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## EUROPEAN PERSPECTIVES

Journal on European Perspectives of the Western Balkans

VOLUME 2 NUMBER 2 OCTOBER 2010

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# Letter from the Editor

A year ago this journal appeared in the scientific community with its first issue. Our aim was – and remains to be – to offer an academic venue for contemplating the integration process, focused on the enlargement perspective of the Western Balkans, as well as to attract authors, dealing with broader aspects of this topic, in particular those from the region discussed.

While having in our hands the journal's third issue we cannot resist sharing our pleasure, both with the authors and readers. Although trying to perform a critical attitude to the one's own output, the first two volumes do bring a variety of papers, hopefully enough substantial and persuasive to offer additional value for discussing the region and its European perspective. This keeps being the key driving force of the change and development that has the power to bring – and perhaps also to push – the region further. A decade and a half after the Dayton Peace Accord a clearly conceptualized and vibrantly implemented step forward is, as we understand it, of crucial importance. Concluding the often so called unfinished business in the Western Balkans needs to be put in a higher gear.

Only looking to the achieved is, as one also knows from the spot, not enough. Thus it is to be expected that the main players in the region would strive more to produce such a move. The *visa issue*, discussed, implemented and dispersed step by step to the countries of the region, serves as an example of the regional policy management. It has been and will continue to be a test for both the international community and each of the countries concerned. There is an impression that the two of them should be more persistent, innovative and keen on advancing the dynamics of the process. Somehow, this dynamics, as it seems to be at the moment, has lost a part of its momentum. As a reader would notice from contributions in this issue, there are many challenges as well as opportunities for the integration process to be enhanced.

Discussed and exercised for a number of years so far, its perspective should be clearer and the invested effort more efficient. Perhaps political elites should listen more to the academic capability to look over and its ability to come together, even though sharing different views and approaches in their contemplation. Still, what stands out is the need and the right of the people across the region to have a stabile, secure and accommodating environment, enabling them to achieve what they have been missing during the course of past years.

The reader already knows the simple structure of the journal. In this volume it has been materialized as follows: The third guest view comes from Jacques Rupnik, a prominent scholar and researcher, who knows the region to the extent that it would be difficult to match with. We extend our gratitude to him for sharing his thoughts with us. Five original contributions, among which one – de facto already by the rule – is from Slovenia, are followed by usual section *Sarajevo 2014*, this time also coming from the capital of Bosnia and Herzegovina. However, also the croquis by chance stems from the same area: the author looks at the old Bridge of Mostar and searches for its historical symbolism, transcendental for the future.

To wrap up, there would be two aspects of the same expectation to point out: the one of readers to benefit from the current number and that of the editorial board to receive new contributions. We suppose and hope the both of them would be met.

The Castle of Jable, October 2010

M. J.

guest view

Reassessing European Challenges in the Balkans

*Jacques Rupnik*



# Reassessing European Challenges in the Balkans

Jacques Rupnik<sup>1</sup>

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*The independence of Kosovo completes the process of Yugoslavia's dissolution which started two decades earlier in Kosovo. With the completion of the process of redrawing of the map of successor states the overall thrust of EU's Balkans policy has moved from an agenda dominated by security issues related to the war and its legacies to an agenda focused on the perspective of the Western Balkans accession to the EU. A formal political commitment all EU members to that prospect has been there since the Saloniki summit of June 2003. The framework was set, the verbal commitments of the political elites in the region were clear enough, the policy tools were supposedly familiar to all since the previous wave of Eastern enlargement. With the most contentious issues for the stability of the region apparently defused one could expect an acceleration of the process of EU integration. What was the difference between Central Europe and the Balkans? Ten or fifteen years, the lost decade of the Balkans in the 1990's. There are, however, a number of reasons why such a reassuring presentation should be nuanced. Some have to do with the uneven pace of reforms and democratic change in the region, others with the lack of political momentum within the EU for a renewed and sustained enlargement commitment.*



1. The 'hour of Europe'? There are three reasons which have recently reinforced the role of the EU as the main international actor in the region. The first is the strong convergence of EU and US policies in contrast to the underlying tensions of the 1990's. There has been over the last decade

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<sup>1</sup> Jacques Rupnik is Director of Research at Centre for International Studies and Research (CERI), Sciences Po, Paris.

a steady Europeanization of international presence in the Balkans while US priorities were shifting outside Europe since 9/11. The list of US international priorities is long from the G2 with China, reset with Russia, non-proliferation in Iran, Afghanistan, Pakistan and the Israel-Palestinian conflict) with the Balkans near the bottom of the list, something not always fully appreciated in the region. However, Vice-president Biden's visit to the region in 2009 showed signs of continuing US engagement which is also seen as crucial by several actors in the region (Bosniaks, Kosovars, Albanians and Croats). There are occasional transatlantic differences concerning the assessment of the stability of the region and particularly over Bosnia<sup>2</sup> with some policy implications: keep OHR or not? Is there a need for a US "special envoy"? Although scaling down the US engagement in the Balkans is consistent with the process of European integration now seen as "the only game in town", the EU should encourage its continuation especially as the professed US prime goal is precisely to assist in the region's accession into the EU. We have moved from security-driven containment to politically driven integration strengthened by an Atlantic insurance policy.

The second reason concerns **Russia**. It has in recent years acquired a significant nuisance capacity and has staged something of a comeback to the region through the Kosovo question and energy supply. The consistency of the EU position on Kosovo and the "frozen conflicts" in the Caucasus has predictably been questioned by Russia. To say that these are self-serving arguments does not dispense with addressing the tension between the legitimacy of the Kosovo independence and the difficult quest for its international legality. The ICJ ruling of August 2010 has considerably changed the picture. Serbia now tends to be considered in Brussels as pivotal to the region and its current government as the most favorable to the EU in two decades. Their jointly proposed resolution at the UN and the more pragmatic stance taken by President Tadic now ready to engage with concrete negotiations with Pristina has also implications for Russia's role. Initially Belgrade's approach was to make a deal with Russia giving Moscow a stake in its energy sector while relying on its backing in the UN over Kosovo. After the ICJ ruling and Belgrades' new pragmatism Russia cannot be "more Serbian than the Serbs". There will be no Russian obstruction in the Balkans, simply a timely reminder that Kosovo precedent has implications for secessionist enclaves in the Caucasus.

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<sup>2</sup> Holbrooke in Foreign Affairs, others

The third factor favoring EU's role in the Balkans concerns the role of **Turkey**. There have been significant and on the whole positive developments in the relations between the countries of the region (particularly Greece, Bulgaria and most recently Serbia) that suggest that old animosities inherited from the past can be overcome. Turkey has opened enlargement negotiations with the EU in 2005 before the countries of the Western Balkans which, from their perspective was, for historical reasons, far from obvious. To the extent that national and European identities were constructed against the ottoman legacy it is not obvious to now proclaim a concerted process of EU accession with Turkey. A 'post-ottoman' enlargement to South East Europe?...The case for geographic proximity need not be the politically the most effective. Given the widespread public opinion reluctance to the Turkish enlargement (particularly in the founding members of the EU) and the new Turkish assertiveness as an international player (vote against the EU at the UN, present itself with Brazil as a go-between with Iran, etc) suggest that, if you are serious about bringing the Western Balkans in the EU, you may consider decoupling their European case from that of Turkey? In either case there is nothing in today's Turkish policy that could weaken the EU's position as the "only game in town".



2. The favorable international environment does not necessarily make it any easier for the EU to shape a coherent **regional approach**. The debate goes back to the regional priorities of the Stability Pact for the Balkans vs the individual competition encouraged by the Stabilisation and Association Process. The current assumption is that the "regatta" approach works fine for the EU as it makes the enlargement process 'discreet' enough for Western public opinion acceptance and for the political elites of the countries concerned. All of them seem to cheer for Croatia's accession in 2013 as opening the door to the EU for the rest of the Western Balkans. The logic of emulation may work for some such as Macedonia or Montenegro with candidate applications in. But for the 'unfinished states'- as Veton Surroi <sup>3</sup>calls s Bosnia, Kosovo and Serbia- there may be a case for a parallel accession to the EU. The shared European roof is meant to help defuse contentious territorial and institutional issues. To be sure, nobody's accession should be held hostage to the intransigence one's neighbor. But given, for instance, the possible interaction between different aspects of the "Serbian question" (Kosovo, Bosnia) it seems

<sup>3</sup> V.Surroi's lecture at CERL, Sciences Po, in Paris on November 7, 2010

prudent to make sure unfinished statehood issues are settled simultaneously during the accession process when EU leverage is strongest. This is a case for a regional approach at least on a smaller scale.

It also helps to answer the concern for the solution of unresolved conflicts during the EU accession process. There is no shortage of bilateral tensions and contentious issues. Croatia, to take the frontrunner for EU accession, has pending border issues with most of its neighbours. The easiest one to solve, or so it seemed, concerns Slovenia's access to international waters has become recently a very sensitive one risking to block Croatia's EU accession (the Slovene referendum was a high risk gamble which could have blocked the enlargement process for the foreseeable future). The most difficult one concerns the relations between Serbia and Kosovo as even the most pro-European Serbian politicians keep repeating that recognition is out of question. Foreign minister V. Jeremic formulated in April 2010 Serbia's three 'no': no to recognition of Kosovo, no to NATO membership and no to changing the status quo in Bosnia Herzegovina (i.e. not challenging Dodik's Republika Srpska as a state within a state). The third bilateral difficulty on the road to the EU concerns Macedonia's quest for a post-FYROM identity acceptable to its Greek neighbor. Greece has vetoed Macedonia's accession to NATO and there is little indication that it intends to be more flexible as far as EU entry is concerned, unless the country's current financial crisis and financial dependence on the EU brings home the message that this is not the time to bloc EU's policy in the Balkans.



3. The Macedonian case highlights the tensions between EU policies and those of some of its member-states. Some of them (Greece, Austria, Italy) have, for historical and geographic reasons, been the most involved and usually considered as vectors of EU influence in the region. Others, new members of the EU such as Slovenia, Bulgaria or Romania, have a direct stake in the region's stability and accession prospects. Proximity and involvement of an EU member states can sometimes become an impediment. Beyond Athen's unresolved conflict with Skopje or the Slovene-Croatian border dispute the most explicit warning for the EU in the region comes from Cyprus: it was included to the Eastern enlargement of 2004 at the insistence of Greece and the assumption in the EU was that accession to the Union would be conditional on the overcoming of the partition of the island in accordance with the UN plan. We know what happened to that

assumption and this must now be considered in the EU as a major warning and a Cyprus lesson for the future dealings with the Western Balkans: there will be no EU enlargement without having resolved pending bilateral conflicts.

These developments should suffice to qualify the widespread assumption that a member state is the best stabilizer and “advocate” of its neighbour as prospective candidate member. The inclusion of Croatia in the EU would certainly contribute to the stabilization of its democracy and the rule of law. However, the impact on neighboring Bosnia-Herzegovina remains debatable as Croats from Bosnia-Herzegovina, owning en masse Croatian passports, are losing interest in the future of their state (Croatia is the only European state with more voters than citizens!). Similarly, the passports delivered by Romania to close to a million citizens in Moldova or by Bulgaria (on a much smaller scale) to citizens of Macedonia raises questions about the nature of citizenship and the destabilizing effects of EU enlargement on some of its neighbours. Any EU enlargement policy in the Balkans should entail a careful consideration of its impact on fragile neighbouring states and thus its relationship to EU’s neighbourhood policy or its “Eastern partnership”.

These are some of the main dilemmas raised in examining EU’s approaches to the Western Balkans. It contrasts stated goals and their implementation. No wonder ‘europeanization’ looks different when seen from Brussels or from the countries at the receiving end. This is also where enlargement fatigue within the EU meets “accession fatigue” in the Balkans. The latter has two faces: the political elites in the region sometimes using verbal commitments to EU accession as a smokescreen for politics as a business model. No less important is the erosion of popular support for EU accession (strongest where it is least advanced, in Albania; weakest where it is most advanced, in Croatia.) According to *Gallup Balkan Monitor* from November 2009 the majority of citizens in each of the candidates for joining the EU believes their country is “heading in the wrong direction”. Hence the importance of checking such premature doubts about a process which has a long way to go and cannot succeed without the support of the societies concerned. This points to the limited effects of a “summit to commemorate a summit” (Sarajevo 2010 celebrates Zagreb 2000) and to the need for tangible measures the citizens can directly identify with Europe. Visa liberalization has obviously been the most important both symbolically and politically

though provisionally leaving Bosnia, Kosovo and Albania out /no regional approach here/.

The agenda for both the countries of the Western Balkans and for the EU seems clear enough. For the former it means to address the doubts raised about the rule of law **after** the accession of Romania and Bulgaria by tackling the question of corruption and clientelism by addressing its main sources: the legacies of war economy (getting around the embargoes through parallel networks), the legacies of socialism (with a fairly corrupt privatization process) and the use of public sector employment for political patronage and state capture. The case of Croatia shows that nationalisms can be made “eurocompatible”, HDZ under Sanader paved the way for a process now at work in Serbia under Tadic. To complete the region’s accession process this emerging eurorealism or europragmatism will be essential to resolve the above-mentioned bilateral disputes which could become a serious impediment to regional stability.



For the EU the Balkans require a rethink in its concept of enlargement which cannot, for reasons mentioned, be simply the replica of the pattern successfully implemented in Central Europe. The EU should strengthen the regional approach by giving all countries of the region the candidate status and a date to open negotiations. The pace and completion of the process will then depend on the capacity to deliver by the political elites of each country thus making their respective responsibilities clear and the political costs of failure more palatable. Such a tangible and assertive European commitment to the Balkans, which is not questioned within the EU, is all the more important as it remains, for the foreseeable future, the only prospect for EU enlargement. It would also be the best way for the EU to downplay its divisions (Kosovo), overcome its hesitations between containment and integration, and restore its credibility in the region and as an international actor.

# articles

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# Political Competences within the EU and their Significance for the Western Balkans

Thomas Döring, Eithne Knappitsch, Birgit Aigner<sup>1</sup>

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## ABSTRACT

The question of which political competences should or should not be carried out at European Union level is one that has occupied policy makers and academics alike since the initial founding of the European Union and still proves to be a contentious issue today. Against this background, the paper at hand attempts to firstly discuss relevant economic approaches regarding the sound assignment of political functions and competences between the European Union and its Member States. Analysis of the current status quo of EU-Western Balkans relations and the relevance of particular political task areas for the Western Balkans region is then sketched. On the basis of theoretical principles and criteria for an efficient allocation of political functions within the EU, the authors ask whether these economic considerations provide arguments for an alternative assignment of political functions between the EU and its Member States. Thereby, the case of the Western Balkans will be illustrated in an effort to look at the significance of EU political competence for pre accession states.

## KEYWORDS

Fiscal federalism, EU budget, EU competences, Western Balkans

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<sup>1</sup> CORRESPONDENCE ADDRESS: Prof. Dr. Thomas Döring, Carinthia University of Applied Sciences – Research Center for Interregional Studies and International Management (isma), Europastraße 4, 9524 Villach, Austria, e-mail: t.doering@fh-kaernten.at.

## INTRODUCTION

The question of which political competences should or should not be carried out at European Union level is one that has occupied policy makers and academics alike since the initial founding of the European Union and still proves to be a contentious issue today. Inextricably linked to this question is that of European public finances and budgetary matters. Here again there is much criticism of the allocation of funds at EU level. A number of economic commentators argue that the provision of European public goods – such as in the areas of policing or defence<sup>2</sup> – should be a major task of the EU. More recently, demands for a European fiscal policy<sup>3</sup> as well as European growth promoting policies<sup>4</sup> have also been increasing in resonance. The latter clearly reflects the perceived need for the EU to be better equipped to cope with macroeconomic shocks like that of the current global financial and economic crisis.

As regards the entire process of European integration and the advancement of the European Union per se, there has been widespread criticism of the apparent lethargy in the EU following the rejection of the Constitutional Treaty and the slow institutional reform. Now that the Lisbon Treaty has finally come into force perhaps it will be accompanied by new momentum in these areas. There has also been much talk lately of the EU’s “enlargement fatigue” in the aftermath of expansion from an EU15 to an EU27. This is of particular relevance to the states of the Western Balkans, which are moving towards playing a greater role in Europe. Clearly any shifting of political competences from the Member States to the European Union level requires the strong backing of sound and valid economic arguments. Bearing this in mind, there seems to have been somewhat of a renaissance recently in the use of economic theories such as that of fiscal federalism to understand the European Union and the allocation of decision-making powers across different levels of government.

Against this background, the paper at hand attempts to firstly discuss relevant economic approaches regarding the sound assignment of political functions and competences between the European Union and its Member States.

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<sup>2</sup> See, for example, Alesina et al. (2005) or Tabellini (2003).

<sup>3</sup> See among others Schmieding (2009) as well as Feld (2005); see for a critical discussion of this issue Belke/Gros (2009).

<sup>4</sup> See with a special focus on innovation policy as well as transport infrastructure policy van der Horst et al. (2008) and de Borger/Proost (2008).

Analysis of the current status quo of EU-Western Balkans relations and the relevance of particular political task areas for the Western Balkans region is then sketched. The paper looks at political task assignment in four steps: First, the economic theory of federalism is briefly outlined by discussing two different concepts of federalism (the welfare economic and the political economic approach), both of which are used by economists to analyse federal structures and intergovernmental (fiscal) relations. This section looks at some basic theoretical principles and criteria for an efficient allocation of political functions within the EU. Secondly, a short outline on the development of the European budget as well as the budget process is given: showing the most recent budget allocation for European level policies.

Thirdly, the paper will critically analyse the existing structure regarding the division of political competences within the European Union, taking into account the insights offered by the economic theory of federalism. Here a brief overview and analysis of the findings of current literature is provided, offering some insight into the discussion on the optimal redistribution of competences within the EU from a normative perspective. Comparison is also drawn to the de-facto distribution of EU-competences today. Furthermore, the authors ask whether these economic considerations provide arguments for an alternative assignment of political functions between the EU and its Member States. And finally, the case of the Western Balkans will be illustrated in an effort to look at the significance of EU political competence for pre accession states. This section aims to shed some light on the current political relationship between the Western Balkans and the EU, and outline specific policy areas of particular interest as regards pre accession negotiations.

## THE ECONOMIC THEORY OF FEDERALISM

The degree of policy-making by the European Union has sharply increased over recent years. The European Union is today facing challenges in terms of the allocation of political tasks or competences between central institutions and its Member States that are typical of those challenges faced by all federal systems. Although the European Union can hardly be seen as a federal state, but rather as a union of states with federal elements<sup>5</sup>, the

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<sup>5</sup> For a discussion on to what extent the European Union is a federation see, for example, Börzl (2003). See also Benz/Zimmermann (2008).

economic theory of federalism can nonetheless be helpful in considering just this allocation of tasks. The aim of this section is to demonstrate which arguments originating from the economic theory of federalism (Oates 1972, 1999, 2005) can be used to assess the appropriate division of competences between different political levels within the European Union<sup>6</sup>. The economic theory of federalism is seen to provide crucial insights into the assignment of policy tasks between different levels of government. It analyses which level of government should undertake which economic tasks and seeks to find the most appropriate means of sharing responsibilities through the various jurisdictions or levels of government in order to optimise performance. It attempts to determine both horizontally and vertically an optimal allocation of public finances. Federalism, therefore, provides a useful framework for any discussion on the assignment of competences to different political levels within the EU.

The idea of federalism builds on the principle of subsidiarity. While the principle of subsidiarity is neutral about the optimal degree of centralisation (Ederveen et al. 2008: 20), it is seen to first and foremost assign power to the lowest effective level of government: the lowest governmental level should act, if it can do better than a higher governmental level<sup>7</sup>. With respect to this, the economic theory of federalism offers three arguments for a decentralised fulfilment of tasks. First, the heterogeneity of preferences of residents is considered. Central governments face informational problems regarding the requirements of their citizens and often also have a limited ability to differentiate policies across jurisdictions. The lower the level of government the easier it is to assess which public goods and services are demanded by local residents. In order to understand the second argument it is necessary to highlight that the economic theory of federalism stems from the so called welfare economics approach. According to this approach it is traditionally assumed that governments act as benevolent maximizers of social welfare, meaning that a government only and exclusively tries to satisfy the preferences of the citizens.

From a political economic perspective, however, this hypothesis is considered over-simplified. If the assumption of benevolent officials is relaxed, governments may also pursue their own aims, which will not always co-

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<sup>6</sup> See additionally for a summary of the main considerations of the economic theory of federalism Ter-Minassian (1997), Inman/Rubinfeld (1997) as well as Bailey (1999).

<sup>7</sup> See also Döring (1996) and (1999).

incide with those of society. But on a lower government level the incentive to provide market-enhancing public goods is higher, as transparency in public transactions is increased and citizens can more effectively control power. Thirdly, the existence of local and regional authorities allows for competition within the public sector. Following the considerations of Tiebout (1956), individuals vote with their feet based on in which jurisdiction service provision is best. Therefore, competition between decentralised governments produced by mobile citizens increases the efficiency of public policies and enhances political and organisational innovation, as governments have to provide for an optimal ratio of services and tax burden. According to Weingast (2009) effective competition is only possible if the subnational governments have the authority to adapt policies to their circumstances, a well functioning common market in the sense of product and factor mobility exists, the budget is constrained so that the full financial consequences of policy decisions have to be taken, and finally, if sub-national governments have institutionalised authority.

Although the arguments mentioned above clearly support a decentralised assignment of competences, a centralised provision of public services is favourable under certain circumstances, which will be outlined below. First of all it is necessary to refer again to the preference argument. In the case of largely homogeneous preferences concerning the demand for a public good, the responsibility for its provision can be centralised<sup>8</sup>. Furthermore, two efficiency arguments need to be mentioned here – economies of scale and regional spillovers. A subnational government may be too small to effectively provide a public good for its population. If a common good exploits economies of scale, a centralised fulfilment is preferable. This is for instance true for defence policy. In the case of regional spillovers (externalities) a decentralised accomplishment of tasks may have (un)desirable consequences for its neighbouring jurisdictions. This is the case for example for negative environmental effects due to cross-border pollution or positive external effects by the provision of a hospital that is also used by neighbouring regions.

Two additional circumstances under which centralisation should be considered are the existence of economic disparities and negative dynamics

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<sup>8</sup> This is in line with the so called principle of fiscal equivalence, which was introduced by Olson (1969) and which implies that those who consume a public good should be identical to those who pay for its provision and who decide upon its provision.

of competition. As regional economies differ in their income and hence their ability to offer public goods and services, redistributive justice can only be achieved by a levying of taxes of the central government and a transfer system to the subnational governments. Action by the national government is also required if the competition between the political authorities has negative effects on the economy. The competition between decentralised governments produced by mobile citizens should not lead to a 'race-to-the-bottom' in terms of taxes and hence the quality of goods (Oates 1972).

In principle, the division of competences between different levels of government is a neutral and technical operation. From a normative perspective, an adjustment of task allocation is only justified if the characteristics of the criteria change. An orientation on the framework of the economic theory of federalism would lead to a comparably clear differentiation between competences of member states and central institution. This would avoid policy choices which are "(...) shaped by the institutional self-interests and policy preferences of governments at both levels"<sup>9</sup>, hindering effective responses to economic challenges by decisions characterized of a minimum of consensus.

## EUROPEAN BUDGET ALLOCATION – STATUS-QUO

Before offering any further analysis of the allocation of political functions between different levels of government within the EU, it is certainly of interest to first look at the financing of the EU. Here a brief outline of developments in the budgetary situation of the EU and current trends in the European budget should provide an interesting backdrop to later analysis of how tasks are allocated or might be better allocated within the EU.

The budget of the European Union amounted to EUR 133.8 billion in 2009. This amount might at first appear quite significant, but at a second glance it becomes obvious that the figure is rather low compared to the budget of its Member States or other federations<sup>10</sup>. The EU budget cov-

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<sup>9</sup> See Scharpf (2005) who defines this perception as "joint decision trap".

<sup>10</sup> This may explain the provocative subtitle Feld (2005) gave his paper on the level and structure of the EU budget: "Much ado about nothing?". He also states that "with such a small budget, no major EU policies in the three areas – provision of public goods, redistribution and stabilization – may be expected" (ibidem: 259).

ers approximately 1.1% of the European Union GNP, which immediately indicates the small size of the budget – especially bearing in mind that federal government expenditures usually cover some 10 to 30 percent of a nations' GNP (Ardy/El-Agraa 2004: 337). So in relative terms, the European budget is small and as such of marginal economic importance (Pelkmans 2006: 412). Another difference between the European budget and national budgets is the fact that it is not permitted for the budget of the European Union to be in deficit: Revenues must cover the costs of all activities undertaken by the EU. The budget of the European Union is decided on democratically. A multi-annual agreement on EU expenditures is reached by the European Parliament, the Council of Ministers, and the European Commission; whereby the latter additionally proposes annual spending plans which are negotiated by the Parliament and the Council<sup>11</sup>. The most recent financial framework covers the seven-year period 2007 to 2013.

As is apparent in Figure 1, the budget of the EU has been growing relatively constantly from less than EUR 50 billion in 1988 to a planned EUR 150 billion in 2013. In the early years the rather small budget was financed by national contributions. Since 1970 the European Union has had financial autonomy and is raising a part of its revenues (14.3% in 2008 according to European Communities 2009: 68) by taxes that are distinct from those of the Member States (e.g. tariff revenues on imports of agricultural goods). Over the years the expenditures have grown, mainly in the field of agriculture<sup>12</sup> – which has been a source of dispute among the Member States. Consequently, various revisions of the budget and its arrangements have been undertaken (Delors I in 1988, Delors II in 1992). As a result, a multi-annual financial perspective and an inter-institutional<sup>13</sup> agreement on budgetary procedures were introduced, the agricultural policy reformed and expenditures for structural development, internal policies as well as external action increased. Further budgetary modifications were then needed due to the Eastern enlargement of the European Union (Agenda 2000)<sup>14</sup>.

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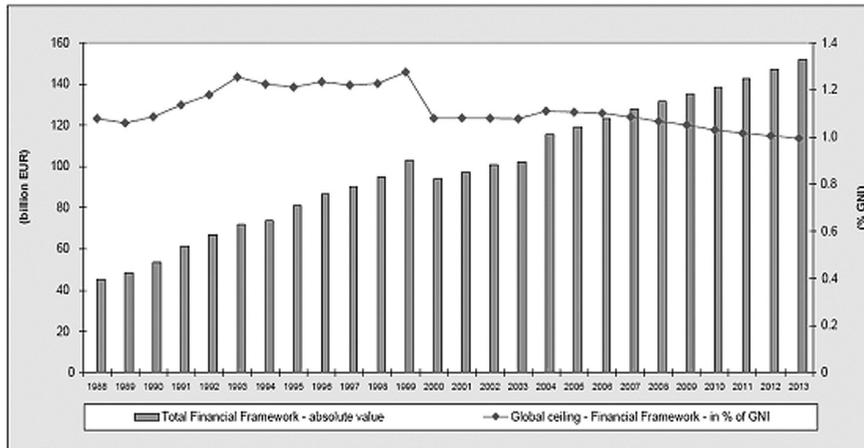
<sup>11</sup> For further details on the budget process see for example Zeff (2004). See also the explanation of the budget procedures in Feld (2005: 289 et seq.).

<sup>12</sup> Agricultural spending increased from 38% of total spending in 1965 to 92% in 1970 (Feld 2005: 276).

<sup>13</sup> European Commission, European Council and European Parliament are involved in the budget agreement procedure.

<sup>14</sup> See for example Baldwin/Wyplosz (2006: 61) for an overview on the milestones in the EU budget procedure.

Figure 1: Financial Framework of the EU



Source: European Communities (2008: 277).

Discussions over budget expenditures have been a constant ever since. EU enlargement to include the Western Balkans and Turkey would also necessarily incur further budgetary changes. The European Union is not a national state but is made up of 27 nation states. The differences between these 27 states are striking – with a variation in income levels even greater than that of the US (Ardy/El-Agraa 2004: 338). This situation would be exacerbated by future EU enlargement. Hence, on the one hand aid policies for convergence are needed, but on the other hand equity is requested by the Member States. The question “How much do I pay and how much do I get?” is the most prevalent among Member States.

In the following table, the structure of the budget of the European Union for the years 2007 and 2013 – the beginning and end year of the current financial period – is shown. Looking at the table, it becomes immediately obvious that agricultural policy (preservation and management of natural resources), which has long dominated the EU budget, still receives the highest share of budget in 2007 at 44.32%. This is followed by structural policies (sustainable growth), which is awarded 43.37% of the total budget. By 2013 the amount made available for preservation and management of natural resources will decline to 40.33%, whereas the budget share for sustainable growth will increase to 45.81%. Sustainable growth, which tops the table in terms of budgetary expenditure for 2013, can be divided into two components: competitiveness for growth and employment, (including expenditure on research and innovation, education and training,

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trans-European networks, social policy and the internal market) and cohesion for growth and employment (designed to enhance convergence within and between the member states). Approximately 5% of the budget is donated to both external actions of the European Union – including pre-accession instruments – and administrative expenditures for all institutions and pensions; these can be found in third and fourth position on the table below. Finally, between 1.02% and 1.56% of the budget are reserved for citizenship, freedom, security and justice, including home affairs, border protection, immigration and asylum policy, public health and consumer protection, culture, youth, information and dialogue with citizens.

Table 1: Structure of expenditure 2007 and 2013 (at current prices)

	2007		2013	
	Million EUR	%	Million EUR	%
Sustainable growth	53979	43.37	69621	45.81
Preservation and management of natural resources	55143	44.31	61289	40.33
EU as a global player	6578	5.29	9595	6.31
Administration	7039	5.66	9095	5.98
Citizenship, freedom, security, and justice	1273	1.02	2376	1.56
Compensations*	445	0.36	-	-
Total	124457	100.00	151976	100.00

Source: European Communities (2008: 253)

Table 1 provides an overview of the relative importance of policy tasks within the European Union. In the following section, the economic theory of federalism will be used to analyse whether these competences should really be carried out at European level, which of them could probably be carried out at Member States level and last but not least which tasks are left out in table 1 but should be fulfilled at European level regarding economic considerations.

\* The term 'compensation' refers to temporary post-accession amounts related to the latest enlargement of the European Union (Bulgaria and Romania).

## ARE ECONOMIC THEORY AND EU PRACTICE COMPATIBLE?

As described above, the theory of federalism offers a set of criteria that can be used to determine how competences can best be allocated between different levels of government. This section discusses the principles of optimal task allocation within the EU as can be read from this economic theory and provides analysis of the current division of competences before offering suggestions on how tasks might be reallocated to the different levels of governance. Bearing in mind the results of section 2, the general guideline of economic federalism is that redistribution and stabilisation should be centralised, while the allocation of the different public goods and services should follow a decentralisation principle. Furthermore, policies should be allocated to the highest federal level in cases where economies of scale and/or spatial (supra-national) externalities prevail, whereas in cases where there is a high heterogeneity of preferences relative to externalities competences should be assigned to national or sub-national levels.

While it is relatively unusual for the division of competences not to be clearly defined, this is the case within the European Union. Exclusive Community competences are not mentioned specifically in the treaties but described in a functional way. A number of tasks have been recognized as exclusive by the Court but not been laid down in a definitive list. The idea initially discussed as part of the European Constitution drafting process of identifying a catalogue of competences was quickly dropped as this was not considered feasible. But at least one step forward was taken with the Treaty of Lisbon. The principle of conferral, the principle of subsidiarity and the principle of proportionality were integrated stating that “Competences not conferred upon the Union in the Treaties remain with the Member States”<sup>15</sup> whereas “(...) the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties”<sup>16</sup>. Additionally, the principle of subsidiarity ensures that apart from its exclusive competences the European Union “(...) shall act only if and insofar as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level”<sup>17</sup>. Despite

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<sup>15</sup> Article 3b (2) TEU, inserted due to the Treaty of Lisbon.

<sup>16</sup> Article 3b (4) TEU, inserted due to the Treaty of Lisbon.

<sup>17</sup> Article 3b (3) TEU, inserted due to the Treaty of Lisbon. See also Baldwin/Wyplosz (2006: 76 et seq.) for an analysis of the subsidiarity principle with respect to the EU before the Treaty of Lisbon.

of the blurriness on task allocation, over the years the EU has acquired increased competences in a number of areas, this becomes obvious if we again consider the increasing budget described above. It goes without saying that the specificities of the European Union account for a number of differences when compared to other federal systems or federations. Hence, the conclusions of the economic theory of federalism will be analysed in terms of their applicability to the specific case of the European Union.

Generally, three major types of competence division within the EU are defined: exclusive competences of the union, shared or concurrent competences of both the Union and Member States, and areas of complementary, supporting or coordinating action<sup>18</sup>. In a very general sense it is argued that the EU has acquired exclusive competences in market-creating policies and shares competences with the Member States in market-correcting policies. Task areas in which EU level involvement is generally considered justified are those areas in which the EU level can generate normatively higher allocative efficiency due to economies of scale realisation, internalisation of spatial (supra-national) externalities, homogeneity of preferences, or the harmonisation of (market) distorting national regulations. Bearing this in mind, the creation of a common market with a common external trade policy is probably one of the most important policy areas assigned to the EU. There is generally widespread recognition of the need for the EU to play a strong role in the implementation of the single market – including competition policy (because of the negative transnational spillover of uncompetitive behaviour) and the free market (see Eichenberger/Hosp 2001, Holler et al. 1996, Persson et al. 1996, Smekal 2001, Tabellini 2003 and Rischkowsky 2007). Monetary policy is widely considered to be one of the most successful policy areas of the EU. Here economies of scale are seen to be inherent in gathering supervisory information, while the possible negative transnational spillover of financial fragility is also recognised (Shah 2002, Smekal 2001 and Alesina et al. 2005).

As far as fiscal policy is concerned, policies for stabilisation purposes remain a national responsibility – while the monitoring of these policies at EU level can be seen as part of broader economic policy guidelines within the framework of the Stability and Growth Pact (Tabellini 2003). In light of recent developments associated with the economic and financial crisis, some commentators are now calling for increased fiscal policy co-ordi-

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<sup>18</sup> See Vaneecloo et al. (2006: 191) for a concise table outlining these EU policy divisions.

nation at EU level. Public goods such as defence, foreign policy, internal security, border control, and immigration policy are, to a large extent, still national prerogatives; although the EU's role here is seen to be growing (as can also be seen by the increasing budget in the fields of 'EU as a global player' and 'Citizenship, freedom, security, and justice' in table 1). Commentators argue that there could be increased benefits to more centralised provision of policies in these areas. Defence and foreign affairs are considered appropriate EU competences because of the economies of scale and externalities to be exploited, assuming that geopolitical preferences are similar (see Alesina et al. 2005, Tabetini 2003, Shah 2002 and Hoeller et al. 1996). Both economies of scale and of rationalisation could enable the EU to enhance its military capabilities in relation to defence expenditures quite significantly (see Dardanelli 2005). Recent Eurobarometer results also indicate European citizens' widespread approval for increased EU involvement in these areas<sup>19</sup>.

In terms of the political tasks assigned to the Member States, we can identify a number of policy areas where economic experts tend to agree that responsibility should be primarily assigned to the national or sub-national government level. For example, in the case of industry, energy and agricultural policy there is general agreement that task assignment should be at national level. Agriculture is one of the oldest and perhaps most controversial EU policy areas, and it is the policy area that still receives the largest chunk of EU financial resources. EU involvement in agriculture is considered too great and calls for redistribution in this area to be scaled back are increasing in resonance. There are predominantly pragmatic arguments, such as a greater reliance on market forces, used against agriculture remaining an EU level competency (see for example Grethe 2008, Alesina et al. 2005 and Hoeller et al. 1996).

There are a number of tasks and competences for which it is not possible to assign responsibility to just one level. The environment is such a case. Environmental effects can be international/global or local/regional. Arguments speaking for a European Union level involvement include EU-wide externalities, economies of scale, and the regulation in the case of market distortions because of disparities between national environ-

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<sup>19</sup> Current surveys show that 79% of respondents believe that decisions on fighting terrorism should be taken jointly at European level, and 64% believe that defence and foreign affairs decisions should be a European policy. See Eurobarometer Standard 69.

mental standards. However, these arguments are countered in favour of Member State assignment of environmental issues based on the existence of local environmental externalities with no cross-border spillovers. The actual enforcement of environmental policies is also likely to have a strong national and sub-national component (see Alesina et al. 2005, Feld 2005, Döring 1997 and Hoeller et al. 1996). EU involvement in terms of EU-wide externalities certainly seems desirable. Considering education, a number of authors make convincing arguments for the decentralisation of this competence because of heterogeneous local preferences, positive effects of inter-jurisdictional competition, or limited cross-national externalities (see Alesina et al. 2005, Smekal 2001 and Persson et al. 1996). At the same time proponents of centralisation base their arguments on an increase of EU-wide labour mobility through the harmonisation of academic or educational grades at EU level, or the adverse effects of sub-national activities on the stock of human capital (Ter-Minassian 1997 and Persson et al. 1996).

In the majority of cases, it can be argued that the de facto distribution of political tasks within the European Union corresponds to a greater or lesser extent with normative economic advice (monetary policy, environmental policy, competition policy etc.). Where some discrepancies exist, as has already been pointed out, are in areas such as defence and agriculture. It is widely believed that the EU role in agricultural policy should be confined largely to trade policy and not to the complete regulation of markets or the paying of direct subsidies. In defence, which is one of the public goods where supra-national externalities of decisions are strongest, centralised provision is recommended.

## **THE WESTERN BALKANS<sup>20</sup> AND THE EU**

In May 2003 the EU Commissioner for External Relations Chris Patton said at the presentation of the Communication on the Western Balkans and European Integration: “The map of the European Union will not be complete until the countries of the Western Balkans are included on it. (...) What we are proposing today shows that the EU will do all it can to help

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<sup>20</sup> From an EU perspective the Western Balkans are seen to consist of seven states: Croatia, the Former Yugoslavian Republic of Macedonia (FYR of Macedonia), Montenegro, Albania, Bosnia and Herzegovina, Serbia and Kosovo.

these countries prepare themselves, and that our wish to see them one day as fellow members is real”<sup>21</sup>.

Initial European Union accession strategy for the Western Balkans was one that linked accession to the pace of reform in the individual Western Balkan states; in the meantime there has been a shift towards a more restrictive strategy. The EU’s original strategy was one of conditionality - requiring countries to meet EU established criteria and conditions - and one designed to increase regional stability in the Western Balkans through regional cooperation. Tailored country strategies were designed for each of the potential candidate countries. The new strategy has moved towards consolidation in the region and takes into consideration the integration capacity of the EU; it also includes concepts of conditionality and communication - in order to ensure that there is public support for enlargement (Brown/Attenborough 2007). This shift in strategy can on the one hand be seen as a result of developments relating to the process of the Constitutional Treaty and slow institutional reform within the EU, and on the other hand may be considered as linked to experiences gained from the enlargement of the EU from 15 to 27 Member States and more recently the economic crisis. Analysts and commentators from various backgrounds make regular reference to the “enlargement fatigue” (see Balfour 2009 and Pridham 2008), which has apparently emerged in Europe in conjunction with future enlargement.

Following the 2007 accession of Romania and Bulgaria to the EU, the Western Balkans now represents an enclave on the European Union map - wholly surrounded by EU member states. The initial steps towards European integration of the Western Balkans have been taken. Stabilisation and Association Agreements (SAAs) - legal contracts currently focused on the Western Balkans states that include specific provisions for future EU membership of the individual countries in question - have now been signed by all Western Balkan states with the exception of Kosovo. These are similar in structure to the “chapters” negotiated with accession candidates, and are considered a sort of pre-accession exercise (Emmerson 2008). Over the past year the SAA network has been extended and the Western Balkans are seen to have “moved closer to EU membership” (Com (2009) 533). Progress has been made away from the

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<sup>21</sup> See European Commission proposes new European Integration Partnerships for the Western Balkans, Brussels, 21/05/2003.

much criticized visa facilitation measures and towards visa liberalization (achieving visa-free travel). In July 2009 the Commission proposed to remove visa obligations from the FYR of Macedonia, Montenegro and Serbia (Com (2009) 533).

Currently Croatia is closest to EU accession, as negotiations enter the final stages. The FYR of Macedonia, accepted as an EU candidate in 2005, has provided evidence of successful progression towards meeting some key challenges of the accession partnership (Com (2009) 533). Montenegro and Albania have both officially applied for EU membership (in December 2008 and April 2009 respectively) and the Commission is in the process of preparing or beginning to prepare an opinion on both cases. Bosnia and Herzegovina has still some way to go before the EU could consider an application for membership and is not yet in a position where it could adopt or implement the necessary rules and laws of the EU. Serbia, with its pro-European government, is seen to be moving in the right direction: signalling a commitment to move closer towards the EU. In 2008 it signed a Stabilisation and Association Agreement with the EU (Emmerson 2008). Kosovo is now the only Western Balkans state not to have concluded an SAA. Stability here has been proving fragile, however, the EU's rule of law mission (EULEX) is now fully operational in Kosovo.

## **THE WESTERN BALKANS AND RELEVANT COMPETENCY AND POLICY ISSUES WITHIN THE EU**

Turning our attention briefly back to the current trends in the EU budget, we determined above that some 5% of the EU budget is allocated to external actions of the EU, which includes both pre-accession instruments and the EU's Common Foreign and Security Policy (CFSP). Both of these budgetary areas are particularly relevant for the Western Balkans. The EU's 2007-2013 budget was viewed with disappointment by some commentators because of perceived limits in terms of the funding made available for the Western Balkans (Avery/Batt 2007). Here comparison is sometimes drawn between the largely disproportionate pre accession aid received by Bulgaria and Romania before accession and that received by the Western Balkans under the Instrument for Pre-accession Assistance<sup>22</sup> (IPA) programme (see

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<sup>22</sup> The IPA has replaced the previous pre-accession instruments such as Phare, Ispa, Sapard, Cards, 'structural funds' and 'rural development funds'.

Jano 2008 or Emmerson 2008). For 2010 approximately EUR 1.6 billion will be committed to the Western Balkans and Turkey through the IPA. This money is available for institution-building, regional and rural development and represents an increase of some 4.9% on the 2009 budget. The CFSP plays an important role in enhancing stability in the Western Balkans region: for 2010 it has been granted a budget of some EUR 281 million (an increase of 15.9% over 2009)<sup>23</sup>.

As was previously outlined, the EU's role in defence, foreign affairs and security has been growing over recent years and there is widespread agreement on the need for more centralized provision of these policies at European Union level. These areas are of course particularly relevant to Western Balkans states. Essentially the EU's Common Foreign and Security Policy was born out of the devastating events which took place in the Balkans in the 1990s. Enlargement policy has been the EU's main instrument in maintaining stability in the Western Balkans region. European enlargement is often referred to as the most successful element of European foreign policy or its most effective foreign policy instrument<sup>24</sup>.

Monetary policy, generally considered one of the most successful policy areas of the EU, represents a major hurdle in achieving *full* European Union integration. The EU follows a very strict line in terms of the conditions it applies before entry into the euro zone is permitted. The basic doctrine in terms of adoption of the euro stipulates that full EU membership is a prerequisite, and even then there are a number of very demanding criteria that still have to be met before acceptance into the euro area is permitted<sup>25</sup>. As regards the case of the Western Balkans states, a number of arguments can be put forward in favour of a possible unilateral euroisation before full EU membership: the entire region is actively interested in and pursuing the possibility of joining the EU market; it can therefore be assumed likely that synergetic advantages would result from joining the euro area as well; and elimination of transaction costs would improve the transparency of cost accounting and almost certainly lead to improved business credibility in the region (Emmerson 2008). However, it is deemed unlikely that the EU will relax its euro zone criteria in the foreseeable future.

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<sup>23</sup> See European Commission, EU Budget 2010 Paving the way for economic recovery.

<sup>24</sup> See Com (2009) 533, p.2., SPEECH/09/492, or Reljić (2009).

<sup>25</sup> These are known as the Maastricht criteria. See Emmerson (2008) for further discussion of this point.

The fact that there is widespread agreement that the assignment of energy, industry and agricultural tasks should remain at member state level was discussed above. If we take a look at EU related policies for the Western Balkans in the energy and transport sectors, a number of developments become of interest. In 2005, for example, the EU and all the Western Balkans<sup>26</sup> signed the Energy Community Treaty. This is the first legally binding treaty between the Western Balkan states following the wars of the 1990s. In signing the Treaty, the states have committed themselves to establishing the legal framework for an integrated and liberalised energy market in their states and adopting the relevant EU *acquis communautaire* on energy, environment, renewables and competition (Renner 2009). A particularly significant element of this Treaty is the accession of all of the Western Balkans to the EU's electricity grid system. The Commission is also currently taking steps to further this model in the land transport sector – a Commission proposal to progress in this direction was accepted by the European Council in June 2008. In addition, it is perhaps also interesting to note that negotiations with the Commission regarding the Western Balkans accession to the Single European Sky are also ongoing (Emmerson 2008).

As with the EU, the Western Balkans has also experienced the negative effects of the recent economic crisis, albeit to different extents. The macroeconomic situation in all countries is considered fragile (Com (2009) 533). Nonetheless, the prospect of EU accession is likely to have gone some way to maintaining confidence in the economies of the Western Balkans and stabilising economic policies. Increased fiscal policy coordination at EU level would almost certainly be viewed positively from a Western Balkans perspective in terms of the prospects of enhancing stabilisation in this area. Besides that, an integration of the region to the Open Method of Coordination would support the West Balkans in their reform challenges<sup>27</sup>. The additional burden for the EU budget caused by the accession process of the Western Balkans should even motivate the European Union more in rethinking and clearly defining the division of competences by taking into account the in the Treaty of Lisbon stated principles. A scale back of

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<sup>26</sup> The United Nations Mission (UNMIK) signed on behalf of Kosovo.

<sup>27</sup> The Open Method of Coordination was set up at the European Council in Lisbon in 2000 and represents a framework of political coordination, while respecting the legal competences of member states. With the aim to support member states in their reform efforts effective policies in the fields of social protection and inclusion of the member states are identified and their experiences shared. For more details see COM/2008/0418.

the task agriculture would exemplarily allow a re-allocation of funds towards actions aimed at macroeconomic stabilisation or defence – within the Member States as well as the Western Balkans.

## CONCLUSIONS

In conclusion it can be said that the current allocation of tasks within the EU is partly inconsistent with normative criteria relating to the assignment of tasks to different levels of government. A precise definition of an optimal degree of (de)centralisation is not possible because of mixed theoretical suggestions. Therefore, the appropriate degree of (de-)centralisation must be determined on a case-by-case, policy-by-policy basis. Economists focus their analysis of the assignment of competences mainly on geographical spillovers, economies of scale and the spatial structure of preferences. When comparing the de facto delimitation of EU-competences with the normative recommendations provided by economists, discrepancies arise in particular in the fields of agriculture and defence. Additional discrepancies are detected in the fields of education (see Van der Ploeg/Veugelers 2008, Gérard 2008, Ederveen/Thissen 2008), as well as macroeconomic stabilisation (see Keen/De Mooij 2008, Pouget/ Stéclebout-Orseau 2008). Any expansion of EU tasks in any of these areas would require significant institutional reforms – either new institutions or reform of existing ones.

It is likely that the most important areas of federal government activity (especially budget-intensive areas such as health, social security or education) will continue to remain national. In a number of these areas, member states and their citizens are still not prepared to transfer further responsibility to the EU; this is because the EU comprises mature national states determined to preserve a significant degree of national sovereignty. As a result, the EU does not have a budget comparable with existing federations, nor does it have significant responsibilities in relation to any of the services or political tasks that dominate central government level in mature federal systems. In keeping with its nature as a loose federation, the likelihood therefore is that the EU's role in various political areas will remain limited.

There is clearly no ideal system for the delimitation of competences. As conditions change over time, public goods experience variability in

their spatial characteristics. That is, innovations, technical adjustments and/or unstable preferences change cost-functions and consequently require dynamic responses within the competence distribution scheme. Against this background it must be considered essential that both the EU and its division of competences remain flexible in order to adapt to these changing conditions. Taking the principle of subsidiarity seriously, Breuss/Eller (2003) did make some notable suggestions in order to facilitate a more flexible competence allocation within the European Union. One of their recommendations is to establish a sunset legislation (i.e. assigned competences with a limited duration) in order to prevent a permanent centralisation of various political tasks. Another suggestion is that the proponents of centralisation should bear the onus of proof in the case of intended shifts of political competences within the EU. Finally and most meaningful, a reversibility-guaranteeing revision procedure should be developed and included in the constitutional treaty of the EU. It remains to be seen, whether such economically sound suggestions regarding procedural and institutional changes within the assignment of political competences between the EU and its Member States will be implemented in the future.

In terms of EU-Western Balkans relations, it may be time for the European Union to reassess its commitment to enlargement in this region and take a closer look at policy areas where further integration of Western Balkans states may prove feasible. A starting point for this could be to revisit the euroisation question: reassessing the euro zone doctrine and investigating the costs and benefits of the Western Balkan candidate states unilaterally adopting the euro. Developments in the energy and transport sectors are seen to be progressing in a very positive manner - already going some way towards integrating the whole of the Western Balkans into these EU policy areas. There are also arguments for the access to funding for the Western Balkans to more closely reflect the terms and scales of those the new member states such as Romania and Bulgaria benefited from in the past and continue to benefit from today. Perhaps the most important point to make in terms of the significance of EU political competences for the Western Balkans is that there are clearly some valid arguments for access to certain EU policy areas before actual accession – particularly in view of the fact that accession is now considered to be a matter of when rather than if.

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# Cultural and Perceptual Problems in Serbia's EU Integration: A Memetics View

Srdjan Jovanović Maldoran<sup>1</sup>

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## ABSTRACT

Integrating a country into the European Union is most commonly seen as a strictly political/legal issue. The reductionist surgeon's knife cuts out all other instances – cultural, sociological, psychological, anthropological and many others, as if countries were simple legal entities floating in a political vacuum. Such a minimalist, vastly incomprehensive view cannot give a clear picture of any state's potential EU future, and such is the state of facts in discourse concentrating on Serbia's EU integration proclivities. In this essay, I would like to concentrate on the cultural instances that have much to do with the integration process and see how they influence it, based on the memetics approach in cultural science. The last part of the essay concentrates on the perception and reception of the aforesaid, on the reception of those cultural instances by the academic and political community in both Serbia and the EU, where I hope to show how there are vast problems in understanding and interpreting them.

## KEYWORDS

Serbia, EU integration, memetics, cultural studies, cultural anthropology

*We need a cultural revolution, a revolution of this people's identity and of the direction in which they are going.*

Marko Vidojković, writer

*One should not forget the following. European integration processes have a technical part and that technical part can be fulfilled, but they also have a value part. If the value part is not fulfilled, Serbia will never honestly be accepted in that family; it will instead be seen as a black sheep that has been accepted (...) out of geopolitical necessity, not because it really belongs there.*

Slobodan G. Marković, historian

*Genes are only the most obvious examples of replicators. Other candidates are computer viruses, and memes – units of cultural inheritance (...).*

Richard Dawkins, biologist

*Legalism* can in brief be described as a point of view in which everything is subordinated to the judiciary. In a legalist's viewpoint, law and its being upheld are of the highest (and often only) importance. Law is thus seen as some kind of *sui generis* entity, floating in a vacuum, untouchable by 'common people', and everything is seen through the 'eyes of law'. Legalism, however, is not the only thrifty 'ism' that puts its own agenda ahead of every other. The distinguished philosopher of science, Sir Karl Popper, wrote extensively about *historicism*, yet another frugal *Weltanschauung* in which everything is subordinated to a tapered, narrow view of history, most commonly a metaphysical view, such as those of Hegel, Herder, Schelling and others. In his *Open Society and its Enemies* (1966), as well as *The Poverty of Historicism* (1994), Popper mentioned that not only historicism, but any worldview that offers such a constricted, incomprehensive vision of society, eventually gives way to huge error and a mistaken portrayal of society and its issues.

Integrating a country into the European Union is often seen in such a narrow view. It is most commonly seen as a legal issue, broadened only to include the geopolitical. All other instances in EU integration discourse, whether academic, journalistic or lay, seem to be shoved aside. The cultural, anthropological, sociological and psychological are barely even included. In this work, thus, it is primarily *the cultural* that I intend to address. In order for that to succeed, I need to bring the relatively novel concept in

cultural studies, the concept of the *meme*, into play. Introduced in 1976 by the eminent Oxford biologist and societal critic Richard Dawkins in his *magnum opus* work, *The Selfish Gene*, the *meme* is defined as a unit, a bundle of cultural ideas or practices, symbols or worldviews that are transmitted from one mind to another by means of speech, ritual or other similar communicational phenomena. The parallel is drawn directly from biology and the *gene*, which transfers biological data from one individual to its offspring. Similarly, the *meme* transfers cultural symbols, rituals and ideas from parents to offspring, but also from one member of the society to the other, through interaction and established institutions. According to Aaron Lynch and his work *Thought contagion: how belief spreads through society*, there are several means, *patterns* of *meme* transference, such as cognitive, adversative, parental, motivational etc (Lynch, 1996), some of which we shall mention soon<sup>2</sup>.

What I am interested in is observation and explanation of *Serbia-specific memes that are relevant to EU integration processes*. This exclamation states clearly that I adopt the generally accepted anthropological view in which there exist cultural differences between peoples and countries, such as described, for instance, by the anthropologist and cultural researcher Edward Hall (1976), according to whom cultures by their very nature have incommensurate value systems. In a world imbued with political correctness, it is of much importance in academic discourse to understand that realizing the existence of cultural differences, and their consequent analysis and description, do not necessary involve having an ethical, judgmental approach, though they quite easily *can*, and maybe even *should*. As Jorgensen (1971) explained, in cultural anthropology, great emphasis is placed on the viewpoint known as cultural relativism, which means that it is important to understand how the world looks to people from different cultures. This also does not mean, however, that anthropologists need to be equally tolerant of all cultures. As Harris (1988) added, there is 'nothing wrong with setting out to study certain cultural patterns because one wants to change them. Scientific objectivity does not arise from having no biases – everyone is biased – but from taking care not to let one's biases influence the result of the research.' The relevance of the aforesaid shall be clear in the final paragraph of the treatise.

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<sup>2</sup> The concept of the *meme* has been further developed in the works of Stephen Shennan, Robert Aunger, Kate Distin, Richard Brodie, Kevin Laland, Gillian Brown and especially the British psychologist Susan Blackmore of the University of the West of England, Bristol, in her best known work, *The Meme Machine*.

According to Hall, understanding a different culture is a task of immense difficulty, and it includes understanding context, meaning and information. Essentially, ‘in order to really understand a Navajo movie one had to be a Navajo Indian brought up in the traditional Navajo way of life’ (Hall, 1976). Though the difference between the Navajo and the Westerner are arguably much larger than those between two different Western cultures (in this case, between Serbia and the EU), the differences do exist. Failure to comprehend those differences, regarding EU integration, can lead to such problems as those that Poland and Portugal, for instance, created after joining. The meme that was of much higher importance and intensity in Poland and Portugal than in other EU countries was *religiousness*. The 2006 idea that came from 46 members of the Polish parliament to elect Jesus Christ the king of Poland<sup>3</sup> was seen as strange in most of Europe; the European Union *is* a secular entity and such religious intrusions created difficulties. Similarly, there was much ado about the Portuguese abortion issue, and it took some time for Portugal to legalize a woman’s personal choice<sup>4</sup>. The Portuguese abortion issue was seen as a *legal* one (should it or should it not be *legal* to have an abortion) and the Polish parliament issue was looked at from a purely political viewpoint. Needless to say, not much was explained.

When it comes to Serbia, cultural studies (as well as science in general) are at an all-time low point. The already mentioned meme of religiousness, unsurprisingly, in a society with underdeveloped science and large numbers of the illiterate (or functionally illiterate<sup>5</sup>), is also an immensely important one. According to Dragica Pavlović-Babić of the Faculty of Philosophy in Belgrade, there is a staggering 1.3 million functionally illiterate people<sup>6</sup> in a country of some 7.3 million<sup>7</sup>. A research conducted by the circle of the *Blic* daily, half of the population does not even have high school education in their background<sup>8</sup>. Such levels of illiteracy and scientific development are

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<sup>3</sup> Polish MPs bid to make Jesus king, BBC, Dec 21 2006 <http://news.bbc.co.uk/2/hi/europe/6200539.stm>

<sup>4</sup> Portugal will legalize abortion, BBC, 17 Feb 2007 <http://news.bbc.co.uk/2/hi/europe/6350651.stm>

<sup>5</sup> Functional illiteracy can best be described as such a state of literacy in which the individual only formally knows to read and write, but has great difficulty understanding what he or she read, and even greater difficulty while forming (especially writing) complex sentences.

<sup>6</sup> U Srbiji ima 1,3 miliona funkcionalno nepismenih, Naslovi.net, September 9 2009

<sup>7</sup> According to the CIA World factbook, available at [www.cia.gov](http://www.cia.gov)

<sup>8</sup> [http://www.blic.rs/\\_customfiles/Image/slike/2009/07\\_jul/26/panorama/pismenost-lv.jpg](http://www.blic.rs/_customfiles/Image/slike/2009/07_jul/26/panorama/pismenost-lv.jpg)

conspicuously lagging behind the European Union<sup>9</sup>, and understanding them is a crucial milestone in bettering them. There are several instances that can easily testify to this.

The probably best known one was the former minister of education's choice to replace Darwinian evolution in school textbooks with biblical creationism in 2004. In Europe as a continent, this was unprecedented. Not even the abovementioned Poland and Portugal went so far – though the idea *was* out, Jesus Christ was *not* selected king, and Portugal *did* legalize abortion. Serbia, however, chose to abandon science and replace it with mythology, if only for a while. The former minister of education, Ljiljana Čolić, explained how she was 'proud that (she) tried to expel the lesson about a human-like monkey from the 8<sup>th</sup> grade curriculum'. She added: 'I will never accept the claim that my grandfather was a monkey. I congratulate "tolerant" persons who are not bothered by such nonsense.'<sup>10</sup>

Many have noticed that there is a wave of clericalization currently in motion in Serbia, first of all the publicist Mirko Đorđević and the philologist, professor at the Belgrade Faculty of Philology, Ljubiša Rajić. 'In a still patriarchal society that is by mentality mostly redneck, such as the Serbian society, the church, the army and everything that is patriarchal still carries high authority,' notices Rajić. He sees the clericalized nature of the state in the fact that the 'Serbian Orthodox Church is incorporated in more or less all parts of the government. Through catechesis, school religious celebrations and the like, it entered schools; icons are hanging in all military institutions, police precincts, ministries. The state is practically supporting the Serbian Orthodox Church and every year it gives hundreds of millions [of dinars] to it'. Having all that in mind, it is less surprising to see a person like Ljiljana Čolić holding a position of such importance as the position of the minister of education. In Serbia, religion is integrated within the state; there is barely even *talk* about the separation of the Church and the state, with the exception of the liberal circles, concentrated particularly around the radio documentary *Peščanik* and the *Helsinki Charter for Human Rights*. In 2003, religious catechesis was introduced into elementary schools (a move that was completely unconstitutional), so even now

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<sup>9</sup> For instance, while levels of education (and the very educational system) in Serbia are at a low point, Finland – a member of the Union – boasts the arguably best education system in the world, according to the latest PISA study. See: *Finland tops global school table*, at BBC, 7 Dec 2004, <http://news.bbc.co.uk/2/hi/education/4073753.stm>.

<sup>10</sup> Vreme, 3 December 2009, available at [www.vreme.com](http://www.vreme.com)

seven-year olds are indoctrinated, meaning that ‘the state is taking care that the Church gets new believers,’ according to Rajić. The *Bukvar*, the first book by which six and seven year old children learn to write in Serbia, under the letter ‘c’ has the word *crkva* (church) as well as the following text: ‘The church is man’s most important home, he who goes to church shall have God as a helper inside of him. He who does not go to church should visit a doctor, maybe his parents are not healthy...’<sup>11</sup> In light of this, Rajić’s following words have a clear resounding: ‘The goal is to make a country for the Serbian people out of Serbia, with the Serbian Orthodox Church as the prime church, that is, to help the church, which wishes a bit of a medieval state of affairs’<sup>12</sup>. The wish for a strict binding of concepts such as Serbs, Serbia and Orthodoxy is even seen in an official proclamation of the Church in 1991, in the Voice of the Church: ‘In our renewal of the spiritual foundation, it is necessary to depart from the idea that serbianhood grew on Orthodoxy and that serbianhood cannot exist without it. Serbs who stopped being Orthodox stopped existing as Serbs’<sup>13</sup>. The commonsense, though rhetorical, question that comes after realizing all of the above is as follows: if all of this is seen *in education*, if Serbia is undergoing such a level of religiousness and clericalization – what can be expected from science and literacy in Serbia *an generale*? It is of crucial importance to understand the *levels* of scientific achievements and scientific thought in Serbia; a recent issue immediately comes to mind.

The dean of the Belgrade Faculty of Philology, Slobodan Grubačić, a known philologist in Serbia, was selected a member of the Serb Academy of Sciences and Arts on November 2009. However, this happened days after he was rightly accused of plagiarism<sup>14</sup>. The well-known nationalism theorist and former president of Yugoslavia, Dobrica Ćosić, heartily recommended him for membership, even though Grubačić’s plagiarism was well documented and proven. This issue barely even had an echo in the Serbian media, indicating perhaps how much science and academia

<sup>11</sup> See: Appendix. Ko ne ide u crkvu, neka ide kod doktora, [www.pescanik.net](http://www.pescanik.net) (28 April 2006), as well as [http://www.b92.net/info/vesti/index.php?yyyy=2002&mm=12&dd=06&nav\\_category=12&nav\\_id=77913](http://www.b92.net/info/vesti/index.php?yyyy=2002&mm=12&dd=06&nav_category=12&nav_id=77913)

<sup>12</sup> [www.pescanik.net](http://www.pescanik.net), posted on 14 April 06

<sup>13</sup> Glas Crkve 1/1991

<sup>14</sup> For details about the plagiarism issue, see Grubačić’s work ‘Aleksandrijski svetionik’, pages 22, 27, 34 and 375, published by Izdavačka knjižarnica Zorana Stojanovića in 2006, compare with Dobrosav Smiljanić’s essay ‘Hermeneutika ljubavi i smrti’, published in NIN, issue 2789, pages 58-59, which is one of the sources; see as well Wittgenstein’s ‘Tractatus Logico-philosophicus’, which is the prime source of the plagiarized material.

are seen as important. The very Academy's functioning is often seen as dubious, inciting severe criticism from the liberal elite. The historian Slobodan G. Marković describes the situation in the Serbian Academy of Sciences and Arts as follows: 'The Academy of Sciences is comprising people who are now fifteen years older than they had been fifteen years ago, (...) they are still discussing questions such as who is a Serb, who is not one, where are the borders of the national being (...). Everything is being driven back to the state of affairs as they were at the end of the eighties. The people are fifteen years more senile than they used to be, but the topics have remained identical<sup>15</sup>.' (The dangers of discussing meta-physical issues such as 'national being' have already been described by Popper, while Schopenhauer's comment on such instances was that they were 'a criminal misuse of language'. Wittgenstein simply said that such utterances 'have no meaning'<sup>16</sup>.) The economist Miodrag Zec noticed how 'the French Academy consists of thirty people, until one of them dies, another one cannot join. This one of ours, however, grows like some companies, whoever can join – joins<sup>17</sup>'.

Another cultural instance, a meme that seems to have caught hold of the majority of the population in Serbia is what I shall designate as the *connection* meme, for lack of better words. Namely, it is widely known throughout Serbia that it is next to impossible trying to accomplish any kind of success (businesswise, academic, or any, for that matter) without 'good connections'. An article from the daily *Politika* illustrates the situation vividly: 'Miloš Puzović succeeded in reaching his PhD studies in informatics in one of the most prestigious universities in the world *without connections* and money (my italics, S.J.M.)<sup>18</sup>. This is the punch-line right beneath the title of the article 'To Cambridge for knowledge', written by Sandra Gucijan. The author of the article was fascinated by the fact that someone succeeded academically *without having to resort to 'pulling strings'*. In a country in which 'connection' is everything in terms of career development, succeeding on your own is seen as eldritch, as unattainable. It is staggering how badly represented and studied this meme is. One should also notice that this meme *does exist* almost universally (within Europe, particularly in the Mediterranean countries) and that its existence is essentially nothing

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<sup>15</sup> www.pescanik.net

<sup>16</sup> For all of these, see Popper's *Open Society and its Enemies*.

<sup>17</sup> *Ibid.*

<sup>18</sup> Sandra Gucijan, Po znanje u Kembridž, *Politika*, available at: <http://www.politika.rs/rubrike/Drustvo/Po-znanje-u-Kembridz.lt.html>

new; however, the sheer strength it possesses in Serbia should convince the academy for a more thorough investigation.

The idea of not being able to function without connection is one of those memes that are currently being transferred and interchanged among the members of the society in Serbia. This meme is in actual fact so strong, that trying to achieve any kind of success within the country without connections is almost impossible. Universities, health centers and companies function almost strictly according to these rules, and finding employment without connections is essentially impossible, if not even openly frowned upon. In an almost feudal manner of functioning, Serbia has developed a sort of a *guild system*, in which affiliation and connection are of utmost importance, while quality and competence are entirely irrelevant. This results in doctors being hired for their connections and people dying consequently; illiterate professors teaching at universities; incompetent managers driving companies to total bankruptcy. Despondently, lack of critical thinking, bias and the bane of political correctness effectively prohibit the most of the observers (even within the academic community) from understanding the state of factors I am trying to depict and explain. Pure intellectual dishonesty and tardiness is also an important factor seen in many an academician's standpoint when refusing to acknowledge these issues as relevant. The actual fact is on the other end of the scale – not only are these issues relevant, but they are of *crucial importance* in understanding how the society functions in Serbia, as they are ubiquitous.

What is arguably of utmost importance to realize as well (from a theoretical point of view this time) is the *meme-based point of departure* in comprehending the abovementioned. Namely, the concept of 'having a connection', 'having to pull some strings' is a strong meme, a cultural instance that is transferred from one generation to another as well as within the society itself. One could argue that the state – from a political or legal point of view – is 'corrupt', that universities and health centers are 'unprofessional' and that the state should intervene in order to put a stop to it. However, what one needs to realize is that until the very *meme* stops being transferred within the society, there will be *no means for any political or legal action*. Culture is stronger than politics, brusquely said. A people's culture invariably influences the ideological and pragmatic side of every society. This is what Lynch calls *proselytic thought contagion*, in which memes are transferred not only from parent to child, but even beyond (Lynch, 1996).

These memes can also be classified as *preservational*, according to the same author, being that they continue to influence their holder for a long time (all the adult life, mostly). They are also *motivational*, being that they give the holder some kind of self-interest in adopting them. The more of these 'meme patterns' a meme holds, the more difficult it gets for the subject to get rid of it. These instances are already relatively well known within cultural anthropology, among which the concept of *enculturation* might be the most important for this work. As described by Harris (1988), enculturation is a 'partially conscious and partially unconscious learning experience whereby the older generation invites, induces and compels the younger generation to adopt traditional ways of thinking and behaving'. Thus, the *imparting, imprinting* of, for instance, religiousness from the older to the younger generation is a typical example of enculturation. The difference that a *memetic approach* has in comparison to classic cultural anthropology is in the fact that it stresses the enculturated instances, seeing them as more powerful than they might be seen from the general viewpoint of cultural anthropology. Also, enculturation is only *one way in which memes are transferred*, as shown by Lynch (1996). Religiousness, similarly, is a meme which transfers itself with greatest of ease, the reason out of which Richard Dawkins called faith a 'virus'. The cognitive philosopher Daniel Dennett of Tufts University propounded a similar view in his work as well, from a memetics point of view.

Going further in 'meme-hunting', in an article entitled 'Witches and patriots', we see the journalist Slobodanka Ast gave a collection of designations that have been used for women (especially of liberal political orientation) by, in her words, 'certain public persons, people in power and some media' in public discourse in Serbia. I have assembled a translation; I need to emphasize that some of the designations though, most of which are vulgar to the extreme, do not really exist in the Serbo-Croatian language<sup>19</sup>, so the end-result might sound bizarre:

Local analytic wenches, under-ass flies, call-girls of Serbian journalism, climacteric grandmothers, mafia wives, whores, common whores, women

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<sup>19</sup> The 'word' *podguzna muva* (which was translated as 'under-ass fly', quite literally), for instance, simply *does not exist*. This is how Milorad Luković Ulemek called the president of the Serb office of the Helsinki Charter for Human Rights, Sonja Biserko. Ulemek was the convicted assassin of the late liberal Prime Minister of Serbia, Zoran Đinđić. His writings have been published even though he is serving his forty-year sentence; among others, his book was the first one in the series entitled 'contemporary Serbian writers'. See: <http://www.b92.fm/channel/Peščanik/34318.html>

that should sometimes be whipped, malicious human waste, half-women half-horses, witches, traitors, pathetic mercenaries, wraiths, mad vibrator owners, whores of the mighty, vagina cohorts.

As seen above, the *meme of misogyny / male chauvinism* is a strong one as well in nowadays' Serbia. A simple search through Serb media (newspapers, weeklies, television and radio) yields a plethora of (mostly) articles about the discrimination against women on the territory of Serbia. Lidija Vasiljević of the Female Info-documentary center in Belgrade mentions how women get only 15% of all media attention. According to her, the percentage does not get higher even during exclusively female celebrations, such as March 8. Furthermore, women are best represented under the headings such as culture, entertainment and crime pages; the last of which sees the woman almost exclusively as a victim of domestic violence<sup>20</sup>. The percentage of employed women in Serbia in 2007 was no higher than 24%<sup>21</sup>, meaning that three thirds of the work force was taken by men exclusively. According to the United Nations Development Fund and the Council for Gender Equality,

[w]omen in Serbia face big obstacles in finding employment and promotion on the job. Out of the total number of employees in our country only one woman in five is in the position of director; among the founders of enterprises, one fourth are women and only 14% of women are chairpersons of the managing boards. These are just one of the results of the research conducted by the Council for Gender Equality and the United Nations Development Fund since the year 2000<sup>22</sup>.

Many a problem is encountered especially by pregnant women while job-hunting, as given by an anonymous woman who explained her problems in the daily *Danas*:

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<sup>20</sup> Diskriminacija žena u medijima, E novine, 4.2.2009. <http://www.e-novine.com/index.php?news=21954>

<sup>21</sup> Patrijarhat još traje, 20 03 207 [http://www.danas.rs/vesti/hronika/patrijarhat\\_jos\\_traje.3.html?news\\_id=106753](http://www.danas.rs/vesti/hronika/patrijarhat_jos_traje.3.html?news_id=106753)

<sup>22</sup> Žene mnogo teže dolaze do posla, 31 01 2008, [http://www.danas.rs/vesti/hronika/zene\\_mnogo\\_teze\\_dolaze\\_do\\_posla.3.html?news\\_id=80894](http://www.danas.rs/vesti/hronika/zene_mnogo_teze_dolaze_do_posla.3.html?news_id=80894)

I was employed, with tenure, in a bank. I was believed to be an industrious, responsible worker. I went back to work after maternity leave on May 15 2007 and already on the 1st of June 2007 I was fired, on the basis of being technological surplus. What this means is they do not want a women with a baby at home. At this moment, I am unemployed and I am afraid I won't be able to find one judging by what happened at the four interviews I attended – when they asked me how I intended to work with two children at home. I feel as if I had written across my forehead: I am a bad worker, that is why they had fired me, and I have two children who make me incapable of anything except changing diapers, cooking...<sup>23</sup>

The same source mentions two young female professionals who have, after having been offered a position, received a contract in which they were supposed to *sign away their right to get pregnant* for five years (*sic!*). After having confronted the employer about this, he mentioned that 'after that [giving birth], my dear, you are useless, and we don't need you as such'<sup>24</sup>. The most common approach in analyzing and criticizing the abovementioned instances of chauvinism are by stressing how it is 'discrimination', how 'the state should do something' and how 'laws should be made to prohibit it'. One rather denigrating approach is taken by conservative analysts who almost as a rule tend to ascribe these instances as 'overblown', 'exaggerated' or even 'imagined', both in Serbia and abroad, in a rather belittling manner of perception. While it really *is* discrimination against women that we see in Serbia and while the jurisdiction *should* be able to combat it (by any definition of the state, the citizen should have at least *some kind of benefit from it*), this approach suffers from having a very shallow point of departure. Deeply buried problems are *perceived* as being on the surface. Memetics shows us that when a member of the community is enculturated into a society that sees a woman as less important, when memes are transferred with such great ease from parent to child, from one member of the society to another, nothing much can in actual fact be done on a legal level. Brusquely said, lawmakers cannot create or uphold a law in which they do not believe themselves, having already received the misogynist memes in abundance.

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<sup>23</sup> Klauzula o zabrani trudnoće, 28 07 2007, [http://www.danas.rs/vesti/politika/klauzula\\_o\\_zabrani\\_trudnoce.56.html?news\\_id=117868](http://www.danas.rs/vesti/politika/klauzula_o_zabrani_trudnoce.56.html?news_id=117868)

<sup>24</sup> *Ibid.*

What I have presented in this work is a collection of *Serbia-specific memes*, an important part of the Serbian culture *memeplex*, a concept which Dawkins (2006) defines as ‘a set of memes which, while not necessarily being good survivors on their own, are good survivors in the presence of other members of the memeplex.’ To fully comprehend the strength of the memes at hand, however, we might have to draw on Susan Blackmore’s view that some memes create *egoplexes*, memeplexes that enable the memes to copy themselves with greater ease by attaching to themselves a particular feeling of power and emotional bond that the subject feels. That is why it is of importance to analyze as many of the memes as possible, as they ‘grow in strength’ when joined. (This is as well the prime moment of interest for *cultural materialism*, the anthropological strategy that ‘holds the primary task of cultural anthropology is to give scientific causal explanations for the differences and similarities in thought and behavior found among human groups,’ Harris, 1988). All of the abovementioned memes/cultural instances/thought and behavior patterns are in serious opposition with official and unofficial values of the EU, not only from a legal point of view (it is *illegal* to discriminate against women, to give but one example), but from a cultural viewpoint first of all. What is somewhat troublesome is the *lack of scientific interest* in these matters, as well as a proportionate lack of secondary sources, resulting in an overly shallow *perception* of Serbian reality. Memetics, nowadays still a fledgling science, similarly, has not even reached Serbia. Consequently, one has to concentrate on *broader cultural science accomplishments* (primarily cultural anthropology and memetics) and *local primary sources* (mostly the media). This might be a good time to mention the French historian Lucien Febvre, who rightly claimed how science is not made in ivory towers, but out of very life itself, out of people who live in the present. Out of this life does a cultural scientist need to draw the necessary information crucial to understanding the culture at hand (or any, for that matter), to better comprehend the vast memeplex that makes a culture what it is. One should only stress the cultural anthropology perspective in which a cultural scientist does not necessarily need to stay ‘neutral’ and not act in order to better a society or culture. The actual situation might be on the complete other side of the scale – if it is not the social scientist who should be the one to assemble, analyze and *better* the cultural instances in which misogyny, connections, illiteracy and religiousness galore, who should? Neutrality in science is not the scientist standing back from society, analyzing it as if it were an assemblage of guinea pigs; neutrality in science is a clear-minded approach to

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the memeplex, in which the scientist refrains from personal bias as much as possible, enabling him to act without what Adorno and Horkheimer designated 'the instrumental use of power', the power in this case being knowledge, in the vein of Francis Bacon.

APPENDIX 1

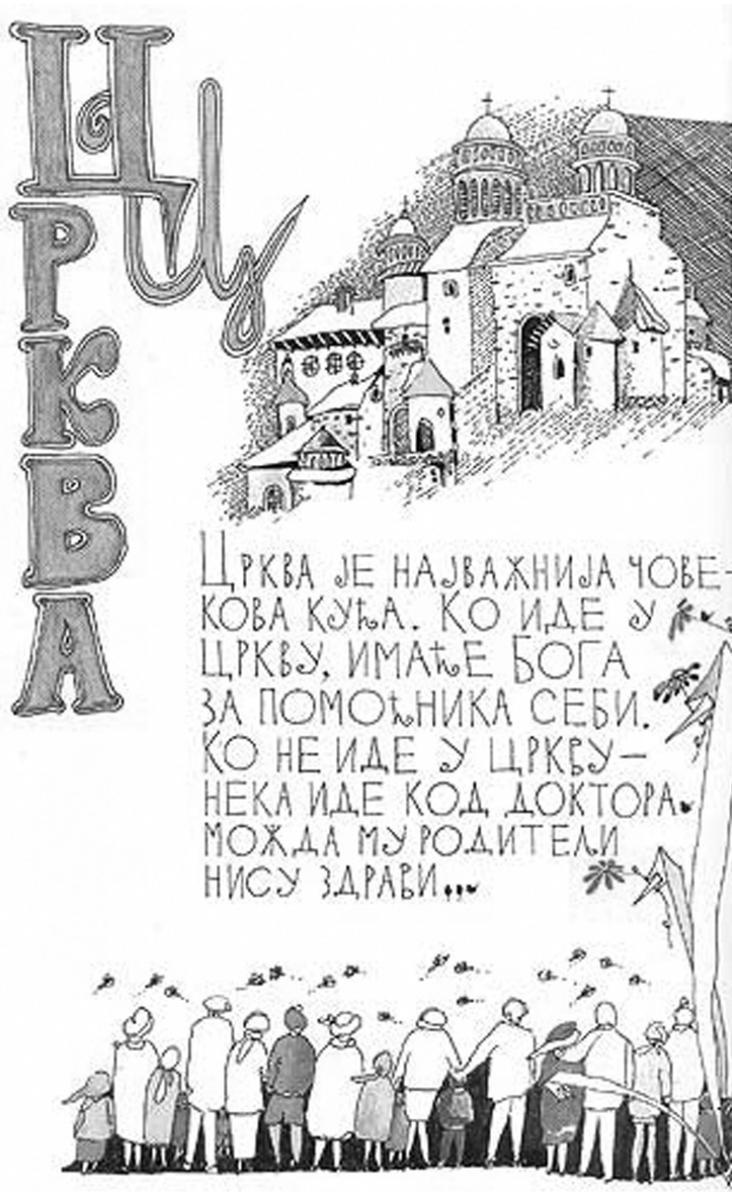


Image 1.0: A page from the Bukvar  
<http://www.b92.net/images/emisije/crkva-v.jpg>

The translation of the text goes as follows:

*The church is man's most important home, he who goes to church shall have God as a helper inside of him. He who does not go to church should visit a doctor, maybe his parents are not healthy...*

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<http://www.b92.net/images/emisije/crkva-v.jpg>

# Making the European Elections Attractive for Citizens: A Reform of the Electoral System

Sergiu Gherghina, George Jiglău<sup>1</sup>

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## ABSTRACT

Introduced in 1979 as a tool to reduce the distance between the EU institutions and its citizens, the direct elections for the European Parliament (EP) did not fulfill their initial goals. Thus, during these three decades the powers of the EP increased and the interest and involvement of citizens in elections decreased. The general explanation for citizens' lack of enthusiasm is the status of the European competitions as second order national elections. The situation cannot change unless real European elections are set. In this respect, our article reveals the numerous problems with the current setting and makes several proposals for electoral reform in order to diminish them. Unlike existing proposals (Hix and Hagemann 2009), ours accommodate transnational issues, tackle the relationship between European and national parties, allow informed choices of the electorate, and are comprehensible for both decision-makers and voters. Our article contributes to existing theoretical and empirical debates on the EP electoral system and provides a valid alternative for political parties and European officials.

## KEY WORDS

reform, electoral system, European Parliament, citizens

## INTRODUCTION

The direct elections for the European Parliament (EP) were designed as a tool to narrow the gap between the European Union (EU) and its citizens.

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<sup>1</sup> CORRESPONDENCE ADDRESS: Sergiu Gherghina, Department of Political Science, University of Leiden, Wassenaarseweg 52, Office 51, 2333 AK, Leiden, The Netherlands, e-mail: sergiulor@yahoo.com

By directly electing the members of the EP (MEPs), citizens could have a say in the decision-making process affecting their lives more and more, following the growing degree of integration within the EU. After 30 years and seven rounds of European elections following the first June 1979 elections, it is obvious that things did not go as planned. The electoral turnout has fallen constantly, this being the first sign that more than half of EU citizens are not interested in these elections. The figures would probably be even more dramatic if voting was not compulsory in Belgium, Cyprus, Greece, and Luxembourg.

Embedded within the broader framework of democratic deficit in the EU (Featherstone 1994; Majone 1998), the EP elections have numerous shortcomings that do not allow them to determine either a higher involvement of citizens or stronger ties of the voters with representatives at Strasbourg and Brussels. Asked in 2008 why they will not vote in the forthcoming 2009 elections, one third of the respondents in the member states replied that they do not feel represented, that the EP does not treat crucial issues, and that they lack knowledge about the role of the EP. Moreover, one in ten respondents noted the lack of general information as one of the main causes, whereas a similar proportion specified that they lack interest in these elections without particular reason<sup>2</sup>. Whereas the latter is hard to tackle (e.g. it is similar to the general lack of interest in politics), all other responses indicate major problems in the process of representation. As we will point out several times throughout this article, the decrease in the electoral turnout in European elections is somewhat in line with the general decrease in turnout in all elections in the last decades, including national and local. However, the low turnout in European elections should worry more the European Union compared to the low turnout in a state. While democratic states are usually consolidated structures, with a clear identity and history, whose existence is a given on the international stage, the European Union is still a young entity, with only half a century of history behind it. In an established democracy, the role of fundamental institutions such as parliaments is no longer a question of dispute (although their place in relation with other institutions may vary in time), while in the EU the European Parliament is still a structure in search for a clear position in the decisional framework. Although the Lisbon Treaty increases the attributions and role of the EP in comparison with 1979, it is still not beyond

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<sup>2</sup> The data come from the Eurobarometer 2008, these results are based on our analysis at individual data for all 27 member states.

doubt that the EU could in fact exist and function without having the EP among its institutions. Hence, we start this article from the premise that the EP was created and still exists primarily as a tool meant to narrow the gap between European citizens and the EU, built from the beginning as a top-down, elitist structure. This is why the decreasing turnout in European elections should constitute a fundamental signal for EU elites that it must find solutions to tackle the lack of interest shown by European citizens. While it can be argued that a wide range of solutions can be identified, we focus here on the need for a swift electoral reform needed to ensure that all the representatives elected by citizens have an equal status and have full legitimacy not only in the country where they were elected, but also at the European level. We consider this to be a precondition in order for other solutions relating to the role and attributions of the EP to be presented as meaningful to European citizens.

Hence, this article argues that the causes for these impediments lie in the election mechanisms and a unitary system will help overcoming them. A previous academic effort in this direction emphasized the necessity to modify the structure of the ballots and the size of the districts (Hix and Hagemann 2009). We build on the reforming premises laid by previous work and we take a step further the idea of modifying the ballot structure. We provide two feasible alternatives to diminish some of the existing problems: the communication between MEPs and voters, the knowledge of citizens about the functions and roles of the EP, and the knowledge on issues from the European agenda. We further complement the existing proposal by explaining how an electoral formula may work and by approaching an issue that was not dealt with before: the size of the Assembly. Our goal is to provide a parsimonious, efficient, and effective tool to elect EP representatives and keep them accountable. The major general contribution is that our perspective accommodates transnational issues, tackles the relationship between European and national parties, allows informed choices of the electorate, and it is comprehensible for both decision-makers and voters. The article contributes both to existing theoretical and empirical debates on the EP electoral system and provides valid alternatives for political parties and European officials, since they can easily be transposed into concrete electoral policies.

The first part of the article summarizes and structures the problems of the current electoral setting at European level. We then proceed with specific suggestions on how the status quo may be altered. The hard to grasp components are accompanied with examples that clarify and illustrate.

The third section simulates an instance in which the proposed system may function, whereas the conclusions emphasize the major implications of the article and elaborate on directions for further research.

## **PROBLEMS WITH THE CURRENT FORMAT**

There are numerous formal and substantial problems with the current setting of the European elections. We analyze them on three interconnected dimensions: the systemic features, the outcomes for voters and representatives, and the structure of the European elections. In doing so, we combine the institutional and behavioral components by revealing not only the pitfalls that reside in the current setting of elections, but also the outcomes perceived by the citizens and their representatives. The thread connecting these problems is that they can be solved by using a modified way of electing MEPs.

Before moving on, we provide the working definition of the core concept of this article – the European party. Referring to European parties, we distinguish between them and the EP groups. Some European parties – as the European People’s Party, the Party of European Socialists or the European Liberal-Democrats – have a corresponding group in the EP. A European party is defined by Regulation (EC) No 2004/2003<sup>3</sup> of the EP and of the Council passed on 4 November 2003, amended in 2007. According to this Regulation, a European party is considered as such if it respects several criteria. We mention here only the fact that it must have in at least one quarter of the member states one or both of the following: at least 3% of the votes in the last European elections or representation by members in the EP, national parliament, regional parliaments or regional assemblies in the respective states. In a political group in the EP there can be affiliated representatives of only one European party (the Group of the Progressive Alliance of Socialists & Democrats only has representatives from the Party of European Socialists) or from several European parties (the Alliance of Liberal-Democrats for Europe has representatives from the European Liberal-Democrats and the European Democratic Party).

### **SYSTEMIC AND INSTITUTIONAL SHORTCOMINGS**

The first major problem of the European elections is that they do not lead to visible and tangible results for voters. Additionally, they were less impor-

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<sup>3</sup> See [www.legaltext.ee/text/en/PH1850.htm](http://www.legaltext.ee/text/en/PH1850.htm) (13 January, 2010).

tant in the architecture of the EU as for decades the legislature used to play minor roles compared to other EU institutions involved in the decision making process (Corbett et al. 2000; Nugent 2003; Dinan 2005). Elections at the local or national level usually lead to the formation of executive bodies or are tied with direct elections for top executive positions. Local elections lead to the formation of local councils, which must work with (usually) directly elected mayors. National elections lead to the formation of national Parliaments and, based on the configuration of seats, governments are formed. Some democracies use direct elections for presidents, which usually share, in these cases, executive power with the government. In the case of European elections, the configuration of seats following each round of elections has no legal consequence over the formation of any other body at the top level of the EU. The formation of the European Commission is a negotiation process between member states. The European Council, in which member states are represented, appoints a president of the Commission, which then must be voted by the EP (including the vote of confidence for the new team of commissioners).

In practical terms, there is no homogeneous system according to which European elections are or can be held. The procedure used to elect MEPs is wrongly considered to be an “electoral system”. Without going into extensive technical details, we can safely argue that an electoral system has as a particularity the fact that all components of a particular representative body are elected under the same rules (Taagepera and Shugart 1989). This is not the case with the MEPs: there is no European electoral system, but 27 different national electoral systems. Hence, we face no real European elections, but national elections for the EP. Member states vote for the representatives of the state in the EP. This raises a question over the legitimacy of MEPs. There is no doubt that each MEP is elected legally, however an MEP chosen under the rules of a particular state might not have been chosen in another state with the exact same number of votes for himself or for his party, due to differences in district magnitude, compulsory or non-compulsory voting, thresholds, the right to vote of European nationals living abroad or minimal age necessary for standing in elections. The only three common elements to all internal procedures are: the use of proportional representation, direct universal suffrage, and the maximum 5% explicit thresholds.

Moreover, the electoral competitors differ from representatives. Citizens vote for a national party and are represented by the European party groups.

MEPs receive a mandate from voters in their home states. While the mandate is not imperative, they make promises to their national electorate and they build programs based on national priorities, which they should pursue in order to have a chance when standing for re-election. The current procedure offers incentives not for the creation of strong European political parties, but rather for the strengthening of national pride within the European legislature and politics.

As a result, the coherence and homogeneity of the European parties is problematic. The discrepancy between the European People's Party and the Party of European Socialists increases every election as the policy of the two great parties to attract new members differs. The European People's Party displays a rather catch-all mechanism that focuses on as many actors as possible, if they declare themselves at the right of the political spectrum. This is how the party manages to have successor of communists (the Democrat-Liberal Party in Romania), agrarian (the Agrarian People's Union in Bulgaria), Christian-democratic (the National Peasant Party in Romania or the Christian-Democratic People's Party in Hungary), and ethnic parties (the Democratic Alliance of Hungarians in Romania) under the label of "popular". By organizing national elections for EP, there is no European campaign prior to European elections, but 27 national campaigns. National parties are the main actors in elections for the EP, they are the one putting forward candidates and programs.

Derived from the electoral system and structure of competition, there are competing discourses that puzzle the voters. In order to be appealing for voters, national politicians need to tackle issues which are as close to the voter as possible. Thus, campaigning is led mostly on domestic ground and voters are offered similar choices to national or local elections. The difference is that local or national elections have tangible results for voters. As Heath et al. (1999) point out in their study on British local and European elections, voters tend to consider that less is at stake in European elections than in local ones, hence voting is more expressive in European elections, as opposed to the more pragmatic approach to voting in local elections. Following local elections, local councils and mayors are elected, which are the closest to the citizen, or national MP's are elected and governments are formed, which then deal with other immediately tangible issues, such as wages, pensions, prices or roads. In the case of the elections for the EP, those elected will "vanish" in a body of over 700 people, where the voice

of a single MEP will be hard to get noticed. Matters worsen due to the lack of information. Simply put, candidates of national parties for European elections cannot explain how they will be able to implement their specific project from the EP. Presenting the process of decision making from the main European institutions (i.e. Council, Commission, and Parliament) all the way to local communities becomes too technical and difficult to understand.

The direct and visible outcome is a weak relationship between the represented and the representatives. The Treaty of Maastricht states in this respect that “political parties at European level are important as a factor for integration within the Union. They contribute to forming a European awareness and to expressing the political will of the citizens of the Union”. It is self evident that this definition does not fit today’s state of things at EU level. In order to effectively change it, the European political organizations should be made politically stronger, autonomous from national parties and provided with more influence over the direction of the electoral campaign. The paradox, however, is that since national parties do not have any interest in being seriously challenged in their role of connection between politics and citizenry they would therefore act as veto players in order to preserve the current favorable state of things.

The attempt to create a link between the EU and domestic electoral projects often makes things worse. Candidates speak about European funds as the solution to finance local needs and improve living standards. However, MEPs have little to do with how European funds are distributed and spent. Such rhetoric may work once, but it will not work in the next election, when the amount of European funds brought into the communities is presumably low. Voters and local communities will rather not elect the same people again, but more often they will choose not to care anymore about such issues, thus becoming disinterested in the real process through which they can use tools put at their disposal by the EU.

Another potential link that national parties aim to make between domestic projects and the EU is based on their membership in pan-European political parties. Domestic parties belonging to the largest European parties – the European People’s Party most of all, but also the Party of European Socialists – claim that voting for them will make major politicians in Europe interested in the domestic projects they present. However, European parties deal with broad European policies, relevant at the level

of the entire Union. The consequence is again a growing lack of interest in European politics as a whole.

Another problem derived from the fact that national parties run in the European elections is that it often happens that the same politicians stand in both national and European elections. While European elites tend to promote the idea that European politics is different from national politics, domestic parties often put forward the same candidates. Some who have been elected in national positions have a positive image and can pull the party higher in the European elections and some others that stood in national elections, but were not elected and are redirected towards the EP.

#### **OUTCOMES OF THE ELECTORAL PROCEDURE OVER MEPS AND EP**

This procedure of electing MEPs does not offer incentives for candidates to become more interested in European policies. As long as debates in European campaigns seem to focus on domestic issues, they are not stimulated to act as spreaders of information and messages about the EU towards the public. Van der Eijk and Franklin (2006) claim that the parties presenting European messages to the public fall outside the area of preferences of the average voter, reflected in their scores in European elections. Such statements are in line with the Hix and Marsh (2007) arguments according to which the position a party takes on European issues does not have a significant impact on the results obtained. However, Ferrara and Weishaupt (2004) explain that parties with a clear and well-built discourse on European issues perform better. Moreover, when confronted with European issues (Kuechler 1991), national parties are unable to control them and they prefer to shift the attention back to domestic issues.

The shortcomings identified above are amplified by the use of proportional representation (PR) systems, often associated with lists put forward by parties. With the exception of Ireland, where single transferable voting is used, all the other states use party lists, with 13 of the states allowing voters to choose the preferred candidates either from one single party list or from several lists. In the nine states where lists are closed, only the first few candidates on the list stand a chance to gain a seat. In the case of parties with a large share of the votes, candidates in top positions on the list are sure of their seat, hence they do not have incentives to campaign too hard. Also, the candidates at the bottom of the list are sure that they will

not win any seats. Depending on the predictions before the elections, a party can more or less establish the number of seats it is likely to win and the only candidates on the list who are motivated to campaign are those situated around the last position the party hopes will bring a seat.

Let us take a practical example from a medium sized member state to illustrate how the mechanism works. If a large party expects to win seven or eight seats and the list has 35 candidates, candidates from positions 1-5 are not stimulated to put too much effort into the campaign as their election is almost guaranteed. At the same time, the candidates in positions 10-35 are aware of the reduced likelihood of being elected irrespective of their efforts. The only candidates for which campaigning makes sense are those in middle positions (e.g. in our case, in positions 6-9). Their strategies may channel in two separate directions: either to make sure that they will win the seat (i.e. certainty provided by polls before elections) or to bring new votes in order to raise the party's share and gain one or two additional seats. These middle positioned candidates may not be top personalities for a particular party, especially for large ones, which use their top people for government or other political positions.

For small parties, which gravitate around the electoral threshold, the current situation provides incentives to place their top personalities at the top of their lists and make them campaign as intensively as possible, in order to make sure they pass the threshold and win one or two seats in the EP. Small parties campaign harder, and this is a possible explanation for their higher success during European compared to national or local elections, as we will detail below.

#### **SECOND-ORDER ELECTIONS**

In the absence of coherent and meaningful debates on what the EU is about, European elections become so called "second-order" elections (Hix and Marsh 2006; Ferrara and Weishaupt 2004; Heath et al. 1999; Marsh 1998; Reif and Schmitt 1980), thus falling in the same category with regional elections in federal states (such as Germany) or midterm elections for the US Congress, just to give two examples. They are regarded as intermediary elections, in which the popularity of government or of winners of previous national elections is tested. Traditionally, turnout is lower in elections falling in this category (Marsh 1998). Mattila (2003) and earlier Flickinger and Studlar (1992) argue, however, against the classical second-order model and state that the turnout patterns are similar in both European and national

elections and that the causes for the decrease in turnout in both types of elections are roughly the same. With respect to European elections, Mattila (2003) argues that turnout decreases if the country is a net contributor to the EU budget and if party lists are closed, and increases if the country is a net beneficiary or if multiple constituencies are used.

Also, voting is less pragmatic than in national or local elections, meaning that voters tend to give their vote to parties which they feel closer to, rather than to parties which stand a better chance to form a government. In brief, there is no strategic voting and “lesser evil” in second-order elections. Hence, parties which obtained a larger proportion of the votes in previous national elections tend to lose part of their votes to smaller parties. This conclusion is reached by Marsh and Hix (2007), who explain why smaller parties tend to obtain better results in European elections than in national ones and argue that “Europe remains at best a minor element in the elections in most cases”. Also, while there has been gradual progress towards a more uniform electoral procedure in all member states, the problems faced today by this particular electoral process are the same as the ones in 1979. A similar conclusion is reached by Reif (1984) after the 1984 elections and by van der Eijk and Franklin (1996).

However, this high degree of political diversity is not necessarily a positive element for Europe. A lower voice of pro-EU parties in European elections means a higher voice for anti-EU parties, which become very vocal and capitalize on the frustrations of voters towards the inaccessibility of decision making inside the EU. In the 2009 elections, every anti-EU extremist party that ran gained seats in the EP. Many blamed non-voters for the high scores obtained by extremist parties in the 2009 elections. But this is a false premise. There is no guarantee that non-voters would have voted with pro-EU parties. On the contrary, non-voters expressed either their lack of interest or frustration towards the EU by not voting, thus we can presume that they would probably have voted with anti-EU parties, if they believed that the EU is worth at least such a negative vote. Another element is that voters may choose to punish ruling parties by voting against them in European elections and give their vote to parties that oppose them. If the ruling party is a pro-European one and the opposition is anti-EU, frustration with the ruling party becomes a vote against the EU and favors the appearance in the legislature of anti-EU MEPs (Marsh and Hix 2007).

## CHANGING THE SYSTEM

The arguments revealed in the previous section indicate a series of structural, institutional and political problems deriving from the current situation in which the European elections are organized. The necessity to construct a European electoral system and to modify the rules of the game was previously identified by Hix and Hagemann (2009) who built a model starting from the causes of EP elections' failures. They emphasized the ballot structure and the size of the district as the main pillars of a new system. Relying on the good practice and usage of the design that combines the two and allows good connections between voters and representatives, they suggested that MEPs should be elected on open ballots (i.e. individual politicians compete instead of pre-ranked lists) in medium-sized districts. The direct result of such a model would be a better linkage between citizens and representatives. Along these lines, the awareness and involvement of citizens in European issues was expected to increase. Our proposals take this initiative to the next level and develop some of the components, adding new ideas to the debate.

### **BALLOT STRUCTURES: BRINGING THE EUROPEAN PARTIES IN THE GAME**

In the current setting, citizens vote in the European elections for national parties, which are members (or not) of European parties or delegate their chosen MEPs to be part of a specific EP political group. Our suggestions to change the status-quo involve the direct competition of European parties: The following two sub-sections present two alternatives – one with transnational and the other with national lists – both implying a different mechanism than the current one. The ballot structure emphasizes the list component, as proportionality and representation are key issues for the contemporary EU.

The first and most important change for the European electoral framework refers to the actors involved in the competition. As illustrated above, the structuring of the competition around national parties is one of the main reasons for the growing lack of interest in European elections among voters. Hence, we believe that giving the floor to European parties is the first and most important step to be taken into consideration when discussing electoral reform. Through such a measure, the European parties become the main actors of the electoral competition. At the moment, most European parties allow for several national parties from the same member state to become their members, whether they are allies or not on the home front. This is especially the case of the EPP, which groups a wide range of

parties, from the center towards the extreme right of the political systems in Europe. Our proposal would impose a higher degree of ideological aggregation in national party systems and would force national parties to join their forces in working together and transmitting a common message. Also, it would reduce the number of competing parties in European elections and would clarify the messages conveyed by competing actors, thus helping voters in making a decision.

Furthermore, the European parties would become active entities in the electoral process, not only groups resulting from the aggregation of different elected MEPs. The elites of these parties would be forced to become active in electoral campaigns, to travel more in member states and to assimilate their own performance with that of the parties they are leading, since the labels of their own parties would be the ones on the ballots and no longer just national labels that transmit their own nationally-oriented message, thus raising the standards of the debates and focusing them on European issues. The following proposals (two for the ballot structure, one for electoral formula, and one for the size of the Assembly) account for the European parties as main actors in European elections.

#### **TRANSNATIONAL LISTS**

The first two proposals that we make maintain the current list voting, but improve it. The first refers to the introduction of a transnational component in the electoral system. Disillusion with local politics and politicians drives many voters to abstention in European elections. Giving them the option to vote for a transnational list, that includes new personalities from other states than the one of the voter, is a solution in the attempt to fight non-voting. Under this provision, the EP would allocate a number of seats occupied exclusively via the transnational lists. Each European party would put forward its own transnational list, with a number of candidates equal with the number of seats allocated in the EP for this component.

Since the EP is a unique structure, being the only body directly elected by the citizens of different states, it is obvious that transnational lists are not used anywhere else, hence it is impossible to identify the potential effects by looking at other similar experiences. Nevertheless, given the problems identified above, we can safely argue that this proposal would have a few direct advantages. European parties should have the chance to be present even in states where they do not have any representing party or where their parties are too weak. For example, Greens are not well represented

in the Central and Eastern European states. In order to illustrate this statement, we recall that in the 2009 European elections, no Green parties presenting candidates in the Eastern European states (in Bulgaria, the Czech Republic, Estonia, Hungary, Latvia, Slovakia, and Slovenia) gained more than 3% of the votes<sup>4</sup>. This poor performance has two main reasons: the environment is not a salient issue in Eastern Europe and the Green agenda is mostly covered by major parties (e.g. the Social-Democrats and Liberals). The use of transnational lists would allow the European Greens to gain votes from voters in these countries. Under the current setting, they are clearly disadvantaged by the performance of their member parties in post-communist Europe and by the fact that competitors tackling environmental issues end up being part of other political groups once elected in the EP. The use of transnational lists diminishes the importance of national pride in the way the EP is structured and also opens the eyes of member states to broader European issues. Dissatisfaction with local politicians, which often leads to low turnout rates, can be overcome by the possibility to vote for candidates coming from other states, which may be more appealing to voters.

As mentioned above, we suggest having transnational lists applied only to a fraction of the EP. Electing all 751 MEPs in such a manner is quite difficult to implement. Traditionally, in systems using list voting, each competing party has a list of candidates equal to or slightly larger than the number of slots available for election. This would mean that each of the pan-European parties running in European elections would have a list of 751 candidates, the same for all member states. This is not a very feasible solution, especially since the list would involve a particular ranking coming from the party (regardless if voters can make their own ranking or not) and it would not be realistic to ask parties to identify and rank 751 candidates.

Transnational lists can be applied in several different shapes. The best way to use it for the election of the MEPs is to maintain the current procedures for the election of the largest part of the body, using lists of candidates at the national level, and apply the use of transnational lists for the rest of the MEPs. Each party competing in elections should present a transnational list and be obliged to include candidates from all member states and from

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<sup>4</sup> A comprehensive archive of the electoral results of Green parties after 1990 can be found at <http://europeangreens.eu/menu/elections/election-results/>.

all member parties. The ranking on the list would remain in the hands of each European party, but a suggestion would be to take into account the electoral scores of the parties at the national level in the most recent round of national elections taking place in each member state.

This type of division has the advantage of making the transition from the current procedure to a more European-integrated system easier to digest for voters. The latter are given the chance to have two votes: one for a national list and one for a pan-European list. Double voting in a round of elections is not a new element for many European citizens where national parliaments have two chambers and voters cast two votes, one for each chamber (like in Romania), or for citizens in states where mixed voting systems are used, such as Germany, where voters cast a vote for a person and another one for a list of candidates. The provision can be accompanied by additional elements. First, voters can be given the option of voting for both or for only one of the two. Moreover, an additional feature of this structure can be the preferential component. Voters can choose to express their preference for one or several candidates on the national and/or transnational list they opted for.

The question is how many MEPs should be elected via transnational lists in the conditions of each member state having a number of assigned MEPs? With European parties as competitors in elections, the fraction of MEPs opened for election via transnational lists should not exceed a third (i.e. no more than 250). In order to accommodate the voters with the new procedures, the number of MEPs elected via transnational lists can be low in the next elections and then gradually increase. For example, in 2014 there will be 50 MEPs elected via transnational lists, in 2019 – 75, in 2024 – 100 and so on until 250. The use of a transnational component would also imply that the fixed number of MEPs for each member state must be abandoned. Since it is not possible to know how many mandates would be gained by each party via its transnational list, what candidates, and from which member states would be elected from each list, it is impossible to hold constant the number of MEPs established for each member state under the Lisbon Treaty. Nevertheless, there can be established a minimum number of seats for each state. The current number can be lowered proportionally with the number of seats in the EP allocated for election via transnational lists, as explained in the formula (1) below:

$$N_f = N_c (1 - T/751), \quad (1)$$

where:

$N_f$  = final minimum number of MEPs for each member state,

$N_c$  = current number of MEPs for each member state,

T = number of seats allocated for elections via transnational lists.

Let us take a practical example to better understand what has been written above. Let us assume the case of European elections in Romania, where, under the current provisions, 33 MEPs must be elected. Let us assume that the number of seats for transnational lists is 100. The number of minimum MEPs for Romania (rounded to the closest integer) is 29. A Romanian voter going in the polling booth receives two ballots: one for the national component and one for the transnational component, the same for all member states. On the transnational ballot, the voter can find the lists, each containing 100 candidates, of all the European parties competing in the elections, while on the national ballot the voter finds the lists with 29 candidates (or more) of the national parties, running under their own labels, very similar to the ballots that they are accustomed to. He/she can give two votes, one for each type of ballot, or only one vote: if the voter wants to ignore the national politicians, he/she can vote only for a transnational list, or can choose to ignore the transnational list and vote only in “the familiar way”, for a national list. The votes are counted separately for the two components. The votes on the transnational lists are counted and each party receives a number of seats proportionally with the number of votes obtained, counted out of the 100 seats allocated for this component. The votes for the national parties are counted in the traditional way and each party delegates its own MEPs.

This formula is easy to implement as it involves the least amount of change for national parties, which may be reluctant to change the existing status quo. Hence they could easily agree to compete for a slightly lower number of seats on the home ground. Nevertheless, each European party would be stimulated to campaign at the European level for the large bulk of seats allocated for the transnational component, thus achieving partly the objectives mentioned by us when we discussed the need to turn the European parties into the main actors of the European elections.

#### **NATIONAL LISTS WITH EUROPEAN PARTIES**

Our second proposal does not include transnational lists, nor the participation of individual national parties in European elections. It again

maintains the PR list system, proposed at the national level by European parties.

How would it work? Let us take an example to illustrate the logic of this mechanism. The European People's Party has the most numerous national parties in its composition and is a suitable example in this respect. In Romania, the Democratic-Liberal Party (PDL), the Democratic Alliance of Hungarians in Romania (UDMR) and the National Peasant Party (PNT) are all members of the EPP. The European People's Party would run under its own label in Romania, with candidates on the national list coming from all the national parties that are its members. The order on the list should be decided by the parties (i.e. most probably after negotiations, electoral scores etc) and approved by the leadership of the European People's Party. Thus, when the citizen goes in the voting booth, he/she will find on the ballot eight or nine lists with the labels of European party groups. The lists are country specific. Linking with the previous example, with this new ballot structure the list has the name of the European People's Party and it is filled with Romanian candidates belonging to PDL, UDMR and PNT.

Thus, a voter going into the voting booth would receive a ballot very similar to what he is used to, containing a list of maximum 43 (33 plus 10 replacements) candidates put forward by the European parties entering the elections. The system would resemble the one existing today, but bears the benefits of having the European parties as the contenders in the elections. An additional provision would be to oblige all European parties that enter the elections to put forward lists of candidates in all member states, in order to ensure that the electoral debate and the issues tackled by each party cover all the member states and become familiar to all the voters interested in the elections. However, we do not believe that this is the most important feature of this proposal and it may be difficult for all the European parties to find the resources and the infrastructure needed to compete in the elections in all member states. In this respect, we recall the examples of the Green parties in Eastern Europe.

Three main advantages of such a ballot structure are directly observable. First, the citizens get acquainted with European issues and they can better understand how parties cluster in the EP (once the cluster is done in the election phase). Second, the collaboration between domestic parties competing on the same list and under common issues simplifies voters'

choices and allows these parties to establish ties for further cooperation also on domestic politics. Third, most European citizens are familiar with list voting, widely used for the election of national parliaments in many European states.

The main pitfall of this proposal is related mostly to the political competitors and can be overcome in the medium and long term. Initially, national political parties may be reluctant to such an approach, afraid that they may lose their identity in front of their voters. However, the merging happens anyway in the post-electoral phase and the process is transparent. One further inconvenience for the parties is represented by the high costs of such an approach to reach the voters. However, as forces are joined, this disadvantage may be overcome quite fast.

**PREFERENTIAL VOTING: PROPORTIONAL REPRESENTATION THROUGH SINGLE TRANSFERABLE VOTE (STV)**

The two proposals above maintain party lists as the main component of the electoral formula, but nevertheless would impose a significant element of reform in the way European elections are conducted. One additional provision, that may complement both proposals (in fact any electoral formula based on PR list voting): preferential voting. In other words, the lists can be closed (or blocked) or opened. Open lists give the voter the chance to choose from a particular list one or more candidates that he/she prefers. This has already been presented as a potential tool that would offer candidates incentives to campaign harder (Hix and Hagemann 2009), considering that the ranking of the candidates on the lists, set by parties, would no longer establish to a large extent who gets elected (the candidates in the highest positions of the parties that are certain to pass the electoral threshold are sure to be elected). Therefore, we will not insist on it in this article, but nevertheless propose it as a complementary measure to what we have proposed. We consider having European parties as the main competitors in the elections equally important to the preferential component in the attempt to fight non-voting, but even more important in the attempt to make European issues the main element of the electoral campaigns for the European elections. Preferential voting on party lists has been a solution brought to the fore several times (e.g. the report of MEP Andrew Duff from 2008 or Mattila 2003), meant to personalize the European elections and to stimulate individual candidates to be more active in campaigning on European issues.

The reference to preferential voting introduces our third proposal, which combines preferential voting with the principle of proportionality, under the form of the single transferable vote. In a nutshell, STV provides proportional representation while ensuring that votes are cast for individual candidates rather than for party lists. Thus, although the ranking on the ballot is arbitrarily made, it is not relevant as long as the voter is able to structure his/her preferences.

STV is a two-step process. It initially allocates an elector's vote to his or her most preferred candidate. Each voter ranks the list of candidates according to their preference. Under this design, the ballot paper submitted by the voter contains an ordinal ranking: they place a "1" to their most preferred candidate, a "2" to their second most preferred etc. After candidates are either elected or eliminated, STV transfers surplus or unused votes according to the voters' stated preferences. STV is already used in European elections by two member states (Ireland and Malta).

There are two technical issues related to STV that deserve closer investigation in separate studies. We only mention them here, in order to draw attention to possible complications of the system: the quota and the votes' counting procedure. The quota is the number of votes a candidate must receive in order to get elected. In our setting this is country specific and it is usually obtained by dividing the number of cast votes to the number of seats (e.g. the Droop and Hare quotas are among the most used). The votes counting method involves two possible scenarios, both given in point b) above. In the first situation, the candidates who receive a number of votes equal or higher than the established quota are declared elected and the excess votes are transferred from the winners to later choices on those ballots until all the seats are occupied. In the second situation, the lowest vote-getter candidate is eliminated and his/her votes are transferred to upper choices on the ballot and then the process in the first situation is applied.

The use of STV has two major advantages. First, it reduces the distance between represented and the representatives. The latter have to strengthen their ties with voters in order to maximize the number of high ranks they obtain. This has two direct consequences. On the one hand, the candidates get closer to the voters, explaining their representation function and becoming aware of their problems. On the other hand, the electorate becomes familiar with the candidates and better understands the role and

attributions of MEPs. Hence, such a relationship has both informative and analytical components before the voting takes place. This is illustrated in the Irish example, where the use of STV has been recognized as a tool that prevents the over-personalization of the electoral process, as would happen in single member districts, but allows voters to have a direct link with their representatives<sup>5</sup>. Second, it maximizes the representation of preferences and minimizes wasted votes. Consequently, it diminishes the number of unrepresented voters. The main disadvantage consists of the difficulty to explain to voters this system before they use it for the first time. It requires a high level of information and attention from citizens.

An important element is that STV requires that each state is divided into several multi-member districts and that each competing party puts forward only one candidate. Again, the national parties which are members in the same European party must join forces and have only one candidate running under their European label. One potential way to divide the country in multi-member districts is by following the borders of the Euro-regions created in each member state.

For instance, following the same Romanian example, there are 8 Euro-regions, hence there would be 8 multi-member districts. 7 districts would have 4 MEPs that need to be elected, while the 8<sup>th</sup> one (the one with highest number of inhabitants or the one containing the capital city) would elect 5 MEPs. Let us assume that a voter from one of the 4 MEPs district would receive a ballot with 8 candidates, coming from 8 different European parties. He ranks all 8 candidates, marking all of them with numbers from 1 to 8, in the order he/she wishes. There are 2.4 million votes cast, hence the electoral quota would be 600.000 votes. Let us assume there are two candidates obtaining 800.000 votes (from the European People's Party) and 700.000

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<sup>5</sup> "Because party identification is weakening, the hard-core through-thick-and-thin party vote is lower than in the past, as was dramatically illustrated by the June 2009 local and European elections. Hence, in a single-member constituency (should these be employed), an incumbent TD could not concentrate on parliamentary business and rely on the party vote to see him or her re-elected but would have to build and maintain personal popularity among the voters, most likely by establishing a reputation as a hard-working constituency TD, just as TDs representing smaller parties (who are not at risk of losing to a running mate as they are usually their party's sole candidate) do at present." There are the words of Irish political scientist Michael Gallagher in his report "Ireland's PR-STV electoral system: a need for reform?", available at [http://www.tcd.ie/Political\\_Science/staff/michael\\_gallagher/IrishElectSys.php](http://www.tcd.ie/Political_Science/staff/michael_gallagher/IrishElectSys.php) (10 January, 2010). This is in fact a thorough report on the advantages and disadvantage of an STV-based electoral system, as they are perceived following the Irish experience.

(from the Party of European Socialists) votes respectively. They would be directly elected, leaving the rest of the 6 candidates to dispute the remaining 2 mandates. The votes cast on the ballots corresponding to the already elected candidates are distributed to the candidates ranked second. Also, the candidate who obtained the lowest number of first preferences (let us assume there is a Green candidate who obtained only 20.000 votes) is eliminated and all the candidates ranked second on the candidate's corresponding ballots receive the corresponding share of the votes. A new counting is made with the remaining 5 candidates. Following it, the candidate of the European Liberal-Democrats, initially ranked 3<sup>rd</sup> with 500.000 votes, now has the highest number of votes (the initial votes where he was ranked first and the votes he received as second ranked from the candidates elected and eliminated). He is also elected, the last candidate is eliminated and the corresponding votes are transferred as explained above. Then the last MEP, let us say from the Party of the European Left, is elected following a new counting.

The downside of this proposal is that it may confuse voters, by offering too many choices. In this respect, citizens must have a high level of information on the candidates prior to the vote; otherwise the time they should spend in the voting booth would be considerably increased. Also, this type of ballot is often associated with increased efforts of the parties to manipulate the vote. As many voters are not familiar with ranking the candidates, political parties usually hand out leaflets - „examples” - explaining to voters how they must vote and usually their own candidate is ranked first on the leaflets. Nevertheless, the experience of Ireland or Malta shows that these technical shortcomings can be rapidly overcome.

#### **THE SIZE OF THE ASSEMBLY**

Besides the three main proposals we have made above, which have as the main element the introduction of European parties as the main actors in the European elections, we refer now to a separate aspect, dealing with the size of the assembly to be elected. It does not contradict the previous proposals, but would rather be complementary and would require additional calculations. Again, it is difficult to assess how such a measure could work in practice, given that the size of parliaments rarely varies. Germany is an example where maths play a role in changing the number of MP's from one election to the next, but this variation resides in the mixed voting formula and not on regional turnout. The size of the EP is now set to 751 at MEPs, under the Lisbon Treaty and each state benefits from a fixed number of nationals to be elected in each round of European

elections. Our proposal means that the size should vary and this is possible only if the Lisbon Treaty is amended, such a procedure resting in the hands of the European Council. This is also the case for our first proposal, referring to the use of a transnational component, where the number of MEPs elected via the transnational lists would induce variations in the number of seats obtained by each member state at the end of the seat allocation process.

The proposal we make is a tool of reward for the countries with a higher turnout, allowing them to hold more MEPs than states with a lower turnout. Thus, the active participation in elections is rewarded and the states where the turnout is low are sanctioned. Such a modification should be based on the formula (2) below. Under these circumstances, the basis of the calculus is the current number of assigned MEPs for each member state. The formula used to determine the number of MEPs for each member state is:

$$N_{el} = (T_{ne}/T_{EU}) * N_{as} \quad (2)$$

where:

$N_{el}$  = number of MEPs after the elections

$T_{ne}$  = national electoral turnout

$T_{EU}$  = EU average turnout

$N_{as}$  = number of assigned MEPs

The disadvantage of this proposal is that it ties the participation of voters in European elections to a strong feeling of national belonging, which contradicts the purpose of the entire reform process that we have in mind. Voters will be particularly stimulated to vote knowing that their own state will hold more MEPs and hence their local interests may be better represented, while those MEPs who gain a seat due to a higher turnout than the European average would presumably be loyal primarily to national interests rather than to the common European ones. We are also aware that this proposal does not solve by itself the lack of knowledge and debate on European issues and raises the risk of turning the European elections into a contest with prizes among member states. Nevertheless, we believe that such a measure would boost the turnout in European elections and may be useful, especially if no other reform measure is implemented. Mattila (2003) acknowledges that the share of seats in the EP is an element that matters to voters.

## CONCLUSIONS

A few decades after the first direct elections for the EP, the shortcomings of the used electoral framework are more obvious than ever. While the EU and EP have undergone numerous internal reforms, with new treaties being adopted and amended, the procedure for the election of MEPs remains basically the same as in 1979. Often in the literature about the democratic deficit affecting the EU, the direct elections for the EP are always brought as an argument by those aiming to show that the EU is opened towards its citizens. This is indeed the most important element of democracy in the EU, but it is nevertheless a corrupted one, since the citizens seem to mind it less and less with every round of European elections.

The proposals emphasized in this article contribute to the existing theoretical and empirical debates regarding the modification of this problematic setting. They are meant to increase the interest of the voters in the European elections and in the EU as whole, to shift the focus of electoral campaigns from local or national issues to EU-relevant issues and to strengthen the role of the European parties and EU elites in the process of direct communication with the citizens. The implementation of any of the four proposals would be a step in the right direction and would make European elections more appealing to European voters. Nevertheless, the decision to start the process of electoral reform can only be a result of a negotiation process between member states and EU elites, both having their own arguments to maintain the current status quo. In this respect, the article can be considered as a starting point for policy implementation. Further research can better and specifically investigate consequences of these proposals and possible directions of action. The EU can coordinate an inquiry meant to learn how European voters would regard the modification of the electoral procedures. Also, other scientific studies may investigate the possibility to implement other types of electoral formulas such as first-past-the post or alternative voting in single member districts. The question of independent candidates is a significant one and it deserves a wider discussion on the criteria that may allow a candidate to stand in elections or the number of votes needed to gain a seat. Furthermore, we consider that the discussion of the assembly size needs a deeper discussion and it is worth investigating if a reduction in the number of MEPs has a beneficial impact of the functioning of the EP or, on the contrary, if a higher number of MEPs means a higher number of transmission belts between the EU and European citizens.

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# Integrating the Western Balkans into the European Union: Overcoming Political and Economic Constraints

Gazmend Qorraj<sup>1</sup>

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## ABSTRACT

The countries of the Western Balkans have been slow to adopt the EU integration agenda. The most important issues such as these countries' economic and political problems remain unresolved. This is because the countries of South East Europe have been unable to resolve the regional challenges and achieve a political consensus. These challenges could delay the necessary economic reforms and the process of EU enlargement for these countries.

This paper will address identify the problems of Western Balkan countries as they seek to integrate with the EU such as: the absorption capacities regarding IPA funds, regional ownership as a mechanism for further co-operation in region, as well as the institutional capacity.

The current enlargement process suggests that the Western Balkan region could face serious challenges relative to EU enlargement. Taking this fact into consideration, the paper also specifically analyses the EU's enlargement strategy concerning the integration of the Western Balkans. The conclusion suggests the main steps that should be undertaken by the EU in order to intensify the EU integration process of Western Balkan countries and especially for Kosovo as a country in an early stage of the EU integration process.

## KEY WORDS

EU enlargement, European partnership, regional ownership

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<sup>1</sup> CORRESPONDENCE ADDRESS: Prof. Dr. Gazmend Qorraj, IIE-Institute for European Integration, Str. Fehmi Agani H-52/5 Prishtina 10000, Kosovo; email: gazmend.qorraj@iie-ks.eu.

## INTRODUCTION

The countries of the Western Balkans are committed to integrating into the European Union. The focus and effort of their institutions are directed at meeting the criteria in order to achieve this goal. These countries' membership in the European Union would provide a great opportunity to become part of a community of nations that aims to advance peace through economic, political and cultural co-operation between member states.

The European Council convened in Thessalonica on 19 and 20 June 2003 and adopted the "Thessalonica Agenda for the Western Balkans: Towards European Integration" where a series of instruments including the European Partnership were promoted to intensify the Stabilisation and Association Process in the region. The countries of the Western Balkans, including Kosovo, were promised a European perspective at this summit.

The Western Balkan countries understand the EU integration process as a structured framework that can facilitate their path towards the EU. The challenge of European integration can stimulate the advancement and functioning of democratic institutions capable of managing a rapid and complex transition involving areas such as cultural, economic, institutional and political life. The efforts made towards EU integration will create the conditions for a modern market economy and boost these countries' capacities to compete within the EU and also in world markets.

Managing and measuring progress in line with European standards across all areas of regulation and policy over time will make the acquisition of good international practice in each of these areas easier – and facilitate the entry of these countries into the European community and other international alliances.

One of the key priorities of the European Partnership Action Plan emphasises the need to "create the conditions for investment, trade, employment and economic growth for the benefit of all communities" of these countries (EU Commission 2005).

In order to support the development of Western Balkan countries in 2006 the EU adopted the Pre-Accession Instrument (IPA) 2007-2013 as a form of financial assistance. It is expected that many of the institutional and

development priorities identified in Western Balkan countries will receive financial support through the IPA over the next few years.

The EU integration process is a highly complex process which involves the design and implementation of reforms in a wide range of areas. The experiences of new EU member states as well as those currently in various phases of their EU integration process clearly indicate that working simultaneously in many areas and making decisions about complex political, economic, legal and institutional issues with long-lasting consequences for the everyday life of citizens is far from an easy task (Mrak et al. 2008).

This paper discusses the biggest challenges facing the region such as: donor co-ordination and the use of IPA funds, regional co-operation issues as well as institutional problems and weaknesses. In order to provide some empirical support, this paper relies on the results of a survey of institutions in Kosovo involved in the EU integration process, e.g. different government ministries, in 2007. Nearly the same problems are also reported in the European Commission's Progress Report (2009).

By analysing and discussing these problems this paper addresses some important issues that should be taken into consideration by Western Balkan countries on their paths towards the European Union. The special emphasises will be given to Kosovo because by fulfilling European accession criteria's and properly using the EU assistance, Kosovo will provide sustainable economic growth, development and reforms that will bring better European perspective and facilitate stabilisation for the whole region of the Western Balkans. This also represents a useful contribution as regards EU policies towards the Western Balkans.

## **DONOR CO-ORDINATION AND IPA FUNDS**

The EU introduced the new financial framework 2007-2013 as a new Instrument for *Pre-Accession Assistance* (IPA) in order to support the Western Balkan countries.

The IPA provides a general framework for financial support from 2007 to 2013 that includes both candidate and potential candidate countries. The IPA has five components: transition assistance and institution build-

ing; cross-border co-operation; regional development; human resources development; and rural development. These five components are available to candidate countries, whereas only the first two components are available for potential candidates. The IPA is a flexible instrument providing assistance which depends on the progress and needs of the beneficiary countries.

According to the EU Commission (2006), the beneficiary countries are divided into two categories depending on their status as either a candidate country undergoing the accession process or a potential candidate country undergoing the stabilisation and association process, namely the candidate countries Croatia, Macedonia and Turkey, and the potential candidate countries Albania, Bosnia and Herzegovina, Montenegro, Serbia and Kosovo.

The experience of Central European countries shows that countries involved in the EU integration process should create capacities in order to coordinate donations and effectively absorb the EU funds for pre-accession assistance. Bearing this in mind, we have to analyse whether the Western Balkan countries are able to create efficient institutions so as to be ready to absorb these funds and allocate them towards sustainable development.

According to Mrak et al. (2008), even developed countries like Slovenia experienced problems with the effective use of IPA funds such as:

- problems with project preparation and the very demanding documentation requirements of the European Commission and national legislation;
- due to the complex implementation systems it became clear that the division of responsibilities and tasks is paramount, yet at the same time extremely challenging to ensure; and
- staffing problems, not just because of the limited vacancies available in the public sector, but also because of the time needed to train people, as well as the difficulties posed by their fluctuations.

The Slovenian experience should be seen as a lesson for the Western Balkan countries, especially for Kosovo as a country in an early stage of the EU integration process. In this regard, the European Commission's Progress Report (2009) for Kosovo pointed out many problems such as:

- the weak institutions involved in the EU integration process;
- problems with inter-ministerial co-operation and co-ordination;

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- the lack of high-level political support for EU integration commitments; and
- political interference in appointments.

The past experience of Central European countries shows that success in effectively using the financial and technical assistance is positively related with the success of countries in moving towards the European Union as well as achieving sustainable development and therefore having greater possibilities to deal with the competitive pressure within the Union. Based on the above remarks from the European Commission's Progress Report (2009), the main suggestions for Western Balkan countries in this process are:

- The need to develop and strength the administrative capacities of institutions dealing with the EU integration process. This will be achieved by reducing the inefficiency of highly bureaucratized and over-centralized government systems, reforming and building human capital so that it better corresponds with European standards.
- The stability of central governments and long-term policies will have positive effects in terms of creating sustainable absorption capacities and managing this financial assistance in these countries. Rationalizing government funds and making them more transparent and results-oriented will reduce the opportunity for corruption and other transaction costs.
- The Western Balkan countries must create a partnership with the European Commission and establish local ownership of the process since, as Mrak (2007) states: the central point of the IPA is not "to get the job done", but to transfer know-how and experience to partner countries. This component highlights the weaknesses of the use of other funds and issues in the past. This will be achieved by encouraging interaction and co-operation among universities, government, research organisations so as to enable them to be much better prepared in their co-operation with foreign counterparts.
- Understanding the importance of the EU integration process, taking the political responsibilities and connecting the EU integration process with the progress of each country. The process of European integration should be seen to be linked with the development of a country, knowing that one of the key objectives of EU integration is to facilitate the transition process and prepare the countries to face the competitive pressures within the Union.

## REGIONAL CO-OPERATION BACKLASH

The countries of the Western Balkans are more integrated with the EU than with themselves (Gligorov 2003). In economic terms, the EU is the most important trading partner of these countries. According to a World Bank report (2010), the main destination for Kosovo exports is the EU, followed by South East Europe. Within the EU the primary markets are Belgium (14.2%), Italy (12.8%) and Greece (5%). Exports to CEFTA markets reached 31% in 2008, representing the second most important regional market: Albania (10.6%), Macedonia (10.1%), whereas the share of exports to Serbia dropped to 5% in 2008 from 11.8% in 2007. The exports of these countries to the EU will play a key role in it due to the free-trade access to the EU market.

Given the lack of co-operation in the Western Balkans, the intensification of regional co-operation by the international community is welcomed by the Western Balkans in order to move forward with the European agenda and create sustainable economic development.

Regional co-operation in the Western Balkans is a complementary process of European integration. In the framework of regional co-operation, the Stability Pact was launched as an engine to pull the entire region torn by crises away from the vicious conflicts between neighbours and outbreaks of ethnically motivated violence. Erler (2004) stated that worldwide attention was focused on this plan that was the first ever to use the promotion of regional co-operation as a strategy for both consolidating peace and preventing crises.

Within the Stability Pact framework some problems of the region were addressed and good neighbourly relations were developed as an instrument which encompasses the broader area of prosperity, stability, security based on human rights, democracy and the rule of law. The Working Tables of the Stability Pact have been actively involved in parliamentary co-operation and building human capital. Working Table II has involved these countries in economic co-operation such as free-trade agreements, an Investment Compact for South East Europe (SEE), the Business Advisory Council, and the Energy Community for SEE, while Working Table III has been tackling anti-corruption initiatives, defence and other security issues.

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The countries involved in this framework by participating in these initiatives have tried to create and foster some co-operation and networks. Despite these achievements, currently the region of the Western Balkans is at a crossroads. Some countries are faced with decisions that will either definitely put them on the road to European Union membership or lead them to stagnation, instability and isolation (Erler 2004).

The obstacles or problems among Western Balkans become visible if we analyse the Regional Ownership and CEFTA 2006 agreement. According to Qorraj (2009), the idea of regional ownership in the framework of regional co-operation is launched under the following assumptions:

- satisfactory regional co-operation has been achieved in the Western Balkans;
- the Western Balkan countries should play an active role in the process of regional co-operation; and
- the countries of the Western Balkans are ready and willing to intensify their regional co-operation and create a sustainable process.

When analysing the processes and activities since 2008 we can state that these past achievements are not currently sustainable. Some Western Balkan countries, specifically Kosovo, are not regularly involved in Regional Co-operation Council (RCC) activities due to problems some countries are imposing on Kosovo. For example, Moldova has not facilitated Kosovo's participation in some RCC activities.

It was stated at the Zagreb SEECP Summit in 2007 that progress in economic co-operation in South East Europe was highlighted by the new CEFTA agreement signed in Bucharest in 2006. The new CEFTA agreement along with the Stabilisation and Association Agreement (SAA) process provides a spur to further reduce national obstacles to trade and investment and open up markets to competition and growth. The new CEFTA also implies greater responsibility of countries in the region to foster trade and implement relevant economic policies. Although it was expected that the CEFTA 2006 agreement would be implemented on 1 May 2007, due to Serbian and Bosnian political hesitations its implementation was delayed until the end of 2007. After these delays, it was also expected that there would be problems with the functioning of this agreement.

The idea to enlarge the area covered by the CEFTA agreement by including Western Balkan countries was part of the European perspective, yet the functioning of this agreement came into question due to past political problems. This is a lesson to be learned by EU authorities. They need to intervene politically and use their authority in order to ensure all Western Balkan countries can receive the full effectiveness and positive effects (both political and economic) of the CEFTA agreement. The CEFTA 2006 agreement was the first practical step to measure or test the performance of regional co-operation in the Western Balkan region. What are the results of the test? It was expected that CEFTA 2006 would have an economic, political and institutional impact on the Western Balkan region. Besides problems in the functioning of CEFTA, the primary impact on Western Balkan countries is their responsibility to adopt European and international standards. Adopting these standards means a step forward in EU integration processes.

Is there a regional co-operation backlash in the Western Balkans? Has regional ownership been launched too early when one considers the current activities of the South East Europe Co-operation Process (SEEC) as well as the RCC? Can these institutions fulfil their role as a Stability Pact for SEE? The answer is no. There is still a need for an international presence and influence on the institutions dealing with Western Balkan countries and regional co-operation issues. Otherwise, these countries will go backwards with regard to co-operation and this will have negative implications for their paths towards Europe.

Knowing that region of Western Balkans is specific environment; the approach to regional co-operation in the Western Balkans needs to change accordingly. The regional ownership idea was initiated at the Regional Table in Sofia in 2005 with the aim of preparing the phased evolution of the Stability Pact into more regionally owned, streamlined and effective regional co-operation (Regional Table of Stability Pact, 30 May 2006, Belgrade).

## INSTITUTIONAL CHALLENGES

The importance of institutions for economic growth has long been understood. It was emphasised by Smith, David Landes (1998) and recognised in the 1993 Nobel Prize awarded to Douglas North who viewed “good institutions” as establishing an incentive structure that reduces uncertainty and promotes efficiency, thereby contributing to stronger economic performance.

The interest group approach sees the state as an arena within which economic interest groups contended or allied with one another group to shape the making of public policy decisions about the allocations of benefits among demanding groups” (Skocpol, 1985).

Olson (1982) added that special interest groups slow down a society’s capacity to adopt new technologies and reallocate resources in response to changing conditions and they thereby reduce the rate of economic growth. The weak capacity of several governments in the region to deliver on reform by implementing policies in a timely and coherent manner tends to weaken the credibility of and support for reform measures.

The Western Balkan countries should accept the process of EU integration as an instrument which facilitates the transitional period and helps them accelerate reforms. This process should be used in a proper manner because, as the accession countries become exposed to regional and global competition within the context of EU membership, the negative impacts of a weak economic incentive and institutional regime will be felt more acutely (World Bank and European Commission, 2002).

Why should Western Balkan countries undertake activities leading towards the creation of effective institutions?

- First, for the countries of the Western Balkans it is crucial to increase their capacity to cope with the competitive pressures of European integration by putting forward a coherent strategic programme for strengthening human capital adapted to the needs of their changing labour markets – by improving the quality of education, educational training, including lifelong learning.
- Second, the stability of democratic institutions is one of the conditions of accession to the European Union.

- Third, the EU integration process requires professional teams to manage the accession process because the conditionality is based on implementing procedural rules and legislation in order to comply with EU standards.

## **ENLARGEMENT CHALLENGES**

Croatia's enlargement process reveals that the enlargement process of the region is no easy task and could generate some additional unresolved problems. In line with that, the most important question for the Western Balkans is whether the process of EU integration might re-ignite old problems from the past or whether it can actually put an end to problems from the past. The EU integration process raised the open issues between Slovenia and Croatia, but what about Bosnia and Herzegovina, Macedonia, Serbia, Montenegro, Albania and Kosovo where the political tensions were or are still greater?

Based on the CEFTA implementation experience as well as other agreements the EU enlargement for the Western Balkans could be delayed due to problems that might be opened during the process. These problems could terminate the sustainable co-operation between Western Balkan countries and also test European Union policy in the future. Based on this reality, it may be expected that these countries could face the same additional challenges when taking political issues, territorial problems etc. into consideration. These problems should be resolved by EU authorities at an earlier stage of the enlargement process. The solution to these problems could be less sensitive and should facilitate further co-operation between these countries.

## **THE EU APPROACH TO WESTERN BALKANS**

Although individual countries of the region are at different stages of European Union integration, all of them see membership as their main political and development objective. The speed of EU integration should be adjusted to the specific characteristics and needs of each country in the region within the common procedure called the Stabilisation and Association Process.

The decision of EU member states to put Western Balkan countries on the so-called EU accession track is expected to strengthen the efforts of countries of the region in the direction of accession, especially if accompanied by appropriate policies and pre-accession funds.

Special membership for the region would represent an attempt to reconcile the specific nature of the unfinished business of the post conflicts in the Western Balkans and the invention of a different pattern of EU integration. Is the Balkans a test case of EU credibility (Rupnik 2005)?

Certain questions need to be addressed. How can the Western Balkan countries fulfil European standards if the EU does not have an appropriate approach to them, or if Kosovo is unable to directly participate in the Stabilisation and Association Process and does so through the Stabilisation and Association Tracking Mechanism (STM) and, unlike other Western Balkan countries, cannot conclude contractual relations with the European Union? This approach has an impact on the free movement of people, capital and investments as well as the mobility of knowledge currently known as the “fifth freedom” of Europe. The EU authorities should undertake the following measures:

- The EU should create a more flexible approach to Western Balkan countries, especially the mobility of people. EU institutions should apply different standards to academics, young professional and business people by offering them more opportunities for institutional, cultural and economic exchange. These areas can promote European values, peace and regional stability.

Another question is how can trade relations between Western Balkan countries be intensified, or what are the impacts of CEFTA 2006 if there are still non-tariff barriers to trade as a consequence of the political problems between these countries?

- If the EU wants to achieve convergence or positive outputs from regional agreements it should support business development by pushing some Western Balkan countries into greater co-operation and support the co-ordination of trade policies in the Western Balkans. Otherwise, the asymmetric policy might simply generate negative effects and not openness, investments and co-operation between these countries.

Another important question is the EU's absorption capacity or EU policies applied to the Western Balkans in order to maintain the European perspective for these countries. The EU should consider that the region of the Western Balkans is quite different to Central Europe.

According to Grabbe (2001), the EU accession process is based on the model of previous enlargements rather than being designed specifically to assist and encourage transition economies. Further, Grabbe points out that consequently the structure of incentives and constraints that it imposes on economic and regulatory policies may be inappropriate for countries facing acute development or reconstruction problems.

EU policymakers tend to assume that that accession and transition require the same policies but, on the contrary, although many accession-related policies are also required for a successful economic transformation, applicants are called on to undertake numerous EU policies that were developed for advanced industrialised economies. These policies were not designed for countries in transition and often require that a complex institutional structure be in place for their implementation.

## **CONCLUSIONS**

The unresolved political issues in the Western Balkans could pose a serious obstacle to regional co-operation, a good neighbourhood, investment promotion and the European integration process. The low level of economic development indicates that the Western Balkans is lagging behind in meeting the European criteria for a sustainable and competitive economy.

There is also the problem of institutional efficiency and the administrations in the various countries have not yet achieved an adequate professional level. There is also a need to enhance the education level so that the Western Balkans' labour force can become more productive and cheaper than in European Union countries.

A further serious challenge in these countries is the political commitments of the elites who govern the countries; in most cases they do not

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understand the importance of the process of EU integration and its complexity.

It is generally accepted that the process of EU integration is internal, that it has to do with candidate countries and the speed of the process depends on the implementation of EU reforms and standards by Western Balkan countries. However, from another point of view, the effectiveness and a flexible approach of EU institutions could help by supporting the mobility of people in the Western Balkans, reducing the opportunity cost of the process, assisting with the better implementation of those reforms and supporting these countries on their way towards the EU.

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# Slovenia-Croatia Border Dispute: From »Drnovšek-Račan« to »Pahor-Kosor« Agreement

Vasilka Sancin<sup>1</sup>

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## ABSTRACT

Almost two decades of negotiations between Slovenia and Croatia were necessary to conclude an agreement to submit their long-standing land and maritime border dispute to an ad hoc arbitration. The article presents a brief overview of negotiation efforts that first led to initialing in 2001 of the 'Drnovšek-Račan agreement', and the process that followed and finally culminated, with the assistance of the Commission of the EU, in the signing of the 'Pahor-Kosor agreement' in 2009. It examines the contents of the two treaties, comparing the solutions reached therein, taking into account their different nature, as the first represents a bilateral treaty envisaging the final resolution of the border issue, while the second only establishes a third party – an ad hoc arbitral tribunal – and envisages future procedure in which it will decide on the disputed questions between the two States. Furthermore, it is argued that the conclusion of the Pahor-Kosor agreement took place in particular political circumstances, when both States, with identical strategic goals realized their interrelatedness and seized a special momentum which enabled the leaderships of the two countries to find a balanced solution and convincingly defend it before their respective domestic publics.

## KEY WORDS

Slovenia-Croatia border dispute, land border, maritime delimitation, negotiations, arbitration

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<sup>1</sup> CORRESPONDENCE ADDRESS: Vasilka Sancin, PhD, Assistant Professor of International Law, Faculty of Law, University of Ljubljana, e-mail: vasilka.sancin@pf.uni-lj.si.

The author has been, in the capacity of an external expert consultant to the Ministry of Foreign Affairs of the Republic of Slovenia, involved in the process leading to the conclusion of the Pahor-Kosor Agreement.

## INTRODUCTION

Slovenia and Croatia, two neighboring countries, one already in and the other at the doorsteps of the European Union, have been ever since their independence engaged in resolution of open bilateral issues that arose following the dissolution of the SFRY. Among these<sup>2</sup>, and probably the most burdensome for the otherwise good neighborly relations, is the long-standing territorial and maritime border dispute between the two States<sup>3</sup>. The predecessor State never introduced delimitations of the maritime areas between former republics, which is why after the dissolution of the SFRY, the new independent States established on its territory could not declare, as they did with the administrative land borders between the former republics, taking into account the general international law principle of *uti possidetis iuris*<sup>4</sup>, that the previous maritime delimitations shall become State borders at sea.

A decade of negotiations to resolve the territorial dispute between Slovenia and Croatia led to drafting in 2001 of the Treaty between the Republic of Slovenia and the Republic of Croatia on the Common State Border, which is also known as ‘the Drnovšek-Račan agreement’<sup>5</sup>. This agreement was however only initialed. While Slovenia was willing to sign it, Croatia refused to do so and years of further negotiations and third-party assistance

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<sup>2</sup> Other two important but still unresolved issues between Slovenia and Croatia relate to the jointly-owned Krško nuclear power plant and the outstanding debts of the no longer existent bank Ljubljanska banka to Croatian depositors.

<sup>3</sup> A plethora of works had been written on the subject-matter of this dispute analyzing it from the perspective of international law (e.g. Degan, Vladimir-Đuro (2007): Consolidation of Legal Principles on Maritime Delimitation: Implications for the Dispute between Slovenia and Croatia in the North Adriatic. Chinese Journal of International Law 6: 601-628; Vidmar, Srečko “Lucky” (2002): Compulsory Inter-State Arbitration of Territorial Disputes. Denver Journal of International Law and Policy 31: 87-111; Arnaut, Damir (2002): Stormy Waters on the Way to the High Seas. The Case of the Territorial Sea delimitation Between Croatia and Slovenia. Ocean and Coastal Law Journal 8: 21-61; Avbelj, Matej and Letnar Černič, Jernej (2007): The Conundrum of the Piran Bay. Slovenia v. Croatia—The Case of Maritime Delimitation. Journal of International Law & Policy V (6): 1-19; Zgonec-Rožej, Miša (2003): Reševanje mejnega spora med republiko Slovenijo in Republiko Hrvaško. Pravnik 58 (9/12): 593-620; Celar, Branko (2004): Mednarodnopravne možnosti rešitve mejnega spora med Republiko Slovenijo in Republiko Hrvaško. X. dnevi javnega prava, Portorož, 14.-16. junij 2004. Inštitut za javno upravo: 539-557 – the list is by no means exhaustive).

<sup>4</sup> This course of events was recommended also by the Arbitration Commission of the International Conference on the Former Yugoslavia of 11 January 1992 (so-called Badinter Commission) in its advisory Opinion No. 3 (‘...if nothing happens to the contrary, the former borders assume the character of borders protected by international law. This is the conclusion resulting from the principle of the territorial *status quo* and particularly the principle *uti possidetis iuris*...’).

<sup>5</sup> It is so called after the two Prime Ministers of Slovenia and Croatia at the time, Janez Drnovšek and Ivica Račan.

were necessary before a new treaty, the Arbitration Agreement between the Government of the Republic of Slovenia and the Government of the Republic of Croatia, the so-called 'Pahor-Kosor agreement'<sup>6</sup> (hereinafter referred to also as: the Arbitration Agreement), could be concluded with the aim to finally resolve this long-standing dispute.

This article presents a brief overview of negotiation efforts that led to the drafting and initialing or conclusion of the Drnovšek-Račan and Pahor-Kosor agreements, respectively. It continues with a short description of the dispute and thereafter focuses on the selected aspects of the contents of both agreements. It seeks to offer a comparison of solutions reached in both of them, to the extent such comparisons, due to their different nature, are at all possible. While the first one represents a bilateral treaty envisaging the final resolution of the border issue, the second one only establishes a third party – an *ad hoc* arbitral tribunal – and envisages the procedure in which it will reach a binding decision on the disputed questions between the two States. Furthermore, it is argued that the compromise reflected in the Pahor-Kosor agreement was possible as a consequence of particular political circumstances existing at the relevant time. Namely, both States, with identical strategic goals - resolution of the border dispute and the EU membership for Croatia – realized their interrelatedness and seized a special momentum which enabled the leaderships of the two countries to find a balanced solution and convincingly present it as such to their respective domestic public, which was a precondition for success<sup>7</sup>.

## THE TWO DECADES OF ATTEMPTS TO RESOLVE THE BORDER DISPUTE

The history of efforts to peacefully resolve the dispute between Slovenia and Croatia regarding the maritime boundary and land border can be in

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<sup>6</sup> After the Prime Ministers of both States concluding it, Borut Pahor and Jadranka Kosor.

<sup>7</sup> Some examples of legal writings following the conclusion of the Pahor-Kosor agreement published in Slovenia include: Arah, Metka (2010): Arbitraža – da ali ne?. Pravna praksa 22 (Priloga): II-VII; Bučar, France (2009): Arbitražni postopek – kaj tvegamo in kaj smemo tvegati. Pravna praksa (Priloga) 45: VI-VII; Drenik, Simona (2009): Arbitražni sporazum: potek pogajanj in dosežene rešitve. Pravna praksa (Priloga) 45: II-V; Krivic, Matevž (2010): Zavajanje s pobožnimi željami po kopenski meji do Savudrije. Pravna praksa 21: 8-9; Letnar Černič, Jernej (2009): Premislek o 3. členu Arbitražnega sporazuma med RS in RH. Pravna praksa 47: 16-17; Sancin, Vasilka (2009): Sosedstvo je vzajemna reč. Pravna praksa 39: 3; Sancin, Vasilka (2009): Kompromis med Slovenijo in Hrvaško. Pravna praksa 45 (Priloga): VII-X; Škrk, Mirjam (2009): Al' prav se piše praviznost ali pravičnost?. Pravna praksa 26: 6-7.

general divided into two main phases: the first one started in 1992 with the establishment of the first working groups to deal with the border issues<sup>8</sup> and lasted until 2001, when the the Drnovšek-Račan Agreement was initialed by the heads of delegations of both sides, and the second that commenced afterwards and lasted until the conclusion of the Pahor-Kosor Agreement in 2010. During these years Slovenia and Croatia, in accordance with the fundamental international law principle of peaceful settlement of international disputes<sup>9</sup>, used or proposed the use of several different means of peaceful settlement of disputes, independently or in combination, including negotiations, mediation, conciliation, judicial settlement, and finally agreed to an *ad hoc* arbitration.

#### THE FIRST ERA OF NEGOTIATIONS

First, the Working Group on Border Issues in 1993 and 1994 managed to identify 53 differences bigger than 50 meters on the disputed land territory. Already in 1993 the two States established a Mixed Diplomatic Commission for Establishment and Demarcation of Slovenia-Croatia Border and Final Treaty on State Border<sup>10</sup>. This commission managed to resolve most of open issues regarding the land border, but failed to find a consensus in four land areas: Prekmurje, Sekuliči, Tomšičeva parcela-Snežnik and Dragonja, and was equally unable to find a solution for the maritime delimitation. While some proposals to divide the disputed land areas in Prekmurje, Sekuliči and Tomšičeva parcela- Snežnik in equal parts (50:50) were exchanged between the two parties, they were unable to find any acceptable proposal for division of Dragonja area and delimitation of maritime areas. However, already in 1995 both States mutually recognized legitimacy of their claims to respect *status quo* on the day of 25 June 1991 – the date of their declaration of independence<sup>11</sup> – on all disputed land areas. Slovenia further claims

<sup>8</sup> In Slovenia: Strokovna delovna skupina za vprašanje meje.

<sup>9</sup> Embodied also in Article 2, paragraph 3 of the Charter of the United Nations (3 Bevens 1153 (1968)) and further elaborated in the Declaration on the Principles of International Law Concerning Friendly Relations and Co-Operation among States in accordance with the Charter of the United Nations (GA Res. 2625 (XXV), UN GAOR, 25th Sess., UN Doc. A/RES/25/2625 (1970)).

<sup>10</sup> In Slovenian: Mešana diplomatska komisija za ustanovitev in demarkacijo slovensko-hrvaške meje in končni sporazum o meji.

<sup>11</sup> The obligation to respect the *status quo* derives from the constitutional documents of both States (the Basic Constitutional Charter on the Sovereignty and Independence of the Republic of Slovenia of 25 June 1991 and the Constitutional Decision on the Sovereignty and Independence of the Republic of Croatia of 25 June 1991) and from the Opinion No. 3 of the Arbitration Commission of the International Conference on the Former Yugoslavia of 11 January 1992. In 2005, the States confirmed their commitment to respect status quo also in the Joint Declaration on Avoidance of Incidents signed by the Slovenian and Croatian Foreign Ministers at Brioni on 10 June 2005.

the right to territorial contact with the High Seas and the right to the integrity of the Bay of Piran (under its sovereignty), while Croatia claims a right to territorial contact with the territorial sea of Italy and requests an equidistant line to be applied for the maritime delimitation in the Bay of Piran. Recognition of legitimacy of these claims was also a leitmotiv in negotiations for the conclusion of the Drnovšek-Račan Agreement. When the Mixed Diplomatic Commission finished its work after its last unsuccessful meeting in 1998, the bilateral talks continued in the political arena at the level of Foreign Ministers of both countries<sup>12</sup>.

In 1999, an attempt was made to try to resolve the dispute with the assistance of a third party, but a former U.S. Defense Secretary William Perry who was chosen as a mediator failed in his endeavors.

In 2001, bilateral negotiations continued at the level of the resumed Mixed Diplomatic Commission, and after unsuccessful conclusion of talks, intensive negotiations evolved at the level of heads of government through the special negotiating delegation. This led on the 20 July 2001 to initialing of the Drnovšek-Račan agreement, following its unanimous endorsement by the two governments the day before. However, in September 2002 the then Croatian Prime Minister sent a letter to the Prime Minister of Slovenia stating that Croatia could not pursue the conclusion of the Drnovšek-Račan agreement and that initialing of it that had already taken place had no legal effect<sup>13</sup>.

There were no bilateral negotiations pursued between the two States in the years to follow (2001–2005) and it was only after a number of incidents in the disputed areas that the Foreign Ministers of Slovenia and Croatia on 10 June 2005 at Brioni signed a joint declaration, the so-called Brioni declaration on the avoidance of incidents. Its purpose was not to solve the border issue, but to ensure respect for the *status quo* as at 25 June 1991 in order to avoid further incidents<sup>14</sup>.

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<sup>12</sup> [http://www.vlada.si/si/teme\\_in\\_projekti/arbitrazni\\_sporazum/zgodovina\\_resevanja\\_vprasanja\\_meje/PType/95/\(18 October 2010\)](http://www.vlada.si/si/teme_in_projekti/arbitrazni_sporazum/zgodovina_resevanja_vprasanja_meje/PType/95/(18%20October%202010)).

<sup>13</sup> Ibid.

<sup>14</sup> It is important to briefly mention another development that is essentially related to the border dispute. Namely, in October 2003 Croatia proclaimed the Croatian ecological and fisheries protection zone (EFPZ) and declared as its provisional boundary towards Italy the boundary established by the Agreement between the government of the SFRY and the Government of the Italian Republic on the delimitation of the continental shelf between the two States of 8 January 1968, to which Croatia claims to be a successor State. After the protests by both, Slovenia and Italy, and several

In July 2007 Slovenia proposed to Croatia that the border dispute be resolved through conciliation proceedings before the Court of Conciliation and Arbitration of the Organization for Security and Cooperation in Europe (OSCE), but Croatia rejected this option. Soon afterwards, in early August 2007, Croatia proposed to Slovenia that the dispute be submitted to the International Tribunal on the Law of the Sea (ITLOS) in Hamburg. This proposal was however unacceptable to Slovenia, as Slovenia insists on the comprehensive global resolution of border dispute which would include not only maritime delimitation, but also the final determination of the land border in disputed areas.

Aware of the reached impasse in bilateral negotiations, the two States continued their endeavors to find a mutually acceptable solution for inclusion of the third party. This led, in August 2007, to a principled informal agreement between the Prime Ministers of both countries (Janez Janša and Ivo Sanader) – the so-called Bled agreement – which envisaged the submission of the dispute to international judicial body, such as the International Court of Justice (ICJ). As a consequence of this development the two States appointed the Slovenian-Croatian team of legal experts, which was supposed to draft a special agreement for submission of the dispute to the arbitration or the ICJ. The team was however, even after four meetings, unable to make any substantial progress due to the major differences regarding the main elements of the agreement. When the Slovenian Government on the basis of the report on the negotiations in March 2009 noted that the Slovenian part of the group was within a given mandate unable to implement key elements of Slovenia it concluded that the resumption of negotiations is no longer appropriate. Thus, the Slovenian part of this group ceased to function.

A major turning point in the resolution of the border dispute was the decision of the Slovene government in September 2008, just before parliamentary elections in Slovenia, to block the accession negotiations of Croatia with the EU. The reason for this decision was the belief that some Croatian actions in this pre-accession process constitute prejudices to the detriment of Slovenia with regard to the final resolution of the border dispute. The new Slovenian government, taking office in December 2008, tried to get,

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talks and decisions on this matter, the implementation of the EFPZ for the EU Member States was finally postponed. Slovenia, however, in October 2005 declared its own ecological protection zone (*Zakon o razglasitvi zaščitne ekološke cone in epikontinentalnem pasu Republike Slovenije*, published in: Official Gazette of the Republic of Slovenia, No. 93/20005).

with the assistance of the French government, assurances from Croatia that it will eliminate all the prejudices from their pre-accession documentation which would enable Slovenia to lift the blockade, but it was not until July 2009, after the change in the position of the Prime Minister of Croatia<sup>15</sup>, that the talks gained a new momentum and the Prime Minister Kosor agreed to address this issue.

#### THE SECOND ERA OF NEGOTIATIONS

A new series of negotiations started in January 2009 on the initiative of the then EU Commissioner for Enlargement Mr. Olli Rehn. Several tripartite meetings (Slovenia, Croatia and the EU Commission) were held in Brussels. The first proposal in March 2009 to submit the dispute to mediation was rejected by Croatia. Commissioner Rehn further proposed to submit the dispute for a resolution to an ad hoc arbitration, to what Slovenia in principle agreed, but Croatia insisted on submitting the dispute for the resolution to the International Court of Justice.

One month later, in April 2009, Commissioner Rehn proposed the draft agreement to submit the dispute to an ad hoc arbitration (the first Rehn's proposal). Croatia has accepted the proposal this time and Slovenia suggested some amendments. Then, the Rehn's second proposal was presented to the Parties in June 2009. The text has taken into account amendments Slovenia suggested to the Rehn's first proposal, but Croatia opposing such amendments in June 2009 withdrew from further talks.

It was in July 2009, at the Castle Trakošćan when Prime Ministers Borut Pahor and Jadranka Kosor met again and agreed on further talks on the basis of three principles: withdrawal of Croatian prejudices in the pre-accession process, Slovenian consent to Croatia's continuation of the pre-accession process where the obstacles were prejudices to the resolution of the border dispute and the need to reach an agreement on the resolution of the border dispute.

After their meeting on 11 September 2009 in Ljubljana, Prime Minister Kosor sent a written statement to the Swedish Presidency of the Council of the EU, in which she declared that no document, map, or any other unilateral act adopted after 25 June 1991 will have any legal effect on the final settlement of the border dispute. Thus, Slovenia lifted its blockade at the

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<sup>15</sup> After the resignation of Ivo Sanader from this position.

next Intergovernmental Accession Conference to the relevant negotiation chapters. In addition, the two Prime Ministers agreed that the negotiations on resolving the border dispute will continue based on the second Rehn's proposal. The agreement was finally signed by the two Prime Ministers in Stockholm on 4 November 2009 and then submitted to the ratification processes in both States. Croatia ratified the agreement on 29 October 2009, while Slovenia first had to wait for the opinion of the Constitutional Court, which was rendered on 18 March 2010<sup>16</sup> and found that the agreement is not inconsistent with Slovene constitutional order. The Slovenian Parliament ratified the agreement on 19 April 2010<sup>17</sup>. However, the agreement still needed to undergo a legislative referendum which was scheduled for the 6 June 2010. After the turnout of 42,66% and 51,54% of voters voting for the agreement<sup>18</sup>, the request for the subsequent review of constitutionality was submitted to the Constitutional Court, which in its Opinion from 7 October 2010<sup>19</sup> reaffirmed its previous conclusions and found that the agreement is not inconsistent with the Slovene Constitution. Thus, all the internal procedures related to the enforcement of the Arbitration agreement had been successfully concluded in both States. According to Article 11, paragraph 2, of the Arbitration agreement, they proceeded with the exchange of diplomatic notes expressing their consent to be bound by it<sup>20</sup>. The agreement entered into force on 29 November 2010, the first day of the week following the exchange of such diplomatic notes.

However, when ratifying the treaty in their national parliaments, both States adopted and included in their internal acts of ratifications unilat-

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<sup>16</sup> Rm-1/09-30, Official Gazette, No. 25/2010. In Opinion the Constitutional Court decided that Article 3 (1) (a), Article 4 (a), and Article 7 (2) and (3) of the Arbitration Agreement between the Government of the Republic of Slovenia and the Government of the Republic of Croatia are not inconsistent with Article 4 of the Constitution of the Republic of Slovenia in conjunction with Section II of the Basic Constitutional Charter on the Sovereignty and Independence of the Republic of Slovenia. See: <http://www.us-rs.si/en/news/headlines/the-opinion-of-the-constitutional-court-on-the-con/> (18 October 2010).

<sup>17</sup> Zakon o ratifikaciji Arbitražnega sporazuma med Vlado Republike Slovenije in Vlado Republike Hrvaške, published in Official Gazette of the Republic of Slovenia, No. 57/10, International agreements, No. 11/10.

<sup>18</sup> See the report of the State Electoral Commission available at: <http://www.dvk.gov.si/AS2010/dokumenti/porocilo.pdf>

<sup>19</sup> U-I-180/10-13.

<sup>20</sup> Some views on the possible ways to proceed with this last stage have been discussed in: Sancin, Vasilka (2010): Začetek veljavnosti Arbitražnega sporazuma. *Pravna praksa* 24-25: 18-20.

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TO »PAHOR-KOSOR« AGREEMENT

eral statements relating to the Arbitration Agreement<sup>21</sup>. In its statement which is included in Article 3 of the Croatia's act of ratification<sup>22</sup>, Croatia claims that it has jointly with Slovenia on 27 October 2009 informed the Presidency of the Council of the European Union and the United States of America, about the following statement: "Nothing in the Arbitration Agreement between the Government of the Republic of Croatia and the Government of the Republic of Slovenia shall be understood as Croatia's consent to Slovenia's claim to its territorial contact with the high seas"<sup>23</sup>. Slovenia immediately denied that such common message was ever delivered to the aforementioned actors, opposed such interpretation of the Arbitration Agreement and in response to Croatia's unilateral statement adopted its own unilateral statement and included it in Article 3 of its act of ratification of the Arbitration Agreement<sup>24</sup>. Moreover, diplomatic representatives of both, the USA and Sweden, in interviews broadcasted in Slovene media expressly denied that they ever received any such message from Slovenia and Croatia.

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<sup>21</sup> On the legal questions that arise in this respect see: Sancin, Vasilka (2009): *Enostranske izjave k dvostranskim mednarodnim pogodbam*. Pravna praksa 46: 16-17.

<sup>22</sup> *Zakon o potrditvanju Sporazuma o arbitraži između Vlade Republike Hrvatske i Vlade Republike Slovenije*, published in: *Official Gazette of the Republic of Croatia, International agreements*, No. 12/2009 (27. 11. 2009).

<sup>23</sup> Available at: <http://narodne-novine.nn.hr/medunarodni/default.aspx> (30. 10. 2010).

<sup>24</sup> Slovenia's statement in Article 3 reads in the original:

»3. člen

Republika Slovenija ob izmenjavi diplomatske note, s katero izrazi svoje soglasje, da jo sporazum zavezuje, Republiki Hrvaški sporoči naslednjo izjavo:

»Ob upoštevanju suverene pravice vsake države, da daje enostranske izjave in ob tem, da je bila Republika Slovenija seznanjena z namero Republike Hrvaške, da poda enostransko izjavo k Arbitražnemu sporazumu med Vlado Republike Slovenije in Vlado Republike Hrvaške, podpisanim v Stockholmu dne 4. novembra 2009, Republika Slovenija izjavlja, da se ni strinjala z izjavo Republike Hrvaške z dne 9.2009 niti z njeno vsebino.«

Republika Slovenija izjavlja, da v skladu z mednarodnim pravom enostranska izjava, podana v zvezi z arbitražnim sporazumom nima učinka na njegovo vsebino in da izjava Republike Hrvaške z dne 9.2009 nima nobenega učinka za arbitražni postopek.

Republika Slovenija izjavlja, da je naloga arbitražnega sodišča določiti ozemeljski stik teritorialnega morja Republike Slovenije z odprtim morjem (stik Slovenije z odprtim morjem), torej ohranitev pravice Slovenije do stika z odprtim morjem, ki ga je imela na dan osamosvojitve 25. junija 1991. Republika Slovenija tudi izjavlja, da se arbitražni sporazum razlaga v skladu z običajnim pomenom izrazov v določbah samega sporazuma.« Available at: [http://www.uradni-list.si/\\_pdf/2010/Mp/m2010057.pdf](http://www.uradni-list.si/_pdf/2010/Mp/m2010057.pdf) (30. 10. 2010).

## **WHAT IS ACTUALLY IN DISPUTE?**

Even though it is far better known to the general public that the disputed area represents a maritime area in the northern Adriatic, and in particular, but not exclusively, the Bay of Piran, there are also sections of the land border that are still disputed. The extent of the disputed land border however remains unclear (as described above). Thus, it remains to be seen, what the two States will submit as the subject matter of dispute to the Arbitral Tribunal and what will be included in their respective claims.

Decision on the land border on the coast of the two parties is however crucial for determination of the base point for the maritime border. Since the relevant coast of the parties in dispute play a major role in determining the maritime border, a special geographical situation of the disputed area should not be overlooked. Relevant coasts are two adjacent coasts, which are in specific situation due to their concavity and the fact that they are located in the semi-enclosed Adriatic Sea. Other delimitations, including provisional ones, in the Adriatic Sea between other States could therefore shed some light on the different approaches adopted by the States in the area and contribute to a better understanding of the regional dimension. Among others the historical developments in this area are of central importance to achieve an equitable solution. Relevant events date back centuries and the Arbitral Tribunal will need to address them accordingly, keeping in mind that the critical date agreed upon in the Arbitration Agreement is 25 June 1991.

## **THE CONTENTS OF THE TWO AGREEMENTS AND THEIR COMPARISON**

The Drnovšek-Račan agreement, in addition to the preamble, contains 30 articles divided into VIII parts.

Part I referred to the Subject of the treaty and envisaged this to be the determination of the maritime boundary and the establishment of the course of border on land between the Contracting Parties, as well as the principle of demarcation, maintenance and restoration of the State border<sup>25</sup>. The State border between Slovenia and Croatia was defined as the surface perpendicular to the line of the border on the surface of the Earth dividing

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<sup>25</sup> Article 1.

the territory of the two States, their air space, subsoil, and any above and underground structures and installations<sup>26</sup>.

In Part II, dealing with the determination of the state border at sea, it provided the geographical coordinates for the border at sea<sup>27</sup>, envisaged the junction of the Slovenia's territorial sea to the High Sea<sup>28</sup> and the junction between the Croatia's and Italy's territorial sea<sup>29</sup>.

Part III was drafted to regulate the land border. Article 6 thus dealt with the establishment of the land border course and provided that the land border shall be the border between the two republics as parts of the former SFRY, running from the three-borders-point between the contracting parties and Hungary to the Adriatic Sea. The maps (on a scale of 1:25,000) for all of these determinations were included in Annexes I, II and III and it was specifically stated that where the description of the state border does not correspond to the map, the verbal description shall prevail. Drnovšek-Račan agreement envisaged the exchange of areas, which occurred on the occasion of mutual establishment of the state border, but this was supposed to have no effect on any rights of natural or legal entities under the law of property and law of obligations with regard to land and other immovable property, included in such an exchange. Holders of rights under the law of property and law of obligations were supposed to use such property in accordance with a special agreement between the contracting parties<sup>30</sup>. Articles 8, 9, 10, 11, 12 and 13 dealt with demarcation of the course of the state border, principles of demarcation of the state border course, maintenance and restoration of the state border, inalterability of the state border course, unity of border markers and belt along the line of the border, respectively. Expenses related to demarcation, maintenance and restoration of the state border were to be ensured by the contracting parties in comparable amounts<sup>31</sup>. Articles 15, 16, 17 and 18 provided provisions dealing with obligations of owners, users, administrators and other holders of rights under the law of property and law of obligations, compensation for dam-

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<sup>26</sup> Article 2.

<sup>27</sup> Article 3.

<sup>28</sup> Article 4. In paragraph 5 it stated that no sovereign rights may be acquired in relation to the water column under the sea surface in the area of the junction and that the contracting parties shall, in their mutual relations refrain from exercising sovereign rights in the seabed and the relevant subsoil under the sea surface of the junction.

<sup>29</sup> Article 5.

<sup>30</sup> Article 7.

<sup>31</sup> Article 14.

age, demarcation, maintenance and restoration of the three-borders-point and protection of markers, respectively.

Part IV envisaged joint regimes, which were to be agreed in special agreements between the contracting parties. Special emphasis in this respect was given to the protection of natural environment along the entire course of the state border and particularly in the protected areas<sup>32</sup>, while the special benefits were envisaged for the inhabitants of the settlements Mliniškrile, Bužini and Škodelin<sup>33</sup>.

In Part V, entitled Joint Bodies, the contracting parties envisaged the set up of the Permanent Slovenian-Croatian Commission for the State Border, responsible for the implementation of the Drnovšek-Račan agreement<sup>34</sup>, its tasks and working methods<sup>35</sup>, establishment of joint technical groups by the Commission<sup>36</sup> and a provision on permissible deviations (for not more than 50 meters) from the line determined by this agreement in order to adjust the state border to the logical geographic and economic conditions<sup>37</sup>.

Settlement of disputes between the contracting parties was regulated by Part VI, which envisaged, first negotiations, and second, if the contracting parties fail to reach an agreement within six months from the date of receiving the initiative for negotiations, the submission of the dispute to arbitration at the request by either party. The arbitration tribunal was to be set up on a case-by-case basis. Each contracting party was supposed to appoint two arbitrators two months after receiving the request for arbitration. The appointed four arbitrators were then, in subsequent two months, supposed to select a national of a third country as a chairperson of the arbitration tribunal, after he/she has been approved by both contracting parties. Should these appointments not have been made within envisaged deadlines, either contracting parties could have requested the President of the ICJ to make the necessary appointments. The arbitration tribunal was meant to make final and binding decisions by the majority of votes. Each contracting party was supposed to cover the expenses of its arbitrators and

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<sup>32</sup> Article 19.

<sup>33</sup> Article 20.

<sup>34</sup> Article 21.

<sup>35</sup> Article 22.

<sup>36</sup> Article 23.

<sup>37</sup> Article 24.

its representation in the arbitral procedure, while the remaining costs were to be covered by both States in equal shares. When defining the rules of the procedure, the arbitration tribunal was to take into consideration also the Model Rules on Arbitral Procedure drawn up by the United Nations International Law Commission<sup>38</sup>.

Transitional provisions included in Part VII provided for the transfer of the entry in the land register<sup>39</sup>, exemption from administrative fees<sup>40</sup> and making of cartographic documentation<sup>41</sup>.

Final provisions in Part VIII envisaged that Annexes I, II and III form an integral part of the agreement<sup>42</sup> and the date for its entry into force – the date of the receipt of the last of the notifications by which the contracting parties notify each other through diplomatic channels that the conditions for the entry into force of this agreement under their respective laws have been fulfilled<sup>43</sup>.

The Drnovšek-Račan agreement was done in two originals in the Slovenian and Croatian languages, both texts being equally authentic.

The Pahor-Kosor agreement is shorter and, in addition to the preamble, includes 11 Articles. It was concluded in English language, which is the only authentic language of the agreement.

As already explained, the main difference between these two agreements is the different purpose for which they were negotiated. The Pahor-Kosor agreement thus in Articles 1 and 3 defines its main *raison d'être*, which lies in the establishment of the Arbitral Tribunal with the task to determine:

- (a) the course of the maritime and land boundary between Slovenia and Croatia;
- (b) Slovenia's junction to the High Sea;
- (c) the regime for the use of the relevant maritime areas.

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<sup>38</sup> Article 25.

<sup>39</sup> Article 26.

<sup>40</sup> Article 27.

<sup>41</sup> Article 28.

<sup>42</sup> Article 29.

<sup>43</sup> Article 30.

How the articles of the Arbitration Agreement are to be understood and applied depends on the Arbitral Tribunal which has the sole competence to interpret it.

However, these two Articles should be read together with other articles, in particular Article 9, which requires from Slovenia to lift its reservations as regards opening and closing of negotiation chapters where the obstacle is related to the dispute and that both parties shall refrain from any action or statement which might negatively affect the accession negotiations. These articles thus reveal what were the two determinants guiding the negotiation process and the resulting compromise which was necessary to enable the two States to find a balanced solution.

The composition of the Arbitral Tribunal is regulated by Article 2, which envisages a five-member panel.

Article 4, defining the applicable law, provides that the Arbitral Tribunal shall apply:

- (a) the rules and principles of international law for the determinations of the course of the maritime and land boundary between Slovenia and Croatia; and
- (b) international law, equity and the principle of good neighborly relations in order to achieve a fair and just result by taking into account all relevant circumstances for the determinations of Slovenia's junction to the High Sea and the regime for the use of the relevant maritime areas.

Critical date, has been set in Article 5 on the 25 June 1991, requiring the Arbitral Tribunal not to accord legal significance to documents or actions undertaken unilaterally after that date, which can not in any way commit either side of the dispute nor prejudice the award.

As regards the procedure, the parties decided in Article 6 to each submit a memorial to the Arbitral Tribunal within twelve months and that unless envisaged otherwise, the Arbitral Tribunal shall conduct the proceedings according to the Permanent Court of Arbitration Optional Rules for Arbitrating Disputes between Two States. The place of arbitration shall be Brussels. Even if such solution seems obvious under general customary international law, the special provision was included in paragraph 8 of Article 6, providing that the Arbitral Tribunal may at any stage of the pro-

cedure with the consent of both Parties assist them in reaching a friendly settlement.

The arbitral award shall be, in accordance with Article 7, issued expeditiously after due consideration of all relevant facts pertinent to the case. It shall be adopted by the majority of arbitrators and shall state the reasons on which it is based. No individual or dissenting opinions are allowed.

Article 8 was included to ensure the overcome of the dead-lock in Croatia's pre-accession negotiations for the EU membership and states that no document presented in the EU accession negotiations unilaterally shall prejudice the Arbitral Tribunal when performing its tasks or commit either side on the dispute. This applies to all documents and positions either written or submitted orally, including, inter alia, maps, negotiating positions, legal acts and other documents in whatever form, produced, presented or referred to unilaterally in the framework of the EU accession negotiations. It also applies to all EU documents and positions which refer to or summarize these documents and positions.

In order not to intensify the dispute or jeopardize the work of the Arbitral Tribunal, both parties must, as required by Article 10 (stand-still), refrain from any action or statement that may cause any of the two before mentioned situations. The Arbitral Tribunal has the power to order, if it considers that circumstances so require, any provisional measures it deems necessary to preserve the stand-still.

Despite the fact, that Article 11 envisages the entry into force of this agreement on the first day of the week following the exchange of diplomatic notes with which the parties express their consent to be bound, all procedural timelines will start to apply only from the date of the signature of Croatia's EU Accession Treaty.

The main bone of contention in the Arbitration Agreement, taking into account debates that emerged in both States, seems to be jointly read Articles 3 and 4 of the Arbitration agreement, which Slovenia, contrary to Croatia, understands as requesting from the Arbitral Tribunal to determine, among others, the coordinates of Slovenia's junction - in a physical sense of territorial contact - to the High Sea by taking into account not only international law, but also a number of other factors and circumstances – amounting in the opinion of Slovenia – to a decision similar to a decision adopted *ex*

*aequo et bono*. Among other particularities of this Arbitration Agreement, it is in particular in these two aspects that it provides unique solutions, not yet witnessed in the case law of territorial disputes<sup>44</sup>.

Despite many differences between the two described agreements, deriving from their different nature and purpose, and different procedural solutions envisaged in them (e.g. appointment of arbitrators, the rules used for the conduct of proceedings), there is at least one striking similarity between them: both envisage Slovenia's junction to the High Sea. It would be a bit credulous to believe this to be a pure coincidence and we shall see whether the final award of the Arbitral Tribunal will in this respect provide for a solution that will much diverge from the one included in Article 4 of the Drnovšek-Račan agreement.

### CONCLUDING REMARKS

The period in bilateral relations between Slovenia and Croatia, marked by the search for resolution of their border dispute, could be described also as a transitional phase between leaving the old family (the former republics of the SFRY) and joining the new one, within the EU, whose assistance proved to be instrumental in the process leading to the conclusion of the Pahor-Kosor Agreement. However, the importance of resolving the border dispute confirms the continuing relevance of state borders which remain a quintessential matter of State sovereignty even in situation of co-existence in the international organization of a supranational nature, such as the EU, which is trying to diminish the importance of borders among its Member States for the benefit of its citizens and other individuals travelling within it.

However, there are still two tasks for Slovenia and Croatia where bilateral cooperation between them is called for, before the third party irrevocably takes the border dispute in its own hands. First, Slovenia and Croatia should select and appoint the five arbitrators that will be responsible for rendering the arbitral award, and second, they should specify the details of the subject-matter of the dispute submitted to the Arbitral Tribunal. Nevertheless, the two issues can be resolved even despite any possible disagreements between

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<sup>44</sup> For the analysis of the judicial and arbitral decisions in relation to granting territorial contact to the High Sea see: Šebenik, Nataša (2009): Teritorialni dostop do odprtega morja v mednarodni sodni in arbitražni praksi. Pravna praksa 49-50: II-VII.

the two parties. In case of the appointment of arbitrators, it is the President of the International Court of Justice, who is under the Arbitration Agreement envisaged as an appointing authority and shall, if Slovenia and Croatia fail to appoint the three 'neutral' members of the Arbitral Tribunal within fifteen days, appoint the President and the two members of the Arbitral Tribunal<sup>45</sup>. After this task is accomplished, it is the President of the Arbitral Tribunal who shall act and appoint any or both of the 'national' members of the Arbitral Tribunal if the parties fail to do so in fifteen days after the appointment of the three 'neutral' members<sup>46</sup>.<sup>47</sup> If Slovenia and Croatia are not able to bilaterally agree on the joint determination of the subject-matter of the dispute within one month, and thus fail to fulfill the third task, it will be left to the Arbitral Tribunal to use the submissions of the Parties for the determination of the exact scope of the dispute and claims between them<sup>48</sup>.

Regardless of the level of satisfaction in each of the two States with the solution to be presented by the Arbitral Tribunal in the final award on determination of the land border and maritime delimitation between Slovenia and Croatia, this will constitute a binding and definitive settlement of the dispute. The two States will then need to prove their commitment to international law and respect for its fundamental principles of good faith and *pacta sunt servanda* and take all necessary steps to implement the arbitral award, including by revising national legislation, as necessary, within six months after the adoption of the award, as required by Article 7, paragraph (3) of the Arbitration Agreement. Only then will we be able to confirm that Slovenia and Croatia by concluding the Pahor-Kosor Agreement set a posi-

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<sup>45</sup> Article 2, paragraph (1) of the Arbitration Agreement reads: 'Both Parties shall appoint by common agreement the President of the Arbitral Tribunal and two members recognized for their competence in international law within fifteen days drawn from a list of candidates established by the President of the European Commission and the Member responsible for the enlargement of the European Commission. In case that they cannot agree within this delay, the President and the two members of the Arbitral Tribunal shall be appointed by the President of the International Court of Justice from the list.'

<sup>46</sup> Article 2, paragraph (2) of the Arbitration Agreement envisages: 'Each Party shall appoint a further member of the Arbitral Tribunal within fifteen days after the appointments referred to in paragraph 1 have been finalised. In case that no appointment has been made within this delay, the respective member shall be appointed by the President of the Arbitral Tribunal.'

<sup>47</sup> On the appointment of arbitrators in inter-State disputes see: Sancin, Vasilka (2010): Izbor arbitrov v meddržavnih sporih. Pravna praksa 29-30: 19-20.

<sup>48</sup> Article 3, paragraph (2) of the Arbitration Agreement states: 'The Parties shall specify the details of the subject matter of the dispute within one month. If they fail to do so, the Arbitral Tribunal shall use the submissions of the Parties for the determination of the exact scope of the maritime and territorial disputes and claims between the Parties.'

tive example of finding a peaceful solution to resolve open issues of greatest national importance. Such achievement is to be particularly appreciated in the region that has in the past witnessed the most serious violations of international law, including the commitment of mass atrocities, constituting breaches of *ius cogens* norms of international law.

While recognizing, that the described Slovenian-Croatian example is neither the first<sup>49</sup> nor probably the last among the new States that emerged from the former SFRY and resorted to third party to resolve their border issues in a peaceful manner, the special contribution of this case is to be viewed from the perspective of the innovative and unique solutions that have been found and included in the Arbitration Agreement to accommodate interest of both parties. These could in the future be beneficial and referred to by other States, in similar geographic, historical, political or economic circumstances, in the region or broader.

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## reviews

**Slovinci v očeh imperija – Priročnik britanskih  
diplomatov na Pariški mirovni konferenci leta 1919**  
**Slovenes in the Eyes of the Empire – Handbooks  
of the British Diplomats Attending the Paris  
Peace Conference of 1919**

Ernest Petrič

*Polona Mal*

**Imagining ‘the Turk’**

Božidar Jezernik

*Janja Vukašinić*

Polona Mal

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Ernest Petrič (ed.).

SLOVENC V OČEH IMPERIJA – PRIROČNIK BRITANSKIH DIPLOMATOV  
NA PARIŠKI MIROVNI KONFERENCI LETA 1919  
SLOVENES IN THE EYES OF THE EMPIRE – HANDBOOKS OF THE BRITISH  
DIPLOMATS ATTENDING THE PARIS PEACE CONFERENCE OF 1919

Centre for European Perspective (CEP), Mengeš, 2007

524 pages

ISBN 978-961-92173-1-3

Under the editorship of Slovene Ernest Petrič a monograph *Slovenes in the Eyes of the Empire*, a collection of British handbooks for the Paris Peace Conference (1919) about Slovenes and with them related questions was published in 2007. In the eyes of Slovenes this collection of once confidential documents 'is of great significance and joy' (p. 267), as it represents some new materials for analysis in the fields of history, international relations and diplomacy studies.

Four out of 193 handbooks for the British delegation at the Paris Peace Conference represent the main part of the book. Alongside the four handbooks, namely *The Slovenes*, *The Jugo-slav Movement*, *The Austrian Littoral*, and *Carniola, Carinthia and Styria*, there are also two forewords and two studies. Forewords were contributed by then

Slovenian and UK foreign ministers, Dimitrij Rupel and David Miliband, respectively. The first study, written by Patrick Salmon, represents historical circumstances in which the handbooks were prepared with special emphasis on the establishment of the historical section in British Foreign Office. On the other hand, Andrej Rahten's analysis represents the role and aims of Slovenes at the Paris Peace Conference. A monograph is supplemented with multilingual lists of geographical names, used in originals and in translations, and with a set of pictures, maps and other materials.

In order to better understand the handbooks and their significance in both UK and Slovenian history, the monograph presents the historical circumstances of their formation. Under the title *The Foreign Office Historical Section and the Origins of the Peace Handbooks* Patrick

Salmon writes about the intra-agency formation of a special section that was entrusted with the task of preparing the papers on many issues that would probably be discussed at the peace conference after the end of the Great War. The Paris Peace Conference started in January 1919 and British delegation strongly relied on the peace handbooks. The fact, that the preparation of them started as early as 1916, shows the importance of strategic planning and analysing information in diplomacy. Nonetheless, this is a short version of the story.

To be more specific about the history of Historical Section of the British Foreign Office, we should elaborate on it a bit more. A first initiative for the establishment of the section came from Arnold Toynbee and Alfred Zimmern, two Oxford historians who were both 'anxious that the government should not repeat the mistakes made at the Congress of Vienna in 1814, when the British delegation had entered the negotiations ill prepared' (p. 247). They represented their idea to a member of War Cabinet secretariat who recognized the importance of the initiative and supported the establishment of historical section. It was established within the Naval Intelligence in May, 1917 under the leadership of Professor George Prothero. Following the quarrels about the affiliation of the

section within the government offices the section was transferred to the Foreign Office where it continued its work. In mid-1918, a part of staff from also newly established Political Intelligence Department was temporarily transferred to the Historical Section, as the preparations of the handbooks were behind schedule. 'Despite the best efforts of the historical section, progress on the handbooks remained behind the schedule' (p. 280). Because of that Prothero sought for input from other government departments. Directorate of Military Intelligence and War Trade Intelligence Department proved sympathetic and eventually some additional clerks were transferred to the historical section. The series of the handbooks was almost complete by the autumn 1918 and in the end contained 193 pieces, 'covering a wide range of subjects that were expected to be raised at the peace conference' (p. 282). Handbooks proved to be of great usefulness during the proceedings. After returning from Paris in April 1919 Prothero was asked to edit the handbooks for public publishing. Their publishing in 1920 is one of the first examples of the Foreign Office's public diplomacy. After that the section was eventually closed but its work has kept its importance until nowadays.

The second study, written by Andrej Rahten, is dedicated to the Slovenian

presence at the peace conference in Paris and especially on the political development of Carinthian question among Slovenian politicians. He starts his analysis with a statement that before the Great War international community was not aware of Slovenes. Consequently, Slovenes were 'unlikely to assert their demands against opposition of their powerful historical rivals – Italians [...] and Germans' (p. 186). In the aftermath, a great part of Slovenes and Croats remained outside the borders of the newly established Yugoslav state. At the Paris Peace Conference Slovenia was represented within the delegation of Kingdom of Serbia; two out of seven delegates were Slovenian (Dr Ivan Žogler and Dr Otokar Rybař). The multiethnic delegation (besides Serbs and Slovenes, Croats were also included) did not have a common position on the negotiating priorities. Questions regarding borders with Austria and Italy were the most significant. In accordance with London Agreement of 1915 the border with Italy was already fixed. Due to that Slovenes were focusing on the Carinthian question and the limitation with Austria. Slovenian politicians were sound in the demand for the inclusion of the whole Carinthia in the Slovenian territory. Ironically, the positions on how to achieve that were not harmonised. During the conference an additional delegation of Slovenian politicians travelled to Paris to discuss

the Carinthian question. They only realised in the aftermath 'that they were as much masters of their nation's destiny as they were allowed to be by the leaders of the great powers' (p. 304–5).

The central and longest part of the monograph represent four above mentioned handbooks. They are all prepared in accordance with the *Instructions for Historical Writers* that Prothero, head of Historical Section, wrote after the final expansion of the section. As a result, handbooks are written in compressed and clear style and have the same structure. The content is structured in three main sections that represent geography of the territory, political and economic situation and general observation. The main text is supplemented with two appendices with principal legal documents and a short bibliography. This structure is rather strictly followed in the three handbooks that are dealing with different territories and nationalities (*The Slovenes*, *The Austrian Littoral*, and *Carniola, Carinthia and Styria*). Handbook *The Yugo-slav Movement* has a different structure; due to different nature of the analysed entity it only contains an overview of its historical development and an appendix consisting of six legal documents with reference to the Yugoslav movement. From the point of those who were familiar with those issues,

the handbooks did not bring any substantially new information. On the other hand, the whole series of the handbooks was well used by the British delegation during the peace talks. Taking into account the fact that the issues of Slovenes and different Austro-Hungarian territories were not in the midst of British interest, usefulness of the handbooks for British delegation is not a surprise.

In overall the monograph *Slovenes in the Eyes of the Empire* brings the handbooks back to the attention of public. The handbooks are still a good example of historic analysis, using variety of different sources of information, including with local bibliography. The fact that the preparation of the handbooks began two years before the war, when the battles were far from the final stage, sets another good example – an example of strategic planning and analysing in diplomacy. Both introductory studies do not represent many new facts and from time to time a reader may get a feeling that they are not strongly connected to the rest of the book, but they represent a point of reference for understanding the historical background of preparation and use of the handbooks as well as the situation at the peace talks from the point of Slovenes. Thus, the occasional lack of connection with the rest of the content is understandable. At the end, I would like to rec-

ommend represented monograph to all who have an interest in diplomacy, the Great War and subsequent peace negotiations and also to those with interest in history and international relations in general.

Janja Vukašinić

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**Božidar Jezernik (ed.).**  
**IMAGINING 'THE TURK'**

Cambridge Scholars Publishing, Newcastle, 2010

205 pages

ISBN: 978-1-4438-1663-2

**T**he image of 'the Turk' that we can observe in Europe today, differs little from the way 'the Turk' was imagined through European history. For centuries the word 'the Turk' had all sorts of uncomfortable connotations for the European mind. Fear of Turks was impressed on western minds during the long period when the Turks governed a large part of Europe and seemed to threaten the existence of Christianity. In the words of B. Jezernik, »in discussions on the image of 'the Turk', stereotyping is a common practice in the west and in the east«.

The Cambridge Scholars Publishing has published one of the most comprehensive books on representations and memories of Ottoman Turks in Europe from the 15th century onwards. The Ottoman Empire's power peaked in the 16th and 17th centuries when it was often at odds with the Holy Roman

Empire in its steady advance towards Central Europe through the Balkans and the south of the Polish Commonwealth. During nearly two centuries of decline, once 'great and mighty' empire became known as 'the Sick Man of Europe'. According to Jezernik 'the Turk' »always had many different faces and they were subject to a range of changes occurring during time. Western authors regarded the military and political conditions of a given country among the most important causes for their judgements about it«.

Imagining 'the Turk' brings together fourteen authors to address the image of 'the Turk' in history, folk culture, ethnography, literature, and political discussions in different European countries. Editor B. Jezernik and Nedret Kuran-Borçoğlu point out the influence of 'the Turk' in Western Europe and its active role in the process of con-

structuring the image of 'the Turk'. On the basis of analysing the images of 'the Turk' in various literary genres of Early modern age to the Enlightenment period in Germany, Kuran-Borçoğlu indicates that 'the Turk' had played various roles, but »most times his image was used as that of an Other, an enemy, against whom religious, ethnological and newly emerging national identities could be shaped«. Similar representations of 'the Turk' can be found in Polish language and culture, Slovenian literary and historiographical narratives, among others in Anton Aškerc's travel stories and Johann Valvasor's works. These images underwent transformations and are still persistent in folk memories.

For centuries, the Turks had dwelled in the imaginary world of Europeans as the (Oriental) 'Other' that was considered crucial for the construction and representation of the European 'self'. According to Rajko Muršič, »the image of 'the threatening Turk', Ottoman invader from the past, is a part of inherited – or recently reintroduced – collective memory in Europe«. He adds, that »it is of utmost importance to understand that old fears and imagery of the threatening Others are still with us«. The negative past images and myths of 'the Turk', for example, the myth of the Turkish incursion, are still vivid in Slovenian collective memory which

was obvious in the discussions on building a mosque and Islamic cultural centre in Ljubljana in the years 2003 and 2004.

In the discourse of the Oriental Other in Southeast and Central Europe, various authors also stress out the importance of the frontier Orientalism, which Andre Gingrich defines as a »relatively coherent set of metaphores and myths that reside in folk and public culture«. In the words of Bojan Baskar, the local varieties of frontier Orientalism have in common the myth of *antemurale christianitatis* – the eternal mission of the Christian lands to defend the border against raiders from the East and Islam«. A. Gingrich finds, »that the Orientalism still alive in these parts today differs from the colonial one, since it is the product of both, (pre)nationalist folk culture and the elite or academic culture created in the age of the rise of nationalism«.

The book *Imagining 'the Turk'* is an interdisciplinary work that offers good insight into the European relations and past with Ottoman Turks. The book explores the historical image of 'the Turk' throughout Europe and presents numerous examples from the history, literature, ethnology and music on how these past memories, representations and images regarding 'the Turk' are inserted into the European social imaginary. As said, the negative image

of 'the Turk' is still alive in European collective memory. Europeans again find themselves in a historical context where they seek an understanding of their relationship to modern Turkey and indeed an understanding of their own identity in terms of this relationship.

Imagining 'the Turk' is not only a book with historical depth, but also a book that discusses the image of 'the Turk' as Orientalistic representation of the Other. The development of the Republic of Turkey from the remainders of the Ottoman Empire links the country to the image of the Eastern Other. In today's Europe, heated debates regarding Turkey's European Union membership are culminating in an ongoing process of European identity formation. Within these debates the 'Turkish Other' functions as a mirror in delineating the European Self in general and European values in particular. The book *Imagining 'the Turk'* contributes to our understanding of the concept of Other and provides interdisciplinary approach for studying the Otherness attributed to 'the Turk'. As such, I would recommend this book especially to students in various fields of humanities and social sciences.

*Imagining 'the Turk'* also tackles contemporary issues of securisation of migration and Islam in the West, and the question of integra-

tion of Turks in Europe. Despite the fact that the book gives us little information about Turkish immigration to Europe and integration policies in European countries, Ayhan Kayan claims »that both republicanist and multiculturalist policies of integration proved to have failed in politically mobilising migrants and their descendants«. However, a growing body of literature has explored Turkish immigration and integration in the European union, but the image of 'the Turk' remains less explored. From the Ottoman empire to the hotly debated integration of Turkish immigrants and Turkey in the EU, the book offers extensive discussion on the image of 'the Turk' and its role as Europe's opposing Other that played a vital role in the construction of the European cultural identity. With Atatürk's modernisation of the Ottoman Empire, Turkey's relations with the rest of Europe entered a new era and the image of 'the Turk' changed. However, today, when European Union is still viewed by some as a 'Christian club' and attitude towards Turkey's accession to the European Union stays divided, *Imagining 'the Turk'* provides important insight into the perceptions of 'the Turk' in European imagination.

**sarajevo**  
**2014**

**The Ethnopolitics and Crisis of Sovereignty  
in Bosnia and Herzegovina**

*Asim Mujkić*



# The Ethnopolitics and Crisis of Sovereignty in Bosnia and Herzegovina

Asim Mujkić<sup>1</sup>

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## SUMMARY

Analyzing the status of the sovereignty of Bosnia and Herzegovina (herein-after 'BiH') the author inquires the ethnopolitical strategies including the International community's various practices of political de-personalization of BiH since 1992 that supported further fragmentation of "Bosnian constituency" into ethnopolitical entities in the attempt to answer an important question on whether Bosnia and Herzegovina could be considered a sovereign state. The present ethnopolitical regime heavily depends on the perpetual "apolitical crisis" as the primary source of political articulation and action. Indeed, author claims, that through the process of, what he coined, 'humanitarization' that had occurred during the 1992-95 war the internationally recognized UN member state has progressively been transformed into the 'conflict zone' and thus politically depersonalized. Parallel to this process was the process of depersonalization of citizens – from political persons, individual bearers of fundamental rights and freedoms they were depersonalized through the humanitarization into biological units, or beings awaiting to be fed. That is why, the political personality of both the state and its citizens has been just empty concept to this day in Bosnia and Herzegovina. In Heideggerian words, Bosnian state is, but does not exist. In that regard, author inquires the possibilities of 'postnational' self-understanding of Bosnian political community.

## KEY WORDS

Ethnopolitics, sovereignty, 'humanitarization', 'state of emergency', political personality;

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<sup>1</sup> CORRESPONDENCE ADDRESS: Asim Mujkić, Ph. D., University of Sarajevo, Faculty of Political Science, Association of Political Science in Bosnia and Herzegovina, Skenderija 72, Sarajevo, Bosnia and Herzegovina, e-mail: mujkica@fpn.unsa.ba

In an interview with the distinguished Emeritus Professor of Sarajevo University Ćazim Sadiković in daily *Oslobođenje* (March 20, 2010) the following has been accentuated: „There have been five to six events attracting our attention recently – each of them being elements of a ‘state of emergency’. In short, the preconditions for the application of Article 15 of the European Convention have been met, since the existence of Bosnian nation has been endangered. Not literally, though, however, it is rather endangered in a long term. With the introduction of extraordinary measures, or the state of emergency, all conditions would be met to dismiss the causes threatening the existence of the nation itself, and these do not relate exclusively to war”. Furthermore, Professor Sadiković concludes: “all this refers to the condition that begs the necessity of a state of emergency. This state is even requested by the Parliamentary Assembly of the Council of Europe, as well as by the Resolution of the American Congress”.

The reason why I mention this view of the distinguished Sarajevo Professor is not the very complexity of problems BiH has been faced with, nor is it the analysis of certain measures he proposes. Simply, I was struck by a Schmittian question in its crude simplicity – really, who is the one in BiH entitled to declare the state of emergency?

At first sight, this question could be viewed as just another additional spark to initiate a devastating political fire. But this is not the case. In fact, the precise answer to the question above could refer us to the question of all questions in this country: “Who or what is truly a sovereign in BiH?”; or “Is BiH really a sovereign state at all?”; “Does BiH indeed have anything resembling of a ‘political personality’?”. I intend to argue that at best, BiH is only formally a sovereign state. Although in the Preamble of its fundamental political document, that is the Annex 4 of the Dayton Peace Agreement, titled as “Constitution of Bosnia and Herzegovina” it is clearly provided: „*Committed* to the sovereignty, territorial integrity, and political independence of Bosnia and Herzegovina in accordance with international law“ ; furthermore in 5th paragraph of Article III of the same document the attributes of statehood are enumerated as follows: „the sovereignty, territorial integrity, political independence, and international personality of Bosnia and Herzegovina“; in addition, there are numerous formal acts of the recognition of BiH as a sovereign nation, its full membership to the UN, now its membership in the UN Security Council. However, a unanimous answer to the question whether BiH is fully a sovereign state could not be found. In fact, it could be even

inferred that “BiH today is suffering from an acute case of virtual statehood” (FPI, 2010: 9).

In order to offer a plausible answer to the issue of sovereignty of BiH I intend to reflect upon few important terms such is the very conception of territorial sovereignty, as well as upon the issue of political personality within which the issue of sovereignty is, in my view, significantly reflected. In that regard, by ‘sovereignty’ in general I mean the Westphalian conception according to which the “sovereign state is an independent, territorially defined, equal and free agent of state and international acts” (Nohlen, 2001: 448). This term derives its meaning from the word ‘sovereign’ (Latin: *superanus*) meaning “1. Above or superior to all others; chief; greatest; supreme 2. Supreme in power, rank, or authority 3. Of holding the position of ruler; royal; reigning 4. independent of all others /a sovereign state/” (Webster’s New World Dictionary, 1988: 1283). As it appears sovereignty is two-fold phenomenon: it refers equally both to authority within the state borders, but also to authority, agency, or personality in the sphere of international relations. In fact, as Kayaoglu notes “various IR scholars have suggested territorial jurisdiction is constructed through the interactions of various state, nonstate, and international actors” (Kayaoglu, 2007: 650). As internationally recognized entity, the sovereign state enjoys international legal and political personality, meaning that this entity is an agent of the international law. Therefore it is possible to talk about the domestic and international aspects of sovereignty, which BiH as an internationally recognized state apparently has. However, within a Westphalian framework authors such as Nick Vaughan-Williams suggest that “it is possible to identify three regulative ideals that have shaped the international legal and political system: states must be responsible for their own internal domestic legal system; states must respect the legal existence and equality of other states before international law; and states must not violate the principle of the territorial integrity of any other state” (Vaughan-Williams, 2008: 324). In this light I intend to problematize the first regulative ideal, namely, that a state must be responsible for its own internal domestic legal system. Since the internal legal system of BiH is subject to the international agreement the first important question with which I will not deal in detail in this text is whether this ‘domestic’ fact influence its ‘international’ counterpart of the definition, namely the international legal and political personality which qualifies certain country as responsible agent in the international relations. This question seems rather plausible after BiH had been elected

as non-permanent UN Security Council member but also when it comes to international treaties and other obligations. The second important question is how does this ‘domestic’ fact that the internal legal system is subject to the international agreement affect the political personality and identity of BiH. This question is about the internal sovereignty which leads us to the issue of the identity or political personality if the personality is understood as the quality or fact of being a particular person/entity, in terms of identity and individuality.

Based on this insight one can argue that BiH is a state with international sovereignty with clearly recognized borders and political personality in terms of membership in the international organizations and signature to the international treaties, but without clear domestic sovereignty, domestic political personality, without the established political order that would make political rulers responsible and accountable for political activities both domestically but also internationally<sup>2</sup>.

So, let me try to answer the question once posed by Carl Schmitt – who in BiH can declare the state of emergency? First of all, because BiH has been in a particular state of emergency since 1992 – war, constitution imposed in the form of the international peace agreement, presence of international military and police forces, numerous organizations who take part in shaping the articulation of political personality of this country, or better put in *acting political personality* of this country. In fact, Schmittian question should be rephrased: who in BiH can declare the state of *normalcy*? Precisely in the context of such rephrased question the first trace of answer could be identified. Article I of Annex 10 of the DPA provided that the institution of the Office of High Representative is, in fact, in charge with, among other tasks, the ‘state building’, with „the establishment of political and constitutional institutions in BiH“, but also with the promotion of democracy. Therefore, it is the OHR that is expected to declare, eventually, the state of normalcy. Numerous statements of the EU officials refer to the future closing of the OHR not only as a positive step, but as a vital precondition for BiH towards its European integration. Is this desired goal, that is, the ‘end-in-view’, really ‘in-view’ in present BiH?

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<sup>2</sup> For example, the addresses of the rotating Presidents of the three-member Presidency of BiH to the UN General Assemblies are usually given without prior consent of the other two members which makes them legally void.

Could it be, however, concluded that that this task has not been accomplished, especially after General Elections of 2006 when OHR actually entered into a peculiar compact with domestic ethno-nationalist forces in its fairly naive expectation that ethnonationalists in general could eventually be reformed. Even worse, as things stand now, one could ask whether the task of state building has been fully undermined. As the institution that “breathed life into BiH state institutions, and, somewhat paradoxically, continues to be their life support machine” (FPI, 2010: 9) the OHR today finds itself in situation of ‘reluctant’ or an ‘unwilling’ sovereign. As it seems, it is no longer in position to declare the state of normalcy in BiH, to initiate the first impetus of state’s ‘normal’ legal and political functioning. Such an initiation is the very task of sovereign who thus resides both *in* and *out* of a legal and political system of a country (Agamben, 2003). OHR thus failed to contribute to the development of authority on national level that would have the monopoly over a legitimate use of force on the entire territory. Above all, OHR did not show necessary decisiveness in the establishment of basic democratic institutions and procedures, in the establishment of clearly defined ‘rules of the democratic political game’, especially the rules of liberal democracy within which contemporary political life could be developed. In fact, OHR has, at least as of 2006, shifted its paradigm toward so called strategy of ‘ownership’<sup>3</sup>, which in effect allowed disintegrative nationalist ‘particularisms’ to lead this country that, eventually resulted in its total collapse. In fact, “OHR became both a substitute and sponsor for the failing state bureaucracy. Although it insisted on the adoption of a large number of reforms it failed to monitor their successful execution. That is how OHR created an illusion of institutional state building and devalued the meaning of its own concept of ‘ownership’. This imaginary or virtual success in state-building has been used to justify requests for a decrease of the High Representative’s powers and transfer of full responsibilities to the domestic institutions” (FPI BH, 2010: 18).

The absence of political personality of BiH is a product of the two decades long process of stripping off the political features of this country. This process is especially visible in the way how the key actors of the international community had understood and BiH especially during the 1992-95 War.

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<sup>3</sup> Ownership society in this context can be understood as „a society whose elite is capable of making strategic decisions in response to societal problems, which is responsible for those decisions, as well as independent from external impositions in the planning stage, and whose activities create or maintain a free and prosperous society of individuals“. See *Governance structures in BiH. Capacity, ownership, EU integration, functioning state* (Sarajevo: Foreign Policy Initiative BH, 2010), p. 18.

The attack upon BiH in 1992, after now almost legendary one-day trip to Sarajevo by French President Mitterand in May of that year, had been reinterpreted as humanitarian disaster. After an ultimatum was issued by NATO Alliance to the Bosnian Serb forces that had besieged Sarajevo ordering them to end the siege under threat of air raids Mr. Mitterand suddenly visited the besieged city and brokered the deal with Bosnian Serb leadership that would allow the UN forces to utilize Sarajevo airport at that moment held by Serb forces to deliver humanitarian aid to the citizens of Sarajevo. The siege of the city remained, now with 'fuller bellies' of city's citizens. From an international community's initial unreserved support to BiH and its legal government the entire problem was shifted to humanitarian issues. This 'humanitarization'<sup>4</sup> of the entire conflict has in fact become the strategy of political depersonalization of BiH. Suddenly, as war went on, this was not the independent, sovereign state under attack protected by the UN Charter, but a 'disastrous region' in desperate need of humanitarian care. Along with the process of depoliticization of the state, depoliticized were its citizens. From political agents (citizens who only few months before had voted, under the directive of the European Community, on the referendum for independence), supposed carriers of fundamental human rights and freedoms, through the process of humanitarization, they have been transformed now into merely biological entities to be fed and medically treated in a humanitarian way. So, almost immediately after the outbreak of war, both citizens and their state of BiH have lost their political identities. The state was soon left out only with 'territorial integrity', while citizens were left out only with their 'biological', or 'bodily' integrity. Until today, political identities of Bosnian state and Bosnian citizens remained an empty term. The biggest achievements of the humanitarization of BiH during the war have become UN-protected areas. They could be viewed as particular natural preserves under special care. Similar to the concept

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<sup>4</sup> By 'humanitarization' I refer to the process of the restriction of the interpretation of a conflict in 'humanitarian', and not in political terms. If by 'humanitarian' is understood the proces devoted to promoting the existential welfare of human beings in terms of provision of necessary food and health service then humanitarianism could have served the agents of the international community to develop their own self-image that something important is being done for the people affected by conflict and at the same time to resolve themselves for any responsibility required by the international obligations. In fact, it seems that the obvious lack of political will of key agents of the international community (for exmaple, to lift the Arms Embargo for a sovereign nation under attack) in 1992 was replaced by the development of the humanitarian will. Generally, if human being is viewed only through his or her existential or 'bare-necessities' dimension, and without his or her political entitlements then even the worst practices of humiliation of human beings could be tolerated.

of natural parks which are under monitoring and care of special agencies in terms of provision of food, health, sometimes of shelter for endangered biological units - animals, but also in terms of hunting, the UN protected areas were monitored and cared by the UN forces. UN forces were in charge of care for biological units of certain ethnic group – providing them with food and medicine, monitoring the borders of the park in order to prevent illegal activities. In my view, the whole concept of the UN protected areas was the most drastic example of the reduction of BiH citizens to their primarily biological being.

Once the political personality of a sovereign state has been dissolved through the process of humanitarization into what was seen as its constituent parts, in our case, the ethnic groups who were made agents of quasi-political negotiation during the war, then the overall peace effort will eventually come down to what had seemed a logical attempt to constitute, or reconstruct the political edifice out of such produced elements. This is exactly what had happened in Dayton, and this is what, ever since, has become the default approach of the international community to any Bosnian problem. That is why, although the state of undoubted territorial integrity was created under the Dayton Agreement, the basis that would enable its internal sovereignty was missing:

The BiH state lacks the independence enjoyed by central government in other decentralized states and thus cannot perform basic state functions. (a) Etho-territorial veto points at state-level accompanied by (b) a complicated division of shared competencies between the state and entities which require high levels of cooperation to function, seriously constrain the ability of the state institutions to perform their functions (FPI, 2010: 13).

Therefore, BiH can be most accurately described in Heideggerian language: There is Bosnia, but it does not exist.

The second obstacle to the internal aspect of sovereignty lies in the domination of the ethno-national identities which systematically disable “more abstract forms of social integration” (Habermas, 2003: 16). Very important characteristic of domination of ethno-national identities is, due to its political direction of the entire society towards more basic, pre-political forms of solidarity which, on the other hand, proved themselves as means of social disintegration. Procedures of political decision-making are in effect procedures of ‘agreeing’ between so-called leaders of ethno-nations. Thus,

the very possibility of creation of abstract, or “legally mediated solidarity” (Habermas, 2003: 16) had been undermined. The source of political legitimacy was reversed back into a form of organic solidarity. For ethno-politics<sup>5</sup> it is of utmost importance to present the process of ‘inter-ethnic’ agreeing as indeed a political process with all of its forms such as free elections, parliamentary assembly, the presidency, the government, etc., while, at the same time maintaining the organic, pre-political unity of its constituency which is always ethnic. So, the secret of the ethnopolitical rule is maintenance of disintegrated citizenry in particular ‘natural reservation’ of organic unity, in what could be called the ethnopolitical-safe-areas. The society as such must be kept in a pre-political situation that precedes the original compact/agreement, while keeping an eye that such a compact is never reached, and that the step into the sphere of political is never made. Furthermore, the society as such must be kept in a constant state of exception so that, as Agamben points, “living in the state of exception that has now become the rule has... meant this: our private body has now become indistinguishable from our body politic” (Agamben in Vaughan-Williams, 2008: 334). Therefore, all vital political decisions in BiH can only be reached by, what I call the touch of the Demiurge: that is from the outside, by the imposition by an external force – be it OHR, EU, or USA. The state with its territorial integrity, yet without one important dimension of sovereignty is a state that persistently avoids the separation of society and legal order. Its politics – the ethno-politics – is the politics of crisis as the crisis of sovereignty.

Now what is to be done with BiH in a situation of more and more reluctant sovereign in the form of OHR, and more and more appropriating ethno-nationalisms? Habermas points that “without this cultural interpretation of political membership rights, the nation-state in its emergent phase would scarcely have had sufficient strength to establish a new, more abstract level of social integration through the legal implementation of democratic citizenship” (Habermas, 2003: 17). Of course, the process of establishing of higher level of social integration is possible without cultural interpretation, as it happened in the USA, where, as Habermas warned “a civil religion rooted in the majority culture took the

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<sup>5</sup> By ethno-politics especially in the case of BiH I mean specific political arrangement that „offers a particular ontology of power, an ontology revealed and affirmed through its politicized practices and the central object of its political concern, practices that locate collective solidarity in ethnic affiliation heavily designed by particular religion, and not in contract and consent enacted by abstract individual citizens“ (Mujkic, 2008: 19).

place of nationalism” (Habermas, 2003: 17). Rather poor heritage of civic virtues and values makes traces of what Habermas coined ‘civic religion’ in BiH rather scarce. Yet only recently, some of civic metaphors have occurred in the public discourse mainly in the form of vague ‘European values’ reflecting, nevertheless, a certain degree of the popular desire for European integration. Of course, no matter how scattered and still poorly articulated this popular desire is, it has already been faced by rather fierce resistance of the ethnopolitical leaders. Meeting such a desire would require the establishment of the political community on the basis of law to the detriment of, what Honneth calls “substantial understanding of the conceptions of ethical goals of society” (Honneth, 2009: 168). The rule of substantiality, as Bosnian example clearly shows, dismisses the need for politics and opens the space for a de-centered “society that splinters into a disordered mass of self-reproducing and self-steering functional systems. Like Hobbesian individuals in the state of nature, these systems form environments for one another. They no longer speak a common language. Lacking a universe of intersubjectively shared meanings, they merely observe one another and behave toward one another in accordance with imperatives of self-preservation” (Habermas, 2003: 25). Maybe the escape from this unmediated being of the citizen and the state as merely entities with their physical, bodily, that is, territorial integrities could, nevertheless, be searched in the conception of the European values, no matter how vague they might be, and in the gradual suppression of the dominant group essentialism, beyond the “traditional linkage of the constitutional state with the ambitions of national self-assertion” (Habermas, 2003: 21). The OHR administrators indeed have sensed rather favorable attitude of BiH population toward the European Union and launched in that regard a public campaign intended to raise public awareness of European values, however OHR remained neutral as to the disintegrative ethnonationalist elites as if the two – constant ethnic homogenization, and organic solidarity on one side, and the European integration and abstract solidarity could be somehow compatible. In that regard, and along Habermas’ suggestion, the answer to the question of the sovereignty posed at the beginning of the text, could, contrary to the conceptions of ‘nation-state’ and ‘civic religion’ could perhaps be traced on the example of the FR Germany and its post- Second World War path to the establishment of a new, more abstract level of social integration, in the form of a “‘post-national’ self-understanding of the political community” (Habermas, 2003: 21). This form has proved to be successful mainly due to the unflinching will of an ‘outside sovereign’, the Demiurge indeed in the form of the Allies

and in the conditions of “deprivation of fundamental sovereignty rights” (Habermas, 2003: 21).

But to leave BiH to the endless process of ethno-nationalist negotiation, to leave the sovereign in its reluctance, means nothing else than remaining blind to the basic logic of the ethnic nationalism. The logic of the ethnic nationalism consists in its constant expansion, the aggressive appropriation of ever new spaces – political, social, mental. In order to achieve that goal, the ethnic nationalism is pressured to create ever new needs for its manifestation among its consumers. That however could be achieved only by ever new circles of conflicts and crisis. So the attempt to reform nationalism, which has been, sadly, in the focus of the international efforts in BiH for decades now means, unfortunately, remaining within the very circle of ethno-nationalist escalation. The ethnic nationalism cannot be reformed because it survives by generating crises thus undermining the very possibility of the internal aspect of the sovereignty.

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## CROQUIS



### »STARI MOST« – THE SYMBOL OF HETEROGENITY

the bridge itself – spanning across the wild, crystal clear and troubled water it was also connecting two societies, two parts of the local community into one piece of a human soul. It has been for ages like that.

However, modern times also teach us lessons, which often come across the ancient wisdom. In November 1993, during the brutal and unprecedented war, the bridge itself was destroyed by shelling. Responsibility for the destruction was attributed to bewildered artillery fire, lit by a human hand. Upon some other theories, it was destroyed by a mine activated from the nearby territory. Damage of destruction was invaluable, not just for the town of Mostar, but for the whole cultural world. It has been a shock within the war that was also a shock by itself. Years later, the reconstruction of the monumental complex of the »Stari most« was carried out. It was exercised with the supervision of UNESCO and with funds managed by the World Bank, and donated by different countries (among which Italy, France and Turkey stood out). The reconstructed bridge was inaugurated on July 2004. A year after, UNESCO inscribed the »Stari most« and its closest vicinity onto the World Heritage List.

The fact is that Mostar was the most heavily damaged city of the 1992 to 1995 war in Bosnia and Herzegovina. Ninety percent of its centre was damaged and a third of its buildings were completely destroyed. Mostar was most probably for the first time in its history the city of an intolerable political and psychological division. The tendencies towards consolidating the separated parts are still vivid. The opposite struggle, for unification of once hostile sides, has been articulated in Mostar also through the rebuilding of destroyed heritage and the construction of new buildings and monuments. Therefore, the »Stari most« has become the symbol of multiculturalism, as it maybe never was before. The terms of urban reconstruction, in the case of Mostar, are the clues of successful post-conflict management.

The bridge is the symbol of a reunification. »Stari most« has become literally the powerful sign of how a symbol could affect reality. Its deconstruction was the violent evidence of war. As such, its rebuilding has given him more meaning then perhaps ever before – the meaning of heterogeneity, of the new possible co-existence between nations and ever lasting challenge of how the tensions may not expand to the scale, which implies world cultural heritage in danger. One has always be able to stand up, would be the echo of the bridge and its experience. Like humans, like art and like science. It is a far-reaching and important for both: to stand up as well as to get strength and bravery to do it again.

Anja Fabiani

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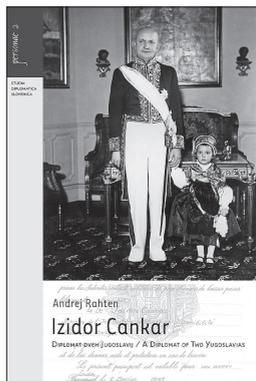
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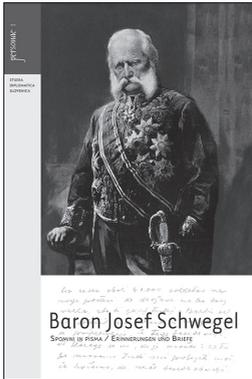
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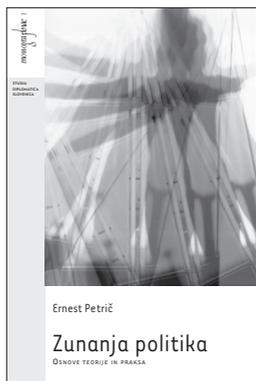
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