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CONTENTS

Editorial Note

The third issue of *Western Balkans Security Observer* aims to contribute to the ongoing discussion on a new status for Kosovo and the possible consequences on the security of the two conflicting sides, the broader Balkan region and the world. The first part of this issue addresses this question from the perspective of international relations. It starts with a report by a British analyst that has as its intended audience the decision-makers in world capitals and considers the possible scenarios for the reactions of Serbia, the two divided communities in Kosovo and the possibility of conflict spill-over into the region. It also includes a list of recommendations for the international donor community after the final status has been adopted. This report is followed by a comparative analysis of the formulation of foreign policy positions, towards the possible independence of Kosovo, by other Balkan states and the factors that contribute to it. This text takes into consideration whether their foreign policy views can be attributed to such factors as their ethnic ties and economic relations with Serbia and Kosovo Albanians or their own vulnerability to secessionism. The third text in this section studies how significant the resolution of Kosovo's final status will be for the system of international relations through an examination of the grounds for comparison between Kosovo, on the one side, and South-Ossetia and Abkhazia, self-proclaimed autonomous regions of Georgia, on the other.

In the *Security of Kosovo* column, researchers from the Kosovar Institute for Policy Research and Development (KIPRED) present the results of 'Internal Security Sector Review' (ISSR), a report that is sponsored by the international community and local political leaders. This text provides valuable insight into the Kosovars' perspective on the status and design of a possible future system of security for the province. From another perspective, a researcher of the Belgrade School of Security Studies scrutinises the justification of the proposals, as put forward by a few international NGOs, for the creation of a Kosovan Army.

In the *Threats, Risks and Challenges* column, two authors use the results from public opinion polls to highlight the possible political, economic and security 'costs' of keeping Kosovo within Serbia, as well as to point out the challenges to establishing stable and democratic governance in the event that Kosovo becomes independent. The first text in the *Atlantic Shores* column contributes to the debate on the nature of EU power through a case-study of new ESDP mission that is to take over the Kosovo administration from UN as soon as the final status is announced. The second text in this column presents the debate on the desirable limits to the special measures provided for the war on terrorism. It provides an analysis of the Military Commission Act that has polarised US public opinion. The last piece in this issue provides policy analysis of the Government's proposal for the Law on the Anti-corruption Agency which has polarised domestic organisations and experts dealing with this field. This piece is a fitting introduction for the new regular column that will report on the practical policy recommendations in the security sector. And finally, the *Western Balkan Security Observer* would like to thank our first editor, Jasmina Glišić, as she has played a key role in the conception and creation our magazine – we wish her lots of success in her new job.

Sonja Stojanović

Moving Kosovo Forward: Reality V Fiction

Amadeo Watkins

The key request from the international community is for Serbia and the region to move forward, to start thinking about the future and to be realistic. However, while this requirement has much logic, there is little indication that the same is done in Western capitals.

The postponement of the Kosovo status decision till early 2007 was a welcome move, as it could finally signal a positive shift in thinking by the West and the realisation of Serbia's importance within the region. The whole debate over the date itself shows how divided the international community is over this issue, with various viewpoints stretching from the US insistence on 2006, to Ahtisaari's constantly changing viewpoints and, the most worrying, the UN's – as the main de jure actor - long overdue stance on the matter. Furthermore, Russia, as a key stake holder within the Contact Group, is not showing much sign of shifting its position and there is little reason to expect it will do so. The conciliatory gesture also comes as a last minute 'carrot' to the Serbian 'democratic' political scene. However, at the same time it indicates that the details of that decision will not be very favourable to Belgrade.

The question is who is serious and who is just playing games. The answer is in every respect mid-ground. All three sides in this duel need to take matters seriously and a compromise should be sought from all. Pristina has to realise Serbia does have interests in Kosovo; Belgrade has to move away from the desire to keep Kosovo but without its majority population; while the international community has to decide if it wants a lasting settlement based on international law and order (which has not yet appeared) or just a short-term political fix which will cause problems in the mid to long term.

The sad reality is that there have been no negotiations so far, just an attempt at negotiating where two sides were brought together under false pretences. While Belgrade has been too conservative and naive in terms of realpolitik, it has offered more on the table at the strategic level. Pristina has played on the tactical card by offering small concession to the local Serbs, while remaining adamant about its strategic objective: independence and nothing short of independence. The international community has been the main bluffer in the whole process with declaratory statements indicating a facilitatory approach while not offering much of substance.

Addressing the future is most relevant in this context. Three questions are important in this respect: how will any decision affect the people on the ground, how will it affect Serbia as the most strategic actor and what will regional implications be?

At the local level, Kosovo has the potential to become at worst a failed state and at best a copy and paste of Bosnia & Herzegovina. Peace, the alleged primary objective, will have been achieved, probably temporarily, at the cost of other stated objectives, the most important being a multi-ethnic Kosovo. If this happens, then NATO and the West did go to war for the wrong reasons and they will appear to have failed in their ultimate aim. The issue of precedent and international order are other debatable questions, whose only justification lies

in the political domain. In other words, the likelihood of Serbs south of the Ibar river leaving Kosovo is real, while the fate of Mitrovica will hang in the balance and partition on the ground looms over UNMIK's head. Such developments will preclude any active participation of Kosovo Serbs in Kosovo's new institutions in the short to medium term.

The question of **Serbs in Kosovo** is a difficult question to address. The final outcome will depend on the details of the status deal, on Belgrade's reaction, on the perceptions this will have in Kosovo itself and the actions of the Kosovo Albanian leadership, and lastly on other factors such as the media and the international presence in the area. Preliminary efforts to address this issue are underway on all fronts, but their success will only be determined if or when a crisis erupts.

Pristina for its part will be forced to be content with what the West has on offer. After all it is aware that this is the best deal it is likely to get, considering all the failures in implementing standards, not to mention the tragic events of March 2004. Yes, the delay might test local cohesion, but the fact that the local political leadership has promised something which it does not have within its power is not enough justification to push this issue beyond reason. Their request for an immediate status solution has no logic. After all, if a future Kosovo under any status wants to become part of the international community, political leadership at least should have an understanding of the way international diplomacy works.

The impact on **Serbia** is most worrisome as it is unlikely to be positive. Many in the West are relieved now that the status issue has been postponed and new elections can run with the dark clouds from the past pushed aside for the time being. The general assumption is that the 'democratic block' will form a new government some time February 2007 in one form

or another - meaning that coalition issues will dominate the immediate Serbian political scene. No strategic shift on the domestic political scene should be expected, apart from the DS confirming its dominance of the 'democratic' block. The end result of this will again be a divergence between a de jure constitutional requirement not to deal with Kosovo if fully independent and a de facto EU requirement to have a constructive approach. The nature of this divergence, which is now codified within the constitution, will depend on the exact power-sharing agreements within the new coalition government.

As stated above a negative Kosovo status outcome is almost certain for Belgrade. However, the key will be how Belgrade perceives or defines the negative outcome. A mildly negative status solution will allow the 'democratic' block to claim some victory against all odds. However, a solution that does not allow any such interpretation will play into the hands of the opposing radical-nationalist elements, led by the Serbian Radical Party (SRS). This immediately calls into question the survivability of any newly elected 'democratic' government, which could be faced with either a vote of no confidence or mass demonstrations that could lead to new elections.

Hence, for the West the immediate post-election problem is likely to be damage limitation in Belgrade, South Serbia and among Kosovo Serbs.

Discussions between Kostunica and SRS Deputy Head Nikolic have had some result and should not be considered a bad policy option in some limited respects. If the Kosovo outcome is negative, but with scope for de facto partition – which is likely, then a new deal with the radical-nationalist elements might postpone any immediate crisis. This scenario might be good for Belgrade but it would only add uncertainty for the Kosovo Serbs and frustration in Pristina and the West – negatively impacting on overall development. There will be little scope for alternatives in the short to medium term, especially if the current elections bring little new on the political scene. The role of the West in preventing this polarisation could be limited. While a violent attempt at partition can not be excluded, especially if the SRS do well in the forthcoming elections, it is unlikely – as the end objective can be achieved in more subtle ways with little political confrontation with the West.

The region? Well, apart from the possibility of some incidents, overall it will remain stable for the short to medium term blessed by the international presence. However, stable does not mean prosperous in any sense of the word. Hopefully, what the OSCE likes to term the economic aspects of security will become the main priority and concern for both domestic and international actors – as this is the only way forward. In any case the short to medium term scenario will not be far from that of weak states characterised by low economic activity, low income families, corruption and personality driven politics – where organised crime is set to become a concern for all, including Western capitals.

Moving to the medium to long term, there is no saying that Pristina will not seek to materialise its long lasting dream of Greater Albania. After all, if two sovereign states decide on this move how can it be stopped? The borders of Macedonia and Montenegro then become questionable in their turn. This matter always rests in the eyes of the beholder, not Brussels or Washington. It rests on the often forgotten truism that the Kosovo Albanian battle was ignited long before Milosevic and his 'bloody' regime.

The international actors have to set their own agenda right and move from the page dominated by political and lobbies rhetoric to one characterised by logic and legality, with the preservation of international order as the key common denominator. Furthermore, they should not only demand realpolitik from Belgrade, but be realistic in their own expectations and commitments to the region – especially in terms of integration and economic 'lifelines' in the form of aid, subsidies and investments. While the UN should remain the final status and standards 'auditing body', the EU should become the primary actor and as such it should get engaged more in Serbia and Kosovo - including micro-management where necessary. So far this has not been the case, and that gap has significantly contributed to the current situation in this part of the region. After all, the interests of everyone are the same: long-term peace, stability and development for all. Only such concerted and well targeted efforts will carry the region as a whole forward.

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Regularities in the Balkans – Do They Exist?

Jelena Petrović

"The greatest deterrent to territorial revisionism has been the fear of opening a Pandora's box. If any one boundary is seriously questioned, why not all the boundaries…"[1], William Zartman wrote way back in 1966, analyzing international relations on the African continent. His question is once again becoming topical with the onset of the final stage of deciding on the status of Kosovo and Metohija (KiM). The question is how strongly the fear of the "domino" effect, i.e. the possibility of turning a possible independence of Kosovo into a precedent that would encourage secessionist movements, figures in foreign policy decisions of the countries in this region? Does it have a dominant role, or are there perhaps more important factors influencing the articulation of the Balkan states' official positions towards the future status of the Serbian province?

The purpose of this text is to analyse the environment with respect to factors that (do not) influence the formulation of foreign policy positions towards the future status of KiM. The results may indicate the possible lines of influence Serbia could have on the process of formulation of its neighbours' positions.

The Balkan states covered by this analysis are Greece, Croatia, Romania, Turkey, Bulgaria, Bosnia-Herzegovina, Montenegro, Macedonia and Albania.[2] We shall try to examine their attitudes towards the future status of KiM, as illustrated by the statements and releases of their heads of states and governments issued in the past two years. Although these releases are not a reliable indicator of their foreign policy views, they may still serve to suggest their attitudes towards this specific issue. Some changes in the foreign policies of these countries are possible, especially after the publication of Ahtisaari's plan for the final status of KiM, when all of them will be expected to state their views.

Theoretical framework

The article will rely on the theoretical framework presented in the works of Steven Saideman and Silviu Brucan[3] addressing the foreign policy determinants.[4] We shall also attempt to demonstrate whether the foreign policy views of the Balkan states towards the future status of Kosovo can be attributed to such factors as their ethnic ties with Serbia or Kosovo Albanians, economic relations with Serbia or their own vulnerability to secessionism.

The first criterion to be addressed by the analysis is the existence of ethnic ties (racial, ethnic in a narrow sense, religious and cultural-linguistic) between the potential voters of one state and the population of another. The assumption is that the voters' preferences are influenced by their ethnic

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[1] Zartman, William. 1966. *International Relations in the New Africa.* Englewoof Cliffs: NJ Prentice Hall

[2] Glenny, Misha. 2001. *The Balkans – Nationalism, War and the Great Powers 1804-1999.* Penguin Books

[3] Brucan, Silviu. 1971. *The Dissolution of Power: Sociology of International Relations and Politics.* Knopf.

[4] Saideman, Stephen M. 1997. Explaining the International Relations of Secessionist Conflicts: Vulnerability Versus Ethnic Ties. *International Organization* 51-4

identities and ethnic ties with the populations of other states, or else by the existing antagonisms. Bearing in mind that politicians seeking to win or retain power must be mindful of the wishes of their voters, we could say that voters' preferences influence the formation of foreign policy positions on a specific issue. It is presumed that in a secessionist conflict a state will support the party ethnically linked with its majority population.[5]

The second criterion we will use is the level of development of economic relations between two states (Brucan).

The stronger the economic relations between two states are (especially if they are each other's major trade or investment partners and engage in a thriving trade) the larger the possibility of their mutual support in international relations will be. The findings of this analysis would be more accurate if they took into account the economic relations each of the Balkan countries has with KiM, bearing in mind that economic relations of all states have to do with more than one partner. However, reliable and precise data on these relations do not exist.

The third criterion, vulnerability to secessionism, according to Steven Saideman exist if a particular state had a movement which over the past ten years showed secessionist ambitions, or if the movement's members organized a group seeking independence of part of its territory. This argument assumes that states susceptible to secessionism will support those whose

territorial integrity has been endangered (*host state*), in opposition to the secessionist movement.[6]

Balkan states positions towards the future Kosovo status

The approaching deadline for the publication of the UN special representative, Martti Ahtisaari's plan for the future status of Kosovo has triggered the debate on the desirable solution in Europe and in the Balkans. There are two types of indicators that may illustrate the assumption concerning the Balkan states' attitudes towards the future status of KiM. The first relates to statements of high officials of the Balkan states, and the second to the fact that some of these countries recognize UNMIK passports and registration tables and have signed international agreements with the Provisional government in KiM. On that basis the Balkan states may conditionally be divided into two groups. The first comprises the states that tend to support the official interests of the Serbian government: Bulgaria, Romania, Greece, Turkey and Bosnia and Herzegovina (BiH).

The main argument offered by the Bulgarian prime minister Georgi Parvanov[7] and BiH foreign minister[8] against KiM independence is the possible destabilization of the region. Romanian foreign minister Razvan Ungureanu[9] as well as the foreign minister of Greece Dora Bakoyannis[10] also

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[5] *Ibid*

[6] *Ibid*

[7] Parvanov's statement to the Centre for International and Strategic Studies, Washington, October 2005, Danas, 21. 10. 2005, http://www.danas.co.yu/20051021/dogadjajdana1.html.

[8] Statement by Mladen Ivanić, 13. 11. 2006, Bilten Ministarstva spoljnih poslova Srbije, 13. 11. 2006, http://www.mfa.gov.yu/Srpski/Bilteni/Srpski/b131106_s.html#N12

[9] Ungueranu's statement, 2. 12. 2006.godine, RTS, Tanjug, 2. 12. 2006. http://www.rts.co.yu/jedna_vest.asp?belong=&IDNews=169279

[10] Dora Bakojanis' statement, 14. 11. 2006, IRNA, http://www.irna.ir/index2.php?option= com_news&task=popup&code=0611148289151457&pindex=&pfrom=0&no_html=1&lang=sr

speak in favour of retaining Kosovo in Serbia and emphasize the importance of observing the inviolability of state borders declared by the Helsinki Final Act.

The position of official Turkey towards the future Kosovo status is posted on the web site of its foreign ministry. Turkish position on the "Kosovo issue" is even visually placed in the context of its relations with Serbia. It stresses Turkey's support to the full implementation of the UN SC Resolution 1244 (defining Kosovo as a component part of Serbia) and expresses Turkey's concern for the rights of the Turkish minority in KiM. AXIS Information and Analysis (AIA) analyst Can Karpat believes that Turkey will support Serbia's official position that Kosovo must remain a part of its territory. Notwithstanding Turkey's agreements on cooperation in the field of culture and environmental protection signed with the provisional Kosovo government in 2001, Karpat believes that Turkey's support to Resolution 1244 and persistent non-recognition of UNMIK registration tables substantiates the assumption that it will back Serbia's official interests.[11]

The second group includes those states which are inclined to support the Provisional KiM government – Albania and Macedonia. It could also comprise the countries that apparently would not oppose the independence of KiM, such as Croatia and Montenegro.

The Albanian National Assembly recognized the independent "Kosovo Republic" way back in 1991.[12] This state still displays an obvious tendency to support the demands of Kosovo Albanians. This may be illustrated by a statement in support of KiM independence, made by the Albanian president Alfred Moisiu at a press conference occasioned by the closing of the summit of heads of states and governments of South East European states in Karađorđevo on 16 October last year.[13]

Although the Macedonian authorities have not made a clear-cut statement concerning the future status of Kosovo, the position of this republic may be perceived from the statements made last October by Macedonian prime minister Nikola Grujevski and his deputy Imer Selmani. Namely, the prime minister said that "Macedonia will be prepared to accept independence if that turns out to be the final decision", while his deputy Imer Selmani visiting the interim Kosovo government expressed Macedonia's support to the political will of the majority nation in KiM.[14]

The Croatian president Stjepan Mesić in an interview to Radio Free Europe said that "if the final solution is the independence of Kosovo, the European standard of living must be guaranteed in Kosovo", without prejudicing Croatia's preference with respect to the future status.[15] However, knowing that Croatia recognizes UNMIK passports and registration tables, and that Agim Ceku, prime minister of the Provisional Kosovo gov-

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[11] Karpat, Can. 2006. *Turkey's KiM Policy: Inexistent, Hesitant or Prudent?,* AIA Balkanian section.

[12] The Library of the American Congress.

http://lcweb2.loc.gov/cgi-bin/query/r?frd/cstdy:Žfield(DOCID+al0012)

[13] Tanjug, B92, 16. 10. 2006. http://www.b92.net/info/vesti/index.php?yyyy=2006&mm=10&dd=16&nav_category=167

[14] Bilten Ministarstva spoljnih poslova Srbije, 16. 10. 2006. , http://www.mfa.gov.yu/Srpski/Bilteni/Srpski/b171006_s.html#N10

[15] Radio "Slobodna Evropa", 14. 11. 2006. , http://www.slobodnaevropa.org/article/2006/11/14/be42b2b4-f15b-4544-876d-02182e59f4b5.html

ernment visited Croatia in early December and was received as a state official, it would be safe to assume that Croatia would not oppose Martti Ahtisaari's solution for the future KiM status, if it proposed the independence of the Serbian province.

Montenegrin attitude towards this issue is similar, judging by the events that marked the beginning of November 2006, when Agim Ceku visited Podgorica and met the Montenegrin prime minister Milo Djukanović.[16] Speaking about this visit Djukanović pointed out that any solution for the Kosovo status Belgrade and Priština may reach with the assistance of the international community would be acceptable to Montenegro. The visit elicited protests in Serbia and Montenegro, but the former prime minister referred to them as "xenophobic and autistic". We believe that these events confirm the assumption that although Montenegro may not directly support the idea of Kosovo's independence, neither will it support Serbian efforts to retain the province within its borders.

Balkan ethnic network

We shall first analyse the existence of ethnic ties and/or antagonisms between the majority population of a state in this region and Serbia, or Albanian population in Kosovo. For that purpose we shall use Saideman's understanding of the existing ethnic ties and animosities in the regions, offered in the analysis of the Balkan states' attitudes towards the disintegration of the SFRY (Table 1).

Based on the assumption that in a secessionist conflict states tend to support the side they have ethnic ties with, it would seem justified to assume that Albania, Bulgaria and Turkey will support the wishes of Kosovo Albanians; that Greece, Romania, Macedonia and Montenegro will uphold the official interests of Serbia, while the ambivalence of Croatia and BiH will make them neutral.

However, even two states which, in theory, should oppose the policy of Serbian authorities (Turkey and Bulgaria) unambiguously support the

Table 1

State	Ethnic tie	Animosity
Albania	Albanians in Kosovo and Metohija	None
Bulgaria	None	Serbia
Croatia	None	None
Greece	Serbia	None
Romania	Serbia	None
Turkey	Muslims in Kosovo	Serbia
Macedonia	Serbia	Albanians in Kosovo
Bosnia-Herzegovina	Division (Republika Srpska has ethnic ties with Serbia, BiH Federation feels animosity towards Serbia)	
Montenegro	Serbia	None

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[16] BBC Serbian, 3. 11. 2006. , http://www.bbc.co.uk/serbian/news/2006/11/printable/061103_ceku_djukanovic.shtml

*Bearing in mind that at the time when Saideman's analysis was written Montenegro was not an independent state while his research included Macedonia and BiH, this author has supplemented the table on the basis of data on the origin of the majority nation, dominant religion , time distance from the last registered armed conflict and ethnicity of conflicting parties.

request to keep Kosovo in Serbia's borders, while Macedonia, although theoretically expected to join the "Serbian camp", supports the demands of Kosovo Albanians. Departure from the theoretical frameworks is also registered in the case of Montenegro. Although it does not offer a clear and positive support to provisional Kosovo authorities, it is still too far from supporting Serbia. Departures noted in these four states are drastic and indicate that ethnic ties cannot explain the formulation of Balkan countries' foreign policy positions with respect to the future status of Kosovo.

Economic relations between Serbia and its neighbours

Economic relations between Serbia and its neighbours are the second criterion to be analysed here. According to the Serbian Chamber of Commerce data for 2005[17] (Table 2), Serbia is an exceptionally important trade partner (ranked among the first five) to BiH, Macedonia and Montenegro, while Bulgaria and Turkey have a very high surplus in their trade with Serbia. Serbia has developed economic relations with Romania, Croatia and Greece, which show an upward trend,

while its economic links with Albania are the least developed.

Assuming that economic relations between states influence their foreign policy, it would be logical for the Serbian authorities to count on the support of Macedonia, BiH and Montenegro. The only state whose opposition could be expected is Albania.

However, the reality is different. The only two states whose foreign policy positions match the expectations are Bosnia and Herzegovina and Albania, which tells us that the factor of economic relations with Serbia cannot completely explain the Balkan states' positions towards the "Kosovo issue". However, these results are not entirely accurate. We lack the data on economic relations between Balkan states in general, and specifically with KiM, and therefore cannot conclude whether these states stand to lose or benefit more from their respective choices.

Are Balkan states vulnerable to secessionism?

Secessionist movements still exist is some of the Balkan states and mostly represent the movements of ethnic minorities. The vulnerability of Balkan

Table 2

Serbia's trade with Balkan countries in 2005, in US$ million
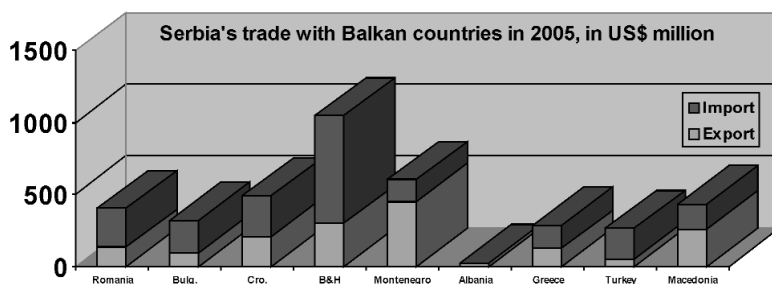
[17] Privredna komora Srbije (Serbian Chamber of Commerce), http://portal.komora.net/pksweb/servlet/pksweb.XMLProcesor?i_sys=pks&i_xml=a10007&i_xsl=s1000&i_pagenumber=1&i_numberrecords=10000&i_param=idđ19đid2đđkategorijađđ

states to secessionism may be measured on the basis of several factors: time distance from the conflict (if there were any), intensity of conflicts (armed conflicts, terrorist attacks, their absence) and prominence of objectives declared by separatist and/or territorial autonomist movements. Although territorial autonomist movements to not demand independence of part of a state territory, their requests to transfer a large number of authorities to the local government weaken the central power of the state.

The states which over the past years registered armed conflicts and/or continuing terrorist activity of groups with remarkably separatist objectives will be classified as highly vulnerable to secessionism. The group of countries defined on the basis of this criterion would include Turkey, Macedonia and BiH.

Turkey has been having problems with the Kurdish secessionist movement for almost thirty years now. The Kurdistan Workers' Party (PPK) emerged in the 1980s aiming to create an independent Kurdish state on the south east of Turkey. This state was also expected to annex parts of neighbouring countries' territories inhabited by Kurds. The conflict between the Turkish authorities and Kurds escalated in the 1990s, to be abruptly discontinued after the arrest of the party's leader Abdullah Ocalan in the 1999, and the party was transformed into a political faction.[18] However, the Turkish authorities do not recognize the PPK and treat it as a terrorist group, and the Kurds are still denied the status of a minority. This was the cause to reopen the conflict, briefly suspended in 2004, when an increase in terrorist activities was registered. In September 2006 the PPK once again offered a sus-

pension of hostilities to the Turkish authorities but the country's prime minister Recep Erdogan refused to negotiate with the Kurdish leaders, and called them terrorists. Armed conflicts between Turkish authorities and the Kurdish movement rank Turkey among the states vulnerable to secessionism.

From the proclamation of its independence in 1991, Macedonia has registered several conflicts between state authorities and its Albanian minority (accounting for 22.9% of the total population). Armed conflicts between the Macedonian authorities and the National liberation Army, an armed group of Macedonian Albanians, in 2001 was ended with the conclusion of the Ohrid Agreement. Under this agreement Macedonia agreed to give up its constitutional definition as a state of Macedonians and include the Albanian nationality into the text of the constitution, i.e. definition of the state. The Albanian side, on its part, agreed to continue its fight for minority rights through legal channels.

The signing of the Dayton Peace Accords (1995), following a four-year armed conflict marked the establishment of two semi-autonomous entities in Bosnia and Herzegovina: Republika Srpska and the BiH Federation. The nature of the conflict shows that BiH ranks among countries highly vulnerable to secessionism, especially in view of the fact that secessionist danger persists despite the international community's efforts to preserve their Dayton construct. This situation is illustrated by a statement of Republika Srpska Prime Minister Milorad Dodik wherein he advocates a referendum on independence of this entity "if its authorities kept diminishing".[19]

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[18] Council on Foreign Relations, http://www.cfr.org/

[19] Dodik's statement, 13. 6. 2006, http://www.danas.co.yu/20060613/hronika2.html.

The group of countries that are not highly vulnerable to secessionism comprises those which over the past ten years registered terrorist activities and have separatist and/or autonomist movements of ethnic groups accounting for a substantial minority in the ethnic structure of state (Albania and Montenegro).

More than a decade ago (1994) Albania for the first time registered the existence of an armed group of Greek separatists called North Epirus Liberation Front[20]. The group has carried out several terrorist attacks seeking independence for North Epirus, largely populated by the Greek minority (precise data on the population are not available). That is why Albania is classified as a state which may be vulnerable to secessionism. In addition, Omonia political party[21] advocating the annexation of North Epirus to Greece has been active in this same area ever since 1992.

Montenegro became an independent state following the May 2006 referendum. Its population (according to the 2003 census) comprises 43.26% of Montenegrins, 31.99% Serbs, 7.77% Bosniaks, 5.03% Albanians and 5.53% other minorities. Already in 2004 the existence of a terrorist National Army of Montenegro[22] was uncovered. It seeks independence for the territory of Montenegro with the majority Albanian population. Separatist tensions still exist in the area of Ulcinj and in the north of Montenegro.

The group of countries with lowest vulnerability to secessionism includes the states which, in the past decade, did not have conflicts on their respective territories, or else were faced only with territorial autonomist demands of politically organized groups (Romania, Bulgaria, Croatia and Greece).

According to the 2002 census[23] the population of Romania included approximately 1.4 million Hungarians (6.6% of the country's total population) predominantly located in Transylvania where they account for about 20% of the population. Transylvania was given to Romania after World War I and comprises several counties with the majority Hungarian population (Harghita 84.61% and Kovszna 73.81%). The Hungarian minority in Romania is politically represented by the Democratic Union of Hungarians in Romania, an organization that strongly advocates autonomy (for the minorities living in "blocks" on a specific territory). The political influence of this organization is quite substantial, and it is represented in both the Parliament and the Government. The Romanian vice premier in charge of education, culture and European integrations Marko Bela is the Union's president. Due to territorial decentralist aspirations on its territory and the absence of conflicts Romania is classified among the states whose vulnerability to secessionism is low.

The process of assimilation of the Turkish minority, accounting for 9% of the Bulgarian population, lasted until 1989. The restoration of rights to this minority that started towards the end of 1989 triggered the rising of Bulgarian neo-nationalist movements. These movements' (e.g. the National Union Attack) denial of the existence of any ethnic minorities in Bulgaria additionally intensifies the social and

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[20] http://members.cox.net/epirus//report_on_epirus.htm

[21] http://www.crwflags.com/fotw/flags/al%7Dgk.html#omo

[22] "Danas", 12. 1. 2004, http://www.danas.co.yu/20040112/dezurna1.html.

[23] Hungarian Government Office for Hungarian Minorities Abroad. 2006. *The Situation of Hungarians in Romania in 2006.* Report

religious dissent in the country. According to Rossen Vassilev[24] the events in KiM encouraged the Turkish minority to take a more aggressive stand in opposing the majority population. This author stresses that despite the legal recognition and influence of the Movement for Rights and Freedoms - the largest political party championing the minority rights, with the majority Turkish membership – the Turkish minority in Bulgaria still nourishes its irredentist aspirations. However, since no armed conflicts or terrorists attacks have been registered over the past decade, Bulgaria is ranked as a country with low vulnerability to secessionism.

The Serbian ethnic minority in Croatia accounts for 4. 94 % of the total population. The last decade of the past century was marked by the Croatian proclamation of independence and conflicts on the territory of this state. One of the most important causes of these conflicts was the aspiration of the Serbian minority (accounting to 12.2 per cent of Croatia's population in 1991) to join the territories wherein it constituted the majority population to its kin state. Still, from that time onwards there have been no conflicts or terrorists attacks on that soil. The return of Serbian refugees and exiles to Croatia is under way, aggravated by the profound resistance of the majority Croatian population. The underdeveloped interethnic tolerance and inadequate application of national minority rights leave room for outbreak of new conflicts in Croatia.[25]

Although Greece has no problems with secessionist movements ever since the signing of the Treaties of Lausanne (1923) its tense relations with Turkey make it take a more cau-tious approach to the areas where the Muslim population is in the majority. A substantial Muslim minority (120 thousand) lives in Greece, more precisely in Thrace and on the Dodecanese, island located on the far east of Greece, near the south-western coast of Turkey. In addition to that, Greece and Turkey are both, as countries of origin, involved in the Cypriot conflict and concerned with the attainment of interests of the parties that enjoy their support. The existing tensions aside, no armed conflicts or terrorist attacks of groups with secessionist and/or territorial autonomist objectives were registered in Greece in the past decade, which ranks this country's vulnerability to secessionism as low.

According to Saideman's arguments the states highly vulnerable and susceptible to secessionism should support the official policy of Serbia, while those with low vulnerability to secessionism could be expected to be neutral.

Judging by the time distance of conflicts (if any), organization of groups and the nature of their demands, we think that Turkey, Macedonia and Bosnia and Herzegovina could be classified as highly vulnerable, while Romania, Bulgaria, Albania and Montenegro would fit into the medium-vulnerable group. Theoretically, these states should support the official policy of Serbia, while Croatia and Greece as low vulnerability countries would be expected to take a neutral stand.

Departures from the initial assumption are also revealed in the analysis of influence of vulnerability to secessionism on the formation of foreign policy views. Namely, drastic departures are noted with Macedonia

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[24] Vassilev, Rossen. 2002. Bulgaria's ethnic problems. *East European Quarterly*

[25] Daskalović, Zoran. 2004. Withering Away of Ethnic Minorities in Croatia. *Dossier on the Rights and Protection of Ethnic Minorities in Bosnia and Herzegovina, Macedonia, Serbia, Montenegro and Croatia*

and Albania which are the most vulnerable to secessionism and somewhat less with Greece, Bulgaria, Romania and Montenegro. The existence of drastic departures indicates that vulnerability to secessionism cannot be a sufficiently valid criterion to prognosticate the support of secessionist tendencies. The discrepancy between historical facts and statements of some Balkan states' officials (e.g. Romania) suggests that the response could be sought in the analysis of influence of vulnerability to secessionism to the formulation of foreign policy positions. Historical facts can help us create a more objective picture of the situation in each of these states. However, if we analyse vulnerability to secessionism we will see to what extent the Balkan states *feel* endangered by the secessionist and/or autonomist movements existing on their respective territories.

What prevails?

The analysis of all three factors lead to the conclusion that, theoretically speaking, the Serbian government could expect support from Macedonia, BiH, Montenegro and Romania. Albania, Croatia and Bulgaria could oppose its efforts, while neutrality may be forthcoming from Turkey and Greece.

But, the combination of all three factors suffices only to explain BiH and Albania's attitudes towards the future status of KiM.

These findings indicate that regularities in formulating foreign policy positions towards the future of KiM in the Balkans do not exist with respect to ethnic ties, economic relations and vulnerability to secessionism. The answer should, therefore, be sought in certain other factors. One of them could be the states' perception of secessionist threats on their respective territories. In addition, an important role in this context may be the one of the policy of adjustment to the positions and views of the key actors of Euro-Atlantic integrations (U.S.A., Germany, UK, France, Italy). Foreign policy adjustments of some Balkan states with the main proponents of integration processes may account for their wish to score political points or secure support for their integration into Euro-Atlantic structures.

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Table 3.

	Ethnic ties and animosities	Priority of economic relations with Serbia	Vulnerability to secessionism	Support to Serbia or Kosovo Albanians
Romania	Serbia	Medium	Medium	Serbia
Bulgaria	Animosity towards Serbia	Medium	Medium	Serbia
Turkey	Kosovo Albanians	Medium	High	Serbia
Greece	Serbia	Medium	Low	Serbia
Bosnia and Herzegovina	Ambivalent (divided ethnic ties and animosities)	High	High	Serbia
Macedonia	Serbia	High	High	Kosovo Albanians
Albania	Kosovo Albanians	Low	Medium	Kosovo Albanians
Montenegro	Serbia	High	Medium	Kosovo Albanians [*]
Croatia	Ambivalent	Medium	Low	Kosovo Albanians[*]

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[*] Conditionally.

Future Kosovo Status - Precedent or Universal Solution

Jelena Radoman

There is no doubt that the final status decision for Kosovo and Metohija will substantially influence the security situation in the whole of South East Europe. One of the arguments invoked by the Serbian team in the status negotiations is that a possible independence of Kosovo would have far-reaching (negative) consequences. The Serbian prime minister warns that the status decision that is not acceptable to all parties threatens to "create a precedent for changing the borders, which the ethnic minorities with territorial pretensions could invoke in future".[1] The Russian president Vladimir Putin opposing the imposition of a solution to either of the conflicting parties simultaneously stresses that Russia insists on a universal answer applicable to all similar situations. "If someone thinks that Kosovo can be granted full independence as a state, then why should the Abkhaz or the South-Ossetian peoples not also have the right to statehood?"[2] This question is often used by Russian officials to justify their support to the independence of these regions. At the same time, NATO, the EU and the U.S.A. deny any similarities between the position of Kosovo, or rather its future, and the position and future of these regions. Our intention is to look into the grounds for the claim that a possible independence of Kosovo would not influence the status issue of South Ossetia and Abkhazia. We shall first examine the similarities between the *de jure* and *de facto* status of Kosovo and these areas and then demonstrate that aspirations towards independence are in all three cases substantiated by the same arguments. Still, in the case of South Ossetia and Abkhazia the UN Security Council, European Union and NATO firmly support the preservation of territorial integrity and sovereignty of Georgia and propose to solve the conflicts on its territory by means of power decentralization, granting a wide autonomy to disputable regions. If this position remains unchanged even after the possible declaration of Kosovo's independence, we believe that the reasons for that should not be sought in the application of provisions of international law, but rather in the ethical argument invoked by these actors in international relations.

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[1] Ahtisaari, Koštunica and Sejdiju address the UN Security Council on the issue of Kosovo status, Voice of America, 13.07.2006.

Available at: http://www.voanews.com/Serbian/archive/2006-07/2006-07-13-voa3.cfm [accessed November 29, 2006].

[2] Vladimir Putin, transcript pres conference for Russian and foreign media, the Kremlin, Moscow, 31.01.2006. Available at: http://www.kremlin.ru/eng/speeches/2006/01/31/0953_type82915type82917_100901.shtml [accessed November 29,2006].

Reduced autonomy cause of conflict

Kosovo and the disputable regions in Georgia in the past enjoyed a certain degree of autonomy within their federal states. By contrast from the federal units, autonomous regions South Ossetia and Abkhazia and the autonomous province of Kosovo did not have a status implying the rights to secession or exit from the federation. The majority population in all three regions invokes the right to self-determination in order to secede from their respective states and obtain independence. Minority rights in all three cases have to be protected and are a matter of concern for international organizations which seek to find the status solution for these territories.

Conflicts in Kosovo and in Georgia (as well as in Moldova and Azerbaijan) are often viewed as relics of formerly socialist states – the SFRY and the USSR. Tensions in all three regions intensified with the disintegration of their federations (1989/90). The immediate cause for the conflicts was the constriction of autonomous powers vested in ethnic groups within their federations. Having proclaimed its independence in April 1992 Georgia substituted its Soviet Constitution with the Constitution of the Democratic Republic of Georgia adopted in 1922. The Abkhazians and Ossetians saw that as endangering the autonomy they had been guaranteed under the Soviet Constitution. That same year each of the groups organized a referendum to confirm that the majority of their population supported secession from Georgia. Something similar happened in Kosovo. In March 1989 amendments to the FRY 1974 constitution were adopted reducing the autonomy of the province which, on the basis of the previous Constitution "formally and practically became the constituent elements of the federation and the federal system in general".[3] In September 1991, Kosovo Albanians organized a referendum unrecognized by the authorities in Serbia and with an overwhelming majority opted for independence.

Aspirations to obtain independence were in all three areas accompanied by armed conflicts and violence. Ceasefires in 1992 and 1994 enabled the formation of self-proclaimed and internationally unrecognized states – the Republics of South Ossetia and Abkhazia. After the NATO 1999 intervention in Kosovo and the Kumanovo Agreement a UN protectorate in Kosovo was established within the internationally recognized borders of the Republic of Serbia.

Same arguments for independence

There are several basic arguments explaining the demands of ethnic groups for secession from states within the borders of which they are located in order to become independent. The main legal argument is the right to self-determination established by international law. Ethnic cohesion of the population, control of territories and establishment of a power structure are *de facto* arguments.

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[3] Nikolić, Pavle. Pogubno istorijsko iskustvo. (Disastrous historical experience), Glas javnosti, 24. 8. 2001. Available at: http://arhiva.glas-javnosti.co.yu/arhiva/2001/08/25/srpski/X01082404.shtml [accessed November 25, 2006].

The right to self-determination has been confirmed by a series of international agreements, declarations and resolutions, the most important of which is the UN Charter.[4] It implies the right of groups that share a common racial background, ethnicity, language, religion, history and cultural heritage, and populate s specific territory to determine their political status, economic and cultural development. In order to exercise that right the group concerned should possess self-consciousness of its identity as distinct from the majority population of the state it lives in and be capable of forming its political identity.[5] This right may essentially be realized in two forms. The first implies the status of autonomy within a unitary state, federal unit in a federation or a member of a confederation. The second is declaration of independence and the establishment of a separate state. This right may, thus, be in conflict with the territorial integrity and sovereignty of the state, which is another basic principle of international law, confirmed and guaranteed by a series of international legal documents. There is no generally accepted principle to solve the conflict of these principles in practice, which allows for politically based *ad hoc* solutions. If such a conflict of principles creates a situation qualified by the Security Council as a "threat to peace, violation of peace or aggression"[6] the Council's authorities to solve it are activated.

The population and political elites in Kosovo and in Georgian regions offer several arguments in favour their right to self-determination. The main *de facto* argument is that these areas are ethnically homogenous. Conflicts have changed the demographic picture in Georgia[7] as well as in Kosovo.[8] Demographic indicators for all three areas after the conflicts reveal the existence of ethnically pure or at least "more pure" areas.

An additional argument in favour of South Ossetian and Abkhaz right to secession is that their authorities *de facto* control the disputed territories. Immediately following the ceasefire, armed forces were formed

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[4] UN Charter, 26. 6. 1945, San Francisco, Chapter 1, Article 1. Available at: http://www.un.org/aboutun/charter/ [accessed December 18, 2006].

[5] New England Center for International Law & Policy. Public International Law and Policy Group. 2000.

The Nagorno-Karabah Crisis: A Blueprint for Resolution. 18-21. Available at:

http://www.armeniaforeignministry.com/htms/blueprint.html [accessed November 23, 2006]

[6] UN Charter, 26 June 1945, San Francisco, Chapter 7, Article 39.

[7] The conflict in South Ossetia caused the death of 50,000 people. According to the last population census in the USSR the population of Abkhazia numbered 500,000, 45% of whom were Georgians and 17% Abkhaz. OSCE claims that in the 1991-93 war an ethnic cleansing was carried out, wherein between 10 and 30 thousand people were killed, while the majority of 250 thousand exiled Georgians still wait to. Abkhaz account for 45% of Abkhazia's population today. Wikipedia, Abkhazia, Demographics

Available at: http://en.wikipedia.org/wiki/Abkhazia [accessed December 4, 2006].

[8] In 1981, of the total population of Kosovo of approximately 1,585,000, (77% were Albanians and 13% Serbs. According to current estimates Kosovo has a population of 1.8 to 2.1 million of whom approximately 85-90% are Kosovo Albanians and 5-10% Serbs.

to counterbalance any attempt of the main state to restore its exclusive right to use force, inherent in a sovereign state. Abkhazian armed forces number 2 thousand men with four times higher mobilization capacities, while those of South Ossetia have 1,500 members.[9] These regions have also established their institutions of (legislative, executive and judicial) power. The political elites of South Ossetia and Abkhazia refer to the functioning of these institutions to substantiate their claims that they are capable of surviving and functioning outside the state jurisdiction of Georgia (as has been the case in the previous 10-15 years). They maintain that the recognition of these areas as independent states would merely legalize the *status quo*. In this way both the rebels and secessionists seek to obtain the legitimacy of state creators. For the time being this legitimacy of South Ossetian or Abkhazian authorities has not been recognized by a single state, including Russia.

The situation in Kosovo is somewhat different. Although it is still formally under the sovereignty of the Republic of Serbia, it is in fact a UN protectorate. Institutions of provisional provincial government have been established in Kosovo and the international community makes efforts to develop their capacities for

independent exercise of power. The process of transferring UNMIK's authorities to provisional provincial institutions is under way.

That is where the similarities enabling us to compare the efforts of Kosovo Albanians with those of Ossetians and Abkhaz to obtain independence end. The differences are revealed in the type and degree of international support to independence aspirations of these regions.

Different views of international officials

Serbia and Georgia propose to solve the status of disputable areas by granting them the widest possible autonomy. The Georgian authorities propose a constitutionally guaranteed autonomy (legal, political, social, territorial, cultural and economic) for the secessionist regions.[10] Georgian officials simultaneously stress their readiness to apply the widest form of autonomy known to European standards and practice in both these cases.[11] However, the Abkhazian authorities turned down the plan proposed by Georgia authorities on 9 June last year. It anticipated the establishment of a federal setup in Georgia where Abkhazia would be given wide autonomy and assistance for economic recovery. In a similar manner,

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[9] Lynch, Dov. 2001. *Managing Separatist States: A Eurasian Case Study.* Institute for Securitry Studies of WEU. 10

Available at: http://aei.pitt.edu/707/02/occ32e.html [accessed November 23,2006]

[10] President of Georgia. 2005. Understanding South Ossetia – A Primer for Peace, Executive Summary.

http:/ www.president.gov.others/presskits.php?&id=106 [accessed November 28,2006]

[11] Georgia's ambassador to the EU, Salome Samadashvili, in an interview to Radio Free Europe. 2006. EU/Georgia: 'No Time to Send Ambiguous Messages' In Russia Row. Radio Free Europe. Access at: http://www.rferl.org/featuresarticle/2006/10/cc766e95-be56-4420-81d4-6db6b4f7254d.html [accessed December 4, 2006]

Kosovo Albanians dismiss the substantive autonomy for Kosovo within internationally recognized borders of Serbia offered by official Belgrade.

Despite the similarity of solutions proposed by Serbia and Georgia, the international support they receive is largely different. Representatives of international organizations offer diverse proposals for the statues of these three areas. NATO, the European Union and the United States support Georgia's efforts to solve the status problems of South Ossetia and Abkhazia without impairing its own territorial integrity and sovereignty. Serbia, however, does not receive undivided international support for the preservation of its territorial integrity, as revealed by Kosovo status negotiations. One of the possible outcomes of these negotiations is the proclamation of the province's independence. The situation in the two countries differs with respect to the type and degree of foreign involvement and mediation in conflict resolution. The presence of international civilian and military missions in Georgia is limited to an OSCE observer mission in South Ossetia and a UN observer mission in Abkhazia, while trilateral peace forces responsible for peace keeping comprise Russian soldiers and those of the conflicting parties. In contrast with Serbia, which reluctantly and forcibly accepted the participation of the international community in conflict resolution on its territory, Georgia desires and demands a higher degree of international involvement in solving the conflicts within its borders.[12]

Foreign officials offer brief and vague explanations of their refusal to compare their approach to Kosovo with that towards the Georgian regions. One of the reasons they invoke to justify their different attitude towards these issues is that under the SFRY 1974 constitution Kosovo enjoyed a wider degree of autonomy than the two Georgian regions. However, even so wide a concept of autonomy did not anticipate the possibility of secession or exit from the federation. Another argument refers to the problem of self-sustainability of Abkhazia and South Ossetia, both of which are reportedly dependent on the Russian military, economic and administrative support. But, self-sustainability also presents an obstacle for the independence of Kosovo. Once the status decision is made Kosovo will, for a certain period of time, need the presence of international peace forces, as well as international economic and political support, which is a fact confirmed in numerous statements of international community representatives. This means that the independence of Kosovo would be an internationally sponsored project.

Ethical argument

The answer to the question why the independence of Kosovo would not provide a universally applicable principle may be obtained if we examined the scope of international engagement and military and civilian presence in Kosovo. NATO's 1999 intervention created a precedent in international relations and opened numerous debates among political scientists as well as those concerned with its legal aspects. It definitely marked the turning point in

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[12] President of Georgia – official website, Understanding South Ossetia – A Primer for Peace, Executive Summary, 11. March 2005, access: http:/ www.president.gov.others/presskits. php?&id=106, access: [28. 11. 2006].

[13] ICTY Indictment of Slobodan Milošević.

the efforts of Kosovo Albanians to obtain full independence. The ethical argument used to justify the NATO action retained validity in the Kosovo status negotiations.

The first "humanitarian intervention" was justified by efforts to prevent further violation of human rights in Kosovo. References to norms of ethnical conduct in international relations provided legitimacy to this action. The use of radical measures, such as military intervention, was partly due to Serbia's reputation marred by its involvement in the wars on the territories of the former Yugoslavia. It was claimed that Serbia lost legitimacy to govern the province bearing in mind that "by 20 May 1999, over 740,000 Kosovo Albanians were expelled from Kosovo and an unknown number have been killed in the operations by forces of the FRY and Serbia".[13] "Should we protect the territorial integrity of every regime that chooses to kill its own citizens?"[14] That question prejudices the interpretation that the norm of international law (inviolability of territorial integrity) is suspended when it clashes with the ethical argument, and provides subsequent legitimacy to the controversial 1999 intervention.

Resolution 1244, which comprises several mutually opposed principles (preservation of state sovereignty, self-government in the province and enforcement of international administration's authorities)[15] created a legal precedent. It established a UN protectorate over the province and gave UNMIK the authorities held by a sovereign state within its borders. Comments on the current stage of status negotiations include e.g. those that with the resolution 1244 Serbia, in all important respects, actually gave Kosovo to the UN, which is now deciding on its future[16]. This confirms the claims that
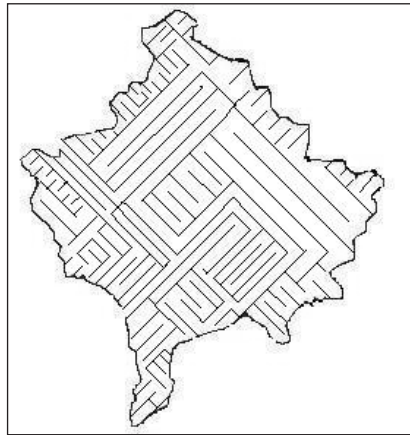
Serbia has lost the legitimate right to govern a part of its territory by accepting to transfer part of its authorities to an international mission.

Serbia and Georgia enter the struggle to preserve their territorial integrity with different starting position, at least as far as their reputation and the degree of international support are concerned. By contrast from Serbia, Georgia does not have to face accusations of genocide or demands for extradition of suspects

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[13] ICTY Indictment of Slobodan Milošević.

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http://www.b92.net/doc/tribunal/01.php [accessed November 20, 2006].

[14] Polt, Michael, US ambassador in Belgrade, Kažiprst, B92, 21. 11. 2006,

http://www.freeb92.net/info/emisije/kaziprst.php?yyyy=2006&mm=11&nav_id=220995 .

[15] Stahn, Carsten. 2001. Constitution Without a State? Kosovo Under the United Nations Constitutional Framework for Self-Goverment. *Leiden Journal of International Law* 14 : 542

[16] Bilt, Carl "Status bez standarda , Balkan i Kosovo nisu visoko na dnevnom redu u Vašingtonu"(Status without standards – The Balkans and Kosovo not high up on Washington's agenda), interview to daily *Politika*, 17. 11. 2006, http://www.politika.co.yu/detaljno.php?nid=12298 [accessed November 17, 2006].

in war crimes and crimes against humanity. Not one part of Georgian territory is under the international community's protectorate. The proposed solution of internationally mediated negotiations on the status of disputable areas will not violate its territorial integrity. Georgia's right to exercise its sovereignty on the entire territory of the state has not been denied. Conversely, Serbia's legitimacy has been challenged and that represents an additional argument in favour of establishing a sovereign state of Kosovo Albanians.

The decision on the final status of Kosovo will certainly influence the expectations and hopes of ethnic groups invoking their right to self-determination. The outcome of the negotiations concerning the status of the southern Serbian province will most probably confirm that independence requires more than claims to the right to self-determination and that each case will be considered *ad hoc*. The system of international law should enable predictability and stability in international relations. But its norms cannot keep up with the dynamics and numbers of factors in international relations. Humanitarian interventionism is legitimized with ethical arguments, and the case of Kosovo shows that aspirations towards independence may be justified by arguments of the same type. Kosovo Albanians invoke these arguments in favour of their right to self-determination, while Georgia uses the same claims to preserve the integrity of its state territory. A possible recognition of Kosovo's independence, while simultaneously denying the same right to the population of South Ossetia and Abkhazia would usher ethical arguments as a means to change and/or supplement the norms of international law.

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Kosovo's Security Policies: Challenges of formulation and implementation

Lulzim Peci and Ilir Dugolli   UDK 327.56(497); 327.7/.8(497.115); 341.231(497.115)

Introduction

Most of the countries of Central and Eastern Europe have radically transformed in a positive direction in recent decades. The former East-West boundary has disappeared and the Euro-Atlantic democratic space has spread throughout Europe. Several Western Balkan countries are already credible aspirants for NATO membership, and some of them have signed Stabilization and Association Agreement. The rest have strongly committed to follow suit. Due to direct involvement of NATO and EU, internal changes and processes that led to these memberships as well as obligations that keep them inside, this part of Europe has never been more secure in its memorable history. Although internal driving forces for reform in the countries of the SEE remain weak, it is worth noting that these countries have made vivid irreversible steps and commitment on their paths toward the EU, and for those that have not, it is much more a question of 'how', and not 'whether'.

The danger of large-scale war in the Western Balkans has largely disappeared. Nonetheless, a number of consequences from the wars of the last decade remain. Most notably, Kosovo's unresolved status and the persistence of northern Kosovo as a renegade province after the solution of the status of Kosovo feeds insecu-

rity and prevents normal relations in the region, first of all between Kosovo and Serbia but in different ways, the Kosovo knot affects also Bosnia and Herzegovina, Macedonia and Albania.

In 2007 we are likely to witness the last chapter in the disintegration of the former Yugoslav federation. While contributing to the regional stability, the resolution of Kosovo's status (assuming a stable transition of Serbia), will result with closer regional cooperation. It is worth noting that these challenges are not likely to lead to anything more than political turmoil, but given ripe circumstances, they may.

Other significant consequences of the recent conflicts are present in the form of thousands of refugees, unresolved property issues, organized crime and related. In addition, political and economic situation in general has not sufficiently recovered years after the end of armed conflicts and presents fertile ground for widespread social dissatisfaction, renewed radicalism, and potential extremism.

The main difficulty in Kosovo's quest to democracy, rule of law and market economy has been its vague temporary status since 1999. The parallel establishment of a *de facto* protectorate, while at the same time recognizing FRY's sovereignty over the territory, left a number of issues pending. International community's

nebulous approach towards the overall legal framework in Kosovo, poor identification of citizenry with existing institutions and applicable laws and unresolved property issues (private as well as over socially owned enterprises) caused overwhelming impediments in establishing democracy, rule of law and market economy.

In addition to NATO led peace-keeping operation in Kosovo, EU keeps a heavy and visible presence too. With the establishment of UNMIK in 1999, one of its four pillars in charge of economic reconstruction and development, including privatisation, was assigned to the EU. With the resolution of Kosovo's status, EU is expected to inherit UNMIK and lead the international presence in the form of International Civilian Office. Furthermore, EU is establishing in Kosovo its largest European Security and Defense Policy Mission. The ESPD Mission in Kosovo will have specific competencies in the filed of police and justice.[1]

Internal Security Sector Review: General Considerations

The Security Council Resolution 1244 (1999), invoking Chapter VII of the UN Charter, lays out the legal framework for security management of Kosovo. The resolution "identifies the international community as the sole legitimate entity with a mandate to law enforcement and the use of force in the region."[2] Along the 2001 Constitutional Framework for Kosovo, Resolution 1244 designates the entire public security apparatus, including the judiciary, police services, prison system and emergency services as reserved functions within executive powers of the United Nations Mission in Kosovo (UNMIK).

In February 2005 the then SRSG Søren Jessen-Petersen signaled a clear change of direction to local ownership by commissioning a ground-breaking 'Internal Security Sector Review' (ISSR) by a UK Government's Security Sector Development Advisory Team.[3] The stated purpose of the review was to "engage stakeholders in a process that will deliver a security sector architecture that serves the legitimate security concerns of all in Kosovo", providing a framework for the development of the sector, including security strategy within the chapter of Internal Security Policy Framework.[4] The ISSR process is almost completed. Its final shape has moved beyond internal security and is similar with the classical Security Sector Reviews.

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[1] Javier Solana and Oli Rehn, The Future EU Role and Contribution in Kosovo, Brussels, December 6th, 2005

[2] Muharremi R, Peci L, Malazogu L, Knaus V and Murati T, Administration and Governance in Kosovo, (KIPRED, 2nd edition, 2005), p.15. See also S/RES/1244 (1999), 10 June 1999, http://daccessdds.un.org/doc/UNDOC/GEN/N99/172/89/PDF/N9917289.pdf?OpenElement.

[3] The final report by the assessment team was approved by the SRSG's office, DPKO and launched on 1 July 2005. It proposed the following generic stages for a security sector review in Kosovo: 1. Conduct Strategic Environment Review; 2. Determine Threats; 3. Develop Internal Security Policy Framework; 4. Develop Individual Institutions/Agencies Policy Framework; 5. Conduct Gap Analysis; 6. Establish Developmental Strategies; 7. Cost and Confirm Affordability; 8. Implement Security Sector Development Strategies. See 'Kosovo Internal Security Sector Review Concept: Scoping Study', May 2005, D/SSDAT/20/1/1/1.

[4] SSDAT report, p.9.

The role of Kosovo's governmental institutions[5] is primarily limited to their representation in the ISSR Steering Committee. The Committee is the supreme body in charge of oversight and principled decision-making of this process and validates documents prepared and proposed during the ISSR process. It is comprised by main UNMIK representatives, institutional and party leaders as well as community representatives.[6]

There has been a substantial involvement of the civil society in the ISSR process. Two first stages of the ISSR were conducted by the Kosovar Institute for Policy Research and Development (KIPRED) and the Geneva Center for Democratic Control of Armed Forces (DCAF), which makes it the first case in the region with such an involvement of civil society in shaping security policies.

Kosovo is moving towards the creation of a full-fledged security sector that will be implemented once the final status is resolved. The ongoing ISSR process is expected, among others, to provide recommendations on division of main responsibilities among Kosovo's institution in implementing of the security strategy.

The perception of the security at the civil society level is strongly influenced by non-traditional threats. Economic and political instability are at the top of the list of threats, followed by unemployment, rule of law, corruption and organized crime.[7]

One of the underpinning elements of the ISSR process has been consultations with citizens. As part of the two first stages of the ISSR (Strategic Environment Review and Security Threats Analysis), a series of consultative meetings were carried out. Community representatives in 30 municipalities and two pilot-municipalities were given an opportunity to voice their views on issues related to their safety and security.

A very high degree of transparency towards neighboring states has been present, primarily due to the fact that the ISSR, like most other important responsibilities in the security field, is ultimately carried out by the international administration. There have been ongoing exchanges about the ISSR process in Kosovo with most of UNMIK's interlocutors, including Belgrade.

Kosovo's Security Keys

The framework for the development of the security strategy of Kosovo has been put in place by the ISSR. Specifically, the framework has been laid out by the Strategic Environment Review and Security Threats Analysis, two first stages of the ISSR.[8] But, due to its predominantly internal character, ISSR falls short of comprehensively defining national security interests.

Security Threats Analysis has revealed the following short term

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[5] Officially referred to as the Provisional Institutions of Self-Government (PISG). See the Constitutional Framework for Provisional Self-Government (UNMIK Regulation 2001/9 of 21 May 2001)

[6] SRSG (chair)

[7] Inputs from ISSR (stages I & II) consultative process.

[8] To review these documents see: ISSR - Strategic Environment Review and Security Threats Analysis, http://mirror.undp.org/kosovo/issr/Reports/English/F1_KIPRED_Initial_Findings.pdf

threats: political extremism and terrorist organizations related to the ongoing final status talks and their aftermath; parallel security structures and political subversion exercised by Serbia; and ethnic non-integration. Identified long term threats include: unemployment; economic underdevelopment; organized crime and corruption; and international terrorism.

The main factors towards national security will be determined by ISSR security sector development plan. In order to deal with the above-mentioned threats cooperation within the region becomes necessary. Kosovo already has good relations with Albania, Macedonia and Montenegro. Preserving and strengthening cooperation with these countries is a precondition for addressing trans-regional security threats. Also, a special focus should be given to building good relations and cooperation with Serbia.

Kosovo aims to become a full-fledged partner in regional security confidence building and cooperation initiatives under the framework of EU, NATO, Stability Pact and OSCE. Ultimately, Kosovo aspires full membership in NATO and EU.

Mid-term priorities in Kosovo's aspiration towards NATO membership are the undertaking of all necessary reforms required to achieve PfP and Euro-Atlantic Partnership Council Membership and preparation for NATO membership. The PfP membership will boost Kosovo's external security and transform it from security consumer to security provider.

In terms of integration into EU, Kosovo's mid-term priorities are signing of the Stabilization and Association Agreement and preparing the country for candidacy and accession.

The analysis of the risk factors threatening the Kosovos security

Kosovo faces a number of immediate external threats, such as organized crime, terrorism and illegal trafficking. Kosovo's relations with its immediate neighbors in terms of cross-border military threats have improved over the recent years. It is worth bearing in mind that the external military threat weighs little in the eyes of Kosovo's citizens, mainly due to widespread belief that NATO military presence will remain present for some time in the future. The region remains volatile as long as Kosovo's fate remains in limbo and its future status is not recognized by Serbia.

The status of a fledgling economy undergoing transition implies difficult economic conditions. Social and economic pessimism, triggered under poor economic conditions, present a structural security challenge to the region. "The region also faces serious threats from epidemics, industrial accidents, and natural and environmental disasters. Whether the countries of the region would be faced with a bird flue pandemic, a flood or an earthquake, they will have to rely heavily on the crisis response and support of their neighbors."[9] Events of March 2004 brought to the surface the total lack of crisis management capacities and coordination among international

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[9] Ibid, p.4

civilian and military presence and the local institutions. In fact, this made obvious the absence of essential information sharing between the international presence and the Kosovo's leaders. Among many reactions to the failures of March 2004, the Kosovo Government commenced the creation of crisis management institutions. These institutions are at their very inception and as such remain highly fragile.

International terrorism is considered a threat by all states of the region. Most stakeholders agree that international terrorist networks have not managed so far to establish themselves within the region. However, the ground remains fertile for such and other networks to fill the gaps of poor performance of public institutions and recruit among the most vulnerable social groups. Vivid pro-American sentiments in the region (such as in Kosovo, Albania, Macedonia) and significant presence of US forces can turn the area into a target of international terrorism. A combination of weak institutions and strong pro-US sentiments present a potentially combustible environment.

Many countries of the region still suffer from weak state institutions that are making them vulnerable to corruption and organized crime. Increasing capacities of the oversight mechanisms of the legislative and executive government as well as ensuring a functional and credible justice and security institutions will diminish internal vulnerabilities and improve good governance.

Ways to go in the security policy

Under Kosovo's Constitutional Framework for Provisional Self-Government[10], a number of responsibilities are "reserved" for the Special Representative of the Secretary General (SRSG). The most significant area from which the PISG are excluded, with exception of some limited responsibilities, has to do with security. According to the formula of "reserved responsibilities" the SRSG is charged, in coordination with Kosovo Force (KFOR), with responsibility for all functions that may be attributed to the domain of defense and security preparedness. From 2002 onwards we have witnessed capacity-building activities in the area of parliamentary oversight of governing institutions and principles of democratic governance have begun to be established as fundamental precondition for an adequate transfer of security structures to Kosovo once the final status is resolved.

The post – status legislation on democratic control of the security and defense forces will need to be harmonized with the international regulations and EU, NATO and OSCE standards. The new framework should also reflect clear division of responsibilities between civilian and security authorities as well contain provisions for participation of the police and defense forces in international missions.

Lack of a sustainable economy undermines Kosovo's prospects for development and is reflected with

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[10] UNMIK Regulation 2001/9 of 21 May 2001

high unemployment, perhaps the single most dangerous long-term threat. A continuation of the current economic situation may result with a reduction of Kosovo's opportunities to respond to security threats. Until Kosovo is economically and politically stabilized it will have to rely on substantial donor support for security sector.

The creation of Kosovo's Defense Force (KDF) is dependent on the final unraveling of the status process. However, discussions among NATO and local actors are taking place on this issue and the format of the future defense force.

KDF will most probably have to be created from scratch and reach a number of 2500 personnel. Its mandate will likely be limited to non-offensive and peace support operations as well as disaster response. Until KDF gets fully operational, it will be under NATO's command and is expected to reach its full interoperability with NATO

Same as security powers, foreign policy falls within "reserved responsibilities" of the SRSG. He may however involve elected officials in the exercise of these responsibilities, as has been the practice. With sovereignty over the territory suspended and UNMIK primarily focused in exercising internal governing responsibilities, Kosovo does not have an official foreign policy. This did not prevent governing institutions to advocate and, within their limited responsibilities, pursue efforts for good neighborly relations with countries of the region.

Furthermore, there is widespread consensus amongst governing institutions and political parties over the high priority that close relations with NATO, EU and USA should have.

Foreign policy has a twofold character for governing institutions. First of all it is seen as one of the tests that Kosovo has to pass in order to gain the status it aspires to, and secondly foreign policy is genuinely seen as a tool for enhancing Kosovo's security.

Conclusions

Kosovo's unresolved status feeds insecurity and restrains normal relations in the region, primarily between Kosovo and Serbia. With political security of the region affected by Kosovo's status, once the latter is resolved the region can finally move from confrontation to cooperation and partnership.

The involvement of international community is decisive in shaping relations in the region. It will take time and assistance by the international community until the states of the region develop own and sustainable capabilities to resolve their disputes and conduct normal relations amongst themselves. In this regard, completing the security architecture of Kosovo with the support of NATO and EU is crucial for the security of Kosovo and the region

On the other side, with all of the states of the region aiming to join EU and NATO they naturally become limited within the framework of CFSP and NATO security and defense policies. This political trend ultimately reduces the possibilities for countries of the region to end up with unpredictable policies outside the abovementioned frameworks of NATO and EU.

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Should a Kosovo Army be Formed?

Đorđe Popović   UDK 327.56(497); 355.357(497.115); 323.1 (497.115)

Requests to form an army in Kosovo, voiced with increasing frequency by Kosovo officials as well as certain foreign analysts, have for some time already elicited conflicting public reactions in both Serbia and Kosovo. These requests should be viewed against the backdrop of status negotiations and the perception of the army as proof and bearer of state sovereignty. Many people, primarily in Priština, believe that if Kosovo became independent after the status negotiations, there would be no reason not to form its armed forces. However, in view of the history of conflicts in this area, as well as the possible instability following the conclusion of negotiations, the question is whether an armed force of this kind should be formed or whether international forces should be entrusted with the job of Kosovo's defence.

Albanian leaders in Kosovo unanimously demand a full-fledged state, and thereby also the creation of its army. On the other hand, Serbian politicians in Belgrade and the leaders of Kosovo Serbs do not even consider the possibility of establishing a Kosovo army. This attitude of Serbian politicians results from the lack of any analysis of the need to form an army in the southern, officially still Serbian, province. This absence of discussion on this topic is, in the view of this author, very unfortunate and is precisely the reason why this matter should receive greater attention.

The establishment of an army in Kosovo primarily depends on the outcome of negotiations on the final status of this area, i.e. on whether Kosovo will become independent, or remain under the international protectorate, or else perhaps be retained within the composition of Serbia. Without going into this complex topic, this article shall first present the proposals of the relevant international organizations for the possible formation of a Kosovo army, and then look into the existing units this army could comprise, and the largest challenges it would have to face.

Arguments used to demonstrate the necessity of forming a Kosovo Army

The debate on the Kosovo army was launched with the International Crisis Group's Report presented in July this year. The authors of the report, assuming an impending independence of Kosovo, offered certain instructions to Kosovo institutions and also to international factors, about the establishment of a Kosovo army. The report precisely defined all stages of this process - from international community's preparations, to the creation of interim capacities for the KPC transformation into a Kosovo army, its actual formation and accession to the "Partnership for Peace".[1]

A similar recommendation is given in a document entitled "The Internal Security Sector Review", financed by the United Nations Development Program (UNDP). Although the report has not been officially published yet,

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[1] See: *Vojska za Kosovo?*. Izveštaj Međunarodne krizne grupe br.174, jul 2006 (*An Army for Kosovo?*. ICG Report no.174, July 2006). http://www.crisisgroup.org/home/index.cfm?id=4290&l=1. (accessed November 17, 2006).

its results have already been presented to the professional public. The starting position of its author, British general Anthony Welch, is that Kosovo should have its own professional defence forces.

Both reports argue that the establishment of an army in Kosovo would add to the internal stability of the province and result in a long-term demilitarization and security of the area. It would satisfy the aspirations of the majority population in Kosovo to have the symbols of its sovereignty and thus help the relaxation of tensions. The placing of all armed forces under the joint control of new democratic government institutions would ensure the lasting stability of the region and the demilitarization of the region by establishing a monopoly over the right to the use of arms and outlaw all other armed groups. This would prevent the creation of another weak state after the end of the war conflict.[2]

Proposal for the future Kosovo Army

Both reports propose that the future Kosovo army should comprise members of the Kosovo Protection Corps. Estimates of its desirable and acceptable numerical composition vary, ranging between two and three thousand men, without tanks, heavy artillery, ground to ground missiles or air force. The size of the future army will not exceed the current number of KPC troops of three thousand active and another two thousand reserve members. In view of the anticipated numerical composition and type of armament we could say that a future Kosovo army would not pose as a major threat to the neighbouring countries.

The two reports also converge on the proposal to entrust the training of the Kosovo army to NATO forces. The ICG recommendations emphasize that "upon the request of Kosovo's government, and guided by the proposed final status, NATO should establish a dedicated military training mission, attaching it to the KPC coordinator's[3] office: that office should be renamed and report to the KFOR commander (COMKFOR) after the UN Mission (UNMIK) leaves."[4] The ICG also suggests that the KPC staff, the Coordinator's Office and NATO should jointly select the members of the future army. Although NATO should have the final say on all candidates, their evaluation must be based on their test results, accumulated professional development, and personal files.

The authors of both reports also recommend the setting up of a Kosovo defence ministry, but in several years time and under the oversight of the international community. This should be preceded by the adoption of a Kosovo security strategy and a budget that could finance a ministry of this kind. The main task of a future Kosovo army should be participation in international peace missions. That would avoid the duplication of the functions of the army and Kosovo

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[2] Ibid.

[3] KPC coordinator is appointed by the international representative. He should be the main person to advise on the KPC policy and practical issues in relation to military and disciplinary aspects, as well as the contact person for KPC and KFOR coordination. See: http://www.iomkosovo.org/Photo-News/PI/KPCT_Book_Serbian/KPC_Serbian%20.pdf. (accessed November 17, 2006).

[4] Ibid.

Police Service, which is concerned with the province's internal security and public order. Within the framework of regional cooperation and participation in peace missions the members of this army could, in the first place, engage in such operations as demining. This function of the Kosovo army will naturally go missing unless it fulfils all standards required for the PfP membership. The ICG believes that the internal security tasks of the Kosovo army should be severely limited. They should not go much beyond the present KPC duties including civil protection, engineering and reconstruction. These assignments suggest that the mandate of a possible Kosovo army would not be much different from that of the KPC. Actually, the only difference is revealed in the fact that the Kosovo army will participate in peace operations. This fact is used by Kosovo officials as an additional argument to convince the international actors of the necessity to form this army.

Kosovo Protection Corps

Both above-mentioned reports state that the new Kosovo Army should evolve from the KPC. That is the main reason why the war heritage, the mandate and organizational structure of this organization should be examined.

The establishment of the Kosovo Protection Corpse in many ways served the purpose of the demilitarization, disarmament and reintegration of the KLA.[5] KLA combatants were encouraged to apply for the KPC. The idea was to place the members of this formation under the oversight of the international administration, to reduce the number of armed persons on the territory of the province and to see that those who remained under arms would undergo the necessary training. Out of the total of the assumed 27 thousand KLA members, 17 thousand responded to this invitation and three thousand of them were admitted.

After the 1999 conflict a part of the

> # Jointly in peace missions
> *In a few years Serbian and Kosovo soldiers may find themselves side by side on a same peace mission somewhere in the world. Inconceivable? Perhaps, but a piece of news – that the Croatian military police contingent joined the peace-keeping forces in Kosovo - which would have caused a fierce Serbian reaction not long ago, has this Tuesday went entirely unnoticed.*
>
> **Dejan Anastasijević,
> Forsiranje vojske, Vreme,
> Beograd, 24. avgust 2006.**

Kosovo Liberation Army (KLA) was transformed into a Kosovo Protection Corps emulating *securité civile*, the French civil security service.[6] The Constitutional Framework for Kosovo, adopted by the Kosovo parliament in 2001, describes the Corps as a "civilian emergency organization, established under the law, which carries out in Kosovo rapid disaster response tasks

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[5] See: Heinemann-Grüder, Andreas and Paes, Wolf-Chrisitian.2001. *Wag the Dog: The Mobilization and Demobilization of Kosovo Liberation Army.* Brief 20. Bonn International Center for Conversion. http://www.bicc.de/publications/briefs/brief20/content.php. (accessed October 27, 2006).

[6] Ibid.

for public safety in times of emergency and humanitarian assistance."[7]

The idea of the Kosovo Army is just as old as that of independence. KPC members, and especially its first commander and current Kosovo prime minister Agim Ceku, have never concealed their aspirations to use it for the development of a future army of an independent Kosovo. Although the Constitutional Framework refers to the KPC as civil defence of sorts, another document places it into the context of the future Kosovo army. The document entitled "Undertaking of Demilitarization and Transformation by the UCK" submitted to the KFOR by KLA commanders a few days after the end of the war, was accepted without objections. The document anticipates a possibility of establishing a Kosovo army according to the American National Guard model.[8] This could perhaps explain the Albanian name for the KPC - *Trupat Mbrojtese te Kosoves*, which may be translated as Kosovo Defence Corps.

What awaits a future Kosovo Army?

The following paragraphs will address the problems that will represent the main challenges to a future Kosovo army. The first set of problems is of purely organizational nature. The command structure would have to be different from that of the current KPC, which is still based on the territorial defence doctrine.[9] The KPC, and the KLA before it, inherited this doctrine since some of their commanders were active officers of the Yugoslav People's Army. However, this doctrine is not appropriate for a modern army of the present day, primarily due to the changed security challenges, risks and threats in the region, and has therefore also been rejected by the Serbian Army. In addition to that, the command staff of the present KPC lack the knowledge of modern military management, which makes them dependent on international assistance.

Yet another problem of the existing KPC that will have to be addressed before a Kosovo Army is established has to do with the so-called inverted command pyramid. Namely, the KPC is characterized by a large number of high ranking officers and an insufficient number of middle and low-ranking commanders. The existence of too few subordinates and too many commanders could prevent the efficient functioning of the army.

A major problem in commanding this hypothetical army may also emerge from the tribal affiliation of its members, which has an important role in Kosovo.[10] As long as obedience to a tribal leader is given precedence over a single military command, there can be no talk of an efficient and organized army. Another specific problem is also found in conflicts between certain tribal communities that exclude any form of coordinated cooperation and the establish-

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[7] *Ustavni okvir za Kosovo* iz 2001. godine (*The Constitutional Framework for Kosovo*, 2001) http://www.unmikonline.org/pub/misc/FrameworkPocket_SRB_Dec2002.pdf. (accessed November 17, 2006).

[8] *Undertaking of Demilitarization and Transformation by the UCK*, Art. 25a, June 1999. www.nato.int/kfor/kfor/documents/uck.htm, (accessed November 17, 2006).

[9] See: Petersen, Erik. 2005. *The Kosovo Protection Corps in Search of a Future*. Field Notes. Groningen: Centre for European Security Studies.

http://www.cess.org/publications/occasionals/pdfs/occasionals1.pdf. (accessed November 7, 2006).

[10] Ibid.

ment of a firm chain of command, as well as responsibility.

Closely related to the problem of clannish divisions is the one of large numbers of illegal weapons on the territory of Kosovo. Albanian sources refer to the struggle against Serbian oppression as the reason for the existence of large numbers of unregistered weapons, the origins of which are impossible to establish. However, seven years after the last member of the Serbian armed forces left the province the problem of illegal arms still remains unsolved. According to a SEESAC small arms and light weapons report, illegal arms possessed by civilians in Kosovo in June this year numbered 317 thousand.[11] Campaigns to collect illegal arms have thus far failed to yield any substantial results. In order to set up armed forces with a monopoly over the use of force, it would be necessary to deal with this problem as soon as possible, i.e. to reduce the number of illegal weapons to a socially acceptable level. The above mentioned reports, arguing in favour of establishing a Kosovo army, point to the fact that the armed forces would probably contribute to the disarmament of the Kosovo population. The truth is, however, that this will only become possible after the end of status negotiations since the former KLA combatants will not be willing to surrender their weapons unless they are convinced that no further struggle for independence is required.

Lack of control

Another, still outstanding, major problem is the lack of democratic civil control over the armed forces in Kosovo. Bodies of the Kosovo interim administration do not have formal authorities to exercise control over the KPC. Moreover, both the provisional Kosovo government and the KPC are under the supervision of the UN Secretary General's special representative. Parliamentary oversight - yet another lever of the democratic civil control – is also inoperational. The Parliamentary Committee for Emergency Preparedness does oversee the KPC to some degree but has no formal competences in that respect. Its role is reduced to supervising the KPC action plan and tasks. If Kosovo obtained independence this problem would probably be solved. Elected government bodies would be established with competences to control and command the army. In addition to these reasons the international officials are sceptical of the Kosovo interim authorities' intentions to control the KPC in view of the rivalry of political parties attempting to place the Corps under their own control and use it in their internal contentions. That is also why they seem reluctant to transfer the bulk of authorities to the provisional government bodies.[12]

In addition to the lack of authorities for the democratic civil control of the armed forces, Kosovo today does not have the capacities to successfully fulfil that task either. Another related problem is the incompetence of parliamentary committee members who lack the knowledge required to efficiently control the KPC.[13] The province still does not have a suffi-

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[11] *SALW Survey of Kosovo*, SEESAC, September 2006, http://www.seesac.org/reports/KOSOVO.pdf (accessed November 7, 2006).

[12] See: Petersen, Erik. 2005. *The Kosovo Protection Corps in Search of a Future*. Field Notes. Groningen: Centre for European Security Studies.

http://www.cess.org/publications/occasionals/pdfs/occasionals1.pdf. (accessed November 7, 2006).

[13] Ibid.

ciently developed professional public that could address the security problems. The debate on the issue is almost non-existent, while the media lack the professional abilities to tackle it and are moreover exposed to powerful political influences. Expert groups like KIPRED, capable of actively participating in the relevant debate, are precious few. Further development of the NGO sector would create the possibility to expand the debate on security issues and ensure its active participation in articulating the security policy.[14]

There is no doubt that a future Kosovo army would be hard-pressed to preserve at least a semblance of multiethnicity. In the first place, the KPC failed to fulfil the prescribed requirement of employing at least ten percent of national minority members. Out of three thousand active members of the Crops only 36 are of Serbian nationality.[15] Secondly, a fair number of the remaining Serbs would probably leave the territory of Kosovo if its independence is proclaimed. The KPC has failed to change the view that it is, in fact, the KLA in other uniforms, which will probably be inherited by the Kosovo army. Officials of certain international organizations help sus-

tain this view by claiming that KPC members maintain close contacts with rebelling groups on the Serbian south and in Macedonia, thereby reinforcing the impression that the Serbian population cannot trust in the protection of the official Kosovo institutions.[16]

The above-mentioned Internal Security Sector Review, which is considered pivotal for the further development of the security sector in Kosovo recommended the formation of the Kosovo Army. Bearing in mind that Resolution 1244 does not allow for the establishment of the army, it may be assumed that it will immediately follow the status decision, naturally if it implied the proclamation of its independence. Another certainty is the fact that this army will be under the strict oversight of NATO forces, primarily due to the cautious approach of international officials, fully aware of the weight of the problems concerned. Knowing that the formation of the Kosovo army is unacceptable to the Serbian side the future armed force may not be called an army, but will definitively have the mandate of one. But, as Erik Petersen has put it, it is not the label that counts, but the assigned mandate.[17]

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[14] Ibid.

[15] Ibid.

[16] See: Heinemann-Grüder, Andreas and Paes, Wolf-Chrisitian.2001. *Wag the Dog: The Mobilization and Demobilization of Kosovo Liberation Army.* Brief 20. Bonn International Center for Conversion. http://www.bicc.de/publications/briefs/brief20/content.php. (accessed October 27, 2006).

[17] See: Petersen, Erik. 2005. *The Kosovo Protection Corps in Search of a Future.* Field Notes. Groningen: Centre for European Security Studies.

http://www.cess.org/publications/occasionals/pdfs/occasionals1.pdf. (accessed November 7, 2006).

Additional useful links:

KFOR official web-site: http://www.nato.int/kfor/kfor/kpc/stmt_principles.htm

UNMIK official web-site: : http://www.unmikonline.org/1styear/kpcorps.htm

Ethnic Tensions – An Obstacle for Security in Kosovo

Zorana Atanasović

How do you envision your average peer among the Kosovo population of Albanian nationality? Do you see him/her as a nice, intelligent, truthful, pleasant and peaceful person with the same hobbies? Do you think it possible for Serbs and Albanians in Kosovo to work in the same firms, receive treatment from the same physicians, frequent the same cafés and take their children to the same nurseries or schools? Would you trust an armed forces' member of Albanian nationality?

Answers to some of these questions may be found through the research into ethnic stereotypes. Over the past ten years or so there have been a number of studies into interethnic relations as reflected in ethnic stereotypes, but these stereotypes were not correlated with the perception of security. That is why we shall use the findings of several surveys carried out on the sample of Serbian and Kosovo citizens in order to learn whether the ethnic stereotypes influence the security perception of Kosovo's citizens, and if so in which way? Our focus will be limited to the relations between Serbs and Albanians since most other ethnic communities become easily integrated into the majority Albanian society.[1] In addition to Serbs, the Roma are also exposed to intolerant reactions of the local community,[2] but their position will not be tackled here due to the limited space for this analysis? We will, thus, first present and briefly comment the findings of researches into the stereotypes in Kosovo and Serbia and then show how they influence the differences in the perceptions of personal security of Kosovo Serbs and Albanians.

Ethnic stereotypes of Kosovos citizens

Ethnic stereotypes amount to a relatively simplified and rigid understanding of other nations' characteristics.[3] They are formed regardless of whether communication with these other nations exists or not. Ethnic stereotypes can be more or less defined, i.e. structured, and more or less prevalent. To this we should add that, being saturated with emotions, they are difficult to change. Investigations into the contents, forms and spread of ethnic stereotypes may provide a more complete insight into tensions existing among nations. There are several theoretical explanations of the functioning of stereotypes. One of them defines stereotypes are generalizations useful for the evaluation of different phenomena in a complex and ever changing environment, while another suggests that they justify our hostile attitude towards certain groups.[4]

According to a public opinion survey in Kosovo and Metohija conducted in 1997 by the Belgrade Forum for Ethnic Relations in cooperation with the Institute for Philosophy and Sociology in Priština, Serbs and

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[1] Krasniqi, Genc. 2006. *Security and Democracy in South Eastern Europe: National Assessment for Kosovo.* KIPRED, http//: kipred.net (accessed November 09, 2006).

[2] Ibid.

[3] Rot, Nikola 1994. *Osnovi socijalne psihologije (Basics of social psychology), deveto izdanje.* Beograd: Zavod za udžbenike i nastavna sredstva., p. 400.

[4] Ibid, p. 401.

Albanians in Kosovo attribute to their respective nations only the positive (desirable) characteristics, as opposed to the members of the other nation, who are characterized only in negative (undesirable) terms.[5] What both groups have in common is that they think about each other in simplified categories, of the kind they certainly would not like to be thought of by others. Stereotypes reflect ethnic tensions among Serbs and Albanians. Describing the Serbs in this survey, Albanians used only 7% positive and 93% negative characteristics, while the Serbs assigned Albanians 32% positive and 68% negative characteristics.

Stereotypes characteristically survive despite the information or facts countering their contents. The lasting nature of stereotypes is substantiated by the findings of a 2005 survey a "Joint European Vision: Free movement for Goods and People in Kosovo and Serbia" conducted by EPUS (in Serbia proper) and KIPRED (in Kosovo). They indicate that 84% of Kosovo Albanians consider Serbs dangerous, compared with 67% of Serbs who think the same of Kosovo Albanians.[8]

Perception of security of Serbs and Albanians in Kosovo

The ethnic division of Kosovo society and stereotypes reflecting this division shape the different perceptions of security of Kosovo Serbs and Albanians. The prevailing majority of Serbs in Kosovo – 90.8% feel insecure outside their homes, compared with 32.1% of Albanians.[9] According to the findings of the "Internal Security Sector Review in Kosovo"[10] ethnic violence is perceived as a threat by 20% of Serbs and five times less Kosovo Albanians.[11]

Interpretation of these data must take into account the fact that according to the traditional understanding of security, groups which are in the minority on a specific territory tend to feel less safe than those in the majority. The existence of negative stereotypes, in this case of Serbs towards the

Table 1: Serb stereotypes of Albanians.[6]

	Ethnic characteristics	%
1.	Hate other peoples	81
2.	Treacherous	52
3.	Pushy	39
4.	Selfish	26
5.	Crude	26

Table 2: Albanian stereotypes of Serbs.[7]

	Ethnic characteristics	%
1.	Unanimous	62
2.	Hate other peoples	55
3.	Treacherous	46
4.	Backward	37
5.	Crude	20

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[5] Mihajlović, Srećko. 1998. *Etnički stereotipi i heterostereotipi na Kosovu (Ethnic stereotypes and heterostereotypes in Kosovo and Serbia)*, Sociologija. LX, 3: 411-426.

[6] Ibid, p. 420.

[7] Ibid, p. 420.

[8] Zajednička evropska vizija: slobodno kretanje roba i ljudi na Kosovu i u Srbiji (A Joint European Vision: Free Movement for Goods and People in Kosovo and Serbia). 2005. Freedom House, EPuS, KIPRED, http://www.emins.org/projekti/istrazivacki/sloboda/index.htm (accessed November 09, 2006).

[9] Izveštaj ranog upozoravanja, Kosovo (Early Warning Report – Kosovo), Izveštaj br.13, januar-jun 2006, UNDP na Kosovu, str. 27, www.kosovo.undp.org/publications/ews13/ewr13_srb.pdf , p. 39 (accessed November 09, 2006).

[10]"Internal Security Sector Review in Kosovo" is an ongoing process je proces aimed at obtaining an insight into the needs of all the parties concerned in Kosovo as a basis for a plan for security sector development to guarantee security of all Kosovo citizens.

[11] Internal Security Sector Review in Kosovo, ppt presentation.

Albanians, adds to their perception of Albanians as a threat to their personal and public security. Accounting for less than a tenth of the total population, and harbouring negative stereotypes towards the Albanian majority, Serbs feel insecure. Non-integration into the political life in Kosovo probably additionally enhances the feeling of insecurity of Serbs in Kosovo.

Both nations apparently still have fresh memories of violence, which represented the main characteristic of their mutual relations in the most recent decades. Tensions among Serbs and Albanians, reflected in stereotypes, may lead the Serbs to look for greater security in self-defence and further arming, which would additionally threaten the overall security in Kosovo. Another threat to of this kind is the fact that Kosovo institutions lack the capacity to cope with ethnic tensions that have developed for decades.

Dangerous politicizing of stereotypes

Political elite may influence the deepening of ethnic tensions through the politicization of ethnic stereotypes. The main actors influencing the shaping or relations between Serbs and Albanians in Kosovo are the political elites of Serbs and Albanians in Kosovo as well as the political elite in Serbia proper. The representatives of the Serbian minority do not actively participate in the political life of Kosovo, while ethnic tensions between Serbs and Albanians develop between Belgrade and Albanians in Priština. Findings of a public opinion survey conducted within the UNDP "Early Warning Report Kosovo No. 13" confirm that the positions of Serbian leaders in Kosovo do not influence the ten-

sions in inter-ethnic relations (Table 3).[12] We will therefore elaborate on the role of the Serbian and Albanian political elites in the politicization of negative stereotypes in greater detail.

The political elite in Serbia places almost all political events in the political life of Serbia (e.g. adoption of the Serbian constitution, admission to the
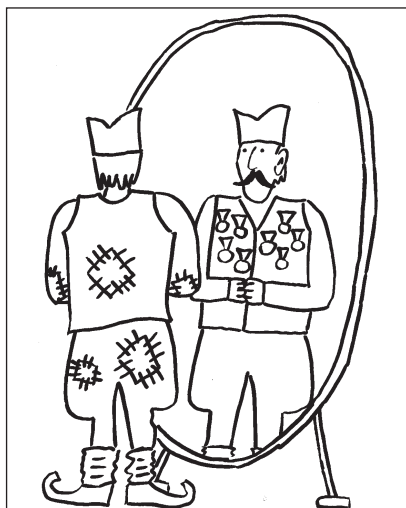
Partnership for Peace, etc.) in the context of the status solution sending a powerful message about the territorial indivisibility of Serbia. Statements concerning the Kosovo status made by politicians in Serbia over the past year include extreme views that the proclamation of Kosovo independence would mean an occupation of part of the Serbian territory and even allow for the defence of Kosovo using all available means, including the military.[13] The anxiety of Serbian citizens and the spread of prejudices and stereotypes are additionally encouraged by the views of Serbian Government members who disparage the Albanian side and the UN special envoy in the final status negotiations.[14] Speaking about

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[12] Early Warning Report, op. cit., p. 27.

[13] http://www.b92.net/info/vesti.

[14] For more details see: http://www.b92.net/info/vesti/index.php?yyyy=2006&mm=11&dd=12&nav_category=11&nav_id=219626&fs=1,http://www.b92.net/info/vesti/index.php?yyyy=2006&mm=03&dd=22&nav_category=11&nav_id=192328&fs=1.

the negotiating parties the Serbian political elite fails to address their needs, interests and problems, and in its communications frequently resorts to emotionally coloured opinions. In this way the elite helps create a black-and-white image of the other side and deepens the stereotypes. The influence of Belgrade, as perceived by the respondents of Albanian nationality, ranks first among the factors causing tensions between Serbs and Albanians in Kosovo (Table3).[15]

The attitude of Kosovo's political elite may be summarized in a statement of the Kosovo government, "Serbs in Kosovo - yes, Kosovo in Serbia – never". The political elite in Kosovo considers the institutions in Serbia incompetent to decide on the destiny of Kosovo citizens. The local Serbian population has felt scant improvement in the conditions of its everyday life attributable to the establishment of provisional Kosovo institutions. That is why Albanian elite's statements of readiness to work towards a better communication with the Serbian minority and higher quality of its everyday life remain declarative. The Albanian political elite speaks of Kosovo as a democratic and tolerant society that will guarantee freedom, equality and economic development for all. The minorities' apprehension and feelings of being endangered are also enhanced by the statements of political decision makers who suggest a possibility for unilateral proclamation of independence by the Kosovo parliament, if the proposal of the UN special representative falls short of the Albanian majority's aspirations. Bearing in mind that the representatives of the Kosovo Serbs do not participate in the work of provisional institutions in Kosovo, unilateral proclamation would completely remove their voice from the process of defining the future Kosovo status. Statements of the Albanian political elite referring to unilateral actions send a message to the Serbs in Kosovo, as well as in Serbia, that their needs, interests and problems are not appreciated, which additionally deepens the mistrust and stereotypes of Albanians as a nation. The position of Albanian leaders was most often cited as the obstacle of greatest importance by Serbian nationality respondents in Kosovo in the 2004 and 2006 surveys (Table 3).[17]

Prospects for reducing ethnic tensions

A lower percentage of respondents who believe that interethnic relations in Kosovo are tense suggest a potential for the change of stereotypes, as well as tensions among Serbs and Albanians. Respondents of Albanian

Table 3:   Factors causing tensions between Serbs and Albanians.[16]

	December 2005		June 2006	
	Albanians	Serbs	Albanians	Serbs
	%	%	%	%
Insufficient efforts by Albanians for integration of Serbs	3.2	33.3	1.9	29.6
Lack of readiness by Serbs for integration into Kosovo society	32.8	0	20.7	36.1
Attitude of Albanian leaders	1.4	60.9	0.6	36.1
Attitude of Serb leaders	9.7	1.6	5.2	0.5
Belgrade's influence	52.7	0.5	59.2	15.3

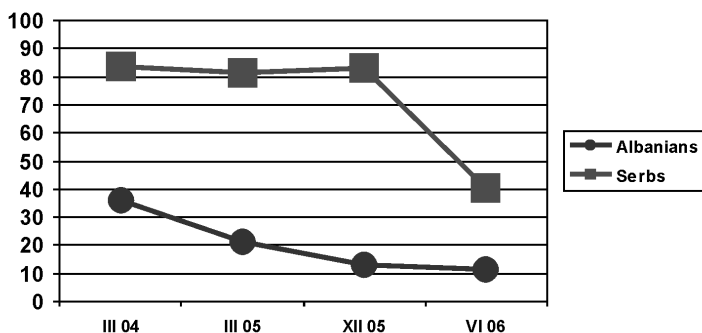[15] Early Warning Report, op.cit, p. 27.

[16] Ibid.

[17] Ibid.

nationality display a gradual decrease, while the relevant percentage of Serbian nationality respondents was halved in the past year (Chart 1)[18]. The thesis that the work towards the reduction of ethnic tensions should be one of the priorities in Kosovo is also substantiated by the fact that almost half the Serbs in Kosovo still perceive further deterioration of interethnic relations as the largest threat to stability.[19]

Research findings show that the change in stereotypes is also influenced by changes in the socio-political and inter-group relations. According to the results obtained by the researchers of the universities in Belgrade and Novi Sad democratic changes in Serbia after 2000 brought about a reduction in ethnocentrism, but there is a question whether this reflects a substantial change in the value system or an expression of desirable views.[21] Regardless of certain limitations, these findings indicate that by changing the discourse, the political elite may trigger the change of negative ethnic stereotypes. Specifically, where the relations between Serbs and Albanians in Kosovo are concerned, the political elite may influence the change in negative stereotypes by abandoning the rationale of losers and winners in

addressing the issue of the Kosovo status, and by attempting to see the problems from the other side's point of view. Work along this line should start with the harmonization of the different views about the everyday functioning of Kosovo's citizens. A compromise on matters less weighty than the issue of the future Kosovo status will certainly increase mutual trust and add to the success of dealing with more complex issues. Empirical research provides additional proof that the change of inter-national relations, i.e. the improvement, or aggravation of relations among groups may influence the change of ethnic stereotypes.[22] The change of stereotypes, i.e. the attitude that "we" are good, while "they" are bad, will certainly help the Serbs and Albanians to stop seeing each other as a threat for the survival of their respective nations. In that case it will be possible to increase the feeling of personal security of both Serbs and Albanians in Kosovo, as well as Serbs and Albanians in Serbia. Failing that, if certain groups continue feeling unsafe, it will be impossible to improve the overall security of Kosovo citizens.

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Figure 1. Respondents agreement with the statement: Relations between Serbs and Albanians are and will continue to be tense.[20]

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[18] Early Warning Report, op.cit, p. 27.

[19] Ibid.

[20] Ibid.

[21] Biro, M., Mihić, V., Milin, P., Logar S. 2002. *Did socio-political changes in Serbia change the level of authoritarianism and ethnocentrism of citizens?* Psihologija. Vol. 35, No 1-2, pp. 37-47.

[22] Rot, Nikola, op.cit. p. 405

Serbia's Capacities to Reintegrate Kosovo and Metohija

Marko Milošević

S erbian defence minister Agim Ceku has today laid a wreath at the Tomb of the Unknown Soldier." Can you imagine seeing headlines of this kind? Judging by a CeSID's public opinion survey the citizens of Serbia are not inclined to accept this outcome.

Do the Serbian citizens care for Kosovo, and if so to what extent? What is, at best, implied by reverting Kosovo to Serbia? Is Serbia aware of the consequences of this reintegration and if so, what is it capable of doing to forestall them? The following analysis will not deal with the war in Kosovo, or the crimes both sides committed at that time, or even with the legal status of Kosovo and Metohija. Its purpose is to point to the consequences that will arise if Kosovo remains within Serbia. The Serbian government does not have a long term strategy related to Kosovo. The talk of Kosovo in Serbia uses diverse metaphors, e.g. "the most expensive Serbian word", all the while thinking about the territory, rather than the people living on it. In other words, no one speaks about the things that make up life in Kosovo. Findings of several different surveys[1] indicate the political, economic and security consequences of keeping Kosovo and Metohija within the composition of Serbia. These problems are not discussed in the Serbian society.

Between desires and possibilities

The solution to the Kosovo status issue is today sought by the domestic and international institutions, or rather through the negotiations between political elites, while the citizens' views may only partly influence their course. Looking at the findings of a number of surveys whether directly or indirectly linked with the Kosovo problem, one may conclude that Serbia's capacities for the reintegration of Kosovo are rather modest. Some of these surveys were carried out by CeSID[2] in August and September 2006. The analysis of public attitudes, especially of ethnic distance, allows us to perceive and, to a degree, also forecast the action potential of Serbian citizens. In this particular case we will define the action potential as the possibility for collective action aimed at creating the preconditions for a joint life.

The questionnaire intended for the citizens included several questions concerning the desired and expected status of Kosovo. The figure shows that the respondents' wishes and expectations are far apart. The largest differences are found between the most radical solutions, i.e. independent Kosovo and Kosovo as an autonomous region in Serbia. The smallest differences between desires and expectations (4-5 per cent) are registered among citizens

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[1] See the sources listed below.

[2] CeSID. Beograd. septembar 2006. Istraživanje javnog mnjenja Srbije (Serbian public opinion survey). http://www.cesid.org/articles/download/files/Izvestaj,%20istrazivanje%20javnogmnjenja,%20septembar%202006..doc?id=28 (November 15th 2006.)

The survey was done on the territory of Serbia, excluding Kosovo and Metohija, on a sample of 1,634 adult respondents.

who support the status quo or the division of Kosovo into Serbian and Albanian parts. The international protectorate is a temporary solution and the perpetuation of the present situation, therefore, does not seem to be a realistic option. The largest number of citizens, as many as 58%, would like to see Kosovo as a region in Serbia, but only 12% actually expect this outcome. Similar discrepancies are also registered on the other end of the scale. The respondents' statements concerning the independence of Kosovo reveal a 30% difference between their wishes and expectations. The citizens are aware that the most probable outcome of the negotiations would be the decision on the independence of Kosovo. However, their wishes, diametrically opposed to the perception of the expected outcome, may nevertheless be used by political actors to mobilize the citizens for the purposes of their political ends. Namely, knowing that at the height of election campaigns promises of certain political parties not infre-

quently refer to the return of Kosovo under Serbia's wing, it is clear that manipulation with the Kosovo issues is still considered an efficient means to score political points in Serbia.

Serbian citizens' attitudes towards the Kosovo problem may be seen on the example of the referendum to confirm the new constitution of the Republic of Serbia. The constitution's preamble defines Kosovo as a part of Serbia. This preamble is politically motivated by the ongoing negotiations on the Kosovo status and serves to reinforce the Serbian party's arguments in favour of keeping Kosovo under the sovereignty and within the territorial framework of Serbia. Namely, ever since June 1999 the Serbian government has had no competences in Kosovo.

In a Serbian public opinion survey[3] conducted in October 2006, on the eve of the constitutional referendum, CeSID included a question on the importance of the preamble on the vote to endorse the constitution. Only

Figure 1. What kind of a solution for the Kosovo problem do you wish and expect?
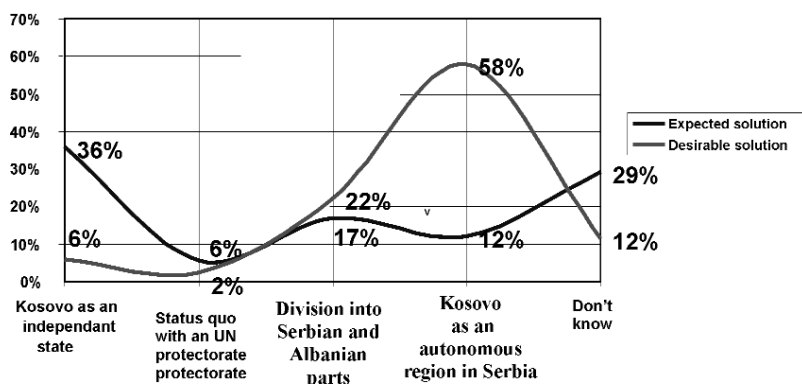
Source: CeSID, 2006.

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[3] CeSID. Beograd. oktobar 2006. Istraživanje javnog mnjenja Srbije.
http://www.cesid.org/articles/download/files/Saopstenje%20za%20stampu.doc?id=34 .(November 15th 2006.)

10 per cent of respondents said the status of Kosovo was their primary reason for going to the vote. This more or less corresponds with the results of a previous survey[4] wherein 12 per cent of citizens expected Kosovo to become an autonomous region of Serbia. A look at the citizens' reactions to the statement, "No matter whether we voted or not, Kosovo is already lost" reveals a fairly even distribution of responses on the opposite ends with 36.5 and 32 per cent of those who agree and disagree respectively. This may be partly attributed to the absence of a Serbian government's clear strategy to resolve the Kosovo status, as well as the different signals concerning the possible solution emitted by the international community.

Ethnic distance as an obstacle

CeSID's survey also addressed the ethnic distance between Serbs and other Serbian citizens. The distance was measured in relation to Albanians, Croats, Montenegrins and the Roma. The largest distance was registered towards the Albanians, on all points of the Bogardus' scale. Interesting in this context is a comparison of two categories – Croats and Albanians – towards whom the ethnic distance is the largest. Only 26 per cent of respondents find Croats undesirable as Serbian citizens, compared with twice as many in the case of to the Albanians (42%).

These figures show that the Serbian citizens are, at best, amenable to coexistence with the Kosovo Albanians, but that the prospect for the reintegration of the two nations are small. In view of the experience of conflicts and ethnic cleansing on both sides, these indicators give scant hope that the stability in the region will be attained. Examples of divided regions in Europe, such as Cyprus, Bosnia and Herzegovina, or Macedonia, confirm that solutions of this kind are not lasting and that a long term strategy is required to establish stability and overcome ethnic tensions.

Political participation

During the campaign for the plebiscitary confirmation of the Serbian constitution, the citizens were not advised on the political, economic and security implications of keeping Kosovo within Serbia. The new Serbian constitution has lowered the election threshold for parties representing minority communities to 2%, compared with 5% for

Figure 2: Ethnic distance towards Albanians, Roma and Montenegrins (in %)
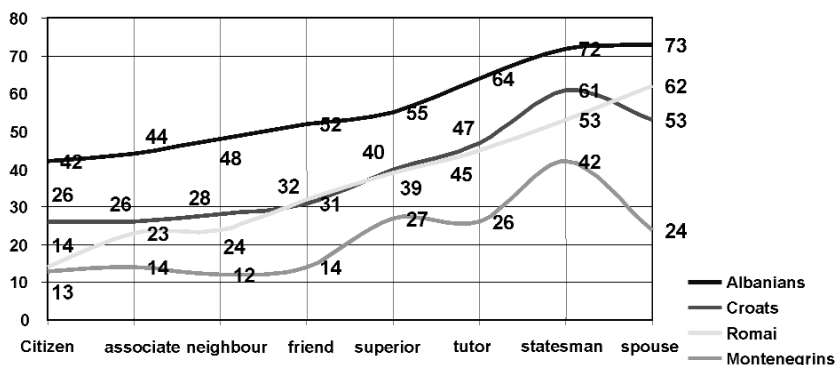
Source: CeSID, 2006.

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[4] CeSID. septembar 2006. Istraživanje javnog mnjenja Srbije.

the parties representing the majority nation. Serbia has approximately to six and a half million registered voters, about three and a half of whom turned out at the referendum to endorse the constitution (supported by all parliamentary parties). The number of registered voters for Kosovo 2001 election was 1.2 million, including 130,000 Serbs. Assuming that Kosovo is *de facto* a part of Serbia and that Albanians actively participate in the political life of the state, there would be a large possibility for Albanians to take some of the leading positions in Serbia. This scenario would only be possible if the Albanians had a single ticket, and, in view of their numbers, represented a fairly strong group in Serbia. This *conditional electoral* calculation could imply a potential coalition of parties of the democratic block with one of Albanian parties or a coalition thereof. This coalition would probably have a low rating among the citizens of Serbia, but, on the other hand, (due to the marked ethnic distance towards the Albanians) it would send more favourable signals to the international community. In a government of that kind representatives of Albanian parties would have to hold some offices. However, we must note that 72 per cent of citizens would not like to see an Albanian as their statesman.[5] This conclusion is substantiated by the fact that 73% of Serbian citizens consider Albanians disloyal citizens, which may have further influence on the future of inter-ethnic relations between Serbs and Albanians.

Economic dimension

In addition to Albanians' participation in the political life of Serbia, retaining Kosovo within the composition of Serbia also has certain implication in the economic sphere. Namely, we must

bear in mind that one of the burning problems in Kosovo is its remarkably high unemployment, resulting from a long-drawn-out economic underdevelopment, war-time devastation of its economy and a rampant grey economy.

UNDP coordinated studies in the 2005-2006 period looked into the problem of unemployment in Kosovo ("Early Warning Report", 2006) and in Serbia ("Report on Human Development in Serbia", 2005). The data on unemployment in Kosovo are rather interesting.[6] The World Bank estimates refer to 23% of unemployed in this area, excluding seasonal and informal jobs in the agricultural sector, while the Kosovo ministry of labour and social
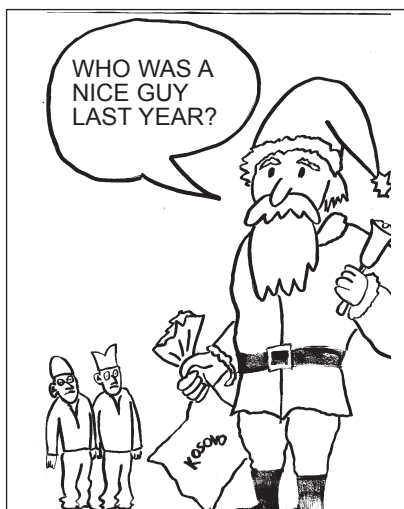
welfare registers unemployment among 40 per cent of its active population (323,201) with an upward trend.

A part of the "Human Development Report" addresses the situation in the Serbian south, in Preševo and Bujanovac municipalities. This region may be taken as an example to demonstrate the willingness of Serbian institutions to deal with economic problems in an area with a majority Albanian popu-

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[5] See Figure 2.

[6] UNDP. 2006. Izveštaj ranog upozoravanja – Kosovo (Early Warning report Kosovo), izveštaj br. 13, januar-jun. str 21-22 http://www.kosovo.undp.org/repository/docs/ewr_7srb.pdf. (November 24th 2006)

lation. It is a part of Serbia with the highest unemployment rate: in Preševo it reaches 60% while in Bujanovac, only 6000 of the local population of 43000 have jobs. The "Human Development Report" shows that large difficulties in this respect are due to the citizens' mistrust of the institutions, the language barrier and an underdeveloped civil society.[7] Other drawbacks include the outflow of labour and the lack of private entrepreneurship. A specific problem also arises from weapons stockpiled by the Albanians living in Preševo and Bujanovac.

Kosovo and south of Serbia share similar problems: a high rate of unemployment, non-integration of their citizens into the institutions of the system and inferior interethnic relations. However, we must note that the situation in Serbia is not much better either. Judging by the data of August 2006, the unemployment rate was 27.9 per cent, or 1,001,408 jobless.[8] A hypothetical integration of Kosovo would increase this number by a third. Knowing that unemployment leads to weaker integration of citizens into the social system, the high unemployment rate appears to be a security problem also. Namely, income that cannot be attained in a legal way may be obtained semi-legally or illegally. Bearing in mind that the Serbian government has no economic strategy in relation to Kosovo, we could say that the restoration of its competences over the former province could act as "social time bomb".

Security

A survey entitled "Public opinion on the Reform of the Serbian and Montenegrin Army" carried out by the Belgrade Centre for Civil-Military Relations looked into the Serbian citizens' perceptions of security chal-

lenges. Several questions were designed to test the citizens' attitudes towards Kosovo as a security problem and their readiness to react to the related challenges. In the seven survey rounds, covering the period from February 2004 until May 2005 about 60 per cent of respondents though that security was threatened by potential conflicts in multiethnic environments (with emphasis on Kosovo and Metohija). On the other hand, asked how the army could best contribute to establishing the peace and security in Kosovo and Metohija, 13.3 per cent of respondents said it should intervene if violence escalated. The remaining three answers (see the Table) were in line with the UN SC Resolution 1244. This distribution of responses reveals the absence of a consensus about the desirable reaction to a threat from Kosovo, and therefore also the formalization of that consensus within a strategy of the state.

The analysis of responses given by respondents who declared their party affiliation is rather interesting. It allows us to establish the correlation between party orientation of the respondents and their choice of the solution for the crisis in Kosovo. By comparing these two indicators we have noted that military intervention in Kosovo (which clashes with the UN SC resolution 1244) registers the largest support among the members and sympathizers of the Serbian Radical Party (28.2%), followed by the Socialist Party of Serbia (19.6%), while the support of the membership of parties with a democratic orientation is below 10% (7.9% for the Democratic Party and 9.5% for the Democratic Party of Serbia). Agreement to use the army in contravention of Resolution 1244 is the most pronounced among the supporters of the extreme left and right, i.e. those who had the power at the time

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[7] UNDP. Belgrade. 2005. Human development report Serbia 2005. *The Strenght of Diversity.* pp. 72 http://www.undp.org.yu/nhdr/2005/NHDR_Serbia_2005_ser.pdf. (November 17th 2006)

[8] Nacionalna služba za zapošljavanje. avgust 2006. Mesečni statistički izveštaj (National Employment Bureau – monthly statistical report). broj 48.

when the international administration took over in Kosovo. This indicates these parties' reluctance to give up the policy that brought about the war and the loss of Kosovo. However, one may wonder whether this is a mere demagogy to appeal to the voters, or an established strategy. On the other hand, the percentage of respondents without political affiliation who support such views is lower, although they do see Kosovo as a potential security problem.

The question is what will become of Kosovo? The Serbian government does not have a clear strategy for Kosovo and Metohija, but only a platform for the negotiations which offers no solutions for systemic problems. The Serbian citizens have different wishes and expectations with respect to the status of Kosovo. Their views concerning military engagement in the region also vary and the official position on the possible use of the army in Kosovo does not exist. The disarmament and dissolution of Albanian armed formations has been achieved in the municipalities on the Serbian south, but this area remains unintegrated in Serbia and a potential source of instability. Kosovo's integration into Serbia is not impossible, but would require a long term strategy that does not exist. A strategy of that kind would have to reckon with the political participation of all Kosovo citizens, and take into account the economic problems of a transition country, along with the security challenges specific to that area. In brief, the price of the "most expensive Serbian word" would have to be calculated with the understanding that it could also be spoken in another language.[9]

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Serbia 2004 – 2005			
	Fourth round	Fifth round	Sixth round
	1647	1617	1637
Return of up to 1000 soldiers as anticipated by UN Resolution 1244	22.0%	20.1%	21.9%
Incorporation of SMAF units into the KFOR	27.1%	24.8%	25.3%
Direct intervention of SMAF in case of a repeated escalation of violence	16.2%	12.7%	13.3%
SMAF should not be included – political solution is required	22.3%	32.4%	29%
I cannot say	12.4%	10%	9.6%

Source: CCMR

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[9] **Other sources:**

1. M. Lazić. 1996 "Delatni potencijal društvenih grupa" (Action potential of social groups)*, Sociologija, Vol XXXVIII, br. 2. str. 259–28*. Beograd.

2. Strategic marketing research, KIPRED. 19. 7. 2006. Proces određivanja budućeg statusa Kosova, saznanja, stavovi, praksa, KAP anketa – finalni izveštaj,. http://www.smmri.co.yu/downloads/Proces%20odredjivanja%20buduceg%20statusa%20Kosova%20-%20Finalni%20izvestaj.pdf. (November 6th 2006.)

3. Mirjana Vasović, *Karakteristike grupnih identiteta i odnos prema društvenim promenama*, u: „Javno mnjenje Srbije", CPA 2000, Beograd *http://www.cedet.org.yu/istrazivanja/grupni_identiteti.zip. (november 6th 2006.)*

4. CCMR. Belgrade 2004–2005. The Serbian and Montenegrin Public on Reform of the Army,survey results, rounds II–VII.

What is the nature of European Union power in Kosovo?

Marko Savković

The European Union has decided that during 2007 it would launch a special mission in Kosovo within the framework of European Security and Defence Policy (ESDP). In the exposition of the Council decision (of 10 April 2006), by which was founded the "Planning Team" (EUPT) of the coming mission it is stated that "the European Union is preparing to increase its role in Kosovo". Therefore, in the first report on "the future EU Role and Contribution in Kosovo" Havier Solana and Olli Rehn have stressed that UNMIK will not be replaced by some sort of EUMIK. They also announced that NATO units will continue to form the only military component of the Kosovo mission.[1]

The question then arises, what is it that the European Union will actually do? We'll place this question in the wider context of the academic debate on the nature of power applied by the EU in its foreign policy. The principal argument of this text will be that currently the EU is applying a normative and civilian form of power and that, according to all indications, this state of affairs is expected to continue. It is, therefore, our intention to summarise the academic debate and to apply the ideas it has arrived at to the case of Kosovo.

The EU: A Civilian and Normative Power

The debate about the nature of power at the EU's disposal in international relations has, in academic circles, lasted longer than three decades. Francois Duchene, in his book "Europe's Role in World Peace" (1972), was the first to speak of the European Community (EC) as a "civilian" power. He considered the source of European power to be in the ability to expand the model of guaranteeing stability and security primarily using economic and political, and not military, means. Thirty years later, those economic and political means form the "appropriate policy instruments, including trade, cooperation, or association agreements; aid; soft loans; institutionalised dialogue; and the promise of EU membership (for European states)".[2] All these factors combined make the EU a "civilian power".

At the start of the eighties, in conditions of slowing integration, namely during a state of so-called "euro-sclerosis", but also during a period of fresh "cooling" in East-West relations, Hedley Bull criticised Duchene's ideas. Because the power that the European Community wields "was conditional upon a strategic environment provided by the military power of states, which they did not control", Bull advocates the development of European military capabilities.[3]

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[1] More precisely: "The future international civilian presence could take the form of an international office with an important EU component but cannot be EUMIK", accordingly, "The future military presence should continue to be entrusted to NATO". *Summary note on the joint report by Javier Solana, EU High Representative for the CFSP, and Olli Rehn, EU Commissioner for Enlargement, on the future EU Role and Contribution in Kosovo.* June 2005. Spokesperson of the Secretary General, High Representative for CFSP, Brussels. http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressdata/EN/reports/85228.pdf (accessed November 24, 2006)

[2] Smith, K. 2003. The EU as a Distinctive Actor in International Relations. *The Brown Journal of World Affairs* IX, No. 2: 103-113.

[3] Bull, H. 1982. Civilian Power Europe: A Contradiction in Terms. *Journal of Common Market* Studies, Vol. 21, No. 2: 151 – 152. At the time, the author believed that the best way to realise such a policy was through an alliance within an alliance which will retain the wider NATO structures.

The question of whether European foreign policy exists at all has been left behind by the development of common foreign and security policies; the question now is what characterises European foreign policy.[4] Meanwhile, the debate had gone one step further than the differentiation of civilian and military power. One of the modern methods of defining the influence that is realised by the EU and which, we believe, is applicable to its policies in the western Balkans, is offered by Ian Manners. Playing around with Hedley Bull's title, Manners considers the possibility of Europe as a "normative power", notion "located in the discussion of 'power over opinion', *idée force*, or the ideological power".[5]

The EU in Kosovo

The war in Kosovo initiated significant changes in the common foreign and security policies of the European Union. It became clear that, without its own advanced military capabilities, the EU was unable to meaningfully influence events.[6] Just like in Bosnia & Herzegovina, Europe was left by the wayside in the solving of the 1999 crisis and handed the initiative to the US. The ESDP, thus, came about in part due to the frustrations of certain EU member states, lead by Great Britain, at the unsuccessful handling of the Kosovo crisis.

The conditions in which the European Union is currently launching operations in Kosovo are significantly different. The deficiency in military capacity, which is defined as a 'capabilities gap' in relation to the United States, has not been overcome. However, the development of the ESDP has created a crisis response mechanism that regards military intervention as just one of many forms and means of involvement. In order to create an acceptable security environment in post-conflict societies, the EU aids the formation of institutions that enforce the rule of law. The application of this approach is a manifestation of the EU's civilian power.

That is to say, when the international presence in Kosovo was established, the EU was entrusted with what came to be called the "fourth pillar or EU pillar" of the UNMIK administration. EU representatives called upon to transform Kosovo's economy into a market economy have, in the past few years, managed the privatisation of state companies and the reform of the public sector, participated in the creation of financial markets and in the reform of the customs service.[7] The European Development Agency has, for example, had at its disposal more than 1.6 billion euros intended for the financing of EU projects in Kosovo. The institutional jigsaw puzzle of the EU presence in Kosovo is completed by the EU Monitoring Mission, the EC Liaison Office for Kosovo and the Personal Representative of the EU foreign policy chief Javier Solana. The latter is employed to put into operation the "International Civilian Office", which will, when the final status of Kosovo is resolved, oversee its implementation.[8]

Damien Helly and Nicoletta Pirozzi have postulated on who (and what) should form the ESDP operation.[9]

[4] Sjursen, H. 2004. From Civilian to Military Power: The European Union at a Crossroads? Outline of Core Theme and Research Questions, *CIDEL Workshop*, Oslo.

[5] Manners, I. 2002. Normative Power Europe: A Contradiction in Terms. *Journal of Common Market Studies*, Volume 40, No. 2: 239

[6] Van Eekelen, Willem. 2006. *From Words to Deeds: the Continuing Debate on European Security.* Brussels and Geneva: CEPS (Centre for European Policy Studies) and DCAF (Geneva Centre for the Democratic Control of the Armed Forces)

[7] http://www.euinkosovo.org/uk/about/about_pillar.php (accessed November 27, 2006)

[8] *Kosovo's Long-term European Perspective.* European Union in Kosovo and UNMIK. 2006. http://www.euinkosovo.org/upload/European%20future%20brohure%20ENGLISH%20FINAL%2013%20December%202006.pdf (accessed December 6, 2006)

[9] Helly, D. and N. Pirozzi. 2006. The EU's Changing Role in Kosovo: What Next? In: European Security Review – Special Kosovo Edition. Brussels: ISIS (Institute for International and Strategic Studies): 2.

Members of the European gendarmerie,[10] i.e. EU citizens given appropriate duties in the UNMIK administration will be employed in the police mission. The second part of the ESDP operation, devoted to reform of the judicial system, will be carried out by the European Commission. The existing programme, the aim of which is the improvement of the competence of the judiciary in Kosovo, will continue in the same fashion; within this framework the assessment and replacement of Kosovo's 308 judges and 89 prosecutors is performed.

The normative power of the European Union in Kosovo can be identified by the administration of the Stabilisation and Association Process. By offering a candidate country economic advantages from the process of association, the EU is in a position to enforce standards according to which the economic and political transformation of said country will occur. In this way the EU is implementing the advancement of security in its own neighbourhood – one of the strategic aims announced in the European Security Strategy of 2003.[11]

This year's report on the "EU's future role" announced that Kosovo is also guaranteed "European prospects" and access to all the instruments which, according to the SAP, are available to the states of the Western Balkans.[12] The

SAP is currently unfolding according to a mechanism of "monitoring", and it is made up of dialogues in which experts from the European Commission and representatives of Provisional Institutions of Self-Government (PISG) take part. The process is based on the "European Partnership" with Serbia & Montenegro. The "European Partnerships" programme represents a specific arrangement which the EU concludes with a country that has started the SAP, in other words, with a country whose goal it is to initiate reforms aimed at adopting the solutions and "good practice" to be found in the "*acqui communitaire*" or "achievements of the union". In that sense, it is expected of the government of that country to adopt an appropriate "Action Plan", that is related to the dynamic adoption of standards that are prescribed by the European Commission, or in short, "European standards". Kosovo is governed by a United Nations administration but also by PISG, which demonstrates the importance placed on a regime of "European partnership".[13]

At the beginning of 2006 PISG and UMNIK reached an agreement that combined the "Standards for Kosovo"[14] and the "Copenhagen Criteria" because they are based on the same principles. That represents a significant and qualitative widening of the jurisdiction of EU institutions in Kosovo. In this way the

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[10] http://www.eurogendfor.org/home.htm and http://www.eurogendfor.org/mission_tasks.htm (accessed December 6, 2006)

[11] *A Secure Europe in a Better World: European Security Strategy*. 2003. Brussels: European Union, page 8.

[12] *Summary note on the joint report by Javier Solana, EU High Representative for the CFSP, and Olli Rehn, EU Commissioner for Enlargement, on the future EU Role and Contribution in Kosovo,* July 2006. Brussels: Spokesperson of the Secretary General, High Representative for CFSP. http://www.europa-euun.org/articles/en/article_4809_en.htm (accessed November 24, 2006)

[13] *Council Decision of 30 January 2006 on the principles, priorities and conditions contained in the European Partnership with Serbia and Montenegro including Kosovo as defined by the United Nations Security Council Resolution 1244 of 10 June 199 and repealing Decision 2004/520/EC.* Council of the European Union. http://www.delprn.ec.europa.eu/en/eu_and_kosovo/key_documents/Partnership2006.pdf (accessed December 7, 2006)

[14] *Standards for Kosovo*. Priština: UNMIK, PISG. 2004. http://www.euinkosovo.org/upload/Standards%20for%20Kosovo%20booklet_ENG.pdf (accessed December 6, 2006)

EU becomes the actor that will, in future, evaluate whether Kosovo society has achieved the ideals of democracy and rule of law.

In this manner the manifestation process of the EU's normative power is completed.

Just like Bosnia
and Herzegovina or *sui generis*

On the 10th of December Serbian media made an announcement, based on a report that Torbjorn Solstrem the chief of the EUPT in Kosovo submitted to Brussels, that the special representative of European Union in Kosovo will have powers similar to those of his opposite number in Bosnia and Herzegovina. Therefore, he will be in a position to suspend local legislation that is in opposition to European standards, but also to request the replacement of local officials whose behaviour falls outside of these standards.[15] Effectively independent Kosovo would, as a consequence, find itself under the protectorate of the European Union.

A week later Solstrem denied these claims with the words that "the new mission in Kosovo will be significantly smaller than the one in Bosnia and Herzegovina [and] organised in accordance with the resolution of the province's status".[16] Even during the planning stage, however, the EU has faced problems in financing the mis-

sion. On the basis of recommendations made in the EUPT report, the mission when it is finally established, will be made up of at least 1,000 policemen, judges and other officials tasked with law-enforcement. Even in April Javier Solana and Olli Rehn warned the member states that the mission in Kosovo will be the most financially demanding ESDP mission that the EU has ever undertaken because the EU may have to finance, not only its own, but the whole international presence in Kosovo.[17]

In spite of the nature of the future engagement of the EU in Kosovo, there will remain a need for a further NATO presence in the province. The situation in Kosovo, in the near future, will continue to require the presence of NATO troops as a result of the following factors: the unresolved status of the province, public opinion that is polarised on the question of the eventual outcome of the talks,[18] and also because of the existence of „criminal networks that are expanding their influence into various socio-economic fields and into political life".[19] The policies of the European Union will, in this sense, be complimentary. In its behaviour the EU will be dependent on non-military means, in other words, on resources that are civilian and normative in relation to the nature of the power they display.

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[15] B92, Beta, Večernje novosti. 2006. EU will head future Kosovo authority. December 10. http://www.b92.net/eng/news/politics-article.php?yyyy=2006&mm=12&dd=10&nav_id=38520&fs=1 (accessed December 10, 2006)

[16] *Radio Serbia internet news*, http://www.radioyu.org/index.php3?language=Serbian (accessed December 10, 2006).

[17] Krasniqi, Ekrem. 2006. EU prepares for Police Mission in Kosovo. *EU Observer*, April 10. http://euobserver.com/15/21349 (accessed December 10, 2006)

[18] "Public opinion on the future status between Kosovar Albanians is relatively uncompromising […] this group has an overwhelming majority for the complete independence of Kosovo and believes that the alternative options are unacceptable. On the Serbian side, public opinion varies, […] almost 80% of Serbs from Kosovo, 67% of Serbs internally displaced and 60% of Serbs in Serbia declare that for agreement to be reached on the future status it is 'critical' that Kosovo remain a part of Serbia as a province with very wide-reaching autonomy". *The Process of Determining the Future Status of Kosovo*, Strategic Marketing Research/KIPRED, 19 July 2006, http://www.smmri.co.yu/downloads/Proces%20odredjivanja%20buduceg%20statusa%20Kosova%20-%20Finalni%20izvestaj.pdf (accessed December 8, 2006)

[19] *Kosovo (under SCR 1244) Progress Report*. 2006. Brussels: European Commission: 38.

Military Commissions Act of 2006

Predrag Petrović

The Military Commissions Act passed by the US Congress in late September last year was endorsed and signed by the US president George Bush on 17 October 2006. The adoption of the Act was preceded by the ruling of the US Supreme Court (in the case of "Hamdan vs. Rumsfeld") in June 2006. The ruling actually abolished the system of military tribunals instituted by President Bush in November 2001. The "Hamdan" decision stipulates that in order to establish this kind of tribunals the president required an explicit authorization of the Congress and that the court procedure was in contravention of the Geneva Convention. In order to fill the resulting legal limbo, the Bush administration proposed the adoption of the Military Commissions Act and managed to ensure the congressional majority in its favour.

The importance of this document is also reflected in the emotional statements of its supporters, as well as staunch opponents. Thus, having signed the Act president Bush said that "It is a rare occasion when a President can sign a bill he knows will save American lives" and that with it "America reaffirms our determination to win the war on terror". Immediately after the law had been signed the republicans issued a press release titled "Democrats would let terrorists go unpunished" including a list of most democrats who opposed its adoption in the Congress (Reuters). On the other hand, opponents of the Act, among other things said, "This is not just a bad bill, this is a dangerous bill (Patrick Leahy, democratic party's senator) and that with it America sinks into dictatorship since it allows the administration to declare even an American citizen an enemy and detain him for ever.

One may rightly wonder why is the American public so sharply polarized, almost along the lines of Schmitt's friends and enemies. The following text

shall indicate the disputable provisions that have triggered so bitter a debate. We shall first show how the Act defines the persons it applies to, followed by how it relates to *habeas corpus* principles and, finally, how it treats the methods of interrogation violating the human rights.

Who is America's enemy?

The international humanitarian law and the Geneva Convention distinguish between combatants – lawful combatants and civilians who do not take part in war conflicts. A civilian who participates in armed conflicts is treated as a lawful combatant. By contrast, persons who violate the laws and customs of war (e.g. mercenaries and spies) cannot have the status of combatants and, therefore, if arrested, do not enjoy the status of prisoners of war. Military Commissions Act enables trials of persons belong to the latter category, i.e. suspected terrorists, referred to as "unlawful enemy combatants".

The Act anticipates two criteria that may make a person subject to military commissions. The first defines an "unlawful enemy combatant" is a person "who has engaged in hostilities, or who has purposefully and materially supported hostilities against the United States". This broad provision practically cancels the difference between combatants and civilians that represents one of the pillars of the Geneva Convention. The Center for Constitutional Rights points out that this category of enemies may include even a "person who has given 5 dollars to a charity working with orphans in Afghanistan that turns out to be associated in some fashion with someone who may be a member of the Taliban".

This definition, furthermore, relativizes the next provision of the Act which clearly prescribes that the purpose of these tribunals is to try persons

who do not have American citizenships, i.e. aliens. Namely, the definition of the concept of "unlawful enemy combatant" does not use the word alien, but a more general concept of a person. This kind of a legal solution has caused concern of many US citizens, since every person, whether an alien or US citizen, may thus become America's enemy.

The second criterion gives the president, i.e. the administration a major role in designating the enemy. Namely, an "unlawful enemy combatant": is also "a person who, before, on, or after the date of the enactment of the Military Commissions Act of 2006, has been determined to be an unlawful enemy combatant by a Combatant Status Review Tribunal or another competent tribunal established under the authority of the President or the Secretary of Defense".

The fact that US citizens may be designated as enemies and that the administration has a major role in that is confirmed by the case of Jose Padilla. Padilla is an American citizen who was detained for more than three years without being indicted. The grounds for his three-year arrest was only president Bush's instruction to the defence secretary Rumsfled to detain him as an "unlawful enemy combatant" (Ronald Dworkin, The New York Review of Books).

Some critics of the US system of military commissions are even more severe. An Italian philosopher Giorgio Agamben thus stressed that the concept of the "unlawful enemy combatant" is largely similar to the one of *homo sacer,* known in the Roman law. It was used to designate the persons deprived of all citizens rights they would have otherwise been entitled to as citizens of a specific country. These persons were not protected by the laws of the state and could be subjected to all kinds of violence. Another parallel may be drawn with Carl Schmitt's understanding of politics. Namely, he saw its substance in distinguishing between friends and enemies and in the conflict and persecution of the internal enemy. To the state as an essentially political entity belongs the *jus belli.* This implies ''...more or less strict, *ipso facto* forthcoming forms of persecution, restraint, proscription, exclusion, based on specific laws, legal-

What are Military Commissions?

Military commissions are criminal tribunals within the competence of the US armed forces. They traditionally try person in violation of the laws and customs of war who therefore cannot enjoy the same rights as combatants of armed forces whose status is clearly defined by the laws of war and the Geneva Conventions. Historically speaking, numerous military commissions were formed during the Civil War and the Revolution, as well as World War II. The best known example is the 1942 Quirin case. The decision of the Supreme Court in this case confirmed the jurisdiction of military commissions to try German saboteurs. This ruling makes the distinction between unlawful and lawful combatants, which has to this date provided the basis for the competence of military tribunals over "unlawful enemy combatants".

The establishment of the present day system of military commissions comes in direct consequence of terrorists attacks of September 11, 2001. The president took an executive order (*Detention, Treatment, and Trial of Certain Non-Citizens in the War Against Terrorism)* to the effect that terrorists will be tried by military commissions. However, the system of tribunals so established was brought down with the ruling of the US Supreme Court in the case of "Hamdan vs. Rumsfeld", whereupon the Executive Branch initiated the enactment of the Military Commissions Act of 2006 enabling the continuing existence and operation of the military judiciary.

ly effective overt or hidden in general descriptions..."

Notwithstanding the above-mentioned vagueness of the Act, we do not

think that it will lead to a wide abuse of the US citizens or a Schmittean division into friends and foes. The American society has firmly embedded liberal and democratic values and lower tolerance of drastic violations of human rights of its citizens. Strong criticism and opposition to this Act only support this claim.

Habeas Corpus
or Habeas Corpses

Habeas corpus is one of the oldest legal institutes aimed at protecting individuals from the arbitrariness of executive power. It "implies an instruction to a state body or official who has detained someone to bring that person before the court and justify not only the legal grounds but also reasons for his detention" (Political Encyclopaedia). Although its initial purpose was to protect individuals from arbitrary arrest this institute today extends to the prevention of diverse pressures of the police, such as e.g. unexpected "night" visits. *Habeas corpus* among other things demands the release of every person if it is established that he/she has been illegally and unjustifiably arrested. The American constitution makers were aware of the importance of this institution and have built it into the very foundations of the US political system. Namely, Article 1, section 9 of the US constitutions reads that the, "The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it".

Despite this constitutional provision, the newly adopted Act prohibits the detainees who have the status of "unlawful enemy combatants" or are awaiting such determination and are not American citizens to appeal the legality of their arrest or treatment during imprisonment. The Act also applies to long-time residents of the United States without American citizenship. The right to petition for *habeas corpus* is granted only to detainees on trial before the military commissions. Bearing in mind that there is no legal obligation to start a trial within a specific period of time, they may be deprived of their freedom for an unlimited period of time. Major Tom Fleener, a military defence lawyer in his statement for *The New York Times* explicitly said that a "detainee who isn't charged with anything, he sits (in detention) forever".

Referring to a possibility for US citizens to be designated as "unlawful enemy combatants" a part of the US public expressed its concern that persons holding American citizens could be deprived of the right to petition for habeas *corpus* and kept indefinitely detained. However, it seems that most legal experts interpret this provision as denying this rights only to aliens.

However, opponents of the Act point out that no one, whether an alien or a citizen, should be deprived of the right to have the grounds for his detention re-examined by an independent court. Thomas Jefferson, one of the founding fathers, himself supported that saying, "The Habeas Corpus secures every man here, alien or citizen, against everything which is not law…"

Finally, as the explanation of the Act points out, its purpose is to "bring to justice terrorists and other 'unlawful enemy combatants' through full and fair trials by military commissions". If there is no legal obligation to institute a legal process against detainees and if the Act deprives them of the *habeas corpus* rights, it is not clear just how it may fulfil its basic purpose.

In conclusion, let us take a look at the provisions that are not directly related to the *habeas corpus* rights but influence the justice of trials. Namely, the Act permits the use of hearsay evidence and the military tribunal, having decided that it is "reliable" and "probative", may declare it admissible. The burden of proof is on the accused, i.e. he must show that the presented evidence is unreliable. This practically abolishes the presumption of innocence, one of the principal institutions of a fair trial. Furthermore, it is not entirely clear how the accused may

show that the evidence is unreliable, bearing in mind that the prosecution is permitted to keep the sources and methods of investigation secret and withhold them from the accused and his legal counsel.

To torture or not to torture...

Pictures and accounts of the torture of detainees suspected of terrorism have shaken the American as well as the world public. The "infamous" water boarding, exposure to extreme cold and days-long deprivation of sleep are some of the best known methods in the "enhanced" arsenal of interrogation techniques used within CIA programs. In addition to human and legal arguments opposing this practice, seasoned operatives of security and intelligence services are known to say that information obtained by means of torture is unreliable since the interrogated person is likely to admit anything only to stop the torture. Both the "humanitarians" and "security men" demanded the end of prisoners' torture and the punishment of those responsible. The attention of the public was initially aimed precisely on the legal regulation of the use of enhanced methods of interrogation, while other provisions became subject to criticism of the professional public somewhat later.

That is why the principal authors of the Act, senators John McCain and John Warner, pointed out that the main purpose of the newly adopted Act was precisely to criminalize the use of interrogation methods violating the human rights of detainees. The supporters of the Act say that it explicitly prohibits torture of suspected terrorists and anticipates strict sanctions for those who violate its provisions. But, legal experts and opponents claim contrary. The Act provides a list of nine grave breaches of the Third Geneva Convention that will be triable as war crimes. In addition to torture, the list includes "cruel and inhuman treatment", which they say is insufficiently clearly defined and legalizes the use of so-called enhanced interrogation techniques. "Cruel and inhuman treatment" is defined as an act inflicting serious physical or metal pain or suffering and serious physical pain exists only when it becomes "extreme" or when an extreme physical injury is sustained. Critics therefore ask whether hypothermia or protracted, hours long standing cause extreme pain or just pain.

Moreover, the Act gives two definitions of "cruel and inhuman treatment" – one for the period before the enactment of the Act and another to be applied after. According to the first definition, if an interrogation procedure applied to a suspected terrorist is qualified as "cruel and inhuman", if he is made to suffer protracted mental pain. Thus, e.g. if an agent threatened to kill a detainee, he did not violate the Act, because the mental pain was brief. According to the other definition applicable after the adoption of the Act, any mental pain, regardless of its duration is treated as "cruel and inhuman". It is obvious that by making this distinction the lawgivers amnestied those who resorted to "enhanced" interrogation methods in the previous period.

Not only has the Act amnestied the persons responsible for torture, but the information obtained in this way has not been dismissed altogether. According to President Bush, " information we have learned from the (CIA) program has helped save lives at home and abroad". The Act thus permits the admission of testimonies obtained with aggressive interrogation methods used before the adoption of the Detainee Treatment Act in December 2005. It is up to the military tribunal to decide whether the data so obtained are reliable and relevant and should be given in evidence. Although in this case the court has the final say analysts warn that the very possibility that this kind of probably enforced testimonies may be used is a cause for grave concern.

The fact that it is not entirely clear which interrogation methods are permissible is also indicated by the supporters of this Act. Authors of the paper "Military Commissions Act of 2006: Striking the Right Balance", *The Federalist Society for Law and Public*

Policy Studies, say: "There is a broad belief, both within the Executive Branch and among the American people, that while torture, cruel or inhuman treatment ought not to be deployed, some use of intense interrogation techniques should be continued". Further on in their article they continue to use the terms "intense interrogation techniques" and "aggressive interrogation techniques" as interchangeable, without explaining either. One may rightly wonder about the limit between torture and intensive, i.e. aggressive methods, or rather between the permissible and impermissible.

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As of September 11, 2001 the United States of America has been at war with terrorism. The five-year long war proved that a fast victory is impossible and that terrorism cannot be defeated with armed force alone. This has been acknowledged by the recently adopted Long War doctrine, which stipulates that "the United States is a nation engaged in what will be a long war (...) Unlike the image many have of war, this struggle cannot be won by military force alone" (Quadrennial Defense Review Report, February 6, 2006). Furthermore, the National Strategy for Combating Terrorism admits that "the War on Terror is a different kind of war. From the beginning, it has been both a battle of arms and a battle of ideas. Not only do we fight our terrorist enemies on the battlefield, we promote freedom and human dignity as alternatives to the terrorists' perverse vision of oppression and totalitarian rule" (The White House). Finally, the promotion of human freedom and dignity, as well as justice and democracy is the first pillar of the US National Security Strategy (March 2006).

Therefore, the United States admits that the liberal democratic values at the basis of the American political system are an equally powerful weapon in combating terrorism as bombs and cruising missiles. It is therefore not clear why the newly adopted US Act to combat terrorism does not fully observe the basic principles proclaimed in the country's strate-

gic documents and ensures the prisoners' "human dignity". The fact that suspected terrorists are denied the elementary human right to a review of legal grounds for their arrest before an independent court of law is certainly no alternative to the terrorist vision of oppression and totalitarian rule. At the time of aggravating security situation in Iraq and Afghanistan, when the "struggle with arms" does not seem victorious, the United States should have enacted a law that ensures a completely fair trial and guarantees the elementary human rights to all suspected terrorists. It would thus win an important victory in the "battle of ideas". The Military Commissions Acts amounts to the legalization of the less than glorious practice of the hitherto system of military commissions.

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·   Authorization for the Use of Military Force
·   Detainee Treatment Act of 2005
·   Military Commissions Act of 2006
·   Military Order on Detention, Treatment and Trial of Certain Non-Citizens in the War Against Terror
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·   War Powers Resolution

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Anti-corruption Agency in Serbia

Jelena Unijat   UDK 351:[343.85:343.352(497.11)

According to the most recent, 2006, survey[1] of the international NGO Transparency International (TI) out of the total of 163 surveyed countries Serbia ranks ninetieth on the Corruption Perceptions Index, same as Gabon and Suriname. The good news is that its score has increased (from 2.8 last year) to 3.0, but corruption still remains a systemic problem in Serbia. On a scale of 1 to 10, only 5 is a score indicating that corruption has been reduced to a tolerable level.

This situation obviously results in the lack of confidence in the official institutions and their inferior functioning. In addition to these internal consequences, there are also some that could be called external. Namely, these ratings influence the decisions of foreign investors to place their capital, badly needed for the economic recovery of Serbia. International companies that have already invested in Serbia speak of informal taxes of 18 to 20 per cent paid in addition to their regular obligations. This reveals the urgency of dealing with this problem and improving the efficiency of measures taken thus far.

After the 5 October change, the authorities made anti-corruption struggle one of their priorities. A lot has been done in terms of developing the institutions and the legal framework to combat corruption. Numerous legal regulations have been passed and many bodies that could join the struggle against this damaging practice have been formed. Furthermore, a National Strategy to Fight Corruption was adopted in December 2005.[2] All this notwithstanding, corruption is still substantial.

The government is trying to deal with this problem by establishing an Anti-coruption Agency (hereinafter the Agency). In view of the high expectations placed in this Agency, this text will try to review the functioning of bodies whose authorities it would assume, as well as the reasons *pro et contra* its establishment.

Review of institutional anti-corruption efforts

The Draft Law on the Agency[3] has entered the parliament on 20 October 2006. According to this legal proposal the Agency is an independent and autonomous state body, accountable to the National Assembly to which it submits annual operational reports. The Agency oversees the implementation of the National Strategy, Action Plan and sectoral action plans. It arranges and coordinates the work of state bodies fighting corruption, resolves the conflicts of interest and keeps the registry of officials and their property. It also oversees the adoption and implementation of the integrity plan. With the entry into force of this Law, the legislation governing the prevention of the conflicts of interests would cease to apply and the proceedings instituted before the Republic Board for Resolving the Conflicts of Interest would be taken over by the Agency. The Agency would also take over the competences of the Republic Electoral Commission and the Parliamentary Committee for Finance, meaning that the political parties would then submit their financial reports and account for the spending

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[1] Transparency Serbia, www.transparentnost.org.yu. (accessed Nov. 6, 2006)

[2] National Strategy to Combat Corruption, www.korupcija.org (accessed Nov. 10, 2006)

[3] Proposed Law on the Agency to Combat Corruption, www.parlament.sr.gov.yu /content/cir/akta/predzakoni.asp. (accessed Nov. 1, 2006)

of their budgetary appropriations to this anti-corruption body. We shall therefore review the work of the bodies whose authorities will be transferred to the Agency in order to see whether it will be able to redress their deficiencies.

We shall first briefly review the work of the Committee for Finance of the National Assembly. [4] The Committee should receive obligatory annual financial reports of political parties with details of their property, contributions in excess of 6000 dinars (complete with the names of donors and the amounts concerned) and their final accounts accompanied by the opinion of an authorized auditor. Out of the total of 421 registered political parties bound by this requirement, only three have submitted complete documentation as required (Bosniak Democratic Party of Sandžak, Democratic Party of Serbia and the Social Liberal Party of Sandžak). Bearing in mind that the Committee is not authorized to institute a relevant legal procedure, the Law on financing of political parties could not be enforced in its three year-existence and the number of non-complying parties keeps increasing. Another deficiency of this body is that it consists of MPs who thus actually control themselves. However, it is expected that at the next elections financial malversations of political parties will be prevented, or at least made more difficult. Namely, a new form for reporting on the cost of election campaigns has recently been prescribed. It requires from the parties to state the precise amounts of the funds they have raised and details of their spending. For that purpose all funds are broken down into public and private.

Another important body the competencies of which would be passed on to the Agency is the parliamentary Committee for Resolving the Conflicts of Interest.[5] The Law on the prevention of

the conflicts of interest was passed in 2004 and the Committee was constituted on 18 January 2005. Its competencies are to keep the registry of the officials' property, decide whether they have violated the Law and if so pronounce appropriate measures. During the first nine months of 2005 the Committee examined the total of 54 denunciations related to potential conflicts of interest, in consequence of which three officials were relieved of their duties. The largest shortcoming in the work of this Committee is that it is authorized to react only to the reports on property and citizens denunciations. The first problem in this respect is related to the accuracy of the submitted property reports, and then the possibility that the citizens may be afraid to denounce the officials or lack the knowledge about their property, or even of the workings of the Committee. There is a danger that the work of this body may be paralysed, especially since it has a staff of only 12, as opposed to 13,000 officials. Out of this number 4,000 failed to report their property and suffered no consequences for this omission.

One of the ways to remove the above mentioned deficiencies in the functioning of these bodies is to set the fines for the defaulting officials. They all prescribed by the proposed Law on the Agency. In case of violation of the Laws' provisions the Agency may institute appropriate legal proceedings. This legislation reinforces the position of the Agency and provides concrete frameworks for the anti-corruption struggle. The main advantage of this solution is that if the Law is violated the Agency institutes the relevant proceedings ex officio. Furthermore, the control of political parties and their officials will be within the competence of a body outside the parliament, thus enabling more efficient control.

Thirdly, the Agency would super-

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[4] Committee for Finance, www.parlament.sr.gov.yu/content/cir/sastav/odbori_detalji.asp?id=42. (accessed Nov. 18, 2006)
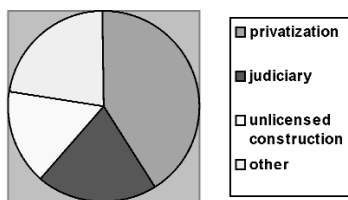
[5] Board for Resolving the Conflict of Interest, www.sukobinteresa.sr.gov. (accessed Nov. 18, 2006)

vise the adoption and implementation of the integrity plan. The plan comprises legal and practical measures preventing and removing the possibilities for the development of corruption. Plans of this kind are adopted by state bodies, bodies of territorial autonomies and local government, public services and public enterprises. These plans should, among other things, include the description of the work process, manner of decision making and identification of operations particularly susceptible to corruption. A special category of such operations that may result in substantial financial losses for the state has to do with public procurement. The Agency may encounter difficulties in trying to oversee procurements for security structures. Bearing in mind that these procurement deals are insufficiently transparent, it is difficult to supervise the adoption and implementation of relevant integrity plans. The entire Ministry of the Interior has been excluded from the Public Procurement Act by a decree on funds for special purposed adopted by the Government in 2005. Speaking about the army let us only recall the "flack jacket" affair. Namely, the defence ministry concluded a damaging contract for the purchase of military equipment with a private company „Mile Dragić". The lawsuit is still under way and there are facts indicating a conflict of interest and the abuse of public office. The establishment of the Agency cannot reduce corruption in the sphere of public procurement unless the relevant regulations are changed.
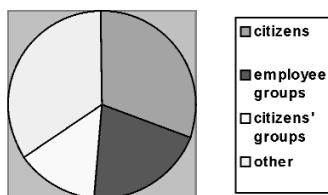
Council vs. Agency

The establishment of the Agency will directly endanger the existence of the Anti-corruption Council (referred to hereinafter as the Council).[6] That is why it will be necessary to state its competences and results. The Council was set up by the Government in 2001 but it took two years to actually start operating. It has an advisory role and should assist the government in suppressing the corruption. In the period from August 2003 until December 2005, the Council received the total of 1050 requests – mostly related to privatization (40.7%), the judiciary (20.5%) and unlicensed construction (16%). They predominantly had to do with Belgrade and the petitioners were mostly citizens (30.7%), employee and citizens groups (20.5% and 14.2% respectively). These figures indicate a high degree of citizens' confidence in the Council, probably because its members are independent experts.

The work of this body elicits diverse comments. Some believe that the Council should exist since its advisory role is definitely not unimportant and it should serve as a springboard for the establishment of the Anti-corruption Agency. Others claim that the Council has generally focused on criticizing the government and that combating corruption through the Council is utopian. Still, we cannot disregard the important role it had in uncovering major incidents and in publicly addressing the issue of corruption. But, in addition to certain advantages, there

■ privatization
■ judiciary
□ unlicensed construction
□ other

Petitions by spheres

■ citizens
■ employee groups
□ citizens' groups
□ other

Petitioners

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[6] Anti-corruption council, www.antikorupcija-savet.sr.gov.yu. (accessed Nov. 12, 2006)

are also several major deficiencies with respect to the Council's competences.

The futility of the Council's work viewed against the formally endorsed solutions is best revealed in its 2005 report.[7] Namely, out of eleven reports submitted to the Government in the course of that year not a single one was adopted. The Government, moreover, ignored the Council's proposals, and offered no feedback or explanation. The im(potence) of the Council is also seen in its capacity to react to the citizens' petitions. All petitions received by the Council are sent on to competent state institutions, which have a 30-day deadline to respond. In practice it sometimes took up to a year and a half, while 10 per cent of its submissions went unanswered. The Council's work was additionally hampered by the lack of finance, which the government failed to provide.

Bearing in mind that the establishment of the Agency directly endangers the existence of the Council, its members severely criticize the Government's proposal. They believe that the motion to establish the Agency amounts to unnecessary spending of budgetary funds. They also say that it cannot operate independently, since the institutions it should regularly oversee are the ones that propose the candidates for its management board and thus indirectly influence its work. This leads to the conclusion that the situation is far from being simple. On the one hand, we have the Council without executive authorities but with independent membership and, on the other, the possibility to establish an Agency with executive authorities, but essentially not independent membership.

What next?

Having said all this, it appears that the relevant institutions are for the most part already established but the question is what else has to be done to reduce corruption in Serbia to a tolerable level. In order to score at least 5 on the TI index – a point that marks a reasonable level of corruption - we should take the steps anticipated by the National Strategy. It is therefore necessary to urgently pass the Action Plan for its implementation and establish the Agency. However, the composition of the Agency's Managing Board ought to be changed, or else the strategy will remain but a dead letter. This body needs to be really independent so as to be able to objectively monitor and coordinate the work of other state agencies combating corruption. Furthermore, in order to prevent possible abuses in the state security structures it will be necessary to establish the mechanisms to oversee procurements for the police and the army. But, the most important precondition is a consensus about the establishment of bodies that would operate independently and have sufficient financial assets and specific authorities in fighting the corruption. Failing that everything will remain but a formality and the role of numerous bodies will remain strictly ornamental.[8]

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[7] Report of the anti-corruption council for 2005, 30. 12. 2005. www.antikorupcija-savet.sr.gov.yu. (accessed Nov. 21, 2006)

[8] **Other useful sources:**

- Clean Hands, www.korupcija.org.

- Financial audit of political parties' reports for 2005, National Assembly, Committee for Finance, 5. 6. 2006. (accessed Nov. 5, 2006)

- World Bank and EBRD research, 2004, ssla.oneworld.net/article/view/94904/1/. (accessed Nov. 5, 2006)

- Council of Europe, www.coe.int.

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- Directorate for Public Procurement, www.ujn.sr.gov.yu.

Call for Contributions

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