supporting the environment and land management, Axis 3 – encouraging diversification of economic activities and improving the quality of life in rural areas, and Axis 4 – LEADER approach

[iii] EU programme using a French acronym standing for Liaison Entre Actions de Développement de l'Economie Rurale – i.e. Links between rural economy development actions.

Agri- and eco-tourism based on rich cultural, historical and natural heritage also appear to be a good opportunity.

2. Introduction and background

2.1 Definition of rural areas

2.1.1 One of the difficulties in dealing with the subject is the fact that there is no unified definition of rural areas at EU level. Individual countries have different official definitions that use diverse criteria such as population density, an agriculture-based economy, remoteness, lack of access to major services, etc. For the purpose of international comparisons, OECD's definition of rurality is frequently used. Recently, the Western Balkan countries have also been adapting their statistics to this methodology.

2.1.2 The EESC therefore supports the idea of harmonising the criteria for defining rural areas at EU level. This would allow better comparison and monitoring of the effectiveness of the various measures and policies applied.

2.2 Rural development in the EU as an important part of the common agricultural policy (CAP) and future CAP reform

2.2.1 Given that nearly 60 % of the EU population live in rural areas, which make up 90 % of the EU, rural development is a vitally important policy area for the EU. Rural development funding provides for a broad range of measures. The current EU model is based on four policy axes, leaving Member States and regional governments enough flexibility to adjust policies to their specific needs.

2.2.2 Balanced territorial development represents one of the main objectives of the future CAP reform. In this respect the EESC is convinced that if future European agricultural and rural development policies are geared to innovation and competitiveness, they can create new business opportunities, more jobs and income diversification in rural areas.[iv]

2.3 Relevance of the rural development policies for national economies of the Western Balkans

2.3.1 Taking into account the size of rural areas, the percentage of the population living in them,[v] and high relevance of agriculture for national economies, it is clear that rural development must also become a vitally important policy area in the Western Balkans.

[iv] EESC Opinion OJ C 132 of, p. 9., The future of the CAP, cf point 3.3.4.

[v] The total area of the Western Balkan countries is 264462 km2 (equivalent to 6 % of the EU). The population is 26.3 million, of which 50 % live in rural areas. The average population density of 89.2 persons per km2 is much lower than that of the EU (114.4).

2.3.2 Rural areas of the Western Balkans face a number of specific structural and socio-economic challenges such as low income levels, lack of employment opportunities, deteriorating quality of life, depopulation processes, etc., which can be successfully tackled with an appropriate rural development policy, based on the complex EU rural development framework.

3. Some common characteristics of the rural areas of the Western Balkans - key determinants of their economic potential

3.1 The Western Balkans, with its outstanding wealth of plants and animals, is one of the richest parts of Europe in terms of biodiversity. The Western Balkans encompass a great variety of natural habitats, ranging from coastal lagoons and wetlands to Mediterranean forests, mountain meadows and pastures, freshwater wetlands, and karst terrain.

3.2 A decline in the population, mainly in remote and less fertile areas, and population ageing (except in Albania and Kosovo), both have a strong negative impact on the rural labour market. A common trend in all countries of the region is migration from rural areas to urban and coastal areas as well as abroad. Those moving to rural areas are mainly retired or refugees.

3.3 The unfavourable education structure, poor qualifications and lack of knowledge and skills among the economically active population represent a serious constraint for the future rural economy. The labour market is characterised by poor labour force mobility, resulting in a lack of alternative employment and income opportunities.

3.4 Agriculture based on low-intensity grazing and farming remains the predominant activity in most rural areas. Agricultural employment shares are among the highest when compared to EU countries.

3.5 Rural households, particularly those with limited resources, have limited access to the agricultural markets, labour markets and financial markets, as well as limited access to information and knowledge. Therefore, their chances of overcoming the poverty risk are significantly reduced.

3.6 Poor diversification of economic activities and income and low employment in the private sector are major issues for rural areas. Economic services and social infrastructure are poor and underdeveloped. This affects the quality of life of rural people as well as the competitiveness and the social fabric of rural areas.

4. Agriculture is still an essential driver of the rural economy in the Western Balkans

4.1 Although the share of agriculture in the economy has been decreasing since 2000, it is still far greater in the Western Balkans than in the EU on average, in terms of both added value and employment.

4.2 The small scale and fragmented nature of private farming remains a general characteristic of agriculture in most Western Balkan states, particularly in the south. The average farm size ranges from 1.2 ha in Albania to less than 4 ha in Serbia. Other factors hampering the development of agriculture are: poorly-developed market structures, inadequate infrastructure, low share of market production, lack of knowledge and skills and failure to meet food safety standards.

4.3 Agricultural production was in decline, owing to transition and even war in some countries, but since 2000 agricultural production has started to increase again, mainly due to investments in production technology. However, the output in most countries is still lower than in the pre-transition period. Despite some shortcomings, most of the Western Balkan countries have fairly high natural potential for agriculture (relatively inexpensive labour, land and water resources, and good climate and soil conditions for certain products such as tobacco, some fruits and vegetables, wine, cereals and meat).

4.4 There are also highly-productive agriculture regions with well integrated economies in the northern part of the Balkan Peninsula (Sava Basin, Danube Basin, Pannonia Plain). This area has favourable soil and climatic conditions for capital-intensive agricultural production. Moreover, it has adequate human capital, developed entrepreneurship, a sufficiently diversified industrial sector and a well developed infrastructure.

5. Meeting the rural development challenge beyond agriculture

5.1 The high proportion of the labour force working in agriculture is not directly reflected in the contribution agriculture makes to GDP. Therefore, future rural economies should be able to absorb surplus agricultural labour into alternative employment opportunities.

5.2 The establishment of rural-based industries has often been very effective in creating new job opportunities and providing additional income. Furthermore, past experience has shown that on-farm investment, modernisation, training and environmental measures have a positive effect on increasing employment and reducing hidden unemployment on farms. Among the sectors with great potential for growth are: processing industries, products with Protected Geographical Indications, organic food products, rural tourism, crafts, wood products and renewable energy production as well as a wide range of health and social services.

5.3 For the rural sector to develop faster, more and better expenditure is required on public goods and services: better roads and irrigation infrastructure, improved business environment, and an efficient transfer of information, knowledge and technologies.

6. Agriculture and rural development policies in the light of EU accession

6.1 All the countries in the region have high aspirations to join the EU. In this respect they all face similar challenges in transforming and modernising their highly fragmented agri-food sectors to ensure they can be competitive in the EU market.

6.2 According to the last European Commission progress reports,[vi] on agriculture and rural development, most of the Western Balkans countries need to make further efforts to ensure greater alignment with the EU agricultural acquis and EU rural development policy.

6.3 In comparison with the EU, national funds for supporting agriculture in the Western Balkans are still relatively low. A wide range of measures and support mechanisms are applied across the Western Balkans. In recent years, direct producer support has been the main element of agricultural budgetary transfers.

6.4 EU financial assistance

6.4.1 Pre-accession support for agriculture and rural development — IPARD[vii] is the 5th component of IPA – the wider EU instrument for preparation and assistance for enlargement. Only countries with candidate status are eligible for IPARD funds (Croatia, the former Yugoslav Republic of Macedonia, Montenegro and Turkey).

6.4.2 The EESC would like to draw attention to the particular obstacles that the Western Balkan countries are facing in implementing pre-accession assistance for rural development. Investment measures under IPARD are difficult to apply as they require full local structures to be in place for implementation and control (management and ownership of IPARD is fully decentralised, EU institutions are carrying out only ex-post control). This results in high project rejection rates and a need for significant investment in the preparatory phase, both by the country and the potential beneficiaries.

[vi] European Commission Progress Reports, November 2010:http://ec.europa.eu/enlargement/press_corner/key-documents/reports_nov_2010_en.htm.

[vii] IPARD, Instrument for Pre-Accession – Rural Development, includes 9 measures under 3 priority axes: 1 – Improving market efficiency and implementation of EU standards, 2 – Preparatory actions for implementation of agri-environmental measures and LEADER, 3 – Development of the rural economy, with allocated funds for 2007–13 of around 1 billion EUR; total IPA funds are over 10 billion EUR in 2007–2013.

6.4.3 The IPARD management and control principles and procedures could be simplified in order to encourage the Western Balkan countries to make better use of measures which would have a direct impact on rural development, such as improving rural infrastructure, diversifying economic activities and training (Axis 3 of IPARD).

6.4.4 A major reason for the slow uptake of EU funds is also poor administrative capacity and lack of appropriate institutions at national and particularly local level, which is hampering the overall absorption capacity of pre-accession funds. Lack of adequate general services (acquiring of building permits, land registry, inadequate plant health and veterinary services, etc.) have also contributed to the low success rate of the latest calls for rural development projects.

6.4.5 An additional obstacle to better use of EU funds appears to be low capacity of potential beneficiaries. This could be overcome by developing more efficient extension and advisory services.

6.4.6 The situation differs from country to country and is not always related to the accession progress or candidate status. Therefore, the EESC would recommend greater flexibility in the use of pre-accession aid for rural development, in particular by abolishing differentiation between candidate and potential candidate countries in accessing the assistance, and allowing individual country assessment of administration and absorption capacity to have more weight.

7. Rural labour markets in the Western Balkans

7.1 Rural labour markets in most of the Western Balkan countries display the following common characteristics:

— employment is dominated by agricultural workers, while the share of employees in the service sector and self employees (except in agriculture) is well below the average;

— part time and seasonal work are very often the only source of income for most of the rural population;

— unfavourable education structure and lack of skills and knowledge are the result of population ageing and an increasing number of early school leavers;

— lack of employment opportunities outside agriculture lead to high dependence on seasonal employment and hidden unemployment;

— the most vulnerable groups which are in danger of being excluded from the labour market are young people, women, the elderly, ethnic minorities (Roma) and war refugees. Some of these categories are not always registered as unemployed ("hidden unemployment");

— rural workers are rarely involved in various employment programmes provided by governments. Better promotion and adequate advisory services for such programmes are needed.

8. Strategies and policies related to rural development and employment

8.1 The main characteristics of current national rural policies are: poor political awareness, poor understanding of the EU concept of rural development – no integrated approach or programming structures, absence of vertical and horizontal policy coordination and poor inter-ministerial cooperation in the field of rural development.

8.2 Certain key problems, as well as development opportunities, are not adequately considered in national rural development policies: there are no sufficient incentives for organic farms, genetic resources, forestry, tourism, etc. Less favoured areas and semi-subsistence farming are not tackled either.

8.3 Rural development policies, in combination with regional policies and appropriate sectoral operational programmes, can make a significant contribution to better employment and better social inclusion in rural areas. A good regional policy can provide important, complementary support, aimed at strengthening poorer rural regions.

8.4 Compared to the EU, national regional policy in most of the countries is even further behind than rural development policy. Therefore, a more coherent approach and better coordination between policies and funds available are needed, pulling different resources together (national funds, EU funds, funds from donors).

8.5 Due to political instability and frequent changes of government, most of the countries in the region are facing lack of continuity in implementation of different policies and measures for rural development.

9. The role of civil society organisations (CSOs) in rural development

9.1 The EESC's opinion on Civil society in rural areas[viii] highlighted several problems and challenges in the development of civil society organisations in rural areas, particularly in new Member States. These challenges include barriers to accessing knowledge and information, lack of entrepreneurial skills, demographic problems, and lower quality of social infrastructure, compared to cities.

[viii] EESC Opinion OJ C 175, 28.7.2009 p. 37, Civil society in rural areas.

9.2 The status and role of civil society in the Western Balkans, together with the challenges facing civil society, are issues which have been tackled in a number of EESC opinions.[ix] Although there are specific issues for individual countries regarding legislation, public financing and fiscal status of CSOs, the level of civil and social dialogue, there are some common issues throughout the region, and particularly in rural areas:

– in general there is no strong tradition of civil society;
– public financing of CSOs is in most cases insufficient and not transparent enough;
– new EU-funded technical assistance to CSOs from the Western Balkans[x] is set up but is not yet producing the desired results;
– in general there is a need for capacity-building and development of specific knowledge and skills in various fields;
– at local and regional level, there is a general misunderstanding among local authorities of the advantages of working in partnership with civil society;
– the urban – rural gap: most CSOs are concentrated in either the capital city or in two or three other cities, leaving the countryside unaware of the role of civil society and its activities;
– most of the CSOs, including farmers organisations, are fragmented and suffer from counter-productive competition instead of cooperation. This prevents them from establishing powerful pressure groups.

9.3 Traditional forms of CSOs in rural areas of the Western Balkans are religious groups and associations of national minorities, firemen's, hunters' and fishermen's associations, cultural or artistic organisations, sports clubs, women's associations, and similar. Their geographical distribution is uneven, but the religious and ethnic minority groups are best organised and are protecting their interests well.

9.4 The possibility of more active involvement of these organisations in programmes to preserve intangible cultural heritage and the environment is not always adequately recognised by decision makers. Their influence on development initiatives is minor and does not extend beyond the narrow boundaries of the local community (village). Networking at a higher level does not exist.

9.5 Donor projects have created new forms of civil society organisations, mainly focused on the transfer of information and knowledge in the field of accession policy, agriculture, the environment, protection of human rights and similar. Cuts in donor funds caused many of these organisations to disappear.

[ix] Opinions OJ C 18, 19.1.2011 p. 11, OJ C 317, 23.12.2009, p. 15, OJ C 224, 30.8.2008, p. 130, OJ C 204, 9.8.2008, p. 120, OJ C 27, 3.2.2009, p. 140, OJ C 44, 16.2.2008, p. 121.

[x] Civil society facility.

9.6 The role of farmers' organisations: during the transition the old cooperative system from socialist times more or less fell apart. Later on, many donors' projects, aimed mainly at modernising agricultural production, favoured and even conditioned the association processes of farmers. At present, the real impact of various farmers' and producers' associations on agricultural and rural development policies is relatively low. Most of them however play a significant role in transfer of knowledge, various advisory services and promotion of agricultural products.

9.7 The LEADER approach to rural development shows how networking and promoting dialogue at local level can help improve participation of civil society in preparing and implementing local development strategies. Its bottom-up partnership approach, including various local stakeholders, has had encouraging results in many EU countries and is regarded as useful tool for boosting employment in rural areas.

10. Issues which need to be addressed to achieve a more diversified rural economy

10.1 Diversified and knowledge-based agriculture

10.1.1 Intensification and technological improvements in agriculture are opening up new opportunities for jobs in different accompanying activities such as transport, packaging, storage facilities, mechanical equipment sale and servicing, quality control, etc.

10.1.2 Diversification within the agricultural sector itself towards the added value of farm products (organic farming, quality food and meat production, products with Protected Geographical Indication status, home-processed traditional foods, etc.) can also bring new opportunities for future development and reducing hidden unemployment.

10.2 Investment in rural infrastructure

Quality infrastructure such as roads, water, electricity, information and telecommunication services can stimulate the development of both, farm and non-farm businesses. At the same time, quality infrastructure improves living standards in rural households by increasing mobility and access to social services, including health and education.

10.3 Building human capital

A more educated and adaptable rural labour force will have more chances of finding a job outside the agricultural sector. It is particularly important to ensure that vocational training programmes are in line with the needs of rural diversification programmes. Programmes for lifelong learning, prequalification and strengthening of managerial knowledge and skills are particularly important.

10.4 Creating a good environment for businesses

10.4.1 Encouraging entrepreneurship and faster creation of small and medium-sized enterprises (SMEs) in rural areas would also help to diversify economic activities and prevent young people leaving. Unattractive tax systems inefficient business registration processes, combined with poor infrastructure and lack of educated young people, are all factors that create obstacles for new investment and new businesses.

10.4.2 Access to credit facilities tailored to the needs of rural people remains a particular problem. It is necessary to encourage banks and other financial institutions to facilitate lending to agriculture. This is important also in relation to the co-financing rules for IPARD funds.

10.5 Building up efficient extension and advisory services

The extension and advisory services should shift from providing technical advice to farmers toward a more innovative, demand-driven knowledge and information transfer. Modern extension services should meet the needs of a wider rural population (consumers, entrepreneurs, farmers, the poor, etc.) and also help rural people to adopt new policy principles and rules.

10.6 Revival of cooperatives by improving the institutional framework and strengthening their human resources and the supporting programmes

Cooperatives are traditional rural society organisations which have the potential to play a key role in developing social capital in rural areas. They can create new job opportunities, generate extra income and allow people to actively participate in the development of their communities.

Development ofsocial enterprises can also bring opportunities for new jobs, particularly for women and young people, as the most vulnerable groups.

10.7 Encouragement of bottom-up approaches (such as the Leader programme)

Better connection and coordination of diverse rural actors, both in vertical terms (government bodies at different levels - national, regional and local) and in horizontal terms (entrepreneurs, professional associations, farmers, etc.) are needed. Local development policies should be implemented with more coordination between relevant institutions and with a bottom-up decision-making process.

10.8 Tourism and agri-tourism

10.8.1 Rural tourism can be a significant development challenge in rural areas. The Western Balkans region offers well-preserved natural, cultural and historical heritage, together with high-quality food and relative proximity to the EU tourist markets. Eco-tourism and new sustainable development trends,

promoting healthy environment and lifestyle, (including "green products" and organic food such as beef, medicinal plants, forest fruits, mushrooms, etc.), fit perfectly with region's cultural and natural heritage.

10.8.2 However, modern, active rural tourists demand high-quality services, comfortable accommodation and a variety of recreational and cultural activities. A number of obstacles are still hampering the development of rural tourism: poor infrastructure, underdeveloped brands of regional products (souvenirs), low accommodation capacity and quality, poor tourist attraction signposting, lack of management of tourist destinations, etc.

10.9 **Cross-boarder projects** could also be a good vehicle for future better use of local development potential (common road infrastructure, energy networks, tourist facilities, local brands, etc.).

10.10 Renewable energy - a potential source of employment and income

Most of the new renewable energy plants will be located in rural areas: e.g. energy crops, biogas plants, bio-fuel production, pellet/briquette production, wind energy plants, etc. These plants will not just be built but will also need to be maintained and serviced throughout their operating period, ensuring additional employment and income.

Brussels, 21 September 2011.

The President of the European Economic and Social Committee

Staffan Nilsson

INSTRUCTIONS FOR ASSOCIATES

The Review of International Affairs is a quarterly published in January, April, July and October every year.

The periodical publishes evaluated articles and conference and book reviews in the field of international relations, foreign policy, international public law and international economics.

In writing all contributions for *The Review of International Affairs* authors are kindly asked to respect the following rules.

Instructions for Writing Articles

1. Author contributions (articles) should not be longer than 10 single-spaced pages (single) in *Word* format (up to 28000 characters with spaces).
2. Articles should be written in *Times New Roman* font, font size 12, with page numbers on the right side of the bottom of the page.
3. The title of the article should be written in capital letters, *in Bold*, font size 14. The title is separated from the text with – *spacing before 18 pt*. Below the title is given the author's forename, middle name and surname (including his title, possibly), the name of the institutions he works for as well as its seat. These data are given in *Italic*.

   Example:

   Prof. Dragana Marko Mitrović, Ph.D., Faculty of Political Science, Belgrade

4. If the author has a wish to point to his readers that some of the views presented in the article express his own opinion and not the one of the institution he works for it is necessary to insert at the end of the title a special footnote with the symbol * for this remark.
5. The *Abstract* should contain not more than 100 words, presenting the most significant hypotheses the work is based upon. Below the *Abstract* the author puts up to 12 *Key Words*. Both the *Abstract* and *Key Words* are given below the title of the article and they should be separated from the rest of the text by applying the option *Paragraph-Indentation*.
6. The *Summary* written in the language of the paper (e.g. Serbian) should be placed after the text. The author should give a concise contents of the paper and the most significant hypthesis his work is based upon.
7. The basic text and footnotes should be justified by applying the option *justify*, while titles should be centred by applying the option *center*.
8. Subtitles are written in *Bold*, while sub-subtitles are in *Italic*; in both cases the font size is 12.

9. The first line in every paragraph should by no means be indented by applying tabulator – option *tab*.
10. Latin, Old Greek and other non-English words and terms in the text should be written in *Italic* (e.g. *status quo, a priori*, *de facto*, *acquis communautaire*, etc.). The text should contain full names and not initials.
11. Only the following form of quotation marks should be put in the text – “ and ”. In case the additional quotation marks are to be put within these ones it should be done in the following way: “Establishing a Serbian Orthodox Monastic Community in Kosovo, as an integral part of comprehensive ‘final status’ settlement”.
12. Footnotes should be written on the bottom of the page (option *Footnote*), and their marks are solely to be put at the end of the sentence.

The details on the quoted bibliographic unit in footnotes should be given in conformity with the following suggestions:

a) *Monographs*

The author's full forename and surname, the title of the monograph (*in Italic*), publisher, place of publishing, year of publishing, p. if one page of the quotation in English is cited, pp. if several pages are quoted. In case several pages are quoted En Dash is applied with no space before and after the numbers (for example 22–50).

When the proceedings in English are quoted and they were edited by more than one editor, then there should be put (eds) in brackets with no full stop after the names of the editors. If there is only one editor then (ed.) is put, including a full stop inside the brackets.

Examples:

John Gillingham, *European Integration 1950–2003*, Cambridge University Press, Cambridge, 2003, p. 221.

Duško Lopandić (ed.), *Regional initiatives in Southeast Europe: multilateral cooperation programs in the Balkans*, Institute of International Politics and Economics, Belgrade, 2001, pp. 24–32.

Theodor Winkler, Brana Marković, Predrag Simić & Ognjen Pribićević (eds), *European Integration and the Balkans*, Center for South Eastern European Studies, Belgrade & Geneva Centre for the Democratic Control of the Armed Forces, Geneve, 2002, pp. 234–7.

b) *Articles in Scientific Journals*

The author’s full forename and surname, the title of the paper (with quotation marks), the title of the journal (*in Italic*), the number of the volume, the number of the publication, pp. from–to. The numbers of pages are separated by En Dash (–), with no space. If some data are incomplete it should be clearly stated.

Examples:

Michael Levi, “The Organisation of Serious Crimes”, in: Mike Maguire, Rod Morgan & Robert Reiner (eds), *The Oxford Handbook of Criminology*, Oxford University Press, Oxford, 2003, pp. 878–84. (pp. 878–9 or p. 878).

Robert J. Bunker & John. R. Sullivan, “Cartel Evolution: Potentials and Consequences”, *Transnational Organized Crime*, vol. 4, no. 2, Summer 1998, pp. 55–76.

c) *Articles in Daily Newspapers and Journals*

There should be given the author's name (or his initials, if they are the only ones given), the title of the article – with quotation marks, the title of the newspapers or the journal (*in Italic*), date – in Arabic numerals, the number of the page/pages.

Example:

John Gapper, "Investor votes should count", *The Financial Times*, 17 April 2006, p. 9.

d) *Document quotation*

There should be given the title of the document (with quotation marks), the article, item or paragraph the author refers to, the title of the journal or official gazette containing the document (in *Italic*, the number of the volume, the number of the publication, the place of publishing and year of publishing.

Example:

"Resolution 1244 (1999)", Security Council of the United Nations, 10 June 1999.

e) *Quotation of sources from the Internet*

It should contain the author's name, the title of the contribution or article, a full Internet Website that enables to access the source of quotation by typing the mentioned site, the date of accession to the Web page, page number (if there is one and if presented in PDF format).

Example:

Maureen Lewis, *Who is Paying for Health Care in Eastern Europe and Central Asia?*, IBRD & World Bank, Washington D.C, 2000, Internet, http://lnweb18.worldbank.org/eca/eca.nsf/Attachments/Who+is+Paying+for+Health+Care+in+Eastern+Europe+and+Central+Asia/$File/Who+is+Paying+text.pdf, 14/09/2004, p. 3.

f) *Repeating of the previously quoted sources*

Ibid. or ibidem is applied only if quoting the previous source in the text, with the page number, and in case the new quotation belongs to the same source (e.g. ibid., p. 11)

Loc. cit. or op. cit. is applied with no page number and only for the previously mentioned source of quotation with the same page number as the previously quoted source.

13. The article may contain tables or some other supplements (such as maps, graphs, and the like). It is necessary to give their number and full title (e.g. *Table 1: Human Development Index among EU members* or *Figure 2: State-Building or Sovereignty Strategy*. If the supplement is taken over from the contribution of some other author or a document its source should necessarily be given.

Instructions for Writing Book and Conference Reviews

1. Conference and book reviews should not be longer than two and a half pages in *Word* format (line spacing *singe*), or they should actually contain no more than 7500 characters with spaces.
2. The bibliographic details should be given at the beginning of the review in accordance with the rules prescribed for monographs in footnotes, and with the total number of pages given at the end (e.g. p. 345).

3. Book and conference reviews must not contain footnotes, while all possible remarks should be put in brackets.
4. The author may also write subtitles of the book or conference review in capital letters – font size 14, although this is subject to changes on the part of the editorial staff.
5. Font size, font and justification of the text should be in conformity with the previously mentioned suggestions on writing of articles.
6. The name of the author of the review is given at the end; it should be in *Italic*, while the whole surname should be written in capital letters (e.g. *Žaklina NOVIČIĆ*).

* * * * *

In case you have some dilemmas do not hesitate to contact members of the Editorial Staff.

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CIP – Katalogizacija u publikaciji
Народна библиотека Србије, Београд

UDK 327

REVIEW of International Affairs /
Editor-in-Chief Mina Zirojević Fatić. Mina Zirojević Fatić. – Vol. 1,
no. 1 (1950) –. – Belgrade : The Institute
of International Politics and Economics,
1950–. – 24 cm

Tromesečno

ISSN 0486-6096 = Review of International
Affairs

COBISS.SR–ID 3092482

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Srbija i međunarodne organizacije, zbornik radova, priređivači Dragan Đukanović i Ivona Lađevac, broširano, 2011, 572 str.

Duško Dimitrijević and Ivona Lađevac (eds.), Procedings, *Japan and Serbia: Regional Cooperation and Border Issues: a Comparative Analysis,* 2011. 192 str.

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Development Potentials of Foreign Direct Investment: International Experiences, Procedings, Miroslav Antevski editor, 2011, 404 str.

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Unapređenje turizma kao faktor razvoja privrede Republike Srbije, zbornik radova, Pero Petrović i Vidoje Golubović priređivači, 2010, 500 str.

Serbia in Contemporary Geostrategic Surroundings, Proceedings from International Conference, editor Nevenka Jeftić, 2010, pp. 468.

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