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FOREWORD

The eighth edition of the International Journal on Rule of Law, Transitional Justice and Human Rights in front of you is a peer-reviewed International Journal published by the Association "Pravnik" and the Konrad-Adenauer-Stiftung's Rule of Law Programme South East Europe. This International Journal is a direct output of the International Summer School Sarajevo (ISSS) which our two organisations co-organise since 2006. During its 11 editions the International Summer School Sarajevo has attracted over three hundred students and young professionals from Europe, Asia and the Americas. After each edition of the International Summer School Sarajevo, our aim was to engage our alumni to contribute to academic discussion with their papers on contemporary topics such as Rule of Law, Transitional Justice or Human Rights. An additional goal is to promote an interdisciplinary approach and build bridges between academia and practitioners in these relevant areas.

Although there seems to be a universal understanding that peace and stability are crucial elements of modern societies, still too many violent conflicts are ongoing and will eventually destroy the fibre of communities affected with conflict. After the collapse of communism, with the transitions and violent conflicts which followed, it was self-evident that a new approach would be needed for these countries to recover. Transitional Justice was coined as a holistic approach offering instruments such as criminal prosecution, truth commissions, outreach and memorialization which were added to instruments already existing at that time, such as institution building, development of a sustainable rule of law and human rights systems, to name but a few.

Today, the concept is no longer new. As Ruti G. Teitel asserts in her book (reviewed in this Journal), Transitional Justice today is *globalized* and currently forms part of a high number of post-conflict missions. However, in most countries, the application of transitional justice faces intricate challenges and fails to deliver the promise of sustainable peace and reconciliation. There already is a quite some research available, while in our view it focuses too much on criminal justice and too little on other transitional justice instruments such as truth commissions, truth speaking and outreach. Since our International Summer School is placed in Sarajevo, we recognised the need to focus on the topic of transitional justice as a new approach in dealing with past atrocities and a strategy for sustainable approach to justice, rule of law, reconciliation and peace building. The articles in this Journal also explore the interplay between Transitional Justice and other processes and in particular the rule of law, human rights and Europeanization, Globalization and others.

With the eighth edition of the Journal in your hands, we hope that you will recognize new generation of voices from the field, suggesting alternative and critical approaches to contemporary challenges of transitional justice. The variety of topics chosen by the authors is indeed inspiring as it ranges from violations of rights of individuals to the group rights. Just like its first seven editions, the Journal will be open for public as it represents the ISSS' contribution to global efforts in analyzing, understanding and teaching about the rule of law, transitional justice and human rights.

Hartmut Rank
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Konrad-Adenauer-Stiftung

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Pitfalls of the European Union approach towards the Western Balkans: A regional perspective

By Velislav Ivanov*

ABSTRACT

This article assesses the approach of the European Union in its enlargement policy towards the Western Balkans. A brief comparison with the Eastern enlargement exposes three main differences: an ambiguous membership perspective, hard conditionality policies, and an exclusive individual approach for each country. These are argued to be insufficient engagement on part of the Union and have unwittingly tolerated the establishment of "stabilitocracies" in the region. A number of proposals for overcoming the unfavourable situation are outlined as a conclusion.

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Introduction

After the fall of the Berlin wall and the collapse of the socialist regimes in Eastern Europe, the European Union (EU) faced an unfamiliar challenge – to integrate a number of states within its framework by catalysing their political transition from totalitarianism to liberal democracy and their economic one from planned to market economy. During the accession process that ended with the 2004 and 2007 enlargements the EU refined the instruments of its accession policy: first, conditionality and second, the regional approach towards candidate countries which arguably fostered positive competition between states on their road to European integration. The results of this policy are the subject of numerous research articles in academic literature, *inter alia* those of Heather Grabbe[1], Frank Schimmelfennig[2], and Ulrich Sedelmeier[3]. They conceptualise the process and reveal the specific interrelations between the features of the enlargement policy and its specific results.

In the Wester Balkan region the EU should apply the experience previously acquired in the Eastern enlargement; however this is not enough, as the region poses challenges the Union has not encountered thus far. The wars in the former Yugoslavia in the nineties have left a significant part of the region in a post-conflict situation with its specific characteristics.

For the purposes of this article, foremost are the fundamental problems related to weak stateness – on the one hand, exterior (unrecognition of a certain state by other subjects of international relations; contested territories etc.), and on the other, interior (the inability of a government to exercise power on its own territory, to collect taxes, to maintain order etc.) Such a state of affairs requires that the EU not only aid in the forging of modern democratic institutions, but also in upholding statehood[4] and constructing states capable of maintaining their basic functions. This is the main reason why the methods of previous enlargements have hardly been successful when applied to entities like Bosnia and Herzegovina or Kosovo.

Other distinctive characteristics of the region that were not part of the Eastern enlargement include extreme nationalism, acute ethnic tensions, and unresolved war-related issues. From the perspective of the EU, the main such problem in the period under scrutiny is possibly the cooperation of the countries in the region with the International Criminal Tribunal for the former Yugoslavia (ICTY) in The Hague and the surrender of the indicted persons residing on their territories. Regional cooperation, the return of people displaced during the wars and minority inclusion are also important issues that the enlargement policy of the EU faces. In addition, the inability of the EU to stop the war near its borders in the nineties is the rationale for the significant peacekeeping engagement in zones with high risk of violence.

Even though the Western Balkan countries are also undergoing a transition to democracy, their initial position is less enviable than that of the Central and Eastern European (CEE) countries at the beginning of their European integration

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[1] Grabbe, Heather. *Eu's Transformative Power*. Palgrave Macmillan, 2015.

[2] Schimmelfennig, Frank and Sedelmeier, Ulrich. "The Europeanization of Central and Eastern Europe." *Cornell Studies in Political Economy. Ithaca: Cornell University Press* (2005).

[3] Schimmelfennig, Frank, and Sedelmeier, Ulrich. "Governance by conditionality: EU rule transfer to the candidate countries of Central and Eastern Europe." *Journal of European public policy* 11.4 (2004): 661-679.

[4] While statehood and stateness are verbally and conceptually related, this text retains the dictionary definition of "statehood" (the condition or status of being a state), and employs the broadly accepted meaning of stateness in political science (the basic functions of a state).

process[5]. As their road to membership is longer, the framework of the process set by the EU, while based on the Eastern enlargement, is significantly different. The democratic criteria set by the European Council in Copenhagen in 1993 ("stability of institutions guaranteeing democracy, the rule of law, human rights, respect for and protection of minorities"[6]) are extended with additional conditions. Both the different context and the accession of Bulgaria and Romania set a different tone to the enlargement process of the region.

The current article begins by juxtaposing the approach of the EU in the Eastern enlargement with that towards the Western Balkan countries by using the conclusions of academic literature on the topic as a starting point of the discussion. The different results and especially the establishment of "stabilitocracies" are then argued to be the result of insufficient engagement. In its conclusion, the text will propose some possible lines of action to overcome the political gridlock.

EU Membership Perspective

First and foremost, the clear and credible membership perspective is a necessary precondition for any candidate country's European integration progress. It is a main catalyst for democratic and market reforms; and a comparative analysis with countries that lack such a perspective unequivocally proves its utmost importance[7].

EU membership was first cautiously offered to the Western Balkan countries at the European Council in Feira in 2000. In the published conclusions, they are named as "potential candidates for EU membership" (a wording that bears political rather than legal weight), the EU aspiring to "the fullest possible integration of the countries of the region into the political and economic mainstream of Europe"[8]. The European Council in Thessaloniki in 2003 reaffirms "its determination to fully and effectively support the European perspective of the Western Balkan countries, which will become an integral part of the EU, once they meet the established criteria" and refers to their "future accession"[9]; nonetheless lacking specific promises or dates. It was not until 2008 that the EU proposed a less equivocal engagement: "…the remaining potential candidates in the Western Balkans should achieve candidate status, according to their own

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[5] It could be argued that in terms of economy, Yugoslavia was better prepared for the transition, as it was not a member of the Council for Mutual Economic Assistance (COMECON) and thus has had to acknowledge the realities of international markets even under centrally planned economy. Politically, Tito's regime was arguably also not as severe as those of, say, Romania or Bulgaria. However, after the dissolution of Yugoslavia, the economic spoils turned out to be geographically uneven with the North being significantly better off; while the devastating wars and extreme nationalism eradicated the political and civic culture of Yugoslav times.

[6] European Council. Copenhagen European Council 21 and 22 June 1993. "Conclusions of the Presidency". *Bulletin of the European Communities 6 (1993): 7-23.*

[7] Schimmelfennig, Frank. "EU political accession conditionality after the 2004 enlargement: consistency and effectiveness." *Journal of European Public Policy* 15.6 (2008): 918-937;
Schimmelfennig, Frank, and Scholtz, Hanno. "EU democracy promotion in the European neighbourhood: political conditionality, economic development and transnational exchange." *European Union Politics* 9.2 (2008): 187-215;
Schimmelfennig, Frank and Cirtautas, Arista Maria. "Europeanisation before and after accession: conditionality, legacies and compliance." *Europe-Asia Studies* 62.3 (2010): 421-441;
Anastasakis, Othon. "The EU's political conditionality in the Western Balkans: towards a more pragmatic approach." *Southeast European and Black Sea Studies* 8.4 (2008): 365-377.

[8] European Council. Santa Maria da Feira European Council 19 and 20 june 2000. *Conclusions of the Presidency.*

[9] European Council. Thessaloniki European Council 19 and 20 June 2003. *Conclusions of the Presidency.*

merits, with EU membership as ultimate goal."[10] Recent documents on the region published by the European Commission (EC) reiterate "the clear perspective of EU membership". The accession process however is linked to "strict but fair conditionality, established criteria and the principle of own merit."[11] The EU membership perspective for the Western Balkans countries is clear, but not unconditional. Whether it is seen as credible on part of the candidate countries is up for debate.

The aforementioned phrasings are significantly more cautious and "ambiguous"[12] compared to the language the EU employed for CEE countries. The European Council in Copenhagen in 1993 which outlined EU membership criteria for the first time stated unequivocally that the CEE countries "that so desire shall become members of the European Union"[13]; the one in Luxembourg in 1997 concludes that they are "*destined* [ital. mine] to join the European Union on the basis of the same criteria"[14]. According to researchers like Schimmelfennig, such statements led the EU into a "rhetoric trap"[15] which was subsequently an important catalyst for the accession process.

The juxtaposition between these phrasings leads to several significant conclusions regarding the approach adopted by the EU. First, unlike in CEE countries, in the Western Balkans, the EU does not propose an accession at all cost, or one that is just a matter of time; i.e. *the outcome of the process is left open*. The EC, on its part, sets certain conditions and employs mechanisms to monitor their fulfilment. The adopted approach, however, is "fundamentals first", in other words, the main conditions set by the EU *have to be met before the accession process moves forward*. The fact that the relevant documents specify no target dates for accession or for moving further in the road to membership is a clear illustration of this argument. The juxtaposition of the time spent in similar phases of the accession process also supports this line of reasoning. Bulgaria, for instance, completed the entire accession negotiation process for a little more than four years[16]. Montenegro, currently the forerunner in the accession process, has closed only three of thirty-three chapters in the negotiations for some five years. This exemplifies not only the more complex issues in the candidate countries, but also the significantly diminished engagement on part of the EU for the integration of the region.

The shift from an inclusive regional/group approach to an exclusive individual one towards each country should also be examined. It could be seen as realistic and constructive because of the lukewarm enthusiasm for further enlargement within the EU Member States, on the one hand, and due to the significant differences between the countries in the region, on the other. Even though they

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[10] European Council. Brussels European Council 19 and 20 June 2008. *Conclusions of the Presidency.*

[11] European Commission. Communication from the Commission to the European Parliament, The Council, The European Economic and Social Committee and the Committee of the Regions. *Enlargement Strategy and Main Challenges 2014-15.*

[12] Phinnemore, David. The Stabilization and Association Process: A framework for European Union enlargement?, *European Integration and Transformation in the Western Balkans: Europeanization or business as usual (2013)*:22-35.

[13] Copenhagen European Council.

[14] European Council. Luxembourg European Council 12 and 13 December 1997. *Conclusions of the Presidency.*

[15] Schimmelfennig, Frank. "The community trap: Liberal norms, rhetorical action, and the eastern enlargement of the European Union." *International organization* 55.1 (2001): 47-80.

[16] Perhaps Bulgaria is the most relevant example, as it was the slowest to complete her negotiations. Moreover, it is a Balkan country, and was at the time of her accession process considered a "laggard".

may be perceived as culturally close, the Western Balkan states differ vastly in terms of their degree of stateness, the effectiveness of their institutions, and, respectively, in their capability of moving forward in the accession path. The inclusive group approach, however, has proven to have an obvious advantage in the Eastern enlargement, as it created positive competition between candidate countries; something which is severely lacking in the Western Balkan region.

Conditionality policy

In this section, a brief juxtaposition between the conditionality policies of the EU towards the CEE countries and those in the Western Balkans supports the hypothesis that conditionality is less effective in countries with fundamental problems of stateness. Drawing from their empirical research on the Eastern enlargement, Schimmelfennig and Sedelmeier present a rationalist bargaining model with four variables[17], which this section takes as a starting point of the discussion.

The *determinacy of conditions* is necessary so as to produce an expected and predictable outcome, since the formal membership criteria are vaguely defined[18]. When conditionality is misinterpreted by the candidates (intentionally or not), it cannot yield the desired outcome. This problem is especially common in the early stages of the Eastern enlargement[19]. Little steps towards European integration are just as important as major milestones. Judging by the numerous EC documents on Western Balkan matters and the high level of precision in them[20], one can posit that in this aspect the EU builds upon its achievement and has adopted this necessity in its enlargement policy.

The *size and speed of rewards* on the integration path are crucial for reaching both the major milestones and the minor steps. The distant promises of accession and cohesion funds are both important; however other forms of rewards should also not be underestimated: international recognition, trade agreements, access to the Single market, visa liberalization, pre-accession assistance, or preferential loans. As the road to accession for these countries is longer than that of CEE ones, the membership perspective, which is also ambiguous and hardly unconditional, could seem unattainable. This is why the preliminary milestones which the countries have to reach should be better outlined and accompanied by stimuli, be they symbolic (legitimacy in the international community, membership in an international organization, visa-free travel) or material (pre-accession assistance, preferential loans). The EU has further developed the different stages of the path to membership compared to the Eastern enlargement. Grabbe[21] has elaborated the concept of "gate-keeping" which distinguishes the stages a country must go through from the status of a "potential candidate" to full membership. In the case of newly emerged states such as Kosovo or Montenegro[22], this road has been mapped for them since their very establishment.

The *credibility of promises* is closely linked to the political will for enlargement and the continuous engagement for the European integration of the region[23]. What should also not be underestimated is the

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17 Schimmelfennig and Sedelmaier 2004.

18 Sasse, Gwendolyn. "The politics of EU conditionality: the norm of minority protection during and beyond EU accession." *Journal of European Public Policy* 15.6 (2008): 842-860.

19 Grabbe 2006, chapter 2.

20 The EC issues periodic strategic reports on the entire region and country-specific annual ones with minute assessment of the progress in each of the areas under scrutiny.

21 Ibid.

22 This refers to the sovereign state that was established in 2006, not to the principality of the XIXth century.

23 Schimmelfennig and Scholtz 2008; Schimmelfennig, Frank, and Hanno Scholtz. "Legacies and leverage: EU political conditionality and democracy promotion in historical perspective." *Europe-Asia Studies* 62.3 (2010): 443-460.

credibility of the *Western Balkan elites'* promises. As democratic reform would inevitably result in a relative loss of power and influence of these elites[24], it is at times difficult to believe anything less than a tangible track record of a particular successful reform. This is relevant to the last variable.

The *adoption costs of conditions and number of veto players* are also essential. Unsurprisingly, the higher the adoption costs and the number of veto players, the less effective conditionality policy is. A clear instance of this would be the fact that major actors in the power structures and networks in Serbia in the beginning of the century were sought by the ICTY in The Hague. They would not hesitate to block reforms and reject the conditions of the EU regardless of rational arguments or offered rewards. This could be seen as a particular instance of the fact that a wide societal and cross-party consensus on European integration is a necessary precondition for the process. The closer the country is to full membership, the bigger the concessions it would ac

EU conditionality towards CEE countries does not provide any "sanctions" for non-compliance. If a country does not fulfil the conditions, it is just not allowed into the next stage of the integration process and, respectively, cannot benefit from the respective stimuli. The rationale for this approach is that the membership perspective fosters positive competition between candidate countries, none of which would like to be lagging behind. This line of thought is supported by the division of the countries to the ten "forerunners" that joined in 2004 and the "laggards" Bulgaria and Romania that joined in 2007. This strategy worked even for the "laggards" of CEE, however it was aided by a stronger, unambiguous engagement on part of the EU and a less problematic transition. In the Western Balkan case, the results are arguably reversed – one clear "forerunner" (Croatia), countries with limited progress (Montenegro, Serbia), and a number of "laggards".

The interrelations drawn in the research on the Eastern enlargements are largely valid for the Western Balkan region, yet they are insufficient to provide an interpretation of the process and account for the modest results. To further reveal the core of the issue, the conditionality policy itself has to be discussed. Conditionality can hardly be effective in post-conflict territories – it presupposes the existence of a united local elite with a common vision for the future of their country and a capacity to reify this vision[25]. In this regard, Elbasani outlines three main challenges for the EU in the region: to empower reformists; to overcome historic legacies; to overcome problems of weak stateness[26]. Empowering reformists entails support for and expansion of the local groups that support EU conditions, as well as limiting their opponents' influence. The ultimate target of these actions being a wide cross-party societal consensus on European integration, a necessary precondition for accession[27]. There are two main aspects to overcoming historical legacies – overcoming extreme nationalist sentiment and ethnic and religious intolerance, on

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[24] Schimmelfennig, Frank, and Ulrich Sedelmeier. "Theorizing EU enlargement: research focus, hypotheses, and the state of research." *Journal of European Public Policy* 9.4 (2002): 500-528;
Schimmelfennig, Frank, and Hanno Scholtz. "EU Democracy Promotion in the European Neighborhood: Conditionality, Economic Development, and Linkage." (2007): 31.

[25] Aybet, Gülnur, and Florian Bieber. "From Dayton to Brussels: the impact of EU and NATO conditionality on state building in Bosnia & Hercegovina." *Europe-Asia Studies* 63.10 (2011): 1911-1937.

[26] Elbasani, Arolda, ed. *European integration and transformation in the Western Balkans: Europeanization or business as usual?*. Routledge, 2013.

[27] Grabbe, Heather. "Central and Eastern Europe and the EU." *Developments in Central and East European Politics* 4 (2007): 120.

the one hand, and a successful transition to democratic governance, on the other. It is a formidable challenge, bearing in mind the hard starting position of these countries and their elites' ability to imitate reform whilst maintaining previous informal networks and ways of governance, even with the formal adoption of EU norms[28]; and also the elites' inclination to exploit extreme nationalist rhetoric and ethnic divisions as means of solidifying their power[29].

Most fundamental of all however are problems of weak stateness. They can be broadly defined as obstacles related to the contestation of sovereign power and the lack capacity on part of the state to impose its decisions[30]. As previously noted, the existence of a single government with a common vision for the country is a necessary precondition for any form of conditionality. The EU faces a completely different set of challenges if certain groups or territories do not recognise sovereign power and wish to secede, or to associate with another state entity.

These circumstances place EU enlargement policy not only before the challenge of helping to build democratic institutions, but also to secure the building of foundations of statehood, at times even of new state entities. Against this backdrop, conditionality policy is both ineffective and inappropriate for a number of reasons, including an insincere commitment of the elites to European integration and open issues regarding the status of certain territories[31]. According to Bieber, the EU's actions related to state-building have been incoherent and imprudent, while problems with stateness are "the biggest obstacle to European integration."[32] Even logically, conditionality would seem an inappropriate instrument for state-building – it presupposes that the state accepting the conditions has uncontested sovereignty on its own territory and also that there is a level of stateness which would secure the application of its decisions; i.e. the state must be able to implement the external norms. When these two preconditions are not present, conditionality cannot build them on its own. Hence, in the Western Balkan region, strict conditionality is likely to be less effective.

Conclusions

To summarise the argument so far, the EU enlargement policy towards the CEE countries was characterised by an unequivocal and strongly stated membership perspective, relatively moderate conditionality policies, and an inclusive regional approach. This fostered positive competition between candidates and was crucial for their undertaking political and economic reform. Both the "forerunners" and the "laggards" were allowed to join, albeit that some countries were clearly more prepared than others. In contrast, towards the Western Balkans, the EU has offered a distant and ambiguous membership perspective and has also employed hard conditionality policies and an exclusive individual approach for each country. This has proven to be insufficient engagement, as the region arguably faces more severe problems than CEE countries in the pre-accession period. Furthermore, the very instrument that has proven to be most effective in CEE is at times irrelevant to the realities of the Western Balkans.

The emergence of governments that thrive on the agonisingly slow progress towards accession, so to speak, on a perpetualised pre-accession period, is hardly a surprise. This phenomenon has

[28] Stefes, Christoph H. *Understanding post-Soviet transitions: corruption, collusion and clientelism*. Springer, 2006.

[29] Boduszyński, Mieczysław P. *Regime change in the Yugoslav successor states: divergent paths toward a new Europe*. Baltimore, MD: Johns Hopkins University Press, 2010.

[30] Elbasani 2013: 13.

[31] Bieber, Florian. *EU conditionality in the Western Balkans*. Routledge, 2011.

[32] Ibid: 11.

most aptly been defined as "stabilitocracy" by and Bieber[33] and Pavlovic[34]: regimes that gain legitimacy and support from external actors (namely EU and its Member States) with the promise of an alleged stability inside the country, while lip-syncing the song of reform and initiating democratic backsliding. Such stability can however only be a short- or mid-term option, as any government that acts against democracy effectively obstructs the European integration of its country, which in the end leads to tensions, instability, and chaos. This was exemplified most recently in the political crisis in Macedonia, which was plausibly the result of the decade-long (mis)rule of Nicola Gruevski and his party; one can easily spot other instances of this vicious circle in other countries in the region.

Yet the EU is hardly left without an effective move. It still has the influence and the instruments to aid the countries in moving further in the accession process. The societies of those countries recognise European integration as the best option for the development of their countries; governments are elected on a pro-European mandate. In a report for BiEPAG[35], Bieber proposes a number of policy recommendations, most notably the explicit naming of problems, transparency in the negotiations, the empowerment of democratic powers in the region. Bearing in mind these proposals and the analysis thus far, the author of this piece would suggest the following policy proposals.

First, the Union should strongly reaffirm the membership perspective both verbally (in political statements stronger than the careful phrasings in the annual reports) and substantively (with target dates for accession and roadmaps for the remainder of the pre-accession period).

Second, a shift in the focus from the short or mid-term stability in the region to the long-term goals of the EU, namely, support for reforms that would build wholly functional Member States. This would bring a different perspective to conditionality, which should be targeted towards the holistic reform of the states' social, political, and economic systems, rather than towards particular problematic instances of dysfunction within those systems.

And finally, a shift towards a more inclusive approach that fosters positive competition in the countries without disregarding the principle of own merit. Thus far, stabilitocracies have drawn inspiration and exchanged best (or worst) practices with one another. There is no reason why this downward spiral cannot be turned on its head with a resurgence in effort, commitment, and engagement in the region. The pitfalls are deep, yet with some momentum, the EU can jump over them.

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[33] Bieber, Florian. "What is a stabilitocracy". *Balkans in Europe Policy Blog*, 2017.

[34] Pavlovic, Srda. "The West's support of Dzukanovic is damaging the prospects of democratic change". *London School of Economics and Political Science*, 2016.

[35] Balkans in Europe Policy Advisory Group. *Policy Paper: The Crisis of Democracy in the Western Balkans. Authoritarianism and EU Stabilitocracy*, 2017.

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The importance of Public Legal Education for strengthening the Rule of Law

By Andrés García Gómez*

ABSTRACT

The aim of this article is to analyse the importance of public legal education in the overall task of strengthening the rule of law. Rule of law is a concept that encompasses four principles: accountability, just laws, open government and accessible and impartial dispute resolution[36]. Hence, there are many actors participate in the shaping process of the rule of law, not only governments and public institutions, also citizens should play a role; because rule of law is a true platform for peace, civilization and guarantee of individual social and communitarian freedom within a State. Absolute respect for the rule of law is a prerequisite to join numerous international organisations, as well as the European Union which is a priority for Western Balkan countries. The purpose of this article is also to explore the situation of Justice in this region and how their inhabitants evaluate and perceive it, evidencing by the way the possibilities that PLE could bring to Western Balkans reinforcing the rule of law and raising awareness about social and community rights.

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[36] World Justice Project. *What is the Rule of Law?* Available at: https://worldjusticeproject.org/about-us/overview/what-rule-law

Introduction: concept of Public Legal Education

The idea of Public Legal Education (PLE) sinks its roots in the Anglo-Saxon legal tradition. In fact, so-called common law system is that where law exists but the body of the law is developed by judges and courts, which makes judicial precedent very important to decide future similar cases. Norms do not provide for all legal assumptions, instead judges play a role similar to a tailor dressing each single case as it were a suit; however this does not imply arbitrariness of judicial action because there is a background stage in which authorities must analyse previous cases that could be binding or persuasive when deciding similar cases. This is the principle of "*stare decisis*".

On the opposite side, civil law system is based just on codes and law that are primarily legal sources; and judges according to Montesquieu should be exclusively the mouth of the law.
Both systems have advantages and disadvantages, but strict compliance with the law as well as its flexibility are two essential characteristics of common law system. In the early days of the Republic, Alexis de Tocqueville, James Bryce, and others detected this respect for the law and saw it as a dominant theme in the then emerging nation. Tocqueville wrote in 1830 in Democracy in America that American people obey the law not only because is their own work, but because it may be changed if harmful; a law is observed, first, it is a self-imposed evil, and secondly, it is an evil of transient duration[37]. From colonial times to the modern age the American people have had an abiding faith in the rule of law, even when they acted in disregard of this faith; that is in part due to the above mentioned intrinsic characteristic of common law. As Joseph Anthony Lewis, New York Times columnist and author who twice won a Pulitzer Prize, said in March 1970 "faith in the common law is England most precious and enduring gift to her former colonies, that it also should renew our own faith in the stability of our legal institutions"[38].

For this reasons the idea could be also extended to other countries of former British Empire, such as Ireland, Canada, Australia or New Zeeland that have incorporated common-law systems. In all these countries both citizens and professionals take part on process in an open and perhaps more participant way than in civil law countries, where each single aspect of trials is strictly regulated and legal professionals act within a very limited parameters. Pursuing the idea of strengthening links, cooperation and accountability between citizens and judicial authorities is how the concept of Public Legal Education was born in the middle of 70' in Great Britain, Canada and Australia mainly. The original ideal of public legal education was born because this kind of education and information is perhaps the oldest and most widely used form of legal assistance delivered around the world, yet paradoxically has only more recently become a clearly defined field of practice and one of the most promising areas of justice innovations. The nature and scope of Public Legal Education varies significantly across jurisdictions. Broad terminology associated with PLE includes concepts such as justice education, legal literacy, legal empowerment, and community legal education. The scope of activities involved in public legal education is invariably wide, encompassing diversity of legal issues in contemporary life, and ranging from basic information to enhanced education[39].

Based on the report of the Foundation for Public Legal Education beneficiaries of the

[37] Alexis de Tocqueville, *Democracia en América*. Trotta Editorial. Madrid, 2010.

[38] John E. Cribbet, *Legal Education and the Rule of Law. American Bar Association Journal* Vol. 60, No. 11 (November, 1974)

[39] Lisa Wintersteiger, *Legal needs, legal capabilities and the role of Public Legal Education*. Foundation for Public Legal Education. London, 2015.

idea could potentially include any member of the wider public, a notable target for PLE activities are groups that experience specific barriers in gaining access to justice such as older people, minority groups, young people, and welfare recipients. Increasingly, community based strategies target non-legal workers, including community leaders, youth workers, students, health workers and social care providers as a means of reaching socially and economically disadvantaged people with legal problems.

According to The Law Society, an independent professional body for solicitors in England and Wales, Public legal is aimed at raising awareness of rights and legal issues and of the wider justice system; helping people to identify the legal dimensions of everyday situations and equipping them with the skills and confidence to resolve issues and prevent problems; enabling citizens to recognise when they need help and find the best help; and finally help people to organise effectively for legal and social changes and get involved in shaping the decisions that affect them both at a local and national level[40].

On the basis of universality of law that affects people of all ages and is changing all the time, public legal education helps citizens to better understand everyday life issues, making better decisions and anticipating and avoiding problems.

There are many reasons why citizens need to know about their rights and responsibilities. Education about basic law principles is important to give people the knowledge and skills that they need to manage their affairs, to allow them to avoid legal disputes in their transaction with others, to take part in the general process of legal reform in an open and equal manner, and at least to create responsible citizens aware of their rights and duties.

At the end the scope of PLE should also reach other spheres of life diverse from just private ones, this means that last objective is public dimension. Once people have all required tools to identify the legal dimensions of everyday situations they will be able to organise effectively for legal and social changes and get involved in shaping the decisions that affect them both at a local and national level.

By doing so States will also contribute to strengthening the rule of law, because they are raising awareness among community about law and legal process, while increasing the ability social ability to understand and critically assess the impact of the law. At the end is a way to reinforce social commitment within a State by encouraging citizens to participate actively in life while being ready and mature to understand and accept a wide range of legal and administrative issues which at first sight could seem complex, unfair or contrary to basic emotional reason, however necessary to ensure peace, civilization and progress within a State.

The concept of Rule of Law

Expression rule of law was consecrated by Robert von Mohl in 1832 (*Rechtsstaat* in German language) one of the most relevant figures of the liberal legalism or Constitutionalism at the times of limited monarchies in German states in the Nineteenth century. Idea that has arrived till now with different influences of French legal tradition of supremacy of law understood as an expression of general will and English proper concept of rule of law, this that law should govern the nation[41]. Despite the different ideas,

[40] The Law Society, *Developing a Public Legal Education Programme*. London, 2016. Available at: https://www.lawsociety.org.uk/News/Press-releases/public-legal-education-guidance-published/

[41] Rainer Grote, *Rule of Law, Rechtsstaat y État de Droit*. Pensamiento Constitucional Vol. 8,

modern concept of rule of law is the theoretical construction that allows rights and freedoms; civil and political rights, no rights of socio-economic nature, simply natural rights of the nineteenth-century bourgeoisie. Under the rule of law elements such as: division of powers, authority of law or supremacy of Parliament get their natural meaning[42].

Rule of law concept must include the idea of justice, but also limits and controls of powers by justice as guarantee of freedom. For that reason modern and democratic states constituted under the rule of law principle understand this on its two fronts: objective and subjective. The objective idea imposes the strict concept of rule of law in which law is the channel to use the powers and at the same time limit against misuses. On the subjective field rule of law states must include on their Constitutions provisions related to rights and freedoms of citizens[43].

To sum up, it is possible to say that rule of law principle is on the basis of democracy, because implies that everybody is subject to the law from citizens to lawmakers and authorities. Hence has become also a core principle of different organizations integrated by states that share absolute respect for the rule of law, like the European Union. The rule of law is one of the founding principles stemming from the common constitutional traditions of all Member States, and is one of the fundamental values upon which the European Union is built. Respect for the rule of law is a prerequisite for the protection of all fundamental values listed in the Treaties, including democracy and fundamental rights.

In the EU accession process, currently on going in different Western Balkan countries at diverse stages, respect for the rule of law is an essential requirement according to the Copenhagen Criteria. In fact, article 49 of the Treaty on European Union establish that new European countries that would like to join the Union must fulfil all values contained in this treaty, among these respect for the European Convention on Human Rights and the Charter of Fundamental Rights of the European Union.

The situation in Western Balkans.

Balkans countries main target for the coming years is to fully join the European Union. Negotiations are going at different pace, it depends on the country; but what it is almost clear is that the future of the region is inside the European Union, facts evidence this affirmation, also this is what most people believe that only way to achieve stability and socio-economic development, as well as an opportunity to solve all frozen conflicts that have impeded Western Balkans to reach its true potential is joining European project.

Stabilization and Association Agreements that has been signed with different states introduce 35 Chapters covering subjects from EU rights and freedoms to agriculture or transport. It is expected to six Balkan countries to introduce reform in order to adapt national legislation and practices to so-called *acquis communautaire*. Rule of law plays also a key role in this overall process, not only because as stated before the European Union is inspired in this principle, also because two Chapters, 23 and 24, refer directly to this concept a wide variety of aspects of justice, internal security, fundamental rights.

The European Union through the Enlargement Negotiations is assisting these countries to implement the Agreements and develop projects aimed at fulfilling accession requirements as

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Núm. 8. Pontificia Universidad Católica del Perú. Lima, 2002.

[42] Antonio Torres del Moral, *Principios de Derecho Constitucional-Tomo I.* Servicio de publicaciones de la Universidad Complutense de Madrid. Madrid, 2004.

[43] Luis María Diez-Picazo, *Sistema de Derechos Fundamentales*. Thomson-Civitas. Madrid, 2005.

evidenced by the different reports elaborated by the European Commission[44]. Notwithstanding, the "official side" it could be interesting to look into society and explore how people really feel in front such important tasks.

When it comes to perception about justice in the Western Balkans opinions among citizens are extremely negative in terms of efficiency and quality as evidenced by the Judicial Functional Review of the World Bank and the 2015 Progress Report of the European Commission. However, the most concerning issue is the position of these countries in the Rule of Law index elaborated annually by the World Justice Project.

A careful analysis of the 2016 Rule of Law index yields data that shows that indicators change from one country to another however is common factor that all of them occupy the lowest positions between the upper middle income countries in terms of adherence to the Rule of Law standards and principles. Performance is measured using 44 indicators across eight primary rule of law factors, each of which is scored and ranked globally and against regional and income peers: Constraints on Government Powers, Absence of Corruption, Open Government, Fundamental Rights, Order and Security, Regulatory Enforcement, Civil Justice, and Criminal Justice. Attending to this report that collect data from 113 countries Western Balkans countries occupy medium-low positions: Albania 72/113, Bosnia and Herzegovina 50/113, the Former Yugoslav Republic of Macedonia 54/113 and Serbia 74/113[45]; there are no data in the WJP Index related to Montenegro and Kosovo, however other reports from the EU or the Council of Europe show that indicators when it comes to quality of justice, corruption, awareness for fundamental rights or minorities remain low.

A look into such indicators suggest that working besides national authorities in building capacities among judiciary, but also to work closely and cooperate with society in order to reverse this negative view. Here is where Public Legal Education could demonstrate its benefits. Society and especially future generations will be aware about their rights and responsibilities. Education about basic law principles is important to give people the knowledge and skills that they need to manage their affairs, to allow them to avoid legal disputes in their transaction with others, to take part in the general process of legal reform in an open and equal manner, and to create responsible citizens aware of their rights and duties.

This idea of PLE has already been developed in many different contexts, perhaps one of the most successful stories is the work done by some Italian organizations in the anti-mafia fight, such as Foundation Giuseppe Fava in Catania or Foundation Falcone in Palermo. In Southern regions where this phenomenon is still strongly anchored in society these organizations are working with children and young people educating them into civic values, showing that freedom is only possible under the empire of the law and citizens should be responsible while defending this idea, because is the only guarantee to ensure and protect their freedoms, rights and duties.

Situation in the Balkans is different, war and violence episodes are recent in time and obviously have conditioned society by polarizing people, increasing differences and reducing issues into an easy bipolar reasoning: good or bad[46]. Furthermore,

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[44] European Commission. *European Neighbourhood Policy and Enlargement Negotiations*. 2016 Strategy and Reports. Available at: https://ec.europa.eu/neighbourhood-enlargement/countries/package_en

[45] World Justice Project, *The Rule of Law index 2016*. Available at: https://worldjusticeproject.org/our-work/wjp-rule-law-index/wjp-rule-law-index-2016

[46] Catherine Lutard, Serbia. *Le contraddizioni di un'identità ancora incerta*. Il Mulino. Bologna, 1999.

historic reasons have fostered a logical reasoning in terms of community that is looking outside from the perspective of belonging to a group or an ethnic[47]. Thus for example a crime committed by Serbs in Croatian is seen as what is in Croatia, however in Belgrade and among Serbian people maybe is not a crime rather a defense action. In the context of Transitional Justice as a response to massive violations of fundamental rights we have witnessed that verdicts of International Courts have been received in very different way depending the country and the group, in this days we have received the sentence of the ICTY to Ratko Mladic that has provided a measure of justice for victims and a direct form of accountability for perpetrators, in this sense decision has been welcomed in Sarajevo but this perception changed radically for some Serbian people[48] even inside Bosnia and Herzegovina[49]; similar situation for the judicial acquittal decided for general Ante Gotovina again cause for jubilation in Zagreb and for disappointment in Belgrade[50].

Conclusion

In post-conflict settings, legislative frameworks often show the accumulated signs of neglect and political distortion, contain discriminatory elements and rarely reflect the requirements of international human rights and criminal law standards. It is impossible to rewrite history, however is possible to build together the future and overcome differences. Proactive campaigns to promote health and financial literacy have been very popular with the public and promoted by government. A similar campaign to educate people about their rights is a practical and powerful way to increase public understanding about the law, raise awareness about own rights and duties and promote social commitment of citizens engaged with a wide range of issues, like justice.

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[47] Anthony D. Smith, *The ethnic origins of nations*. Wiley-Blackwell. New Jersey, 1991.

[48] The Economist, *A verdict of genocide against the Bosnian Serb commander*. Edition of 22/11/2017, available at: https://www.economist.com/news/europe/21731601-international-criminal-tribunal-former-yugoslavia-winds-up-its-work-verdict

[49] The Guardian, *Bosnians divided over Ratko Mladic guilty verdict for war crimes*. Edition 22/11/2017, available at: https://www.theguardian.com/world/2017/nov/22/bosnians-divided-over-ratko-mladic-guilty-verdict-for-war-crimes

[50] El País, El TPIY absuelve al exgeneral croata Ante Gotovina de limpieza étnica contra serbios. Edition 16/11/2016, available at: https://elpais.com/internacional/2012/11/16/actualidad/1353057910_536243.html

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  - The Economist, *A verdict of genocide against the Bosnian Serb commander*. Edition of 22/11/2017, available at: https://www.economist.com/news/europe/21731601-international-criminal-tribunal-former-yugoslavia-winds-up-its-work-verdict
  - The Guardian, *Bosnians divided over Ratko Mladic guilty verdict for war crimes*. Edition 22/11/2017, available at: https://www.theguardian.com/world/2017/nov/22/bosnians-divided-over-ratko-mladic-guilty-verdict-for-war-crimes
  - The Law Society, *Developing a Public Legal Education Programme*. London, 2016. Available at: https://www.lawsociety.org.uk/News/Press-releases/public-legal-education-guidance-published/
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  - World Justice Project, *The Rule of Law index 2016*. Available at: https://worldjusticeproject.org/our-work/wjp-rule-law-index/wjp-rule-law-index-2016
  - World Justice Project. *What is the Rule of Law?* Available at: https://worldjusticeproject.org/about-us/overview/what-rule-law

Bosnia and Herzegovina's approach and the role of Transitional Justice in the sphere of ensuring the rights and freedoms of internally displaced persons: lessons for Ukraine

By ***Anastasiia Tokunova****

ABSTRACT

The article is dedicated to the experience of Bosnia and Herzegovina in the field of Transitional Justice providing for the problems, connected with internal displacement, dealing. Possibility and directions of Transitional Justice's application in Ukraine was augmented in relation to the challenges caused by internally displacement of people, who had previously lived in Crimea and certain territories of Donetsk and Luhansk regions of Ukraine. A list of ways and prospective results of implementation of Transitional Justice elements was defined. The main approaches of Bosnia and Herzegovina strategic planning on the issues of internally displaced persons and Transitional Justice was studied. As a result some opportunities of its application in Ukraine were determined. The role of international community activities in post-conflict period in Bosnia and Herzegovina was investigated. The certain ways, which could support rising of positive and minimizing of negative effects of international actors' presence in Ukraine, were outlined. Also an attention was paid to the issues of organizing the work of the authorities and building of civil society in these conditions.

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Introduction

Solving of the problems, caused by internal displacement, is one of the key issues in the modern world. By the end of 2016 there were 40.3 million people internally displaced by conflict and violence across the world.[51]

Unfortunately, Ukraine had to face this problem, due to the conflict in the Eastern Ukraine and disruption of the territorial integrity of Ukraine (Crimea). All in all, 1,653,000 became internally displaced persons (IDPs) as of 31 December 2016[52], when the total population of the country was 42,467,037 (3.9 per cent).[53]

It should be said that activities targeted to this vulnerable group can't be called successful in Ukraine. The Issues of such as social and economic rights of IDPs have raised concerns in the international community with regards to capabilities of Ukraine government to ensure their protection.

On the one hand, the work on these problems resolving is already underway. However, in consideration of the absence of relevant practices in the country, it would be useful to apply the experience of other countries in this area. As to my point of view, the most valuable in this sense is Bosnia and Herzegovina's (BiH) experience.

Reasons for choosing the experiences of BiH are that the military conflict occurred there relatively recently, so the relevant practice is rather contemporary. Secondly, enough time had passed to enable launching of the Transitional Justice mechanisms; therefore the relevant measures can be studied. Thirdly, IDPs' issue is an important problem for this state. In particular, after the war, over half of the 4.4 million pre-war population of Bosnia was displaced, with an estimated 1.1 million displaced internally and approximately 1.3 million fleeing to neighboring countries and Western Europe.[54] According to UNHCR Global Report, 518,300 people were registered as IDPs in BiH in 2000[55] (13.7 per cent of the country's population for that year[56]). Taking to consideration the post-war destruction, BiH had to make rather fast decisions to avoid such situation. The fact, that for the close of the 2016 the number of IDPs in BiH was 98,324 people[57] (2.6 per cent of the current total country population[58]), gives the opportunity to recognise that this work had a positive effect.

Thus, studying the experience of BiH is expedient for Ukraine, so this research conducting is timely and topical.

The key objective of this paper is determination of certain successful steps of BiH in the field of peacebuilding and Transitional Justice providing, which

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[51] Jeremy Lennard (Ed.), Global Report on Internal Displacement (Geneva: The Internal Displacement Monitoring Centre, 2017), 10.

[52] *Ibid.*, 24.

[53] State Statistics Service of Ukraine, Available Population of Ukraine as of 1 January 2017, Statistical Collected Book (Kiev: August Trade LTD, 2017), 5.

[54] Tomaž Kravos, 'Sustainable Return: A Guarantee for Stability and Integration in Bosnia-Herzegovina, Balkan Diskurs, 3 February 2016, http://www.balkandiskurs.com/en/2016/02/03/sustainable-return-a-guarantee-for-stability-and-integration-in-bosnia-herzegovina/.

[55] UN High Commissioner for Refugees Global Report 2000: Bosnia and Herzegovina (Geneva: ATAR Rotopresse, 2001), 388.

[56] Agency for Statistics of Bosnia and Herzegovina, Demography 2012: Thematic Bulletin (Sarajevo: Printing House Avery, 2013), 22.

[57] Concept Note of the Conference on Economic and social rights for forcibly displaced persons during the conflicts in former Yugoslavia, Parliament of Bosnia and Herzegovina, Sarajevo, 27 – 28 June 2017, https://rm.coe.int/coe-unhcr-conference-on-idps-in-former-yugoslavia-concept-note/1680716122, 2.

[58] World Population Prospects: The 2017 Revision, Key Findings and Advance Tables, UN Doc. ESA/P/WP/248 (2017), at 17.

made possible the achievement of the rights and freedoms of IDPs, for further implementation of the relevant practices in Ukraine.

Opportunities for Transitional Justice in Ukraine

In this case the first question is about whether BiH's approaches are applicable to Ukraine. The enquiry is that Transitional Justice operates with the past. According to the UN definition, Transitional Justice is the full range of processes and mechanisms associated with a society's attempt to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation.[59]

UN work on Transitional Justice is based on international human rights law, international humanitarian law, international criminal law and international refugee law. Particularly, four tenets of international human rights law have framed Transitional Justice and the fight against impunity: (a) the State obligation to investigate and prosecute alleged perpetrators of gross violations of human rights and serious violations of international humanitarian law, including sexual violence, and to punish those found guilty; (b) the right to know the truth about past abuses and the fate of disappeared persons; (c) the right to reparations for victims of gross violations of human rights and serious violations of international humanitarian law; and (d) the State obligation to prevent, through different measures, the reoccurrence of such atrocities in the future.

Different mechanisms or measures have been established to fulfill these obligations: truth-seeking mechanisms such as truth commissions; judicial mechanisms (national, international or hybrid); reparations; and institutional reform, including vetting.[60]

The conflict in Ukraine is still being in an active phase. Therefore, it's necessary to determine whether it is possible to apply the experience of BiH now, or all the recommendations on this issue should be left for the future.

From my point of view, the question about implementation of the Transitional Justice elements is timely right now due to the following reasons.

Primarily, there are several types of territories in Ukraine, affected by the conflict. From the one side, there are certain territories in the east of the country, which are outside of control of the Government of Ukraine (in multiply publications of international organizations as UN these territories are called "non-Government controlled areas" (NGCA), accordingly the term "Government controlled areas (GCA) is used for territories remaining under the control of the Government[61]).

From the other side, there are locations, for which staying outside of the Ukrainian Government control remained in the past, the same as direct armed actions (e.g. Sloviansk, Kramatorsk). Simultaneously, there are still a lot of reminders about this conflict: consequences of shelling, destroyed or damaged buildings, mine risk, unexploded ordinances etc.

And, finally, there are a big number of inhabited localities of Donetsk and Luhansk regions, which is staying rather remotely from the contact line and hosting of IDPs, who came after the armed actions

[59] Transitional Justice and Economic, Social and Cultural rights, UN Doc. HR/PUB/13/5 (2014), at 5.

[60] *Ibid.*

[61] UN Office for the Coordination of Humanitarian Affairs, Humanitarian Response Plan: Ukraine (January-December 2017), https://www.humanitarianresponse.info/ru/operations/ukraine/document/ukraine-2017-humanitarian-response-plan-hrp.

had started. People there feel the consequences of the conflict also.
At the present time, for all above mentioned affected territories post-conflict phenomena is in place in higher or lower level, such as:
- everyday massive flows of people from the NGCA to GCA and back to solve certain problems (for example, related to specifics of Ukrainian legislation towards social and pension payments), to receive some necessary services, etc. Here it should be taken into account, that for people this action is still connected with difficulties and risks;
- psychological trauma, which affected high percentage of local population on both GCA and NGCA;
- existence of different approaches to understanding and attitudes to roots of the conflict, and disquieting expectations about how the further scenario for Donetsk and Luhansk regions as well as for whole Ukraine will be developed;
- big number of cases of human rights' violations, which has not been investigated yet and as a result guilty persons have not suffered punishment.

The situation described above makes people inlive in a highly stressful and unstable environment, which increased due to the risk and fear of conflict escalation and growth over the territories.

The launch of measures for elements of Transitional Justice implementing would help not only to overcome (for at least partially) these challenges, but also to raise chances for reintegration. The fact of the matter is that now an active propaganda, connected with the ideas of the peril of the Ukraine's control recovery, is taking place in NGCA. In this territories is widely disseminated the statement that at this case the NGCA residents will be physically liquidated or extremely limited in rights, so further existence will become practically impossible. This idea is supported by the declarations of some Ukrainian politicians and the actual restrictions of a number of rights of IDPs from the side of Ukrainian authorities (nonpayment of pensions, infringement of electoral rights, freedom of movement etc.). All these conditions cause a fear among people, living in NGCA, and deepen mutual division. Transitional Justice, even in its initial stage, could become an example of positive changes, which will help to overcome this fear and play an important role in the reintegration of the territories.

Speaking about BiH's experience, one of the key problems of the Transitional Justice implementation in this country is limited results of the existing fact-finding and truth-telling initiatives. It is estimated that close to 100,000 people were killed during the war in BiH, around 35,000 of them were missing, and 2.2 million people became refugees or internally displaced. Although the armed conflict in BiH ended nearly two decades ago, a number of the problems associated with these disasters have not been resolved to this day. Despite the fact that a great deal of work has been done, some researches point out the insufficiency of measures for credible description of violations of human rights, objective estimation of the human losses, efficient provision of platforms for the public hearing of victims' accounts etc.[62]

Therefore, for at least to ensure above noted aspect of Transitional Justice, it is advisable to start preliminary preparatory work now, when the relevant data is still available and can be documented.

Besides, it is necessary to emphasize the following features of Transitional Justice, which contented in the BiH Transitional Justice Strategy. The matter is that all four mechanisms of Transitional Justice (criminal justice, fact-finding and truth-telling, reparations and memorials,

[62] Bosnia and Herzegovina Ministry for Human Rights and Refugees, Bosnia and Herzegovina Ministry of Justice, Transitional Justice Strategy for Bosnia and Herzegovina 2012-2016, Working document, Sarajevo, 2013, http://www.nuhanovicfoundation.org/user/file/2013_transitional_justice_strategy_bih_-_new.pdf , 31.

institutional reforms) are mutually related and dependent on each other and that a specific activity can be a characteristic of each individual mechanism. For example, although the primary goal of criminal justice is to establish individual criminal responsibility of the accused persons, a judgment establishes, beyond a reasonable doubt, the facts about an event covered by the indictment (factfinding and truth-telling mechanism). A verdict also has the effect of delivering a symbolic reparation to the victim in terms of serving justice (reparations programmes mechanism), while prosecution and trial of the responsible ones, in the end, indicate the will on the part of the state and institutions to respect the Constitution, laws and international norms. Bearing responsibility for human rights abuses, as well as the relevant punishment, leaves the impression that the system is functioning indeed and ensures restoration of citizen confidence in institutions (institutional reform mechanism). Finally, it is necessary to emphasize that the Transitional Justice mechanisms touch upon some other important issues relevant for a society which is addressing the legacy of past human rights abuses, such as protection and preservation of memory, democratization, reconciliation, etc.[63] It is precisely this approach should become the key one for Ukraine in identifying the line of application of Transitional Justice in the country.

Lessons of strategic planning of BiH for Ukraine

It is necessary to mark the achievements of BiH in the field of strategic framework of legal relations on IDPs' issues development.

The national response to internal displacement in BiH is based on two key documents, which define the state planning in IDPs topic. They are the Revised Strategy of BiH for the implementation of Annex VII of the Dayton Peace Agreement and certain aspects of the Transitional Justice Strategy for BiH. However, the second document is based largely on the provisions of the first one in IDPs issues, but inscribes relevant aspects into the overall concept of Transitional Justice in the country.

More detailed the appropriate questions are covered by the Revised Strategy of BiH for the Implementation of Annex VII of the Dayton Peace Agreement.[64] It should be said that the initial strategy was widely discussed, which led to its adjustment and revision (a few updated strategies were published several times).

This practice should be assessed as a positive one. There is a problem in Ukraine that decisions and their revisions at the cases of IDPs are often made contrary to the opinion of public, local civil society organizations (CSOs), recommendations of international experts, and even laws of Ukraine (in regard to the last aspect the most visible example is procedures of pension and social payments for IDPs[65]).

The last open for the analysis English version of the Revised Strategy of BiH for the Implementation of Annex VII of the

[63] Transitional Justice Strategy for Bosnia and Herzegovina 2012-2016, 14.

[64] Dayton Peace Agreement is the General Framework Agreement for Peace in Bosnia and Herzegovina, also known as the Dayton Peace Agreement (DPA), Dayton Accords, Paris Protocol or Dayton-Paris Agreement, is the peace agreement reached at Wright-Patterson Air Force Base near Dayton, Ohio, United States, in November 1995, and formally signed in Paris on 14 December 1995. These accords put an end to the 3 1⁄2-year-long Bosnian War, one of the armed conflicts in the former Socialist Federative Republic of Yugoslavia. The current Constitution of Bosnia and Herzegovina is the Annex 4 of the DPA (definition is made according to the OSCE Mission to BiH position).

[65] Алла Котляр, Інтерв'ю з Координатором системи ООН, постійним представником ПРООН в Києві Нілом Вокером', "Дзеркало тижня", № 1129 (04-10.02.2017), https://zn.ua/SOCIUM/nil-voker-territoriya-za-kontaktnoy-liniey-eto-ukraina-_.html.

Dayton Peace Agreement contains the next strategic objectives:

- completion of the return process of BiH refugees and internally displaced persons;
- implementation of repossession of property and reinstatement of occupancy rights;
- completion of reconstruction process of housing units for the return needs;
- ensuring conditions for sustainable return and reintegration process in BiH.[66]

It is understandable that full apply of this approach is impossible in Ukraine now. In particular, the question of the return process of IDPs and refugees cannot be solved until the complete ceasefire, ensuring of safe living conditions, demeaning etc. At the same time, other issues should be included in Ukraine's strategic documents related to IDPs.

Particularly, this is possible to implement through the draft law "On the peculiarities of state policy on securing Ukraine's state sovereignty over temporarily occupied territories in Donetsk and Luhansk regions", which is being developing now. Also, it is necessary to take into account a fact, that the key factor of any strategy is not only plan, but also its implementation, allocation of necessary resources (human, financial etc.), monitoring of the situation and comprehensive awareness raising. Insufficient attention to this factor while preparing could lead to developing of a declaration, instead of effective instrument.

Thus, in accordance with Human Rights Watch's World Report 2017, the government of BiH published a revised strategy on the return of refugees and internally displaced persons in December 2015. But a lack of reliable public information either from the Bosnia authorities or UNHCR about returns of displaced persons and refugees to their pre-war homes makes it difficult to assess what progress if any has been made under the previous 2010 strategy, and what impact the new strategy will have.[67] Ukraine needs to take into account that, it is necessary to involve the audience widely, when working in a changing environment on the revision and improvement of documents related to IDPs and other groups of population affected by conflict.

Features of the international community's participation: the pros and cons

It should be said that BiH strategies and action plans for overcoming of conflicts and consequences were written with the broad support of the world community. Most of the actions in the areas, related to IDPs, are also carried out under the patronage of a large number of international organizations. For example, in BiH the work with this vulnerable group of population is carried out by ICRC, UN Women, UN Volunteers, OSCE, UNICEF, OHCHR, UNDP, UNFPA, UNHCR, USAID and many others.

On the one hand, these activities resulted in significant achievements (such as, establishment of peace, development of the above-mentioned strategies, urgent assistance in conflict and post-conflict situations etc.). On the other hand, close cooperation with international institutions also has certain negative sides. So, such approach leads to the formation of political elite, which is not actively taking responsibility for what is happening in the country. This entails apathy and mistrust of the population, which affects the nation-wide processes.

For example, Canadian political scientist David Chandler persuasively argued that the presence of the non-accountable law-making international community in BiH also takes accountability away from

66 Revised Strategy of Bosnia and Herzegovina for the Implementation of Annex VII of the Dayton Peace Agreement (Sarajevo: Ministry for Human Rights and Refugees, 2010), at 1.

67 Human Rights Watch, World Report 2017: Events of 2016, (New York: Seven Stories Press, 2017), 134.

Bosnian politicians, thus stimulating all political actors to simply engage in the game of "faking democracy" instead of genuine democratization[68]. More recently, Bosnian political scientist Nermina Sacic, at a conference devoted to the role of international community in BiH, simply concluded that "the politics of the international community has been reductionist and non-democratic, i.e. in defiance of the democratic spirit which governs its mission, since most of the laws and regulations have been created without consulting the public. Therefore, it may be important to see that similar mistakes are not repeated in other countries of Southeastern Europe".[69] Faced with the existence of two powerful internal entities on the one hand, and just as powerful representatives of the international community as inventors of statehood on the other, Bosnian public intellectuals often bemoan the weakness of the state in BiH. In words of Asim Mujkic, professor of political science at the University of Sarajevo, Bosnia has become an "ethnopolis" with no hope for the construction of a civic state any time soon.[70]

Moreover, it is noted that external activities can also produce unintended side-effects, end up in failure or hamper processes of reconciliation. There is always a danger that external actors do not fully understand what has happened to the people in a locality where mass crimes have occurred, and might introduce inappropriate concepts. All too often internal and external actors on the various tracks are at cross purposes due to a "clash between paradigms". Hence it is crucial to analyze how activities on different tracks relate to each other, and to be aware that actions on one track can sometimes wreck efforts on another.[71]

This issue is highly timely for Ukraine, as a big number of international organizations have launched their work in the country during last three years. These actors have a significant impact on the processes that are taking place. Therefore, it is necessary to build relationships in a manner, which enable to optimize this interaction and minimize possible negative consequences.

A possible option may be to build a cooperation of authorities with international organizations in such a way, when the key initiatives will come from the Ukrainian authorities. The main intervention from the side of international actors should comprise knowledge and capacity building activities, which could ensure awareness and study about the effective methodics of response to problems, but not the solo development of solutions for crisis situations.

Building civil society in the post-conflict period

The above-mentioned negative consequences theoretically can be weakened by a strong civil society, which formation and development is declared in both BiH and Ukraine.

According to the R. Belloni research of Civil Society and Peacebuilding in BiH, citizens' participation is one of the corner-stones of the principles guiding international efforts to build civil society. In the hopes of the international community, political and social participation should be expressed in the work of local NGOs.[72] That's why the main accent in this paper will be made on the

[68] Karol Jakubowicz, Miklos SCikosd (Eds.), Finding the Right Place on the Map: Central and Eastern European Media Change in a Global Perspective, (Chicago: Intellect Books, 2008), 148.

[69] *Ibid.*

[70] *Ibid.*

[71] Beatrix Austin, Martina Fischer, Hans J. Giessmann (Eds.), Advancing Conflict Transformation, The Berghof Handbook II, (Opladen/Framington Hills: Barbara Budrich Publishers, 2011), 423.

[72] Roberto Belloni, 'Civil Society and Peacebuilding in Bosnia and Herzegovina', Journal of Peace Research 38 (2001), 172.

aspect of civil society organizations (CSOs) functioning.[73]

It must be said that the topic of the role of civil society in the Transitional Justice realization has been critically reexamined due to their prominent role in this process. One of the last scientific papers, which are dealing with Transitional Justice in BiH issues (published on July, 2017), defines the need to improve the role of civil society in Transitional Justice processes. Its author argues that during the past decade, however, civil society actors supporting Transitional Justice practices have grown.[74] Also, it is noted, that CSOs in BiH play a supporting role in the country's emerging post-conflict and post-socialist democracy, and their achievements should be neither overestimated nor underestimated. This heterogeneous sector includes some 23,000 CSOs as of mid-2016, less than half of which are actually active. Most of them are small associations operating in the fields of social services, cultural activities and advocacy.[75]

Truthfully, the CSOs, including CSOs of refugees and displaced persons, participate actively in the Transitional Justice processes, holding in the state.

For example, the Revised Strategy of BiH for the implementation of Annex VII of the Dayton Peace Agreement 2010 among those, who participated in the working subgroups activity and thus contributed to the revision of the Strategy, such local CSOs are listed: BiH Union of Associations of Refugees, Displaced Persons and Returnees; RS Union of Associations of Refugees, Displaced Persons and Returnees; Association of Refugees and Displaced Croats in BiH.[76]

At the same time, a number of shortcomings in the activities of this sector are noted. For instance, to argue that the development of NGOs in BiH is complex and confusing is an understatement, given the presence of large numbers of INGOs whose emergency relief operations became a kind of substitute civil society and many of which are now seeking, in the post-emergency phase, to secure funding for their own role in (local) NGO development. It's noted that 'civil society', always a slippery term at best, becomes even more contested and problematic in BiH. All of the large INGOs are present in BiH and, reflecting the fact that this is a major protracted political emergency in Europe, they have been joined by a range of Western feminist and peace solidarity organisations, new INGOs, and a range of volunteer projects. Together, these organizations construct an implicit social policy through their activities in the spheres of regulation, redistribution and provision.[77]

Another recent (2017) study about civil society in BiH marks, that after the war BiH was completely destroyed in terms of both social capital and infrastructure; also citizens were imprisoned in newly formed, ethnically divided and homogenized communities. International aid was important for mitigating the humanitarian crises, but it also had negative effects on both CSOs and the state. Some organizations were genuine grassroots initiatives that pursued goals for social

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[73] In this paper terms "CSO" and "NGO" are regarding as the equal ones.

[74] Arnaud Kurze, 'Time for Change: Aid, NGOs, and Transitional Justice in Bosnia-Herzegovina', Transitional Justice Review 1 (2017), 41, 46-47.

[75] Peter Vandor, Nicole Traxler, Reinhard Millner, Michael Meyer (Eds.), Civil Society in Central and Eastern Europe: Challenges and Opportunities, (Vienna: Publisher ERSTE Foundation, Center Vienna University of Economics and Business, 2017), 188, 190.

[76] Revised Strategy of Bosnia and Herzegovina for the Implementation of Annex VII of the Dayton Peace Agreement (Sarajevo: Ministry for Human Rights and Refugees, 2010), at 4.

[77] Bob Deacon, Paul Stubbs, 'International Actors and Social Policy Development in Bosnia-Herzegovina: Globalism and the 'New Feudalism', Journal of European Social Policy 8 (1998), 111.

change, but most used the momentum to achieve their own interests.[78]

Critics of post-war "CS building" emphasize the weak connection between foreign-supported organizations and local constituencies. Many CSOs have been created in response to available donor funding but with little local backing. Conversely, groups formed by citizens uniting for social or political change either receive little assistance, or 'NGO-ize' to become eligible for donor funding at the cost of growing distance from their constituency.[79]

International environment formed local branches in BiH that developed various projects and social services that were needed, but some authors estimate that it was, in fact, a "parallel system of social services, which weakened government's ability and will to re-establish effective state-run social institutions". However, in a devastated and ethnically divided country like BiH, certain issues would have probably not been addressed at all if it were not for these organizations and their projects. The vast majority of CSOs were formed in larger urban areas, while rural communities remained neglected.[80]

R. Belloni's investigation has shown that the heavy dependence of local NGOs on external donors has a strong impact on their functioning, agendas, and effectiveness. Top-down planning, top-down funding, and upward accountability often negate participation. Pragmatically, NGOs veer toward a market mechanism that focuses on the provision of services at the expense of genuine political and social participation. The technical delivery of services is given priority over the political articulation of channels of expression for the disempowered and excluded. Frequently, NGOs are contractors, customers are constituencies, while members become employees. Hence, accountability is redirected toward the donor and away from the organizations' social base, and the idea of participation and empowerment is squelched by the reality of an externally driven process.[81] Some analysts say that international community continues to maintain the fiction of the properly functioning institutional framework and, by so doing, prevents civil society from assuming responsibility and its proper political role vis-à-vis local ethnic elites.[82]

Moreover, CSOs today do not enjoy a lot of trust in the public eye due to the lack of transparency and democratic procedures within their organizations, and they do not conduct independent financial audits of their work. Only 18 per cent of these organizations undertake financial audits, and less than 5 per cent publish their annual accounts.[83]
The situation in Ukraine is quite similar now. After the conflict started in the Eastern Ukraine, a large number of CSOs appeared on both local level and in the capital of the state. Mainly these CSOs are playing the role of contractors and implementing partners of international actors and national donors. Among others the described tendency is a reason for declaration of development of civil society in the country. But, as it is visible from the experience of BiH, such a trend could be a cause for its stagnation, and not a factor for its increasing.

Also, the issue of interaction between CSOs is rather complicated in Ukraine.

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78 Peter Vandor et al. (Eds.), Civil Society in Central and Eastern Europe: Challenges and Opportunities, 191.
79 Randall Puljek-Shank, Willemijn Verkoren, 'Civil society in a divided society: Linking legitimacy and ethnicness of civil society organizations in Bosnia-Herzegovina', Cooperation and Conflict 52 (2) (2017), 185.
80 Peter Vandor et al. (Eds.), Civil Society in Central and Eastern Europe: Challenges and Opportunities, 191.
81 Belloni, 'Civil Society and Peacebuilding in Bosnia and Herzegovina', 173-174.
82 *Ibid.,* 172.
83 Peter Vandor et al. (Eds.), Civil Society in Central and Eastern Europe: Challenges and Opportunities, 191.

The situation is widespread, when CSOs carry out identical activities about the same territory, but they concentrate on competition with each other, rather than on building partnerships.

Another feature is that often financing for one or another project implementation is received by CSOs at the central level, as they have more opportunities to meet formal requirements due to wider experience in such procedures, previous practice on cooperation with international organizations. At the same time, not all of them have branches or systematically maintain networks in the regions. In such cases local CSOs are contracted "*ad hoc*" and conduct the necessary scope of work for lower funds. Thus, there are the situations, when central CSOs are partly turning into business projects, whose activities over time tend to focus more on making a profit, rather than contributing to real changes in the local level.
Hereby, in accordance with the above mentioned experience of BiH, it is possible to formulate the next recommendations for Ukrainian CSOs. Firstly, it is necessary to strengthen the networking component of systematic CSOs development. Secondly, the accent in the work of CSOs should be made on training and empowering of their members, enhancing of the capacity of local partners' organizations and initiative groups. For example, it is advisable for CSOs of any mandate to be knowledgeable about engaging the target group of people to these bodies' activities, organizing projects with a "zero budget" (incidentally, the experience of the CSO "Promolod" from Cherkasy, which has been successfully implementing such practice (e.g. "Cherkasy in the Perspective", "Pure Wave", "Open University", "Free Walking Tours" and other projects (more on this topic is on the [84]) for several years, may make interest).

Conclusion

Ukraine is faced with a number of challenges, connected with the need to respond effectively to the problems of a huge number of IDPs, who previously lived in Crimea and certain territories of Donetsk and Luhansk regions of Ukraine. Transitional Justice mechanisms could play a significant role for Ukraine not only in dealing with the aftereffect of the current situation, but also in preventing possible negative consequences.

Despite all elements of Transitional Justice can't be used at the present moment, nowadays it is an important time for the collecting and preserving evidence of human rights violations, committed during the conflict, what is the necessary precondition for criminal justice, reparations, institutional reforms etc. The key objective is to secure as much data as possible, but it should be done systematically and be accompanied by using unified rules. In that case further applying of international mechanisms in the sphere of human rights will go effectively.

Success of the Transitional Justice providing is often depends on the suitable strategy, which is a cornerstone of this process. Until Ukraine can't establish full-fledged program of Transitional Justice aims' achievement, some of its aspects might be implement through the draft law "On the peculiarities of state policy on securing Ukraine's state sovereignty over temporarily occupied territories in Donetsk and Luhansk regions ", which is being developing now.

The next matter is that Ukraine (as well as BiH during the conflict phase and in the beginning of the post-conflict period) feels the lack of information about the specifics, tools and measures of Transitional Justice application. This could be overcome through the support of international organizations, the vast majority of which has the experience in countries with similar contexts, where certain practices proved their effectiveness. Simultaneously, such actors must be the consultants, but not the

[84] CSO "Promolod" Official Web Site, http://promolod.pp.ua/

decision-makers. The main intervention from the international partners should comprise knowledge and capacity building activities, which could ensure awareness and study about the effective methodic of response to problems, but not the solo development of solutions for crisis situations.

To the best advantage the interests of the IDPs can be expressed by CSOs, consisting of or working with these people. In addition, it is precisely a strong civil society that can ensure the implementation of institutional reforms and ensure the work of the mechanisms of Transitional Justice. At the same time it is necessary to take into account that such changes could be accomplished based on consistent and synergetic work only, so there must be paid a special attention to the networking component of CSOs development. Also the local level actors must be as much as possible involved in the appropriate activities.

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The Allies and Opponents of the Bulgarian Protests against the Borisov Government, the "Bosnian Spring" and the "Citizens for Macedonia" Movements and their Impact on the Policy Process

By Ivan Stefanovski*

ABSTRACT

This article analyises the allies and opponents of the three movements in Bulgaria, Macedonia and Bosnia and Herzegovina taking into consideration some of the main factors and actors within the POS approach to social movement studies, primarily the political systems in the three states as main organizational fields for political parties and other actors in the political system; the role of the political parties and allies and opponents to the movements; the key role of the international community in regards to the interaction with the social movements and the main political parties; as well as the role of the most significant media actors and their relationship with the movements.

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1. Introduction

This work deals with the allies and opponents of the three movements which are under study, taking into consideration some of the main factors and actors within the POS approach to social movement studies, primarily the political systems in the three states as main organizational fields for political parties and other actors in the political system; the role of the political parties and allies and opponents to the movements; the key role of the international community in regards to the interaction with the social movements and the main political parties; as well as the role of the most significant media actors and their relationship with the movements.

The following section is focused on the political systems of the three states, looking at the main differences regarding their institutional setting, as well as the interaction between the key institutional actors. The main differences across states are the unitary vs. complex/federal institutional design which resulted with specific government-opposition relationships.

The third section of this work looks at the anchoring role of the international community, especially in the case of Macedonia. Furthermore, this section presents the main notions regarding the attitude of the international actors during the three waves of mobilization: The strong involvement in the Macedonian case, the lack of interest in the Bulgarian case, as well as the ambivalent and not very coordinated approach to the situation in B&H.

The next section glances through the main information regarding the media setting in the three countries, including their considerably low levels of media freedoms and freedom of speech. It points to the main characteristics of the relationships between the movement actors and main media outlets.

The fifth section is divided into three smaller subsections, each of them dealing with the specifics of the three cases under study. Each country-oriented subsection elaborates on the relationships between the movement actors, the main political parties, the international community and the media. Furthermore, these subsections highlight the most important events which contribute to the respective outcomes in the three cases under study. Lastly, the final section of this paper is devoted to the conclusions.

2. The Political Systems as Organizational Fields for Political Parties as Key Actors

Macedonia and Bulgaria are defined as unitary countries, while B&H is characterized by a unique constitutional design developed by the international community in the aftermath of the Yugoslav wars. This resulted with a clear government/opposition divide in the two unitary countries, and a very complicated government-opposition relationship in B&H, which varied on state, entity and cantonal level. Furthermore, the multiple veto players in the BH constitutional and political system require a lot of compromise, fluctuating coalitions, but also, it very often ends with endlessly long blockades of the political processes in the country

During the Citizens for Macedonia (CfM) platform activities and further during the extensive political negotiations between the largest four political parties (VMRO-DPMNE[85], SDSM[86], DUI[87] and DPA[88]) there was a very clear *pro/contra* movement divide. From the very beginning, the SDSM was a constitutive member of the CfM platform and had a partner relationship with the numerous SMOs and individuals which were involved[89]. At the end of the political negotiations, the SDSM stepped out from

[85] Internal Macedonian Revolutionary Organization – Democratic Party for Macedonian National Unity

[86] Social Democratic Union of Macedonia

[87] Democratic Union for Integration

[88] Democratic Party of the Albanians

[89] See interviews XX MKD – M.Z. and XX MKD – B.M.

the CfM coalition arguing that the party should return to parliament and focus on implementation of the provisions agreed upon in the Przhino Agreement[90]. On the other hand, the largest party in power, the VMRO-DPMNE, was a clear opponent to the movement activities, going to the extreme of negating its existence and labeling it as clearly partisan activity by the SDSM and clearly disregarding the citizens which were largely involved[91]. Furthermore, the largest ethnic Albanian party in the country, the DUI, did not directly confront the governmental challengers, but tacitly aligned with its senior partner in the government, the VMRO-DPMNE. This was more evident during the political negotiations in Przhino. Lastly, the DPA, as a largest ethnic Albanian party in opposition, remained almost completely silent during the movement activities. What was very unusual was the covert allegiance to the largest party in power, the VMRO-DPMNE[92]. The inter-party dynamics and their attitudes towards the CfM are thoroughly explained in the section dedicated to allies and opponents in Macedonia.

The first Bulgarian protest wave in 2013 saw very fluctuating dynamics in the party-movement relationship, especially regarding the role of the largest party in opposition, the BSP. Many of the interviewees commented how the central left party played a very dubious role during this first wave of mobilization[93]. On the other hand, the GERB, as the largest political party in power during the protests, acted as a strong opponent to the movement, although making concessions to the activists, when this was convenient for its public political support. This fluid constellation of relationships, in comparison to the Macedonian case, to a certain extent derives from the fragile position of the Borisov cabinet, due to its nature of a minority government[94]. What remained an enigma was the very neutral position of the Movement for Rights and Freedoms (MRF), colloquially referred to as "the Turkish Party". Although in opposition, no clear support for the movement actors was noticed or pointed out by the interlocutors. The section devoted to the interactions between the friends and foes of the Bulgarian protesters will further reflect on the complex relations between the key political parties and the governmental challengers.

Moving to the third country which is under study, the very complex political, ethnic and party relationships, unexpectedly, created a very straight-forward outcome regarding the positioning of the political parties in regards to the movement actors. The largest political parties in the state, the SDP[95] and the SDA[96] in FB&H, and the SNSD[97] in RS, although ethnically and territorially divided, aligned together against the protesters. From the first days of protest in Tuzla, Sarajevo and Mostar, the biggest political parties began an orchestrated attack over the governmental challengers, some of the high public officials even labeling them as thugs, criminals, drug traffickers and scum[98]. The only

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90 http://arhiva.sdsm.org.mk/default.aspx?mId=55&agId=5&articleId=12321 (in Macedonian) and http://fokus.mk/sdsm-se-zablagodari-i-izleze-od-koalitsijata-graganite-za-makedonija/ (in Macedonian)

91 http://prizma.mk/blog-vo-zhivo-makedonija-silna-miting-na-vmro-dpmne/ (in Macedonian)

92 https://www.youtube.com/watch?v=GLFG6Y8E9YE

93 Interviews XX BUL – B.P.I. and XX BUL – D.D.

94 http://www.france24.com/en/20090727-borisov-lead-new-minority-government-

95 Social Democratic Party

96 Party for Democratic Action

97 Union of Independent Social Democrats

98 https://www.klix.ba/vijesti/bih/uzivo-protesti-u-sarajevu/140207060 and https://www.klix.ba/vijesti/bih/klix-ba-u-zgradi-predsjednistva-bih-demonstranti-su-unistavali-i-svecani-salon/140208024 (in Bosnian)

significant political party which declared itself as "opposition", was the SBB[99] led by security minister Fahrudin Radončić. Immediately after the protests exploded, Radončić aligned with the movement actors and strongly criticized the other political parties in power[100]. In the forthcoming period he was sacked from the ministerial position by the majority in the Federal Parliament[101]. The section dedicated to the context in which the allies and the opponents of the BH protests operated, sheds deeper light on how the party dynamics unraveled and influenced the policy outcomes.

3. The Crucial Role of the International Community

One of the factors which are largely understudied in social movement scholarship is the role of the international community in the contentious dynamics between the challengers and the state. Traditionally, the foreign powers have played a key role in the state building process of the Balkan countries after the fall of the Iron Curtain[102]. Within the three cases under study, this is underpinned more in the cases of B&H and Macedonia.

The role of the international community was undoubtedly largest in the Macedonian case, especially through the pressure exerted over the largest four political parties during the Przhino negotiations. Within the plethora of international envoys which were engaged during the protests in Macedonia, and later, the political negotiations, the EU and the USA were the most visible ones[103]. Fostering the political negotiations, the foreign powers were one of the crucial allies of the movement in Macedonia. This is mainly because both the governmental challengers and Brussels and Washington had very similar visions and standpoints regarding the future of the state. A country which is re-democratized, where rule of law is reintroduced and whose urgent priorities are the Euro Atlantic integrations. On the other hand, sporadic Russian influence was also noticed during the contentious events. Expectedly, Moscow issued press releases backing the regime of PM Gruevski and arguing redefinition of territories and borders in the Balkans by their Western opponents[104]. It must be noted that this influence was relatively mild in comparison to the engagement by the Western diplomats. The crucial role of the international community in regards to the policy outcomes arising from the CfM are analyzed in detail in the section dealing with key external actors during the movement in Macedonia.

Conversely to the Macedonian case, the role of the international community during the first wave of mobilization in the contentious 2013 in Bulgaria was rather limited. An apparent lack of interest by the major international players, may be a result of two main factors: the already completed Euro-Atlantic integration of Bulgaria, unlike the one of Macedonia and B&H, as well as the fact that the three distributors of energy which dominated the Bulgarian market, EVN, CEZ and Energo Pro, are companies coming from the EU. Ultimately, long-term decrease of energy distribution prices would have damaged the financial stability of these companies which have their seats in EU countries (Austria and Czech Republic) and employ a lot of citizens in their founding states. The inert position of the international community is further elaborated in the section dedicated to the

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[99] Union for a Better Future of B&H

[100] *Dnevni Avaz* 09.02.2014 (in Bosnian)

[101] https://www.klix.ba/vijesti/fahrudin-radoncic-smijenjen-s-pozicije-ministra-sigurnosti/140313073 (in Bosnian)

[102] Bieber, F. (2011). Building impossible states? State-building strategies and EU membership in the Western Balkans. *Europe-Asia Studies*, *63*(10), 1783-1802.

[103] https://www.gov.uk/government/news/joint-statement-on-political-crisis-in-macedonia

[104] http://www.novinite.com/articles/168689/Russia+Claims+Macedonia+Crisis+Managed+from+Abroad

Bulgarian movement's allies and opponents.

The third case which is under study in this work is the most puzzling regarding the involvement of the international community. Since its post-war reformation, B&H was a state where its international partners played a key role in the state building, reconciliation process, and the peace building[105]. The first days of protests saw a disturbing statement by the Office of the High Representative Valentin Inzko. The OHR called for urgent stop of violence, alternatively advocating for a possible military intervention by the guarantors of peace in B&H[106]. Furthermore, although numerous ambassadors and other envoys continuously visited the state and interacted both with the protesters and the key political figures[107], no further effort was invested in order to help the governmental challengers reach the policy arena on federal and state level. Even visits by high level officials such as Catherine Ashton[108], Hoyt Bryan Yee[109] and William Hague[110] failed to impose sufficient pressure over high BH officials in order to help and alleviate the citizens' grievances. The specific section dealing with friends and foes in the BH context elaborates on the main reasons contributing to the absence of the mechanism of international support, which gravely limited the BH governmental challengers in fulfilling their goals.

4. Mediatizing the Movements: The Role of the Media

The role of the media in social movements is one of the most important factors which largely affect the creation of the image and the acquisition of potential friends and allies of particular mobilizations. Rohlinger and Vaccaro have particularly underlined the role of mass media in social movement studies because "they carry movement ideas to a broad audience and give activists leverage in institutional and political processes"[111]. The cartelization of mass media, their alignment with power structures and the perilous conditions in which independent investigative journalists work, made the mainstream media more of an opponent to the movements in the three cases under study. Similar conclusions can be derived regarding the print media in the three countries, although, a slightly more balanced distribution in regards to supporters and opponents to the movements was noticed.

The Macedonian CfM occurred in the midst of a very volatile media scene, when media freedoms were in vertiginous free-fall. The Macedonian public broadcasting service (PBS), the Macedonian Radio and Television (MRT), was transformed into a governmental mouthpiece[112], and at least the three largest privately owned media outlets were in close ties with the government, acting as fierce opponents to the movement actors. A more balanced score was noticed among the printed media. Among the two daily newspapers with the largest circulation, *Dnevnik* was dominantly pro-governmental, while *Sloboden Pechat* was clearly in support of the movement and the parties in opposition. Still, apart from the small amount of allies within the media sphere in Macedonia, the movement actors managed to build a strong and stable coalition with their allies, trying to neutralize, as much as possible, the

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105 Bieber, F. (2011). *Europe-Asia Studies*, *63*(10), 1783-1802. SECOND TIME

106 https://www.rferl.org/a/bosnia-inzko-warning-troops/25258191.html

107 Interview XX B&H – S.T.

108 http://europa.eu/rapid/press-release_IP-14-252_en.htm

109 http://www.predsjednistvobih.ba/saop/default.aspx?id=59251&langTag=en-US

110 http://www.sarajevotimes.com/william-hague-visits-bosnia-herzegovina/

111 Rohlinger, D., & Vaccaro, C. (2013). Media and Social Movements, p. 1 SECOND TIME

112 http://www.wan-ifra.org/sites/default/files/field_article_file/Soft%20Censorship%20Macedonia%20Dec%2015.pdf

constantly strong attacks coming from the government-affiliated media. The following section analyzing the Macedonian movement's friends and foes in context, further clarifies the relations between the CfM movement and the actors from the media scene in Macedonia.

During 2013, Bulgaria was rated as the worst in the EU regarding media rights and freedoms. These media surroundings were anything but a friendly environment for the emerging first wave of winter protests. The huge media concentration around couple of oligarchs very close to the ruling elite, created a hostile atmosphere against the governmental challengers. Similar to the Macedonian case, the PBS in Bulgaria strongly defended the government's positions, while the most powerful private media outlets continuously attacked and stigmatized the protesters. Furthermore, printed media were also mainly adversaries to the protesters, with several exceptions which remained fairly neutral. Left without any tangible ally in the media department, the movement participants were forced to exploit only social media and alternative media outlets. Conversely to the Macedonian case, the Bulgarian protesters failed to secure stable and somewhat credible partners in the media sphere. This left them with very limited visibility and without allies. Furthermore, this was also one of the main reasons for early demobilization and failure to secure favorable policy outcomes. In the section devoted to allies and opponents of the Bulgarian winter protests, this study delves deeper into the dynamics between the movement and the media.

The last case presenting the media scene in B&H shares many similarities to the two previously described cases. The very ethnically and politically divided media setting is also a fertile soil for fostering the triad of money, media and politics. The several PBSs were ethnically and politically loyal to the centers of power, providing a lot of airtime and space for high level politicians to throw full scale attacks on the governmental challengers. The same protest-hostile atmosphere was nurtured by the private media outlets as well. On the other hand, the setting regarding the printed media was very similar to the Macedonian case, with a clear division between the allies and opponents to the BH protests. *Dnevni Avaz*, a highly circulated daily owned by Fahrudin Radončić, the former federal Minister of Security, was at times considered as one of the main allies of the protesters[113], providing detailed information on the protest activities and being highly critical to the power holders. Still, many interviewees didn't perceive Radončić, his political party SBB and his newspaper a sincere friends, but more as a populist-opportunist who wanted to misuse the protest activities and swing public opinion in his direction[114]. On the other hand, many other read and circulated dailies and weeklies were firmly loyal to the authorities and participated in the distortion of the clear picture, creating false images of the governmental challengers. The last section preceding the conclusions of this work analyzes in further details the relations between the movement actors and the most important media outlets during the 2014 BH protests.

5. Friends and Foes in Context

5.1. The Allies and Opponents of the CfM Movement as a Key Factor for Favorable Policy Outcomes

Macedonia as a unitary state with a monocameral legislature and clear-cut horizontal separation of powers, providing the setting for a clear government/opposition divide[115]. During the CfM mobilization both the majority in parliament, and the directly elected president of the state were in the authoritarian hands of PM Nikola Gruevski, leader of the ruling VMRO-DPMNE. Furthermore, the largest party in

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113 *Dnevni Avaz* 07.02.2014-30.04.2014

114 Interview XX B&H – E.E.

115 http://www.wipo.int/edocs/lexdocs/laws/en/mk/mk014en.pdf

power also controlled the vast number of municipalities including the City of Skopje. As expected, the largest ruling party was the major opponent to the movement which pushed for democratization and detronization of the ruling elite. The parties in power which comprised the governing coalition were the biggest opponents of the movement. This primarily refers to VMRO-DPMNE as the largest and most dominant party in government. As it is very common in social movement studies, the state as target of the movement had much more resources on its disposal, which the power holders in Macedonia were using to cling to power as longer as possible. The main strategy of the VMRO-DPMNE was to discredit the protesters and present them solely as party members whose only wish was to come to power[116]. Apart from the continuous media campaign performed by its government mouthpieces[117], the largest ruling party organized a counter mobilization on the following day after the 17 May grand rally, and set up a counter shantytown encampment opposite from the Macedonian parliament, under the smokescreen of defending democracy from the occupiers, traitors and invaders of Macedonia[118]. Former PM Gruevski and his party led the media campaign in the direction of ignoring the numerous movement actors, but frontally attacking the leader of the opposition Zoran Zaev as the great "mastermind" of the entire mobilization, scaling down the role and the impact of the citizens[119].

What was very peculiar was the relatively neutral position of the ethnic Albanian parties. The DUI, which was a junior partner in the governing coalition, had a very reserved stance towards the CfM and its activists. Prior to the grand rally on 17 May, the DUI leader Ali Ahmeti issued a statement reaffirming the constitutionally guaranteed freedom of peaceful assembly, and urged citizens to protest and to channel their grievances in a peaceful manner[120]. This dubious position of the DUI may arise from the prior closeness between the DUI and the SDSM who governed together in a coalition from 2002 to 2006. This coalition was reaffirmed following the early parliamentary elections in 2016, when the coalition led by the SDSM coalesced with the DUI and another pre-electoral coalition of Albanian parties in order to install the new reformist Macedonian government. Another argument, which to a certain extent explains the reserved standpoints of the junior partner in government, was the public opinion which continuously highlighted that a vast majority of the ethnic Albanian citizens voiced strong disapproval of former PM Gruevski[121]. On the other hand, during the negotiations in Przhino among the largest four political parties, the DUI showed closeness to the VMRO-DPMNE. According to several interlocutors, the main motivations were the party-centered lucrative and political interests[122].

Lastly, circling with the opponents to the CfM movement coming from the side of the political parties, the biggest surprise came from the largest ethnic Albanian party from the opposition, the DPA, led by years long MP Menduh Thaci. Taking into consideration the previously stated

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116 http://prizma.mk/blog-vo-zhivo-makedonija-silna-miting-na-vmro-dpmne/ (in Macedonian)

117 http://russia-insider.com/en/politics/leaked-memo-shows-soros-ngos-payed-macedonian-students-1500-come-regime-change-ideas/ri7179

118 https://www.occrp.org/en/blog/4012-macedonia-a-tale-of-two-skopjes

119 http://prizma.mk/blog-vo-zhivo-makedonija-silna-miting-na-vmro-dpmne/ (in Macedonian)

120 http://www.fairpress.eu/blog/2015/05/15/ministers-resign-as-macedonia-enters-into-deep-political-crisis-followed-by-everyday-protest-and-increased-bias-in-media-reporting/

121 http://www.iri.org/sites/default/files/wysiwyg/2015-07-13_survey_of_macedonian_public_opinion_june_6-15_2015.pdf

122 Interviews XX MKD – B.M. and XX MKD – Dj.H.

arguments, primarily the sentiments of the ethnic Albanian citizens, one would expect that the DPA would be one of the strongest supporters of the CfM, and fiercely oppose the VMRO-DPMNE and DUI led government. To the contrary, the DPA remained reserved and silent during the protests, while tacitly supporting the two ruling parties during the Przhino negotiations. One of the indicators which, to a certain extent, unraveled the unconditioned loyalty of DPA and its leader was the released wiretapped conversation between Menduh Thaci and the former chief of the secret service and first cousin of former PM Gruevski, Sasho Mijalkov. In the phone conversation released by the SDSM, the wider public could hear Thaci saying to Mijalkov that he would be "loyal until his death"[123]! Once again, the narrow business and political interests prevailed over the democratization of Macedonia and the protection of human rights of its citizens.

On the other hand, the largest party in opposition, the SDSM, who led the democratic opposition, was the greatest ally of the CfM. In the period preceding the encampment in front of the government, and almost during the entire period of protests, the SDSM and the smaller political parties from the coalition in opposition, were also constitutive members of the CfM[124]. It was only when the political negotiations were drawn to closure, that the political parties formally stepped out of the movement because they were supposed to re-enter parliament and participate in the implementation of the provisions from the Przhino Agreement[125]. Many interlocutors, both coming from the side of the SMOs and the political parties, witnessed the close cooperation between the citizens and the SDSM in terms of human resources, funding, knowledge-sharing and values[126]. Furthermore, the crucial role that the political party had in enacting the laws deriving from the Przhino Agreement, and which were to a large extent complementary with the grievances of the citizens, once again depicted the close ties between the two entities. The CfM was the only movement among the three which are under study, which had a strategic partnership and cooperation with one of the biggest and most influential parties within the three respective political systems of Macedonia, Bulgaria and B&H. This proved to be one of the crucial factors which contributed towards the verification of the desired policy outputs and their further implementation resulting with valuable policy outcomes.

The frequent press releases coming from Brussels and Washington, as well as the numerous visits of high European and American officials aimed at putting pressure over the Macedonian authorities in order to release the authoritarian grip imposed over their political opponents and the civil society. After the huge citizens' gathering on 17 May and the setting up of the encampment in front of the government, followed by the huge rally and counter-encampment set up by VMRO-DPMNE supporters, the international community felt that political negotiations must commence as soon as possible, in order to prevent violent contentious events. One of the key informants further explained the caution of the international community regarding the political stability and security of Macedonia:

"*At the end of the 80s, President George Bush senior asked his National Security Council 'Which is the lowest common denominator for America's intervention in the Yugoslav crisis?' The analytical services pointed out to him that the lowest*

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123 https://www.youtube.com/watch?v=GLFG6Y8E9YE

124 http://plusinfo.mk/vest/25867/gragjanite-za-makedonija-povikaa-na-miren-protest-na-17-maj (in Macedonian)

125 http://telma.com.mk/vesti/sdsm-ja-napushti-koalicijata-gragjani-za-makedonija (in Macedonian)

126 Interviews XX MKD – B.K. and XX MKD – I.T.

common denominator is Macedonia. Why? They evaluated Macedonia as the only Yugoslav republic with explosive powers. All the other had implosive characteristics. What does this mean? You can have a war in B&H for 10 years. It can be bloody and tragic, but it is likely that it will not spill over the border with Croatia, not to speak of Vienna. They said that Macedonia had that explosive power and that this must not be allowed under any circumstances…"[127]

This is one of the reasons why the mechanism of international influence played such an important constitutive part of the puzzle for acquiring policy outcomes which would further secure re-introduction of rule of law and respect of human rights in Macedonia. The alliance between the movement participants and the Western international community also arises from the complementary interests. Both parties pushed for westernizing of Macedonian society and for limiting the authoritarian power of former PM Gruevski's government which throughout the years had removed the established checks and balances in Macedonia's political system.

From the very beginning of the political negotiations, numerous high officials from the US Department of State and the EU Commission flew in Skopje, facilitating the negotiations brokered by the official representatives of the USA and the EU – H.E. Ambassador Jess Baily and special representative Aivo Orav[128]. In the midst of the years-long political crisis and just several weeks before the protests erupted, US Deputy Assistant Secretary for European and Eurasian Affairs Hoyt Brian Yee, visited Macedonia and met the four political leaders as well as other high political officials in the country[129]. The inability of the political leaders to find a common solution to end the political stalemate, furthermore urged the citizens to take the streets and put pressure on the government, but also on the opposition, in order to start working for their wellbeing. During the peak of the crisis, when the protesters in front of the government started to become impatient and slightly nervous, while the political negotiations were going towards a dead end, the US Assistant Secretary for European and Eurasian Affairs Victoria Nuland, landed in Skopje in order to facilitate the talks and to help in bridging the gap between the main political actors. After meeting the key stakeholders she gave a statement underlining the cooperation with the EU aimed towards putting Macedonia back on the road to democratization:
"*Now is the time to bring this crisis to an end. We the United States are very pleased to be working with the European Union… to try to bring the parties together around a package of understanding that will allow Macedonia to get back on its chosen path*"[130].

Deputy Secretary Nuland obviously synchronized her visit to the country with that one of the EU high officials, EU Commissioner for Neighborhood Policy and Enlargement Negotiations, and the three MEPs from the European Parliament, Richard Howitt, Ivo Vajgl and Eduard Kukan. Just one day after Nuland's visit, Commissioner Hahn arrived in Skopje, while his three colleagues from the EP arrived the following day[131]. After the coordinated international pressure and facilitation, on 15 July 2015 the Przhino Agreement was

[127] Interview XX MKD – S.O.

[128] https://ec.europa.eu/commission/commissioners/2014-2019/hahn/announcements/agreement-skopje-overcome-political-crisis_en

[129] http://kurir.mk/en/?p=44396

[130] http://www.balkaninsight.com/en/article/nuland-focuses-on-rule-of-law-in-kosovo-montenegro

[131] https://ec.europa.eu/commission/commissioners/2014-2019/hahn/announcements/commissioner-hahn-visits-former-yugoslav-republic-macedonia-14-july_en

signed[132] and the laws deriving from it were promptly enacted in parliament during mid-September.

These events once again point to the important role both of the international community and the political parties in securing the policy outputs which were desired by the movement activists. Although the role of the citizens was very limited in acquiring the policy outputs, they showed strong commitment to their goals during the implementation of the outputs which resulted with the favorable policy outcomes. This strong international presence was one of the important factors which lacked in the Bulgarian and the BH cases.

Although Macedonia's Western partners were one of the key allies to the CfM movement, the entire international community did not have a uniform and coherent standpoint regarding the political crisis in Macedonia. The Russian Federation, which for years had been uninterested in the political developments in Macedonia, started issuing statements and press releases immediately after the protests commenced, commenting that the anti-governmental protests had been orchestrated and "brutally managed from outside"[133]. The Russian Minister of Foreign Affairs, Sergei Lavrov, commented that Russia is gravely alarmed by the meddling of the Western countries in the internal affairs of Macedonia, and blamed the EU and the USA for trying to bring down former PM Gruevski because he failed to support the sanctions against Russia[134]. The traditional influence from the East, as a counterbalance to the one coming from the West, was also stressed by one of the interlocutors:

"*There is one thing which is very important and it needs to be understood. Russia, both in Macedonia and throughput the Balkans, is a tectonic power. Because it is tectonic, you do not see it on the surface. It is not a matter you can spot above surface. It is a matter of mentality, a matter of history, and a matter of real resources.*"[135]

In the aftermath of the political crisis, a reporting endeavor by Macedonian, Serbian and British journalists provided evidence that the Russian Federation, accompanied by Serbian aides, tried to meddle in the internal politics of Macedonia. Based on intelligence and counterintelligence reports, the journalists conclude that Russia's approach to Macedonian politics had been "nakedly partisan and the Kremlin has been a vociferous public supporter of VMRO-DPMNE"[136]. Still, summarizing the efforts by the key international actors, with regards to the policy outcomes following the CfM movement, one can conclude that the efforts by the Western partners in Macedonia proved sufficient, and managed to provide the movement activists with enough impetus to secure their projected goals. Following the enacted documents in parliament deriving from the Przhino Agreement, the international community pressed for minimum credible early elections which would largely depict the political will of the citizens. Both the EU and the USA saw the legitimate elections as the most convenient tool to "level the field of play"[137] between the autocratic government and the opposition.

Lastly, this study reflects on the role of the media during the CfM mobilization. The movement operated in a very perilous media environment which resulted with

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132 http://europa.eu/rapid/press-release_STATEMENT-15-5372_en.htm

133 http://www.novinite.com/articles/168689/Russia+Claims+Macedonia+Crisis+Managed+from+Abroad

134 https://www.rferl.org/a/lavrov-says-macedonia-protests-orchestrated-from-outside/27026904.html

135 Interview XX MKD – S.O.

136 https://www.occrp.org/en/spooksandspin/leaked-documents-show-russian-serbian-attempts-to-meddle-in-macedonia/

137 Interview XX MKD – Department of State employee

many more opponents to the movement in comparison to the allies[138]. The Macedonian PBS, *MRT*, for years favored the ruling parties, and during the protests acted more as a government mouthpiece rather than an institution which should inform the wider public of the daily events. Even fiercer opponents to the CfM movement were the largest private TV stations which for years received governmental funds in order to promote campaigns introduced by Gruevski's government[139]. Only several smaller private televisions with national coverage objectively depicted the events during the mobilization. The movement actors were dominantly relying on social media and several news portals which were run by journalists which had previously been victims of the regime[140]. This media setting mainly derived from the clientelistic relationship which the ruling elite enforced in many social spheres[141]. The largest media outlets were more than aware that any type of objective reporting would deprive them from the large amounts of money which were pouring from the state directly on their accounts[142].

The situation was much more balanced in regards to the print media. Looking at the two newspapers with the highest circulation, *Dnevnik* and *Sloboden Pechat*, the pro-governmental *Dnevnik* was largely ignoring the protests, reporting sporadically and without any systematic overview of the events. Furthermore, this newspaper regularly printed columns by MPs from the ruling parties and analyses written by university professors and experts which are very close to the ruling elites. On the other hand, the pro-opposition *Sloboden Pechat* reported on daily events connected to the movement activities, but also published columns and analyses by opposition-affiliated university professors, artists and writers. This resulted with a relative balance in the sphere of the print media. Still, taking into consideration the difference in influence and outreach between the electronic and print media, one can easily conclude that the CfM movement had more media opponents in comparison to the number of allies in the media. Still, the strong and stable partnership built with the largest political parties in opposition and the one with the international community, managed to neutralize the strong pro-governmental media influence.

5.2 The Friends and Foes of the Bulgarian Winter Protests: From Political Parties to Politicized Media

Similar to the Macedonian constitutional and political setting, Bulgaria is also a unitary state with a monocameral legislature and a directly elected President of the republic. Although the evident horizontal separation of powers is a solid prerequisite for a clear government/opposition divide[143], during the first winter protests in 2013 Bulgaria was led by a minority government headed by PM Boyko Borisov from the GERB. Although Borisov's position was not as strong as the one of former PM Gruevski, the presidency of Rosen Plevneliev was also backed by the GERB, while the City of Sofia and a large number of municipalities were also GERB-controlled. The GERB was undoubtedly the greatest opponent of the Bulgarian protesters among the political parties[144], although, the vast majority of movement activists and key informants didn't really see any of the key players in the electoral arena as true and sincere allies[145].

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138 https://freedomhouse.org/report/freedom-press/2015/macedonia

139 http://www.rcmediafreedom.eu/Publications/Reports/State-Media-Financial-Relations-in-Macedonia-Media-Freedom-Curbed-with-Public-Money

140 www.plusinfo.mk www.libertas.mk www.a1on.mk etc.

141 Interview XX MKD – P.B.C.

142 Interview XX MKD – S.O.

143 http://www.parliament.bg/en/const

144 Interview XX BUL – B.S.

145 Interview XX BUL – V.G.

On the other hand, one of the covert opponents to the Bulgarian winter protests, coming from the side of the political parties, was the MRF. This Movement which is also known as the "Turkish Party", didn't openly criticize the movement actors, but used its media power concentrated in the hands of the outspoken shady oligarch Delyan Peevski, who is one of the most long-serving MPs of the MRF, although still in his late 30s[146]. In the following rows of this section, which discuss the relationship between the media and the protesters, the antagonism between Peevski's media and the protest organizers is picturesquely presented.

The most dubious role by the political parties which wanted to present themselves as allies was played by the biggest party in opposition, the BSP. One of the protest organizers vividly explained this insincere position:
"*To be honest, the largest party in opposition, the BSP, supported the protests. Expectedly, they wanted to materialize on the moment of citizen dissatisfaction. We immediately told them not to misuse the protest. They supported the mobilization, but only to the extent when it was politically opportune for them. They worried for their own partisan interests. We told them bluntly that they are a product of the Bulgarian Communist Party, and that there is no difference between them and the GERB, between Boyko Borisov and Sergei Stanishev…BSP is one of those 'players' that act as your friends, but they stab you in the back. To be honest, BSP created the energy mafia. Realistically, they control the green energy and all the projects which are closely connected to it.* "[147]

Both the BSP and another smaller right-wing nationalist party named Ataka, put in efforts to monopolize, to a certain extent, the protests. The two political parties followed the logic taking into consideration the fact that they are in opposition; they are automatically representatives of the citizens which took the streets. One of the protesters coming from the more left-wing – liberal strand of the movement, explained this reasoning of the political parties in opposition:
"*In my opinion, there was a big struggle between the political parties regarding who is going to dominate the protest. The entire opposition comprised of both bigger and smaller political parties, but especially BSP, as the largest party in opposition, and Ataka, which is a nationalist party, wanted to be the representatives of the protesters. They reasoned in the following way 'OK, you are protesting against the governing party, so we are the ones who sent you there!' Or, 'We represent you in the National Assembly'…*"[148]

Unlike the Macedonian case, where the parties in opposition were stable and loyal allies to the CfM movement, the Bulgarian winter protest activists were surrounded by two-faced, opportunist political players, which were not sincerely interested in alleviating the socio-economic grievances of the Bulgarian citizens, but were rather interested in securing a better result in the forthcoming snap parliamentary elections. There were numerous actors which wanted to profit politically on the emerging popularity of the movement:
"*There was also support from some smaller political parties that wanted to mobilize the electorate in the wake of the elections, and this is the only reason they supported us. The only motivation was to 'accumulate political dividend'. There is a certain Slavei Dinev, a mobster. At that time he was an MEP. He contacted us in order to go to Brussels and speak about the protest activities. He suggested this to us. There was also one Meglena Kuneva from the reformist block. Furthermore, there was one businessman which tried to infiltrate us. His name is Mareshki. He is into the pharmaceutical business. All of them wanted to support us in order to take advantage of the energy. Still, I cannot call them friends.*"[149]

[146] Interview XX BUL – B.S.
[147] Interview XX BUL – D.D.
[148] Interview XX BUL – K.D.
[149] Interview XX BUL – D.D.

One of the interlocutors, coming from the strand of the movement which is ideologically close to the green and anti-fracking movements, managed to point to one sincere ally coming from the camp of the political parties. Although a very small, but emerging party, the Bulgarian Greens were constantly on the side of the movement activists, supporting them in their efforts to lower the energy prices and enhance the lives of the Bulgarian citizens:
"*I can definitely say that the Green Movement, which I am a part of and which also, includes the Green Party, acted as an ally. The anti-fracking movement, which I also told you about, also was an ally to the movement. They were both part of this fight, but they also supported one previous protest which was against the increase of the oil prices.*"[150]

The differences between the positions and roles of the political parties in Bulgaria and Macedonia, especially those coming from the opposition, are more than evident. While the CfM movement could rely on stable partnership in the electoral arena, this could not be inferred in the Bulgarian case, at least not when one glances at the largest and most notable political parties in Bulgarian political life. This lack of stable allegiance between the winter protesters and the largest parties in opposition, especially the BSP, prevented the protesters to acquire more policy outputs and effectuate the attained ones into tangible policy outcomes.

Moving to the limited role of the international community during the first wave of protests in Bulgaria in 2013, this study once again points to the divergence with the Macedonian case. This study already stated the possible reasons for lack of involvement by the international community. Still, this was not what PM Borisov thought. Similar to the wording of former Macedonian PM Nikola Gruevski, and several BH power holders whose views are presented in the rows which follow, the Bulgarian PM and some of his closest collaborators pointed to international interference in his ruling, accusing Russia for meddling into Bulgarian internal politics and trying to remove him from power. Former interior minister Tsvetan Tsvetanov, commenting on the 2013 winter protests, among other things, added "*We must remember the anti-shale protests and the other organized actions against the government of Boyko Borisov. This was a well-planned scenario developed by local corporate, oligarch and economic interests connected with Russia*"[151]. One of the key informants, who is also a renowned university professor, commented these statements with disbelief, highlighting the lack of evidence for Russian interference:
"*Borisov said on several occasions that he was taken down from power by Russia, and by Russian interests, because of the construction of the Belene nuclear plant. His words were that it was a 'Russian intervention' organizing protests against him. But again, I must say that I don't believe that the protests were organized for the sake of his resignation, at least initially, and apart from his words, I don't have any information or evidence for Russian interference.*"[152]

The interlocutor locates the main reasons for the mobilization in the scarce finances which Bulgarian citizens needed to manage the difficult winter times. Furthermore, if Bulgaria was subjected to an international scenario involving Russia, one would expect a much deeper political crisis, and unraveling of events similar to Macedonia, something which clearly lacked in the Bulgarian case.

Another indicator for passive behavior by the international community was the absence of any reaction coming from the Delegation of the European Commission in Bulgaria. Their official press center

[150] Interview XX BUL – B.S.

[151] https://www.ft.com/content/e011d3f6-6507-11e4-ab2d-00144feabdc0

[152] Interview XX BUL – B.S.

remained silent during the days of contention[153]. The same can be concluded regarding the US Embassy in Sofia[154]. This once again reaffirms the difference in the standpoint of the international community, especially the USA and the EU as key international factors in the region, in regards to the mobilizations in Bulgaria and Macedonia.
As it was noted previously, the specific role that the media played during the protests in the three countries under study, dominantly as opponents to the mobilizations, was one of the main obstacles of the Bulgarian protesters in their quest for acquiring tangible policy outcomes which would have alleviated the socio-economic grievances of the citizens, and further democratize Bulgarian society. Being the worst in the EU when media rights and freedoms are at stake, one could not have expected better from media outlets being undermined by political and business interests.

One of the movement activists, that was also a leader of one of the many strands of the Bulgarian winter protests, discussed this media bias, but also pointed to the incentive which this unbalanced reporting encouraged among the movement activists. Faced with the distorted mainstream media presentations, the governmental challengers were forced to launch a strong social media campaign in order to present the reality which was unraveling on the streets:
"*The reporting of the mainstream media was as usual during these types of activities. It is always the same. Whoever governs, the largest media outlets try to be 'fair' with them, so they didn't really show any support. On the contrary, they wanted to hide what was really happening. That is why social media were crucially important in order to tackle the efforts of hiding and covering up what was really happening on the streets. From that moment on, the largest media started to present the events, because there was no space to continue with the lack of coverage.*"[155]

Another key informant, that is also a university professor that sporadically deals with social movement studies, stressed the sensationalist role of the majority of media outlets. In the spirit of scandals, sensations and the quest for audience, the mainstream media transformed into one of the fiercest opponents of the winter protests in Bulgaria:
"*The media, back then, would not support the movement. In fact, they would search for…you know…what usually media like…violence, bloodshed, those kinds of things…and they had it. They had it on the night of 19 February when there was some confrontation with the police between Orlov Most and the university building.*"[156]

The protest organizers, as the most publically visible faces, were continuously under attack by the dominantly government-affiliated media outlets, with special emphasis on the televisions. The previous arguments stated by the university professor were reconfirmed by one protest organizer which shared his thoughts regarding the negative campaign that was launched against them, when the Bulgarian government felt the threat coming from the ordinary citizens:
"*When you start going against the system…you know…I must say that the media played a very important role in the entire process. Media in Bulgaria are extremely dependent on business and politics. Commissioned texts, commissioned interviews, and commissioned provocations. Various TV stories, scandals…They totally distorted our claims. They never reported precisely what we demanded, but were continuously searching for a scandal, for a feud. They were, simply, on the side of the problem.*"[157]

[153] http://ec.europa.eu/bulgaria/news_bg
[154] https://bg.usembassy.gov/news-events/

[155] Interview XX BUL – B.S.
[156] Interview XX BUL – V.G.
[157] Interview XX BUL – D.D.

Apart from the frontal attacks on the organizers, the TV stations allied with the power structures, also wanted to channel the public discourse in the direction of creating an image that the movement activists are only poor thugs, violent and lazy people coming from the outskirts of Bulgarian society which are not worth the time and energy from the bystanders, and they should not join them in their struggle for better socio-economic conditions:
"*Another thing which happened with the media, and I completely disagree with it, was the presentation of these people as poor and stupid. People that do not know any other way but violence in order to achieve their goals. And it was a completely classist argument, like "OK, there are some people in the streets that cannot pay 150 LEV for electricity. It is their problem, they should work more!" This is, of course, something which was intended to make them look foolish. Somehow, they (the media, I.S.) managed to do it. So, the media in general, was not supporting the movement.*"[158]

In addition to the electronic media, the newspapers were also mainly opponents to the movement activists. The long-lasting free-fall of freedom of the press in the country combined with decline of freedom of speech, and amplified by the numerous economic factors which push investigative and professional journalists to the edge of precariat, resulted with blindly obedient newspapers, aligned with the power holders. On the forefront of these activities were the newspapers belonging to the media group of the outspoken Delyan Peevski:
"*The newspapers are of very low quality. But this is not something new. It has been like this for a long time, at least for the last five years. We have basically run out of quality newspapers in this business. There were still a few quality newspapers which were not fully economically based, which are on the verge of bankruptcy, but still manage to function somehow. The others are mainly mafia newspapers owned by this guy Delyan Peevski. They are Monitor, Telegraf and Politika. There was one newspaper, Dnevnik, which at the times of protests was, let's say, objective. It did not take sides, but it was objective. It remained objective and independent, not allowing to get caught in the Peevski scheme. There were also local newspapers which spread a lot of defamations for the protest groups. They were connected to the oligarchs coming from the energy business. For example, Cherno More in Varna is that type of a newspaper.*"[159]

Unlike the Macedonian case, where the governmental challengers managed to build, to a certain extent, a reliable partnership with some of the smaller media outlets critical to the government, the Bulgarian protesters failed to secure stable, and somewhat, credible partnerships in the media sphere. This resulted with limited visibility and no substantial allies backing them in the public sphere, which to a certain extent triggered early mobilization and blocked the path to securing tangible policy outcomes.

5.3 The Allies and Opponents in the BH Protests: "Opposing for Failure"
Contrary to the constitutional and political systems of Macedonia and Bulgaria which define them as unitary countries, the state of B&H is characterized by very complex institutional setting deriving from the constitution enshrined in the Dayton Agreement, which throughout the years created numerous ethnic, confessional and political cleavages. This was further mirrored in very complex government-opposition relationships which varied both on the horizontal and vertical levels of separation of powers. Thus, during the contentious 2014, the collective presidency was comprised of Bakir Izetbegović from the SDA, as the Bosniak member; Željko Komšić from the SDP, as the Croatian member; and Nebojša Radmanović from the SNSD-SP, as the

[158] Interview XX BUL – K.D.

[159] Interview XX BUL – B.S.

Serbian member[160]. At the moment of initiation of protests in Tuzla, the rotating presidency was in the hands of Željko Komšić. Furthermore, the two houses of the parliament of B&H were deadlocked due to the very close electoral results and number of mandates following the 2014 general elections[161]. Almost one and a half years after the general elections, the participating parties in parliament agreed to elect Vjekoslav Bevanda from the HDZ-B&H as chairman of the Council of Ministers of B&H[162]. Regarding the Parliament of FB&H, the power was concentrated in the coalition led by the SDP and the SDA, with Nermin Nikšić from the first party being elected as PM[163]. On the other hand, in the RS entity, all powers were vested in President Milorad Dodik[164], and his political party SNSD[165]. Lastly, the cantons within the FB&H entity were mostly shared between the largest two political parties in the entity, the SDP and the SDA[166]. Just as an example, the Tuzla canton was led by SDP cadre, while the Sarajevo canton had a PM coming from the SDA. Although the numerous political and ethnic cleavages created a public image of big rivalry between the major political parties, during the entire post-conflict period in the entire state of B&H, including the period of the 2014 mobilization, the ethnocracy and the partocracy aligned against the ordinary citizens which were continuously wrapped in ethnic and partisan hatred[167]. This resulted with a fragmented constitutional and political system, united along party lines against the governmental challengers which pressed for improvement of their socio-economic condition, and democratization of BH society.

The previously described setting, deriving from the specificities of the institutional design, created a strong division between the protesters on one side, and almost all the political parties on the other. If at one point, the governmental challengers in Bulgaria had some of the influential political parties on their side, even though driven by party-centered interests, and the Macedonian movement actors had the largest political parties in opposition on their side as permanent allies, the BH protesters were continuously opposing the most influential players in the electoral arena.

Beginning with the first days of protest, the political parties took a very warlike attitude towards the governmental challengers. The leader of the SDP, who was also a Minister of Foreign Affairs of B&H, accused the protesters for trying to "bring down the institutions", adding that "they (SDP, I.S.) will not allow that to happen"[168]. Strong reactions came also from the federal PM coming from the same party, Nermin Nikšić. While discussing the 2014 mobilization, he commented on the happenings occurring during the first days of protests:
"*I spoke to a woman from the British embassy, which was very much supportive and in favor of the protests. I explained to her that the presidency building is on fire, that politicians are being lynched. The cantonal governments began to resign, literally 'to fall like pears', but not the federal government. Many people say that the federal government remained intact*

160 http://www.izbori.ba/Finalni2010/Finalni/PredsjednistvoBiH/Default.aspx
161 http://www.izbori.ba/Finalni2010/Finalni/ParlamentBIH/ZbirniRezultate.aspx
162 http://www.balkaninsight.com/en/article/vjekoslav-bevanda-to-be-the-new-bosnian-pm
163 http://www.izbori.ba/Finalni2010/Finalni/ParlamentFBIH/ZbirniRezultate.aspx
164 http://www.izbori.ba/Finalni2010/Finalni/PredsjednikRS/Nivo.aspx
165 http://www.izbori.ba/Finalni2010/Finalni/NarodnaSkupstinaRS/ZbirniRezultate.aspx
166 http://www.izbori.ba/Finalni2010/Finalni/SkupstineKantone/Default.aspx

167 Interview XX B&H – A.M.
168 http://www.blic.rs/vesti/svet/lagumdzija-rusioci-drzave-kidnapovali-proteste/xbtmmnd

because I am who I am, a jerk, and I prevented that from happening. In one communication with the Reis Ul Ulema, when he called me, he asked me 'Please don't make concessions'. I told him 'It doesn't even come to my mind to make concessions, because I think that this will lead us to become stateless. We are going to lose the state!' I still think that you cannot act like that, as the protesters acted…"[169]

Reflecting on the days of violence in Sarajevo, former PM Nikšić also reflected on the meeting he had with the citizens, when he welcomed them in his office. He underlined the lack of knowledge shown by the governmental challengers, and the high level of arrogance and stubbornness with which they confronted him:
"*I welcomed the protestors in my premises and asked them 'Which are your demands?' They said that they wanted my resignation. I said 'OK! This government will leave immediately after someone who is elected by the parliament steps here.' Then, they said that they wanted some privileges of the officials to be abolished. I said 'Perfect, but those are already abolished!' We could not formally abolish the 'separated life' compensation, because we did not have the majority to do that. With the previous government, this 'separated life' was around 500-600 BAM. Initially, we cut it buy half, and later we brought a governmental decision to make it symbolic 1 BAM. Why? If we abolish this privilege illegally, the ministers were going to sue us, and in the end, we were going to pay both the compensation and the court expenses. In this way, we were legally protected. Then, the citizens' delegation said 'Really?' I answered 'Yes, really!' 'OK then. We want a decrease of the salaries of the public employees!' 'Really? I wanted to decrease the salaries for 10% as well', I replied. I was not allowed. I only managed to agree a decrease of 4.5% with the trade unions. I told them 'You have a problem here. You have to negotiate that with the trade unions, not with me.' 'OK then, since you decreased the salaries, we want your resignation!' I asked them how they planned this to happen. I can leave, but someone elected in parliament should replace me. I am fine with that. Then, I asked them, 'You don't expect me to leave the keys here on the table and leave?' 'Yes, this is exactly what we expect!' Then I told them that they are the once who have a problem with basic logic. I told them 'Now, I think that it is time for you to leave, and not me. You were my guests, I accommodated you, and now it is time to leave.' They asked me whether I plan to address the people in front of the government. I told them that I don't plan on doing that. I told them that they were not the only citizens of this country, and that I am going to address all people tonight, I am going to address the state and not just them…"*[170]

The member of the B&H presidency coming from the second largest political party in the country, the SDA, Bakir Izetbegović, who is also the most influential member of the party and the son of the former leader and first president of the country Alija Izetbegović, also condemned the violence during the first days of protest, but also tried to strengthen his political positions and those of the SDA, by generally blaming SDP for the situation in the country[171]. Still, glancing at the behavior of the SDA, it was also one of the biggest opponents to the movement, especially when the cantonal governments ruled by their cadre were at stake.

One of the most ambiguous roles during the protest events was played by the SBB, the party whose leader Fahrudin Radončić was the minister of security. He suddenly fiercely attacked the largest two political parties, and openly aligned with the citizens, mostly using the power of his daily newspaper *Dnevni Avaz*, which covered all the protests throughout the

[169] Interview XX B&H – N.N.

[170] Ibid

[171] http://www.dw.com/bs/bih-%C5%A1ta-dalje/a-17418674

country daily, but also favored the SBB and its leader in the numerous columns and political analyses, which were produced[172]. Still, the governmental challengers did not perceive Radončić as an ally. On the contrary, they commented on his political opportune behavior, and his attempts to hijack the movement:
"*The entire political elite were against us, of course. From the conservatives to the social democrats. I cannot remember that someone publically expressed solidarity with the protesters… Radončić acted as a proper populist. Because it was election year, Fahro was trying to collect votes. He wanted to leave an impression that Dnevni Avaz reports objectively, although, all of us know that it was not the case.*"[173]

One of the biggest shortcomings of the BH governmental challengers was the inability to create a strong alliance with some of the largest and strongest political actors in the political system. Apart from opposing the largest political parties, which to a certain extent is justifiable due to their power-sharing on multiple levels, the protesters also rejected some smaller and emerging movement-parties, which could have been a reliable partner for building a stronger bottom-up coalition which could have threatened the power structures. Several activists commented on these positions expressed by the movement activists:
"*It is not completely true that all the political actors were against the movement. There were really a lot of people which were, and still are, politically active. For example, the members of Nasha Stranka (Our Party, I.S.) wanted to join the protests and even offered their help, but they were explicitly told that we don't want them to be part of our story. They are very active in Sarajevo and they work a lot. They are also politically legitimate. Although they wanted to participate, they were not allowed. It was a decision brought in the very beginning. That we do not like to cooperate with political parties…not even with NGOs which were not up to their task. I am not sure whether this was good or not…* "[174]

If one compares the role and the attitude of the international community in the BH case, it lies somewhere in the middle between the Macedonian and the Bulgarian case. If in the first case, the international community played a strong role pressuring the main political actors to enact decisions in the favor of the citizens, while in the latter, the main international actors were rather passive and uninterested; the BH case was characterized by active international involvement which failed to produce any tangible results. This epilogue can be the outcome of several factors, but one of them is surely the very ambivalent attitude of the actors in the political system. Both the biggest political parties, as well as the movement activists, perceived the international community as an opponent. The parties perceived the protests as internationally-driven, while the governmental challengers didn't really see any sincere efforts on behalf of the international envoys.

One of the very resourceful key informants saw the international community as a partner of the BH movement. Still, their behavior in the past, which resulted with B&H being an institutionally deadlocked state, governed by ethnocracy and partocracy, was the turning point which led to mistrust on behalf of the citizens[175]. Furthermore, the lack of decisiveness and coordination by the international community provoked actions by certain embassies which did not produce much effect "on the ground". One of the key informants comments on the unjustifiable steps by fractions of the international community:
"*The 'foreigners' reacted in a strange manner. For example, certain embassies tried to meet them (the protesters, I.S.) half*

[172] Dnevni Avaz newspaper, 07.02.2014 – 30.04.2014
[173] Interview XX B&H – E.E.
[174] Interview XX B&H – D&B
[175] Interview XX B&H – A.M.

way. They immediately asked them of their needs and how they could help. For example, they suggested taking them to Vienna and starting some discussions there. Some of the international envoys which I was in contact with…I warned them. I asked them why they were doing that. I told them not to do that…actually, I told them not to do anything. I suggested that by the time they (the protesters, I.S.) decided what they wanted, and how they plan to achieve it, that they don't need any help. I think that it was the Austrian embassy. It put all of them in a bus, took them to Vienna, and all of them together criticized the existing NGOs, as well as the other actors. It turned into a talk show. The 'foreigners' immediately reacted saying that they helped. It was a series of idiotic moves from all parties…"[176]

On the other hand, the main personification of the international community, the high representative Valentin Inzko, gave a rather dubious statement during the first days of protest. In the aftermath of the Tuzla and Sarajevo events, Inzko invoked the possibility for EU troops to enter B&H if the situation doesn't calm down[177]. Inzko's statement was furiously accepted by the governmental challengers. Many of them harshly criticized the behavior of the OHR:
"*…The OHR behaved very weird. He even threatened to send in some troops…something…he mentioned NATO…he was really an asshole. I even forgot his statement. That he will send EUFOR, he threatened in a way. He was completely against us. It was a shock for everybody. Not that someone likes him, or we were expecting something from him, but it was such a stupid statement, a catastrophe…"*[178]

On the other hand, a fraction of the movement activists appreciated the efforts by some representatives of the international community, mainly few embassies which operated in B&H. They highlighted the interest and activities by the embassy personnel, but also the visits which were paid by several foreign MPs. Some portion of the governmental challengers also perceived the EU and the USA as allies, although not very sincere ones:
"*It was very intriguing that many embassies and representatives were interested in the situation: the American embassy, the Austrian embassy…their ambassador participated in some of the plenums. This was really interesting for me…The American embassy stood beside us, the EU as well. Maybe, not very straightforward, but they were pro. MPs from the Italian parliament visited one of the plenums. They were members of a leftist parliamentary group…You know what is very interesting? With them, you are never clear and straight. For example, the OHR was definitely an opponent to the movement.*"[179]
This chapter already mentioned the perception which the political parties had of the international community. The ruling elite at the times of contention blamed the international community not only for being an ally of the movement, but also for being one of the initiators and organizers of protests. Expectedly, the interlocutors were not able to provide any strong evidence apart from assumptions. Former PM Nikšić openly told the British embassy representative that he thought her institution was behind the protests, but commented that the state of B&H had no resources to prove these findings and to provide evidence[180]. Furthermore, one of the MPs in the state parliament also presented his theory regarding the initiation of the protests:
"*According to me, it was a combination of the justified dissatisfaction of the citizens, which at times was motivated by portions of the media which wanted to create an atmosphere of havoc, but the entire story was inspired and created by a part of the*

[176] Interview XX B&H – A.H.
[177] https://www.rferl.org/a/bosnia-inzko-warning-troops/25258191.html
[178] Interview XX B&H – S.T.
[179] Ibid
[180] Interview XX B&H – N.N.

international community in B&H, as well as some NGOs which are related to and financed by the embassies in the country. Still, I would call these protests a great manipulation."[181]

The presented evidence clearly point to the ambiguous role of the international community in B&H during the contentious events of 2014. In comparison to the Macedonian and Bulgarian case where clear-cut involvement and lack of interest, respectfully, can be noted, as well as clear supporters and opponents to the international community can be detected, the BH case documents an unusual absence of the mechanism of international supports, especially intriguing for a country which has been for years designed, administered, and financed by its international partners. One might justifiably argue that a stronger and more coordinated action by the international partners could facilitate the fulfillment of the governmental challengers' goals.

Lastly, this text turns towards the attitude of the media in regards to the movement actors and the other stakeholders in the political system. One of the major peculiarities, very similar to the perception of the international community, is the perception of the media as a general opponent, both to the movement actors and the political parties. Furthermore, these political and ethnic cleavages were mostly determined by the infamous triad of money, media and politics. A very protest-hostile atmosphere was cherished by the private media outlets. This setting created the perception that the media were one of the largest opponents to the movement. At least, this was how the movement activists perceived the atmosphere:

"*You know, the mainstream media are generally owned by the political parties, especially those in power. Thus, you cannot expect anything but allegiance to the power structures. But, they were extremely influential. They fabricated lies, disinformation, they manipulated with the people. They played the worst games…for example, that the state archive was destroyed. A lot of people fell for these manipulations. Especially those who are not 'citizenly free'.*"[182]

This text already focused on the perception of the political parties in power which had the impression that a lot of media outlets wanted to create a perception of chaos[183]. Furthermore, former PM Nikšić also stressed that certain media outlets tried to materialize on the political situation, blowing out of proportion some of the happenings, in order for their owners to achieve better electoral results in the 2014 general elections[184]. These comments primarily referred to one of the most circulated dailies, *Dnevni Avaz*, whose owner Fahrudin Radončić, leader of the SBB and former state minister of security, publically aligned with the movement activists and left the coalition government led by the SDP and the SDA. Still, the vast majority of the movement activists perceived Radončić and the SBB as political profiteers, rather than movement allies[185]. This left the governmental challengers in B&H with no proper allies in the media sphere, very similar to the Bulgarian case. Conversely to the Macedonian case where the movement activists managed to secure the allegiance of some of the relevant media and facilitated their way to securing favorable policy outcomes, the BH governmental challengers were prevented to reach the federal and state policy arenas, primarily due to lack of cooperation with key stakeholders in the political system, as well as the undefined position of the international community.

6. Conclusions

Revisiting the main hypotheses which refer to the allies and the opponents of social movements in Western countries,

[181] Interview XX B&H – S.M.

[182] Interview XX B&H – S.T.
[183] Interview XX B&H – S.M.
[184] Interview XX B&H – N.N.
[185] Interview XX B&H – E.E.

this study encountered very enlightening conclusions. Although della Porta stressed the importance of the governmental strength, building on the Tocqueville-ian argument that a strong government and a weak civil society would lead towards violent protests, the three examples coming from the region showed alternative results[186]. In spite of the fact that the three countries are characterized with strong governments and weak civil societies, the level of violence considerably varied in the three cases under study.

Furthermore, turning towards the arguments regarding the importance of the distribution of institutional power for the development of social movements, many authors claim that "the larger the number of actors who share political power, the greater the chance for social movements to influence institutions"[187]. Consequently, one should hypothesize that social movements in the region of study can easier influence political institutions in countries where political power is shared among larger number of state actors. This research overthrows this hypothesis. Although the B&H state is the most fragmented regarding decision-making and power concentration, the governmental challengers secured the least of gains. On the other hand, the movement actors in the two other cases which occurred in two unitary states where power was rather centralized and accumulated, Macedonia and Bulgaria, the protesters managed to secure tangible policy outputs.
This research already highlighted the important role of the political parties regarding the level of policy gains acquired by the movements under study. The CfM movement in Macedonia could rely on stable partnership with the SDSM, while the protesters in Bulgaria had only limited support in short periods of time by the opposition BSP. This limited support prevented the protesters to acquire more policy outputs and effectuate the attained ones into tangible policy outcomes. Lastly, the BH protesters were continuously opposing the most influential players in the electoral arena, which proved to be one of their biggest shortcomings. Apart from opposing the largest political parties, which to a certain extent is justifiable due to their power-sharing on multiple levels, the protesters also rejected some smaller and emerging movement-parties, which could have been a reliable partner for building a stronger bottom-up coalition which could have threatened the power structures.

The second important factor in regards to the allies and opponents to the three movements was the role of the international community. If we summarize the efforts by the key international actors during the contentious events in Macedonia, we can conclude that they proved to be sufficient and managed to provide the movement activists valuable impetus to secure their projected goals. On the other hand, in the Bulgarian case, the main international actors were rather passive and uninterested. Lastly, the BH case was characterized by active international involvement which failed to produce tangible results. These outcomes derive mainly from the ambivalent attitude of the largest political parties and the movement activists. The parties perceived the protests as internationally-driven, while the governmental challengers didn't really see any sincere efforts on behalf of the international envoys. Furthermore, the BH case witnessed an unusual absence of the mechanism of coordinated and strong international support, especially taking into consideration that the country had been for years designed, administered and financed by its international partners. One might justifiably argue that a stronger and more coordinated action by the international partners could facilitate the fulfillment of the governmental challengers' goals.

Lastly, this chapter looked at the relations between the crucial media actors and the movement activists in the three countries.

[186] Della Porta, D. (2013). (SECOND TIME), p. 956
[187] Ibid

Unlike the Macedonian case, where the governmental challengers managed to build, to a certain extent, a reliable partnership with some of the smaller media outlets critical to the government, the Bulgarian protesters failed to secure stable, and somewhat, credible partnerships in the media sphere. This resulted with limited visibility and no substantial allies backing them in the public sphere, which to a certain extent triggered early mobilization and blocked the path to securing tangible policy outcomes. On the other hand, the governmental challengers in B&H were left with no proper allies in the media sphere. Conversely to the Macedonian case where the movement activists managed to secure the allegiance of some of the relevant media and facilitated their way to securing favorable policy outcomes, the BH governmental challengers were prevented to reach the federal and state policy arenas.

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The Right to Truth and the Failure of Seeking it

By Kristin Birkenzeller*

ABSTRACT

The paper is dealing with seeking truth after the Bosnian War. For this reason, the relevance of truth, manifested in intergovernmental agreements and legal acts, is presented. To find truth, there exist different mechanisms, a crucial one is criminal prosecution of grave breaches of international law through courts. Individual liability is sought to establish by bringing the main perpetrators before judges. Judicial procedures may initiate a corporative process of reconditioning, reconciliation and pacification, nevertheless for such a long-term effort to be successful, a bottom-up process, taking place simultaneously, is needed. Establishing a truth commission is what can fulfil this purpose.

In Bosnia and Herzegovina, there was never a comprehensive truth and reconciliation commission established, two reasons for this failure are analysed within this article. To enable the state and its society to reconciliate, the incentives of the leaders of the different factions would need to change while determined international support is obligatory.

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For societies transitioning from conflict, it is necessary to find truth about the things that happened. Truth is essential for recovering, rebuilding social trust and returning to peace, it is the crucial means for finding out the causes of inequalities and discrimination, which underlay the conflict (Ni Aolain/ Haynes/ Cahn, 2011, p.176ff). Finding truth includes investigations on different levels through different methods. While a truth process sets a symbolic mark of accountability, it is enabling a state to receive back its legitimacy (Ni Aolain/ Haynes/ Cahn, 2011, p.178).

There exist different ways to disclose and process the past: One method is criminal prosecution, another one the establishment of a truth commission. The aim of a truth commission is to complete the picture of what has happened in a systematic way, aiming to prevent recurrence in the future. Instead of individual acts, the broader context should be analysed. Priscilla Hayner listed five goals of truth commissions (vgl. Hayner, Priscilla, 2011, p.20):

- Discovery and acknowledging of past abuses
- Responding to victims' needs
- Contributing to justice and accountability
- Showing institutional responsibility and recommending reform
- Promoting reconciliation.

The aim of this work is to analyse the process of seeking the truth after war in the territory of Bosnia and Herzegovina. The paper in organized in two parts. The first part concentrates on the right to truth, its codification in international law, its application and the relevance for the case at hand. The second part focusses on transitional justice in Bosnia and Herzegovina, looking at efforts done by the International Criminal Tribunal for the former Yugoslavia (ICTY). Why was there never a truth and reconciliation commission established? In how far exist flaws in the process of seeking the truth and what may be the long-term backlashes?

A. The right to truth, its codification and application

A report of the UN Commission on Human Rights (UNCHR), a subdivision of the Economic and Social Council (ECOSOC), delivered in 2005 an updated set of principles for the protection and promotion of human rights through action to combat impunity (E/CN.4/2005/102/Add.1). Impunity was defined as the (legal and factual) impossibility of bringing perpetrators of violations to account because of a missing inquiry, which may have otherwise effected accusations and reparations.

The principle 1 states the general obligation of states, to take effective action to combat impunity (…); to foster the inalienable right to know the truth about past violations. Principle 2 outlines the inalienable right of every person and contributes to seek for truth "about past events concerning the perpetration of heinous crimes and about the circumstances and reasons that led […] to […] those crimes". Just a comprehensive exercise of this right serves to provide a real safeguard against recurrence, as it is complemented.

Already Geneva Convention IV from 12 August 1949, stated in Article 26 that each party to an international armed conflict "shall facilitate enquiries made by members of families dispersed owing by war". The Additional Protocol to the Conventions from 1977 relates to the regulations concerning the missing and dead, and wants the parties to the conflict to investigate "by the right of families to know the fate of their relatives". There are no direct regulations governing the situation of non-international conflicts in the Conventions or the Additional Protocols, but other documents were added during the decades. Relevant are for example the so called 'Guiding Principles on Internal Displacement' from 1998 which specify in 16(1) and 17(4) that "all internal displaced persons have the

right to know the fate and whereabouts of missing persons".
The 'right to truth', recognized by several national and international human rights bodies, has an individual and a collective dimension. As an individual right it serves the quest for truth and justice from victims of severe human rights violations like forced disappearances, torture or extrajudicial executions, as for grave breaches of humanitarian law, and their relatives. Besides, there is the right and duty of the whole society to get sensitized for the happenings in there town, region and country and the experiences of victims. This collective dimension is crucial for a society to recover and to owe an awareness about the own history, which is able to prohibit recurrence. The right to the truth was in some cases included in peace agreements. In the case of Bosnia and Herzegovina, the General Framework Agreement for Peace also contained a regulation which lead the parliament to the adoption of a law giving the families of missing persons the right to know about the fates of their missing relatives.

To apply the right to the truth against a state, courts referred to two categories of protection, deriving from international treaties. On the one hand, there is the obligation of a state to disclose the fate of a person in its custody. If a state neglects this obligation, it constitutes an inhumane and degrading treatment to the family members of the person missing deriving from Art. 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). As a state is responsible to protect its citizen against inhuman and degrading treatment, the failure to disclose manifests a continuous violation of protection of its own citizen against this treatment. The Human Rights Chamber of Bosnia and Herzegovina (HRCBiH) applied Art.3 ECHR following jurisdiction of the European Court of Human Rights (ECtHR). The cases were brought to the HRCBiH by families of missing persons from the city of Srebrenica, to seek information about their relatives, who were lastly known to be in the custody of the army. The court found that the respondent government of Republika Srbska had neglected its duty to obtain information on the missing men to the families. This treatment manifested an "inhumane and degrading treatment" of the families what states a violation of Art.3 ECHR (Groome, 2011, p.179).

The HRCBiH established clarifications to determine who can be a subject to the violation of Art.3 ECHR. For this aim, the court introduced two sets of factors, one relating to the claimant, the other to the respondent, to examine the legal situation. What is mattering in the interest of the claimant are factors like his or her relationship to the missing person, own efforts made by the claimant to investigate the fate of the missing ones or a witnessed criminal background. The categories mattering for or against the respondent are inter alia engagement in investigative activities, the amount of information disclosed and involvement in underlying crimes (Groome, 2011, p.180). It is now settled law that a state's continuing failure to investigate and disclose facts surrounding grave violations of human rights constitutes inhumane treatment for the family of the victim and a continuing violation of their right to protection from such treatment.

The second foundation for a legally enforceable right to receive information about missing relatives, is laid down in the obligation of a state to judicial guarantees for victim's relatives. The failure of a state to adequately investigate the disappearance and fate of victims constitutes a violation of the right to a fair trial and judicial protection, guaranteed in Article 13 of the ECHR. The HRCBiH determined the positive obligation of a state to actively investigate a matter, falling under the scope of Art.8 ECHR which constitutes the "right and respect for private and family life". This argumentation goes also back to the jurisdiction of the ECtHR which held, that it constitutes the breach of an active obligation, if a state has information about

a missing person and refuses the disclosure to family members upon request (Groome, 2011, p.180).
Finding the truth by delivering insights in things that happened and reveal those responsible for the crimes, is believed to enlarge the understanding of communities and individuals of the causes of conflict. Further, truth and awareness about past experiences are tools to change routines, institutions, behaviours and prevent violations from happening again. Truth is crucial for the healing process and enables reconciliation by restoring the dignity of victims and reach safeguards against impunity and public denial (Gonzales/ Varney (2013), p.4). The next chapter will shed light on the details on the work of the ICTY, the failure to establish a truth commission and resulting lack of truth and justice.

B. Finding truth and justice

I. Prosecution
To prosecute persons responsible for serious breaches of international humanitarian law committed in the territory of the former Yugoslavia since 1991, the ICTY was put in power via resolution 827 on 25 May 1993, adopted by the Security Council (Statute of the International Criminal Tribunal for the former Yugoslavia, Art. 1). Earlier, there already had been UN resolutions which, unfortunately, had no effect on the war parties, while the international audience of this conflict, fed with media reports and pictures of horrible violence, concentration camps and murder, neglected to "run the risk of a military intervention" (Basic, p. 360).

Main aims of the ICTY were overcoming the shift from impunity to accountability and strengthening the rule of law. While the ICTY wanted to set an example to the world to achieve individual liability for crimes, the realisation of those aims was marked by dragging procedures and for a long time, the missing ability to bring high ranking officials to court. Beside the persons in command positions, it was even harder to bring perpetrators to indictments because of missing proof and evidence of their individual action (Akman, 2008, p.130f).

Additionally, there was the goal of the ICTY to bring about truth through fact-finding. For this purpose, different crimes, which had taken place on different sites, were investigated, recognized and acknowledged. Nevertheless, as it is the nature of a tribunal, fact finding was "focussed on the behaviour of individuals" instead of the collective reappraisal (Akman, 2008, p.132). This meant in concrete, the investigations concentrated on the guilt of single officials rather than on uncovering the whole picture and systemic nature of deeds.
The ICTY applied the principles of the Geneva Conventions of 1949 and their Additional Protocol on an inter-state conflict and strengthened by this practice the coverage of international law. Further, the Tribunal considered mass rape as a war crime, and as an instrument of ethnic cleansing. By its jurisdiction the ICTY developed international customary law by adding mass rape as a tool of genocide. But, more than one decade later, the legal framework in Bosnia and Herzegovina for dealing with war crimes like sexual violence and other crimes against humanity is still incomplete (Amnesty International, 2014, p.6). While rape and sexual violence were used as instruments for ethnic cleansing, as the ICTY found, the Dayton Agreement did not address gender-based crimes, which may have shifted the focus in a higher sense to the victims (Moratti/Sabic-El-Rayess, 2009, p.17).

In 2015 the Bosnian War Crime Court decided for the first time to include financial reparations to a victim of rape in times of war in the verdict. Afterwards also local courts followed this jurisdiction. In the past, victims were forced to file claims for reparations in civil proceedings – on their own costs and under need to reveal their identity (Binetti, 2015, p.1). Reparations are a crucial instrument in a transitional justice process, they are focused on the victims. Reparations may

provide acknowledgement of equal rights, a measure to justice and recovery, and change existing gender inequalities (Binetti, 2015, p.2). Those effects may lead many victims to start procedures and change the public awareness for the topic, which is crucial for transitional justice.

Another aim of the ICTY to give victims and their families a voice and bring justice to individuals, this could be realised just within a small scope. Probably it is not possible after war, that any tribunal may fulfil this task. In the case of Bosnia and Herzegovina, there were alongside the ICTY also domestic bodies responsible for prosecution of crimes, in special the War Crime Chamber and the second instances courts of Bosnia. The War Crimes Chamber was established in 2002 by the national parliament and started working in 2005. Even though this court was well equipped, it had problems to cope with its huge workload. The second instances courts in the entities were poorly equipped, and not able to bring about this task (Moratti/ Sabic-El-Rayess, 2009, p.20).

To conclude, the ICTY and domestic courts did indispensable work and attained continued development of international law, especially in matters of sexual violence. Victims of sexual violence are finally able to receive reparations from their perpetrators through the verdict, which has a strong impact in the process of individual and collective reconditioning. Nevertheless, there are tasks which cannot be fulfilled within a solely legal framework. For this reason, bodies fostering a societal reconditioning are imperative.

II. Collective Truth

The society in the state of Bosnia and Herzegovina is still divided through a parallel history-telling, which has a strong impact on presence and future. A crucial instrument, to make transitional justice successful, is to influence and clarify the awareness on what really happened. Lawsuits in courts, in special those before the ICTY, created a huge public attention and are essential for "breaking the walls of denial by establishing the facts" (Moratti/ Sabic-El_Rayess, 2009, p.21). While statistically the number of Bosnian Serbs denying the genocide in Srebrenica decreased, the process moves on slowly. Further it has also destabilizing effects on domestic institutions because it causes an increase in ethnic tensions through bringing back old questions and iniquities in the minds and results in a glorification of the accused perpetrators (Moratti/ Sabic-El-Rayess, 2009, p.21).

While prosecution served the purpose to adjudicate the individual criminal responsibility of perpetrators, a judicial process requires a careful examination of credible and reliable evidence (Groome, 2011, p. 186). In consequence, the judicial truth-seeking process concentrates on individual indictments; and factors which aren't relating to a specific perpetrator appearing in court, are disregarded. If truth seeking takes place only by criminal prosecution, the scope of truth is limited (Groome, 2011, p. 187).

1. Failure to establish a truth and reconciliation commission

Since the armed conflict was settled, considerations of an establishment of a truth and reconciliation commission took place. Several commissions with a limited scope started their work on specific cases with varying results. There was a commission established for the investigation of events in and around Srebrenica between 10th and 19th July 1995, this ad-hoc committee was set up by the government of Republic of Srpska following strong international pressure. Within its scope, investigations took place on the genocide and the fate of missing persons from the region (Binetti, 2015, p. 22). The commission published a report on its findings which lead to public apologies from the government of Republic of Srpska to victims and their families (Binetti, 2015, p. 22).

Other efforts weren't likewise successful. While one commission was established in 2006 to investigate on the fate of

disappeared Colonel Avdo Palic, a former commander of the Bosnian Forces in the town of Zepa, calls for investigations on other matters and a huge public debate started, resulting in a new commission on the "Suffering of Sarajevo Citizens", initiated by the Council of Ministers in BiH. These comprehensive investigations didn't achieve the needed success what was also due to differing political aims of the actors and a lack of funds (Binetti, 2015, p.22).

The first attempt in 1997 to create a comprehensive, regional truth and reconciliation commission (TRC) was impeded mainly by the ICTY. The second attempt in 2001 to start a reconciliation process and establish a truth commission was supported by the government, the international community and the ICTY, nevertheless the process failed in its beginning. The third attempt in 2006 was led by the political parties of Bosnia and Herzegovina, equipped with the task of drafting a law on the establishment, mandate and composition of a truth commission (Ahmetasevic,/ Jelacic,(2006). The law on the establishment of a truth commission was part of a larger package of constitutional amendments to empower national institutions. The drafting took place behind closed doors, and lead to outcries in media and society, when these efforts became known – because of their non-transparent and premature character (Djokic/ Ker-Lindsay, 2011). So far, there hasn't been a TRC in Bosnia and Herzegovina starting its work.

2. Reasons for the failure

For understanding the failure of the creation of a truth commission, one crucial factor is the floor plan of the political system and the power-sharing arrangements, manifested through the Dayton Agreement. As within the Dayton peace accords the new constitution was negotiated, the ethnic elites were still controlling resources and military – and wanted to keep their power and authority in peacetime (O'Brien, 2010, p.338). Preserving autonomous power, was the aim of the Bosnain-Serb and Croatian leaders, so they pledged for a system with limited competences of the central government, while "ethnic aspects of governmental arrangements" were given high relevance – noticeable in the structure of the voting system and governmental positions (O'Brien, 2010, p.338).

Aiming to implement a form of a consociational democracy, local power-sharing arrangement should effectuate a cooperative and consensual style of politics among the leaders of the three main ethnic groups. Following the ideas of Arend Lijphard of the late 1960s, ethnically divided societies can be stabilised through a joint rule and decision-making by leaders of the specific ethnic groups (Lijphard, 1969, 216).

Problematic was in the case of Bosnia and Herzegovina, that the interests of the leaders of the different groups weren't taken into account adequately. Consequently, it was missed to set incentives of the ethnic leaders for finding consensus and establishing an effective common state (Tzifakis, 2007, p.86).

The aim of the Dayton constitutional arrangements, to combine a consensual democracy-model with features of partition preserved the former war parties' interest "to exploit the aforementioned power-sharing arrangements" (Tzifakis, 2007, p.87). This neglected focus on creating incentives of the leader to integrate into a consensual democracy model is one big factor which explains missing incentives in fostering the newly established state of BiH by supporting a truth-seeking process.

Beside that, representatives of the ICTY opposed the installation of a TRC, mainly caused by the fear that it may undermine efforts of the tribunal. One reason for the fear was the assumption, that Bosnian society and its political leaders would not favour it, because they were "not ready", what "might prove counterproductive" (Basic, P.373) Furthermore, representatives of the tribunal argued, that the "possible mandate […] might

overlap in the nature of investigation" and might bring witnesses and victims in a situation choice and alternativity of cooperation. Finally there was a concern on diverging use of standards of evidence and authority to interpret what has happened (Basic, P.373).

C. Conclusion

The right to the truth is codified in several international treaties and legal acts and was applied in different procedures, that is a huge accomplishment. International and domestic courts play a crucial role in the process of seeking truth about the things that happened. It is crucial to impede impunity and reach accountability, in these affairs the ICTY and its domestic counterparts played an indispensable role. Nevertheless, the scope of judicial prosecution for disclosing the truth is limited. To acknowledge past abuses, discover structural and institutional causes of conflict and integrate the needs of victims and their families, another approach would have been needed, to construct the floor plan of a stable, prospective political system. This paper included an analysis of causes for a failure of a truth and reconciliation commission, which may have been a tool to achieve the mentioned aims, which a tribunal cannot fulfil. The analysis concentrated on two relevant obstacles to the establishment of a truth and reconciliation commission: Firstly, the constitutional design of a consociational democracy, which wasn't able to create incentives to the leaders of the ethnic groups, to support the well-being of the state of Bosnia and Herzegovina instead of putting solely interests of the own group in their focus. Secondly, for some time also representatives of the ICTY were impeding the establishment, fearing rivalry, procedural barriers and alternative interpretations.

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The protection of the witness as a risk for the rights of defense in the criminal procedure

By Natasha Todorovska*

ABSTRACT

The necessity of implementation of witness protection system is undisputable given the increasing organized crime and other severe criminal acts being perpetrated in our country as well. This is so owing to the expansion of new, more sophisticated forms of crime, and increasing violence and witness intimidation. Therefore, witness protection is one of the most important instruments for achieving justice in a modern society where many various forms of organized crime occur. The rights of the defense in a situation where guilt is proven through a protected witness are of particular interest in several aspects. First, the source of the threat should be analyzed, further the connection between the witness and the defendant, in the end, the possibility that the witness will be key proof, and the defense does not have the right to object.

Key words: protected witness; national legislation; defense; organized crime .

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Introduction

Emergence of new forms of crime and its organized structures imposed the necessity of intensifying the reform of the penal legislation in the Republic of Macedonia. The grounds for reform of the penal legislation is, by all means, observation of the basic freedoms and rights of the citizens of the Republic of Macedonia stipulated in the Constitution and in the international agreements as well as creation of appropriate mechanisms for efficient elimination of the organized crime and improvement of the efficiency and effectiveness of the criminal procedure.The Law on Witness Protection addressed the necessity of establishing a legal frame which is to provide efficient protection of a person possessing information of significance for the criminal procedure and whose life, health, freedom or property has been threatened and his/her close persons as well as the victims, if they appear in the capacity of witnesses, and collaborators of justice.

The necessity of adopting the Law on Witness Protection was overwhelming also for implementation of the provisions of many interlantional documents: Documents of the Council of Europe Recommendation (REC (97) 13 of the Committee of Ministers of the Member States concerning the intimidation of witnesses and the rights of the defense; Recommendation REC (2005) 9 of the Committee of Ministers of the States Parties for the Protection of Witnesses and Associates of Justice; Convention against Action on Trafficking in Human Beings; Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters; Penal Convention on Corruption and Jurisprudence of the European Court of Human Rights on the Protection of Witnesses), Documents of the European Union (Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union Council; Resolution for protection of Witnesses in the Fight Against Organized Crime Council; Resolution for persons cooperating in the judicial a process in the fight against international organized crime; The Council's Framework Decision on the Placement of Victims in the Criminal Procedure) and Documents of the Organization of the United Nations (Convention of the United Nations against transnational organized crime, Additional Protocol to the United Nations Convention against Transnational Organized Crime for the Prevention and Suppression and Punishment of Trafficking in Persons, Especially Women and Children)

The significance of "threat" and "risk"

In general, the threat must beagainst the witness's life; it does not extend to his or her well-being or property.A threat assessment can be defined as the investigative and operational techniques usedby law enforcement authorities to identify, assess and manage the risk and potentialperpetrators of targeted violence against a witness.

A distinction between "threat" and "risk" should be made. A threat assessment looks atwhether the life of the witness is in serious danger, and should address issues such as:

(a) The origin of the threat (group or person);

(b) The patterns of violence;

(c) The level of organization and culture of the threatening group (for example, streetgang, Mafia-type group, terrorist cell);

(d) The group's capacity, knowledge and available means to carry out threats.[188]

A risk assessment examines the chances of the threat materializing and assesses how it canbe mitigated. The assessment is conducted according to set standards and using a matrix.[189]Action is taken to reduce the probability of the threat being carried out, for example byusing unmarked cars

[188]Good practices for the protection of witnesses in criminal proceedings involving organized crime, United Nations Office on Drugs and Crime Vienna, 2008, p.61

[189]Kambovski V, "*Organizedcrime"*. Skopje: 2-August, 2005, p.227

to transport witnesses, resettling witnesses temporarily or providingthem with new identities. The assessment is conducted by the witness protection unit andis a key factor in providing tailor-made protection to suit the needs of the witnesses.Throughout the programme and even after its termination, it may be necessary to carryout periodic threat evaluations in order to decide whether to continue, upgrade, discontinueor reinstate protection measures.[190]

Witness protection in the Macedonianpenal legislation

Witness protection is regulated by the Criminal Act of the Republic of Macedonia, the Law on Criminal Procedure; Law on Witness Protection; Law on Interior; Law on Prevention of Corruption; Law on Sanctions and the sub laws regulating the witness protection.

Witness protection in the material penal law

The Criminal Act of the Republic of Macedonia[191]foresees offences which could be perpetrated in order to harm the witnesses. The basic offence[192]refers to an action of forced or other influence over a person being summoned as a witness, to present himself/herself in the court or not, or to make a certain statement or not.[10]Beside the threat, influence over the person could be exercised also by offering a bribe, obstructing or otherwise.[193] Object of such action is a person, whose statement about a certain fact may be used as evidence in a court procedure or an administrative procedure, which implies that the person has certain knowledge on the fact. What is relevant for the offence is that the act of perpetration prevents giving a statement in general or giving a true statement.[194]

Witness protection in the law on criminal procedure

The Law on Criminal Procedure[195]regulates the witness protection during the criminal procedure and taking measures for witness protection during the criminal procedure. Witness protection during the criminal procedure is carried out during the pre-criminal and the criminal procedure[196]. Uponproposal of the/ public prosecutor the court decides on the measures to be taken for protection of a threatened witness during the criminal procedure[197].

In case the threatened witness refuses to reveal information on his/her name, surname, his/her father/s name, occupation, residence, place of birth, age and relation with the defendant and the injured party as their disclosure could expose himself/herself or his/her close person to danger, the investigative judge or the president of the council shall notify the public prosecutor without delay and submit minutes requesting a written

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[190]Good practices for the protection of witnesses in criminal proceedings involving organized crime, United Nations Office on Drugs and Crime Vienna, 2008, p. 62

[191]Criminal Act, integral text-preface, short explanations and glossary, second edition, Official Gazette of Republic of Macedonia, Skopje, 2011

[192] Article 368 –a of the Criminal Act of the Republic of Macedonia

[193]Kambovski V, " *Criminal Law – general part*". Skopje: 2-August S- Shtip, 2006, p.322

[194]Budzhakoski S., "*Criminal Law-generalpart"*. Skopje: CSI Instituteof Managementknowledge, 2008, p.184

[195]Law on Criminal Procedure, Official Gazette of Republic of Macedonia No. 15/97, Law on Amendments and Modifications to the Law on Criminal Procedure, Official Gazette of Republic of Macedonia No.44/02, 74/04 and 83/08, and 67/09

[196]The Novelty of 2004 to the Macedonian Law on Criminal Procedure introduces special chapter with provisions on witness protection, collaborators of justice and victims

[197]According to article 270 -a of the Law on Criminal Procedure, Official Gazette of Republic of Macedonia No. 15/97 Law on Amendments and Modifications to the Law on Criminal Procedure, Official Gazette of Republic of Macedonia No.44/02, 74/04 and 83/08, and 67/09

proposal on use of a special manner of hearing and participation in the procedure.[198]

The special manner of hearing of a threatened witness can be implemented through concealing the identity and appearance of the threatened witness. The persons, who, in any capacity, have come to know information about the threatened witness, shall treat them as classified information, in compliance with the law[199].
Beside the provisions organized in a separate chapter referring to the witness protection, collaborators of justice and the victims, the Law on Criminal Procedure includes other provisions regulating the witness protection, which are organized in other chapters[200].

By changing the concept of the Criminal Procedure Code, Articles 226-233 of the Criminal Procedure Code of 2010 provide for the protection of witnesses.[201] The protection is envisaged for the endangered witness to be provided with a special way of examining and participating in the procedure determined by the provisions of the Law on Criminal Procedure and by applying the measures for protection outside the procedure regulated by a separate law, that is, the Law on Witness Protection.

The Criminal Procedure Code of the Republic of Macedonia underwent huge changes with the 2010 amendments. The protection of witnesses is laid down in Articles 226-232, without specifying a separate chapter as was the case with the previous law.[202]
The law stipulates that, if it is likely that by giving statements and answering a certain question, the witness, the collaborator of justice or the victim, that is, the injured person would expose himself or herself close to a serious danger to life, health or physical integrity, the endangered witness may to forbid the giving of the statement or the presentation of the data (name and surname, father's name, occupation, place of residence, place of birth, place of birth, years of age and his relationship with the defendant and the damaged party) safe conditions for its protection.

The protection of the captured witness shall consist in a special manner of examination and participation in the procedure regulated by this law and by applying measures for protection outside the procedure regulated by a separate law.[203]The protection of the endangered witness can be in two stages of the procedure, in the framework of the

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[198]Kambovski V, *" Criminal Act, integral text-preface, short explanations and glossary"*, second edition, Official Gazette of Republic of Macedonia, Skopje, 2011, p.120

[199]In article27—a the Law on Criminal Procedure stipulates that the witness protection out of the procedure is carried out through special inclusion of witnesses into the Witness Protection Program, which is regulated by a separate law, that is, the Law on Witness Protection. This article offers the legal basis for implementing out-of-procedure measures for protection stipulated in the Law on Witness Protection

[200]Those are: article 142-c organized in the part referring to special investigative measures of Chapter XV-Pre-investigative procedure; article 146-a, which is also organized in the part referring to special investigative measures of Chapter XV- Pre-investigative procedure and article 295-a organized in the part referring to assumptions for holding the main trial under Chapter XXI-Main trial

[201]Kambovski V, *"The second phaseof the reformof the criminallaw"*Skopje: Macedonian Reviewof Penal LawandCriminology, Year 11 No. 3 2004, p.86

[202] Kambovski V. and Tupancheski N, "*Criminal Law*". Skopje: Ss. Cyril and Methodius, Faculty of Law, Justinian "2011, p.223

[203]Buzarovska G,*"Procedural measuresto protectwitnessesindomesticandcomparativelaw"* . Skopje: Protection ofwitnessesandcollaborators ofjusticefor victimsindomesticandinternational law-the International Organization for Migration-IOMMissioninSkopje, p.163

preliminary procedure and the main hearing.

The Law on Criminal Procedure introduces the category "especially vulnerable victims and witnesses" in the general provisions, which also have specially provided rights. The provisions for interrogation of witnesses also define the conditions under which such a person is examined. Thus, if a damaged person and a witness for whom the body conducting the procedure determines that, given the age, health condition, nature or consequences of the crime, or because of other circumstances of the case, they fall into the category of especially vulnerable victims and witnesses, person - victim of trafficking in human beings, violence or sexual abuse, and that the examination in the premises of the body conducting the procedure would have harmful consequences for their mental or physical health, a special way of investigation .[204]

The law provides for a provision on the rights of the defense in the examination of endangered witnesses at the main hearing, that is, defense guarantees. When examining the endangered witnesses at the main hearing, special attention will be paid to the right of the defendant and his counsel to have an adequate and sufficient opportunity to dispute and verify their statements. The verdict can not be based solely on the statement of the endangered witness obtained by applying the provisions for concealing his identity or the appearance for his protection and protection of his close relatives.[205]

[204] Kalajdziev G, "Witness protection in terms of human rights". Skopje: Protection of witnesses and collaborators of justice for victims in domestic and international law-the International Organization for Migration - IOMisija in Skopje, 189

[205]KalajdzievG.andBuzarovska G.,*"Code of CriminalProcedure"* Skopje: Academic2011, p.180

Witness protection in the law onwitness protection

The Law on Witness Protection[206]was adopted on the session of the Assembly of the Republic of Macedonia held on 19 May 2005 despite of the presence of opposing positions regarding the necessity of its adoption. Witness protection is preconditioned by the fact that the process of proving the offence may face severe difficulties or it may not be carried out without a statement of a person who disagrees to give a statement in a criminal procedure as he/she could be exposed to intimidation, threat of revenge or threat to his/her life, health, freedom, physical integrity or property.[207]The measures for protection prescribed by this Law are measures for protection including activities for physical protection, and operational and technical measures to guarantee security of protected persons. The main goal of the measures for protection is to provide maximum protection and security for the protected person by minimum intrusion into his/her private life, that is, to provide natural, normal and usual environment for the protected person.

One of the basic principles of this Law is the principle of secrecy[208], which is a general characteristic of the issue of witness protection. Therefore, information obtained by the persons pursuing official duty, related to the measures for protection, are classified information of

[206]Law on Witness Protection, Official Register of Republic of Macedonia No. 38/05 and Law on Amendments and Modifications to the Law on Witness Protection, Official Register of Republic of Macedonia No. 58/2005

[207] Offences for which the use of measures for protection may be approved, which are offences against the state, against humanity and international law, organized crime offences and those which hold minimum of four years imprisonment according to the Macedonian Criminal Act

[208]Promoted by the recommendation Rec (2005) 9 of the Committee of Ministers of the EU member countries, for protection of witnesses and collaborators of justice

certain degree of secrecy regulated by law.[209]

For the purpose of protecting witnesses the Law on Witness Protection prescribes establishing the following bodies: Witness Protection Council is a body to make decisions on inclusion of persons into the witness protection program and its termination, and on use of the measure of identity change. The Department for Witness Protection is a part of the Sector for Organized Crime within the Central Police Office of the Ministry of Interior.[210]The procedure of inclusion into the Witness Protection Program is composed of two phases: inclusion of a person into the Witness Protection Program and implementing measures of protection.[211]Inclusion of a person into the Witness Protection Program is composed of three sub phases: request for inclusion into the Witness Protection Program; proposal for inclusion into the Witness Protection Program, which is submitted to the Council for Witness protection by the Public Prosecutor of RM, and decision upon the proposal for inclusion into the Witness Protection Program submitted to the Council for Witness Protection by the Public Prosecutor of RM.

Measures of protection stipulated by the Law on Witness Protection are: providing secrecy of the witness's identity; providing personal protection; change of residence and change of identity. The Law also stipulates the possibility of use of urgent measures. The goal of the urgent measures is to provide appropriate protection for the persons included in the Witness Protection Program. Duration of the urgent measures is restricted up to the moment the decision upon including the person into the Witness Protection Program is made by the Council for Witness Protection. According to the Law, the following measures of protection may be used as urgent: providing secrecy of the identity; providing personal protection and change of place of residence.[212]
The difference between the regular measures and the urgent measures is the grounds for their use.

In the part referring to the penal provisions the Law on Witness Protection stipulates unauthorized reveal of information and data about a witness, collaborator of justice, victim appearing in the capacity of witness or his/her close persons as well as other information, which may lead to his/her identification and threaten his/her life, health, freedom, physical integrity or significant property amount. The stipulated penalty for this form of a crime is a minimum of four years imprisonment[213].

Two qualified forms of this offence have been stipulated: if revealing information and data about the person have led to severe physical injuries of the witnesses, collaborators of justice and the victims appearing in the capacity of witnesses and their close persons the penalty for the perpetrator is minimum eight years imprisonment, and if revealing information and data about the person have led to death or suicide of the witnesses, collaborators of justice and the victims appearing in the capacity of witnesses and their close persons, the penalty for the perpetrator is minimum 15 years of imprisonment or a life imprisonment.

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[209]According to the Law on Classified Information there are four classification levels: state secret, strictly confidential, confidential and internal.

[210] Grozdanovska M. "Witness protection: international aspects and the legislation in the Republic of Macedonia, Master's paper, Faculty of Law "Justinian Primus" (2010): 27-46

[211] Kalajdziev G, "Witness protection in terms of human rights". Skopje: Protection of witnesses and collaborators of justice for victims in domestic and international law-the International Organization for Migration - IOMisija in Skopje, 191

[212]Ibid, Marija Grozdanovska, p. 47

[213]Article 42 of the Law on Witness Protection, Official Gazette of Republic of Macedonia No. 38/2005

Analysis of Macedonian custody jurisprudence

For the purpose of the research, I analyzed several verdicts issued by the Basic Court Skopje I.

Characteristic for verdict no. IV C. 9/09 is the the place, the time and the type of the violation indicate that the persons have the status of endangered witnesses because their life was at stake at the critical moment and they were heard under a pseudonym that should protect the endangered life as a protection or an out-of-process measure. Such a factual situation reveals their working position in detail, the connection with the deceased who was their colleague, as full information on medical certificates is provided, through which the type and degree of bodily injury is inspected. This suggests that a lot of data indicating the persons under protection are transparent, that is, on several occasions details of the identity are revealed, and there is no data that is the competent authority that has assessed the disgusting nature of the life and body of the witnesses, so decided to give protection out of process way or their questioning under a pseudonym.

In this judgment no. C.40/10 there are no circumstances on the basis of which the threat to the life or body of witnesses can be established. The bases under which these types of witnesses were used is in accordance with the Law on Criminal Procedure, that is, the provisions that allow the application of a special manner of suicide, as well as from the aspect of the gravity of the crimes committed, were applied. Regarding the manner of their participation in the procedure, they were heard under a pseudonym, but as we stated, no procedure was filed under which their protection was received. Characteristic of this judgment is above all the way in which the judgments of the witnesses who are threatened in the case are appreciated. In this judgment, the statements of the endangered witnesses in one part are presented as endangered witnesses in a certain section of protected witnesses. Of course, the most significant feature is that despite the fact that their application is in accordance with the positive regulations, the court does not bind trust to them. However, despite the existence of other evidence in support of the indictment, in the end, a verdict is dismissed which refuses the indictment. Given the fact that the circumstances from which we can assess the threat of these witnesses are missing, there are also missing data on the body that was responsible for determining this status at the critical moment.

According to the elements I took as criteria in the analysis of the verdict no. XVIII C. 2421/11 circumstances taken into account when the protection status was approved in this judgment, the circumstances under which the protection was determined were not stated, but the level of the threatened witness is not unknown. The bases under which these types of witnesses were used is in accordance with the Law on Criminal Procedure and the Law on Witness Protection, that is, the provisions that allow the application of a special way of drying and from the aspect of the gravity of the crimes committed by the defendant. Regarding the manner of their participation in the procedure, the witness is being heard under a pseudonym. Characteristic of this verdict is primarily the relationship between the defendant and the endangered witness. In the instant case, direct acquaintance is the reason for the risk of having a convicted witness in serving the sentence of the convicted person. Also, the court should establish responsibility because of the fact that during the application of the special investigative measures, the measures did not take any actions to prevent further assault, but on the contrary, despite the determined conversation and the intention to use the fortunes, it was allowed to take over and the witness then enjoyed protection. In this judgment, within the entire text, a term of a fiery witness is used. Certainly, the claim of the defense that the person is a provocative agent deserves special attention, and in

accordance with the decision approving the status, it clearly indicated that it is not a provocative agent.

The analysis of these judgments clearly indicates the terminological inconsistency and the problems in practice for several reasons. Certainly, as I mentioned the lack of a definition of an intimidated, threatened and protected witness, it greatly provokes problems in practice. Judges act in different ways and in no case there is unification if a statement of an endangered or protected witness is used. It is precisely this terminological incongruity which causes the biggest problem in the judgment with which two people have been convicted of a clause of Art. 42 of the Witness Protection Law. Further, some of the verdicts determine the manner in which the person received the status of an endangered or protected witness, and in some of them, this information is also missing, which is also an additional problem. Regarding the basis on which the use of such a statement is permitted, the biggest problem is that the Witness Protection Law allows the use of witness protection for crimes listed in the law. By contrast, the existence of a broad determination of the threat of a witness as a risk leads to what crimes can be used by a disturbed witness. It is also controversial that the protected witness should not be used if it can be proved in another way, and from the evidence procedure it can be established that there were also material evidence that there is in large numbers, hence the protected witness did not have to to be used to prove it.What is characteristic is that the defense does not have access to the witness and does not know whether it is a threatened or protected witness. The defense always emphasizes that the witness is contradictory, does not know the reasons for his protection, and does not know the risks of being bullied. It gets the impression that the selected person is abused for disabling confrontation, the defendant does not believe in the credibility of the witness and his identity. It is necessary to introduce the protection of witnesses that the defense will propose.

Conclusion

In the national legislation of the Republic of Macedonia, the spirit of the provisions of the international documents related to the protection of witnesses has been incorporated. It can be concluded that the Republic of Macedonia has incorporated in its national legislation the provisions of international documents in the field of witness protection. Such crucial provisions have been elevated to the level of international standards and are therefore incorporated in national legislation, which is particularly important in the context of international cooperation in the field of witness protection as one of the conditions for effectively dealing with modern crime.

Successful witness protection in any country considerably depends on the financial resources allocated for the purpose. Therefore, the inevitable conclusion regarding the financial resources necessary for implementation of the Law on Witness Protection is that implementation of this Law is costly for the state. On the other hand, the expenses for witness protection are relative in comparison with the expenses that may occur if no measures are taken for witness protection.

Therefore, it is necessary to instigate modification of the Law on Witness Protection in the Republic of Macedonia; it should commence by determining the degree of responsibility of persons who will make public any data about a protected person (a person who comes to know the identity of a protected person in the line of duty should be held responsible for higher degree than a person who comes to know it in a different manner).
Special consideration should be given also to upgrading the organizational and institutional setting of the authorized enforcement organs and their mutual cooperation and coordination as well as to the need of permanent education of

authorized persons for enforcement of the Law.

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Accommodating minorities in conflict resolution: the case of the Maronites of Cyprus

By Lorena Diz Conde*

ABSTRACT

This article provides an overview of the Cyprus conflict as an introduction to the problem of the refugees that emerged after the division of the island in 1974. It particularly focuses on the case of the Maronites of Cyprus, an ethnic group that has been present in Cyprus for over millennia, geographically enclaved, a situation that eased the preservation of their unique language, the Cypriot Maronite Arabic. However, the mass displacement of population that occurred after the geographical division of Cyprus has had a deep impact in the development of the Maronite identity and the preservation of their culture and language. Following the occupation of their traditional settlements by the Turkish military, the largest part of Maronite community was forced to leave to the Greek-ruled part of the island. After analyzing the impact of the conflict on this national minority, the article provides an insight into the demands of the Maronite community in the negotiations of the settlement of the Cyprus conflict and the current initiatives that intend to preserve the cultural heritage of the Maronites of Cyprus.

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I. Introduction: Cyprus conflict and the Maronite Community

The current division of Cyprus into two different entities took place in mid-July 1974, when the Turkish Army invaded the northern part of the island, following a coup d'état ordered by the military junta that had been ruling in Greece since 1967. This coup d'état was intended to depose the Cypriot president Makarios III, and replace him with a loyalist government. However, since the independence of Cyprus from the United Kingdom in 1960, tensions between Greek and Turkish Cypriots had been escalating, leading to inter-communal violence, the collapse of the constitutional order after the withdrawal of Turkish Cypriots from the state institutions in 1963, and the creation of enclaves of Turkish Cypriots.

Two main approaches dominated the political scene in Cyprus, even before the formal independence of Cyprus from the UK: on the one hand, *taksim* advocates for the division of the island between Turkish Cypriots and Greek Cypriots, and it is mostly followed by the former; on the other hand, *enosis*, i.e. the formal union of Cyprus with Greece, has been largely advocated by Greek Cypriots. These two conflicting views have dominated the inter-communal conflicts and negotiations since the 1950s.

The 1960 Constitution, which is part of the Zurich Agreement that granted independence to the Republic of Cyprus, established a bi-communal state of Greek and Turkish Cypriots, whose guarantors are the United Kingdom, Greece and Turkey. At that time, the population in Cyprus was made up by a 77.1 per cent of Greek Cypriots and a 18.2 per cent of Turkish Cypriots,[214] along with three main minority groups: Armenians, Maronites and Latins, which were integrated in the Greek institutions. The Constitution provided a 30 per cent quota for Turkish Cypriots in the National Parliament and public administration, along with a permanent veto power.

The inter-communal violence among Greek and Turkish Cypriots that developed during the 1960s resulted in many failed peacemaking initiatives and the intensification of violent clashes between both groups. President Makarios III, as the representative of Greek Cypriots and Mr Rauf R. Denktash, on behalf of the Turkish Cypriots, met on several occasions seeking an agreement and settlement of the disputes that would satisfy both parts' demands. However, the course of events prevented a real perspective for a long term resolution of the conflict. The initiatives to end the open armed violence between Greek and Turkish Cypriots that outburst in December 1963 and to rebuild the collapsed constitutional institutions failed, and in March 1964 the United Nations Peacekeeping Force for Cyprus[215] was established and has continued its mission to this day.[216] The inter-communal violence aggravated in 1967, following the coup d'état that took place in Greece and established a military junta government. All the mediation attempts organized under the auspices of the United Nations also failed.

The turning point in this conflict took place in 1974, when Turkish armed forces entered in the northern part of the island as a reaction to the coup d'état instigated by Greece, which sought to achieve *enosis*. This event led to the de facto division of the island and the suspension of the Constitution of the Republic of Cyprus in the northern part, controlled by Turkish forces.

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214 Georgia Verropoulo, "The Demography of Cyprus, 1881-1982" (University of London, 1997), 153.

215 United Nations Security Council, "Resolution 186" (1964).

216 Cihat Göktepe, "The Cyprus Crisis of 1967 and Its Effects on Turkey's Foreign Relations," *Middle Eastern Studies* 41, no. 3 (2005), 431.

The conflict would develop in the following decades leading to the current situation of a divided island with dozens of non-solved problems, including refugees, land ownership, exclusion from formal representation in state institutions, socio-economic challenges, among many others. These are direct consequences of the division of the territory into two different entities, the Republic of Cyprus, which has fully international recognition, and the Turkish Republic of Northern Cyprus (TRNC), self-declared in 1983, only recognized and supported by Turkey. This conflict has continued for more than 40 years without a successful resolution, even though several initiatives and peace talks have been held.

One of the reasons that may explain the deadlock in negotiations for more than 4 decades is the absence of an open violent conflict between Greek and Turkish Cypriots after the division of the island, which has led to the definition of the Cypriot conflict as a *comfortable* conflict.[217] The lack of deadly victims does not encourage the negotiating parts to reach an agreement any time soon, however, the large number of refugees has been the most visible outcome of the division of the island, having a great impact in the socioeconomic development of Cyprus.

The Maronites of Cyprus are a minority group that has been present in the island since the 7th century. As it has already been pointed out, they constitute one of the three minority groups in Cyprus, along with Armenians and Latins. Historically, they have been settled in the north-west of the island, and by 1960s they were present in four main villages: Ayia Marina, Kormakitis, Asomatos, and Karpasha. These villages are under TRNC territory in the current division of Cyprus. Therefore, this minority group has been affected by the outcomes of the conflict in a very particular way, mostly due to their historical presence in a defined area of the island, but also due to the particular ethno-cultural characteristic of this minority, as we will explain in the following chapters.

The Cyprus conflict is a complex topic that involves many factors and actors, both internally and internationally. This essay will introduce the problem of refugees in a divided island by analyzing the specific case of the Maronites of Cyprus. The aim of this essay is to analyze how the Maronite community has been affected by the conflict and how this community is tackling with their particular situation. Moreover, we will also address the political role of the community in the peace talks, their proposals and demands.

II. The impact of the Cyprus conflict in the Maronite community

The Maronites of Cyprus are the biggest minority group in Cyprus. They are an ethnic, religious and language minority that has been present in the island since the 7th century, originating from the area of today's Lebanon and Syria, where they maintain strong ties. The Maronite identity is particular in the Cypriot context: they consider themselves Cypriots, constitutionally Greek, and Catholic with the center of their faith in Lebanon (Maronite Patriarchate of Antioch). Moreover, they speak a unique language, known as Cypriot Maronite Arabic (CMA or *Sanna*, "our language"), which is officially considered a severely endangered language, according to UNESCO, since 2002.[218]

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[217] Constantinos Adamides and Costas M. Constantinou, "Comfortable Conflict and (Il)liberal Peace in Cyprus," in *Hybrid Forms of Peace: From Everyday Agency to Post-Liberalism*, ed. Oliver P. Richmond and Audra Mitchell (Palgrave Macmillan, 2011), 242–59.

[218] Marinela Karyolemou, "The Demographics of the Cypriot Maronite Community and of Cypriot Arabic Speakers," in *Empowerment through Language Revival: Current Efforts and Recommendations for Cypriot Maronite Arabic*, ed. Brian Bielenberg and Costas M. Constantinou (Oslo: International Peace Research Institute, 2010).

The Maronite community was historically settled in a very specific area in the northern part of Cyprus, in the Kyrenia district. In the 1960s only four Maronite villages remained: Kormakitis (which is considered the centre of the Cypriot Maronite culture and used to house half of the Maronite population), Karpasha, Asomatos and Ayia Marina. At that time, the Maronite community numbered about 4200 people. [219]

As it has already been pointed out, according to the Constitution, the Republic of Cyprus is a bi-communal state with two recognized communities: Greek Cypriots and Turkish Cypriots. The Maronites are recognized in the Constitution of the Republic of Cyprus as a religious group, but they had to choose which constitutional community they would join. Their decision in 1960 was to become part of the Greek Cypriot community, due to their belonging to Christianity. The Constitution of the Republic of Cyprus recognizes three religious groups[220] and defines their right to be represented in the Greek Communal Chamber.[221] After 1974, the Parliament of the Republic of Cyprus became unilateral, and the Maronite community is represented by their own Parliament Representative, who is not allowed to vote, but can intervene in matters directly affecting the Maronites. This may be seen as discriminatory or as a privilege, because Maronites are also entitled to vote ordinary members of the parliament. Therefore, they have a "dual" representation, as Cypriot citizens and as members of the Maronite community.

One of the distinctive features of the identity of the Maronite community of Cyprus is their unique language, which is severely endangered. The Cypriot Maronite Arabic is a language with strong Arabic and Aramaic influences that has been spoken by this community since their arrival to Cyprus and has been orally transmitted to the following generations. However, after the division of the island and the military occupation of two of the Maronite villages, a great part of the community was forced to leave to the southern side of the island, where they have settled all over the territory, without a particular city or village where they would concentrate. This had a great impact on the transmission of the language to the younger generation of Maronites, who have been raised in Greek majority municipalities and use Greek language on a daily basis.

Nowadays CMA is commonly spoken by a small number of Maronites in Cyprus, where Greek and Turkish are the official languages. Most of the speakers are the elderly living in Kormakitis, and some of the Maronites that gather in the different clubs that were created after the exodus, such as the Kormakitis Club in Nicosia. Most of the younger generations cannot speak CMA anymore as a consequence of the strong ethnic assimilation that is taking place into the Greek Cypriot society, mostly through education and mixed marriages.[222] It is estimated that only 900 out of 4200 Maronites[223] can speak CMA nowadays.

In an attempt to revive the language, many initiatives have emerged, including the codification of the language,

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[219] Caesar V. Mavratsas, "The Armenians and The Maronites of Cyprus: Comparative Considerations Concerning Ethnic Assimmilation," in *Mediterranée: Ruptures et Continuités. Acts of the Colloquiumin Nicosia, 20-22 October 2001, University Lumière-Lyon 2, University of Cyprus* (Lyon: Maison de l'Orient et de la Méditerranée Jean Pouilloux, 2003), 207.

[220] "Constitution of the Republic of Cyprus" (1960), art. 2.

[221] "Constitution of the Republic of Cyprus" (1960), art. 109.

[222] Mavratsas, "The Armenians and The Maronites of Cyprus: Comparative Considerations Concerning Ethnic Assimmilation," 205.

[223] Ibid., 207.

associations teaching CMA to young generations, and the use of CMA in cultural activities organized by the Maronite community. The main motivation for the revival of the language is historical and cultural, not its usefulness.

For a long time, the Cyprus government was reluctant to recognize and protect the CMA, as the Maronite community was considered merely a religious minority, whereas their language was disregarded. This fact was largely criticized by academics and the Committee of Experts of the European Charter for Regional or Minority Languages, who exposed that the lack of protection contributed to the disappearance of this endangered language.[224] The government of Cyprus used to categorize CMA as a dialect of Arabic, rejecting any need for protection of the language. However, Alexander Borg, the foremost expert in this language, argues that it is not a dialect, but a language itself, that requires official recognition and protection to guarantee its survival.[225]

In 2008, the Maronite community created the "Committee of Experts for the Codification of Cypriot Maronite Arabic" and the "Platform for the Revitalization of the Cypriot Maronite Arabic" who try through different initiatives to revive the language. Moreover, they managed to put pressure on the government of the Republic Cyprus to include the CMA on the application of Part II of the European Charter for Regional or Minority Languages (ECRML) in November 2008, which guarantees official recognition and protection. However, the resources devoted to this protection and the achievements have been certainly limited. The government of the Republic of Cyprus argues that the occupation of the traditional Maronite villages by the Turkish armed forces prevents the successful protection of the language. Nevertheless, the community is taking steps forward and it is actively involved in the codification and standardization of the language, meaning the compilation of the grammar and vocabulary, which is crucial for producing textbooks and teaching material.[226]

Before the division of the island, the ethnic distribution of the population was mixed, especially in the cities, with some enclaves of Turkish Cypriots that emerged as a consequence of the inter-communal violence. Thus, Turkish and Greek Cypriots were present throughout the whole island, with areas of higher predominance of one or the other group, but no possibility to divide them geographically. As a consequence of the *de facto* division of the island in 1974 and the establishment of the Turkish Republic of Northern Cyprus (TRNC) in 1983, large population displacements took place. Greek Cypriots were forced to move to the south, whereas Turkish Cypriots displaced to the self-proclaimed TRNC in the northern third of the island. The figures about the number of Greek Cypriot refugees vary between 160,000 and 200,000, meaning that at least a third of the community became internally displaced persons (IDPs).[227] On the other hand, approximately 48,000 Turkish Cypriots moved to the north as refugees, making up around a 40 per cent of the community.[228]

After the division of Cyprus, the remaining four Maronite villages (Ayia Marina, Kormakitis, Asomatos, and Karpasha) were geographically integrated in the northern third of the island under Turkish occupation. This event led to the

[224] Costas M. Constantinou, "Why Does the Government Refuse to Protect Cypriot Maronite Arabic," *CyprusMail*, 2008.
[225] Ibid.

[226] Committee of Experts of the ECRML, "Application of the Charter in Cyprus: Initial Monitoring Cycle" (Strasbourg, 2006), para. 71.
[227] Michalis Stavrou Michael, *Resolving the Cyprus Conflict: Negotiating History* (New York: Palgrave Macmillan, 2009), 130.
[228] Fiona Mullen, "How Many Refuges Are There in Cyprus," *InCyprus*, 2016.

displacement of a large number of Maronites, who dispersed throughout the Republic of Cyprus, i.e. the southern part of the island. Two of the traditional Maronite villages, Ayia Marina and Asomatos, remain Turkish military camps still today. Karpasha is also under Turkish military control; however, some of its residents are allowed to live there. Finally, Kormakitis, has no such status, and it is far easier for its residents to resettle there if they wish.[229]

However, some people decided to stay in the villages, even if they risked to be deprived from basic civil and political rights as well as support in their daily life from the government. Although most of the population of Kormakitis left to the south in 1974, around 130 people remained. In 2003, the mean age of the population of Kormakitis was seventy-three for men and seventy-five for women.[230]

At the moment, around 200 Maronites, mostly pensioners, live in Kormakitis and Karpasha, out of which a hundred resettled there recently following a new support scheme announced by the Republic of Cyprus to encourage the enclaved to return to their villages in the north.[231] As C.V. Mavratsas points out, for older Cypriot Maronites, preserving a sense of Maronite distinctiveness is seen primarily in reference to their return to the Maronite villages in the northern part of the island. They strongly argue that coming back to their traditional villages is the only option they have to save their community from complete assimilation in the Greek Cypriot society.[232]
Most of the internally displaced persons "no longer have humanitarian needs and have largely integrated in the places they have settled"; however, "they are still unable to take back possession of the property they left behind, or return to their homes".[233] This is a visible problem in any community in Cyprus, including the Maronites.

Nevertheless, it is important to point out that the Maronite community of Cyprus has also been granted a "special" status, as the authorities of the TRNC recognized their distinctiveness from the Greek Cypriots and have been treated differently in some matters. For instance, the Maronites were allowed to cross the Green Line even before its opening in 2003, so they could visit their relatives in the villages.[234] Moreover, those living in the north have Turkish Cypriot residence permits and right to property. However, those who left the villages after the division of the island are deprived from their right to property, as they are their Greek counterparts. Thus, "when a person dies, if there are no heirs living in the north the family cannot inherit the property, which is confiscated by the authorities. Similarly, when persons die, their families cannot return to settle in the north".[235] However, some advancement has taken place in the last decade and some properties in Kormakitis, Karpasha and Ayia Marina have been given back to their owners.

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229 Tahsin Eroglu, "Maronites to Return to Villages in the North (Updated)," *CyprusMail Online*, 2017.
230 Mavratsas, "The Armenians and The Maronites of Cyprus: Comparative Considerations Concerning Ethnic Assimmilation," 206.
231 Eroglu, "Maronites to Return to Villages in the North (Updated)."
232 Mavratsas, "The Armenians and The Maronites of Cyprus: Comparative Considerations Concerning Ethnic Assimmilation," 209.
233 Internal Displacement Monitoring Centre, "Cyprus: Lack of Political Settlement Prevents the Displaced from Fully Enjoying Their Property Rights" (Geneva, 2007), 7.
234 Parliamentary Assembly of the Council of Europe, "Rights and Fundamental Freedoms of Greek Cypriots and Maronites Living in the Northern Part of Cyprus," 2003, para. 8.c.
235 Ibid., para. 19.

Moreover, there are two representatives of the Maronite community in the TRNC administration (one appointed by the Cypriot government and the other by the Turkish Cypriot administration), who have civil functions but do not have the powers of mayors".[236] Therefore, we can conclude that some individual rights (health, education, freedom of movement, freedom of communication and freedom of religion[237]) of the Maronites are more or less protected, even within the TRNC, but their community rights are systematically ignored.

One of the main concerns for the survival of the Maronite community is their progressive assimilation in the Greek Cypriot society. On the one hand, the Maronite youth is mostly educated in Greek schools. There is a Maronite school in Nicosia that opened more than 15 years ago; however, less than a hundred children attend this school and are obliged to follow the Greek curricula. Therefore, education on the Maronite culture and language must be carried out in extracurricular hours, a fact that deters the young generations to get involved in their community. On the other hand, there have been an increasing number of mixed marriages with Greek Cypriots, leading to the integration to the Greek community of the children and the disuse of CMA in the family communication.

This assimilation is having a strong impact in the identity of young Maronites. As Caesar V. Mavratsas points out, "for some, the Maronites are a different nation, clearly demarcated from the Greeks; for others, the only factor differentiating the Maronites from the Greeks is their faith".[238] Nevertheless, this community is strongly attached to Cyprus and consider themselves Cypriots.

To sum up, the Maronites of Cyprus have been severely affected by the conflict in Cyprus and the division of the island, which is compromising the very existence of their community. Their forced displacement to the southern part of the island and their geographical dispersion has led to a great amalgamation with the Greek Cypriot community. Moreover, they have been deprived from their properties in the villages where they have been historically present. Furthermore, despite the important damage that the conflict has inflicted in the Maronite community, they have systematically been left aside in the peace talks and the initiatives for conflict resolution.

III. Conflict resolution: what can be done? Demands of the Maronite community and perspectives for a comprehensive resolution protecting minority groups

The Cyprus Problem, as it is widely known in the island, has been present for longer than 50 years already without perspectives for a long term agreement that would settle down disputes. The new generations have been raised in a *comfortable* conflict that prevents their willingness to reconcile with a community, with which they have never lived together. Therefore, the longer time it takes to establish common initiatives for conflict resolution, the fewer opportunities to achieve a successful long term agreement that would settle down disputes once and for all.

As it has been already highlighted in the introductory chapter, many peace initiatives have taken place since the early 1960s in order to find an agreement that would settle the inter-communal conflict between Greek and Turkish Cypriots. Different models have been proposed as alternatives to the bi-communal state established in the 1960 Constitution. Departing from the idea that Enosis is no longer a viable option for Greek Cypriots, there are three main models in consideration for the resolution of the

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[236] Ibid., para. 20.
[237] Ibid., para. 13.
[238] Mavratsas, "The Armenians and The Maronites of Cyprus: Comparative Considerations Concerning Ethnic Assimmilation," 206.

Cypriot conflict: a consociationalist state, a federal state, or a two-state solution.

Shortly after the division of Cyprus in 1974, the two sides of the conflict succeeded to reach the 1977 and 1979 High Level Agreements that would become the guidelines for the following negotiations. According to these agreements, "the objective of the negotiations is to form a bi-communal, bi-zonal federation that will be based on the political equality of its two constituting communities".[239] Therefore, "such a settlement must exclude union in whole or in part with any other country or any form of partition or secession".[240]

The following negotiations have been conducted under the United Nations Secretary General's good offices and mediation roles. The attempt that came closer to a solution was engendered under Kofi Annan's mandate in 2004. The agreed solution was voted in referenda by each community. It was accepted by a 64.9 per cent of Turkish Cypriots, but rejected by a 75.8 per cent of Greek Cypriots.[241] Shorty after, the Republic of Cyprus became part of the European Union, a fact that may explain the overwhelming rejection to the Annan Plan by Greek Cypriots that perceived an increase in their bargaining power in future agreements.

The negotiations that have taken place after the rejection of the Annan Plan have not achieved any prospect agreement. However, some hope emerged after the Joint Declaration issued in February 2014, which intends to "inject new impetus to the process and add substance to the already agreed settlement parameters" of the High Level Agreements.[242] Currently, the talks cover the following issues: property, governance, economy, territorial adjustment, security guarantees and the harmonization with the European Union.[243] Out of these issues, the most problematic subject in the negotiations has been the property, as it is needed to establish comprehensive criteria "to settle relevant property issues through three agreed remedies: compensation, exchange of relevant properties and restitution, taking into account the rights of current users of properties, as well as the rights of the previous property owner".[244] This is a very challenging effort to accomplish after a long time since the outburst of the conflict and the mass movement of people.

However, minorities have become invisible in the conflict due to the Greek Cypriot and Turkish Cypriot inter-communal issues, and have been left aside in the peace talks and the initiatives for conflict resolution. The Maronite community is actively involved in cross-cultural activities which intend to bring new impetus to the process of reconciliation and peace-building. An interesting initiative where the Maronite community is involved is "The Religious Track of the Cyprus Peace Process", a peace-building initiative under the Auspices of the Embassy of Sweden which includes the religious leaders all the communities of Cyprus, including the three minorities, who are committed to work together for human rights, peace and reconciliation.[245]

As we have already pointed out, the Maronites have their own representative in the Parliament of the Republic of Cyprus. The role of this representative is

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239 M. Ergün Olgun, "Cyprus: Towards a Settlement," Foreign Policy Institute, 2016, http://foreignpolicy.org.tr/cyprus-towards-a-settlement/.

240 United Nations Security Council, "Resolution 939" (1994), para. 2.

241 Theodore Chadjipadelis and Ioannis Andreadis, "Analysis of the Cyprus Referendum on the Annan Plan" (Aristotle University of Thessaloniki, 2007), 5.

242 Olgun, "Cyprus: Towards a Settlement."

243 Patrick Wintour, "Cyprus Peace Talks: All You Need to Know," *The Guardian*, 2017.

244 Olgun, "Cyprus: Towards a Settlement."

245 "The Religious Track of the Cyprus Peace Process," n.d., http://www.religioustrack.com/about.html.

to be the connection between the Maronite community and the Cyprus government. The representative is elected on a five-year term and has the right to express the will and views of the community on any matter which concerns it, but he doesn't have the right of speech and vote in the House of Parliament.[246]

The former Maronite Parliament Representative, Antonis Haji Roussos actively sought for the inclusion of the Maronite community in the peace talks taking place and issued a declaration, which included five claims to be considered in the possible political settlement of the Cyprus conflict:

- Firstly, they demand "the explicit constitutional recognition of the Maronites of Cyprus as a national community of Cyprus with territorial rights over their villages", as a measure to counteract the assimilation that the community has experienced after their inclusion in the Greek Cypriot community in the 1960 Constitution, which does not consider the Maronites a national group, but a religious association.[247] They argue that the restoration of the status of Maronites as national community will guarantee the survival of the Maronite community of Cyprus.[248]
- Secondly, they request "the reinstatement and the clustering of the Maronite villages and the return of all Maronite properties to their legal owners".[249] Thus, the Maronite community wants to reach a single local authority in their four traditional villages as a way to include all members of the community in the decision making process on local matters and anything important for the development of the community.[250] This is important and necessary for the economic development of their lands. Moreover, they request a "special status arrangement" in order to guarantee the protection of their particular identity at the local level.[251]
- Thirdly, they claim for "the consideration of individual political rights of Maronites in conjunction to their property and territorial claims".[252] They argue that the political, property and territorial rights of the Maronites should be addressed while negotiating the political settlement of the Cyprus conflict in order to protect the rights of the communities outside an eventual bi-communal constitution.
- Fourthly, they also request "the resettlement of the Maronites in their villages", which includes the guaranteed access to those villages under military occupation. Furthermore, they express their wish for the incorporation of their villages to an eventual Greek Cypriot Federal State.[253]
- Finally, they demand their access to "political representation in both the regional and the federal structure of governance, and the right to participation, vote and veto on matters that directly affect Maronite community"[254], which should be guaranteed by the Constitution adopted after the eventual resolution of the conflict.

The model eventually chosen for the conflict settlement is not particularly relevant, as far as it integrates and protects the minority groups living in Cyprus. Nevertheless, the Maronite

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246 "The Role of the Representative of the Maronite Community," n.d., http://www.maronitesofcyprus.com/index.php?option=com_k2&view=item&layout=item&id=152&Itemid=830&lang=en.

247 Antonis Haji Roussos, "The Claims of the Maronites of Cyprus in a Forthcoming Political Settlement of the Cyprus Problem" (2015), paras. 1–2.

248 Ibid.

249 Ibid., para. 4.

250 Ibid., para. 5.

251 Ibid., paras. 6–8.

252 Ibid., para. 4.

253 Ibid., para. 9.

254 Ibid., para. 10.

community would accept any solution to the Cyprus conflict, even if their claims are not considered. However, it is a responsibility of both parts of the negotiations to reach a solution that would include the minority groups and would not compromise further their existence.

Therefore, if a solution is not reached soon and the current situation does not improve any time soon, the Maronite community is condemned to disappear. As C. M. Constantinou points out, "the non-recognition of the ethnic character of certain Cypriot minorities creates serious difficulties for the protection of their cultural difference and thus also for the survival of these communities as distinct groups".[255]

However, there is some cause for hope in the near future. The initiatives taken by the community in the last years have succeeded in bringing back some families, and the current population in the villages is 320 people. Moreover, the Maronite authorities are trying to encourage entrepreneurship and tourism in order to attract young Maronite families to the villages.

Furthermore, recently the Turkish Cypriot authorities have announced that 4,000 Maronite refugees will be allowed to return to their villages, although they did not specify when this measure will be effectively implemented.[256] This announcement certainly brings hope to the Maronite community, which will be able to return to their villages and rebuild the community and daily activities, which are crucial for the preservation of their culture and language. However, the community would need financial resources to rebuild the destroyed homes and infrastructure necessary for the daily life in the villages, which should be provided by the governmental structures.[257] Nevertheless, after more than 40 years, the voluntary resettlement of a large number of Maronites is not very probable. Many of them will try to recover their properties, but due to the lack of infrastructure and opportunities, they will most likely stay in the Republic of Cyprus.

IV. Conclusion.

The conflict that has been present in Cyprus since its independence from the United Kingdom in 1960 has largely affected the social relations and the economic development of the island. The division of the island between Greek and Turkish Cypriots was the outcome of more than a decade of inter-communal violence and the collapse of the constitutional system. One of the most visible consequences of such territorial division was the mass displacement of people from one side of the border to the other, leaving behind properties that were taken by authorities without any kind of compensation. The problem of refugees has affected all the communities living in Cyprus, but we argue that the consequences on the Maronite community have been devastating.

The division of Cyprus in 1974 and the military occupation of three out of four of the traditional Maronite villages forced the displacement of most Maronites to the southern side of the border, where they have dispersed all over the territory controlled by the Republic of Cyprus. Very few, mostly old people, stayed in the occupied territory. This fact has led to the progressive assimilation of the Maronite community in the Greek Cypriot society, as they have adopted Greek as the

[255] Costas M. Constantinou, "Cyprus, Minority Politics and Surplus Ethnicity," in *The Minorities of Cyprus: Development Patterns and the Identity of the Internal-Exclusion*, ed. Andrekos Varnava, Nicholas Coureas, and Marina Elia (Cambridge Scholars Publishing, 2009), 6.

[256] Eroglu, "Maronites to Return to Villages in the North (Updated)."

[257] Evie Andreou, "Government Scathing over Move to Open up Maronite Villages," *CyprusMail Online*, 2017.

language they use in their daily life, and inter-ethnic relationships are common practice. Therefore, it can be argued that securing the return to the villages is the only option to save both the Maronite identity and their unique language, which should be considered cultural heritage of Cyprus.

On the other hand, the presence of the Maronite community and their role in the conflict can be seen as an opportunity for reconciliation between the two sides of the conflict. As Neophytos Loizides points out, "the Maronites themselves have played an increasing role in the rapprochement of the two communities. More importantly, the return of Kormakitians to their ancestral lands in the North could potentially inspire the beginning of the process of reversing forced displacement and its bitter legacy in the island."[258] On the other hand, Mary Southcott proposes that the future reunited Cypriot state should not be based on the current identities present in the island; on the contrary, they should " focus on building a solution that would protect them if they happened not to be from a dominant group", and therefore, "any constitutional system put in place would be based on trying to protect minorities in society, whoever they might be".[259]
All in all, the need for finding a solution for the Cyprus issue and the possibility to return to their villages is highlighted as crucial for the survival of the community. The current situation can be perceived by the Maronite community with hope but without much optimism. Thus, the dispersion of the Maronites and assimilation with the Greeks, if not addressed soon, will jeopardize the existence of this community in the near future.

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[258] Neophytos Loizides, "Challenging Partition in Five Success Stories," in *Resolving Cyprus: New Approaches to Conflict Resolution*, ed. James Ker-Lindsay (London: IB Tauris, 2005), 180.
[259] Mary Southcott, "Updating Our Thinking on Cyprus," in *Resolving Cyprus: New Approaches to Conflict Resolution*, ed. James Ker-Lindsay (London: IB Tauris, 2005), 238.

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The Unfinished Promise of the Philippines Peace in Mindanao

by Rukmani D. Bhatia*

ABSTRACT

This paper seeks to examine the security issues created in the Philippines following the unfulfilled peace agreement between the Philippines government and the Moro Islamic Liberation Front (MILF). It discusses how the issues facing the southern Philippines today and the increased rate of radicalization is linked to the failure to implement the Comprehensive Agreement on Bangasamoro (CAB). Many factors driving radicalization would be addressed by the CAB and many fighters become radicalized are disillusioned MILF fighters

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Brief Background on the Conflict in Mindanao

The conflict in the southern Philippines region of Mindanao was one of main conflicts in the Philippines followings its independence in 1946. The Moro conflict is recognized as a push by the communities of the Muslim majority regions of the the southern Philippines for self-determination; a conflict driven by differences in culture, ethnicity and religion.[260] The seeds of discord that sprouted into conflict extend far back to the Spanish colonial era of the 16th century, where intermittent warfare created divisions between Catholic and Muslim communities.[261] In the early 20th century the U.S., then a colonial power in the Philippines, incorporated Mindanao into the Philippine state, and passed legislation that dispossessed Muslim-owned land.[262] This is the narrative employed by separatist rebel groups to use an ethno-national struggle to justify their insurgencies. However, this perspective provides only a partial picture of the dynamics of conflict; it overlooks the issues of class division and economic exclusion.

Resentment between the Moro and Christian communities, and division between the Moro communities in Mindanao and the central government of Manila built following a series of events. In 1968, the "Jabidah massacre" occured where Moro commandos were slaughtered by the Armed Forces of the Philippines (AFP).[263] The massacre was seen by the Moro community to be evidence that the Christian government was failing to protect Muslims while also actively seeking to oppress the Moro minority communities in the Philippines.[264] The incident was a watershed moment in the Moro community, where decades old ambitions of independence were unearthed and desire for an independent Minadanao emerged.[265] The following year emerged the the Bangsa Moro Liberation Organization (BMLO), reviving the secessionist movement. In 1971, the BMLO morphed into the Moro National Liberation Front (MNLF); the MNLF became the main Moro separatist group representing communities in Mindanao in the 1970s. In response to the insurgency, martial law was declared by the Marcos regime; dissidents saw severe crack downs and between 1972 and 1976, ferocious war broke out in the southern Philippines.

In 1977, the MNLF, following a division between Chairman Mur Misuari and Vice-Chairman Hashim Salamat, fractured. In 1984, Salamat established the Moro Islamic Liberation Front (MILF) with a stronger Islamic orientation than the MNLF. The MILF was centered in central Mindanao, well-organized and garnered material and intelligence support from

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260 Peter Chalk, "Separatism and Southeast Asia: The Islamic Factor in Southern Thailand, Mindanao, and Aceh," *Studies in Conflict & Terrorism* 24, no. 4 (2001); K. Che Man, *Muslim separatism : the Moros of southern Philippines and the Malays of southern Thailand*, South-East Asian social science monographs (Singapore ; New York: Oxford University Press, 1990); Lambang Trijono and Frans de Djalong, *The making of ethnic and religious conflicts in Southeast Asia : cases and resolutions* (Yogyakarta, Indonesia: CSPS Books, 2004).

261 The struggle for self-determination by the Moro population began in 1565 under Spanish colonial rule. Today, these areas consist of Western Mindanao, Central Mindanao, and the Autonomous Region in Muslim Mindanao (AARM), and the four provinces of Southern Mindanao, Davao del Sur, Sarangani, South Cotabato, and Sulta Kudarat).

262 Thomas M. McKenna, "Governing Muslims in the Philippines," *Harvard Asia Pacific Review* 9, no. 1 (2007).

263 Nathan Quimpo, "Options in the Pursuit of a Just, Comprehensive, and Stable Peace in the Southern Philippines," *Asian Survey* 41, no. 2 (2001).

264Carmen Abubakar, "Review of the Mindanao Peace Process," *Inter-Asia Cultural Studies* 5, no. 3 (2004).

265 Hamid Aminoddin Barra, *The Code of Muslim Personal Laws: A Study of Islamic Law in the Philippines*, English ed. (Marawi City, Philippines: Mindanao State University, 1988).

rural villages.[266] The MILF grew steadily until it was roughly 40,000 combatants in the late 1990s.[267] The MILF was initially founded on the demand of an independent Islamic state for Muslims; by 2010 the demand changed to autonomy for the Mindanao region from the central government in Manilla.

Traction in the Peace Process

In 1996, the Philippine government began discussions with MILF leadership to work towards peace talks; a ceasefire agreement was signed in 1997 but the agreement was short-lived.[268] The MILF's demand for autonomy for the entire Mindanao region was non-negotiable for the government at the time.[269] The talks formally ceased in 1999, conflict restarted and the MILF saw increased support in the region from Moro communities.[270] Negotiations restarted under Arroyo, with small progress in the discussions beginning in 2005. in 2008, Arroyo made an agreement with the MILF, granting Muslims a right to reclaim ancestral land taken from them and given to Christians in the mid-20th century.[271] This progress was shortly undone by the Supreme Court, which prevented the accord from being implemented in 2009, resulting in the government backing out of the agreement.[272] The peace process once again stalled and violence resumed.[273]

Under President Benigno Aquino III's rule, the peace process began again. The government sought peace, as the intense fighting between the MILF and government forces had displaced thousands of civilians in the southern Philippines. The MILF were not granted an independent region but they were granted more autonomy and the ability to create the Bangsamoro region, outside the political control of Manilla. In October 2012, the MILF and the goverment of the Philippines signed the Framework Agreement on the Bangsamoro. On March 27, 2014, the two parties signed the Comprehensive Agreement on the Bangasamoro. The agreement laid out a framework of power-sharing and the process to create an autonomous region to allow for harmony between the Philippine and Bangasamoro governments.

However, the peace agreement has failed to be fully implemented. On January 25, 2015, skirmishes between MILF militants and the police in Maguindano province left 44 police and seven civilians dead. The incident has derailed the peace process, with parliamentary hearings on the passage of the agreement into legislation were repeatedly delayed and the proposed legislation to codify the agreement into law failed to pass. The draft law to create the autonomous region of Mindanao failed to pass in the Congress and Senate. The agreement sits, stalled, unimplemented.

Consequences of the Stalled Implementation of the Agreement

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[266] In what Weinstein refers to as stationary rebels. See Jeremy M. Weinstein, *Inside Rebellion : the Politics of Insurgent Violence*, Cambridge studies in comparative politics (Cambridge; New York: Cambridge University Press, 2007).

[267] Rizal Buendia, "The GRP-MILF Peace Talks: Quo Vadis?," *Southeast Asia Affairs* (2004).

[268] Quimpo, "Options in the Pursuit of a Just, Comprehensive, and Stable Peace in the Southern Philippines."; Schiavo-Campo and Judd, "The Mindanao Conflict in the Philippines: Roots, Costs, and Potential Peace Dividend."

[269] Salvatore Schiavo-Campo and Mary Judd, "The Mindanao Conflict in the Philippines: Roots, Costs, and Potential Peace Dividend."

[270] Graham Brown, "The Long and Winding Road: The Peace Process in Mindanao, Philippines," in *IBIS Discussion Paper* (Institute for British-Irish Studies: University College Dublin, 2011).

[271] "Memorandum of Agreement on Ancestral Domain," (2008); "The Long and Winding Road: The Peace Process in Mindanao, Philippines."

[272] Brown, "The Long and Winding Road: The Peace Process in Mindanao, Philippines."

[273] Ploughshares, "Philippines - Mindanao (1971 - first combat deaths)," http://www.justice.gov/sites/default/files/eoir/legacy/2014/02/25/Philippinesmm_Mindanao.pdf.

In 2017, the Philippines saw Marawi City, in the southern Philippines, become subject to a takeover by extremist members of the Maute, a breakway faction of the MILF and ISIS's branch in the Philippines. The nation, despite a history of separatist violence, had never experienced a situation quite like what occurred in the summer of 2017. The Maute had established a coalition of rebels and foreign fights; they had pushed out residents in the thousands; hundreds were killed.[274] President Duterte declared martial law across Minandao in an effort to control the situation. A siege ensued between the Maute and the Philippine military; it ended after 5 months.

The seizure of Marawi is an anomaly in Philippines history; separatist groups have never successfully seized on a region as swiftly as the Maute did. However, the fact that the Maute grew in numbers over a short period of time is not surprising. Their rise is rooted in the failure of the Philippines government to follow through on the agreement with the MILF; the failure of the Congress to pass legislation codifying the agreement and allowing its implementation to begin has created an environment of economic inequality, despair and disillusionment - an environment rife for radicalization.

The MILF have notably distanced themselves from the Maute, even setting up coalitions to eradicate the Maute from their territory.[275] However, former MILF members joined the breakaway Maute because of frustration with the delay in the peace process, particularly among the younger generation who see limited economic opportunities in the region without the implementation of the peace accord. The failure to advance the process to grant autonomy to Mindanao fuels insurgency in the region.

The government of the Philippines should press Congress to debate legislation that will advance the long-stalled peace process is detrimental to the stability of the country. It not only holds the volatile southern region in a state of limbo but it allows for further radicalization to foment, pushing potentially even more conflicts and divisions in a region that has seen half a century of conflict. By delaying on granting autonomy for the Bangsamoro region, the Philippines is destined to see higher levels of radicalization and insecurity.

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[274] Joseph Hincks, What the siege of a Philippine city reveals about ISIS' deadly new front in Asia," *Time*, May 25, 2017.
[275] Carmela Fonbuena, "MILF, Maute Group Battle for Legitimacy," *Rappler,* 2017.

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The link between globalisation and gender equality

By Ema Talam*

ABSTRACT

Globalisation is a phenomenon that is believed to exist for centuries and even millennia. However, over the past few decades, this phenomenon was more widespread than ever and its impacts were widely discussed and analysed. This paper will focus on examining the link between globalisation and gender equality. The paper is divided into three parts. First part of this paper will look into different definitions of globalisation – some of them being far broader and more comprehensive than the others. Second part of the paper will examine the link between globalisation and gender equality. This is done using KOF Globalisation Index, measuring the extent of globalisation of a country, and Gender Inequality Index, measuring the extent of gender inequalities present. Data implies that the link exists between gender equality and globalisation, as more globalised countries also appear to be more equal in terms of gender equality. Third part of the papers discusses the existing research evidences that explored the link between globalisation and gender equality in details. It links gender with employment opportunities, discrimination on the labour market, foreign direct investments, education, etc. Finally, conclusions of the paper are presented.

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Introduction

Globalisation is a phenomenon that exists for centuries and even millennia. However, in certain segments, it has gained a significant momentum during the past few decades. At the same time, gender inequalities exist and persist. Although it can be widely discussed that reasons for the existence of inequalities (i.e. difference in skills, or education) do not hold true any more, we are still witnessing their existence. The negative impacts of gender inequalities on the society and its development are understood to the great extent and often discussed. Lot of effort has been done to ensure equality in all aspects of life. Treaties were adopted and ratified by many countries in the world to combat discrimination against women, among which the most important one is CEDAW – Convention on the Elimination of All Forms of Discrimination against Women. Many international trade agreements include different clauses in order to ensure equality and combat discrimination.

It is believed by many that globalisation has produced a positive impact on gender equality. The proponents of this thinking believe that globalisation has led to increased employment opportunities which have, as a consequence, led to improvement of position of women in their households or societies and to overall women's empowerment. However, not all believe that globalisation necessarily led to only positive results. The concerns often mentioned are related to the types of the jobs offered as a result of an increased globalisation, wages paid to the workers (especially female workers) and finally, stability of the employment in a globalised world.

This paper will explore the link between globalisation and gender equality in order to try to determine which of the widespread views presented above is the correct one, if any, understanding the complexity of both phenomena. The paper is organised as follows. Part one describes globalisation by presenting several definitions that differ in scope and that explain different segments of globalisation. Part two looks at the KOF Globalisation Index and Gender Inequality Index and examines whether the countries that are more globalised also appear to be more equal in terms of gender equality. Acknowledging that this comparison is not sufficient to claim with certainty that the link exists and to what extent, part three gives a detailed overview of the existing research evidences that linked gender equality, discrimination and globalisation, by introducing both theoretical phenomenon, their descriptions and explanations and a spectre of empirical evidences.

Globalisation

There are many different definitions of the term "globalisation". Some of them are broad and encompass many different aspects of globalisation, whereas others focus on just one. One of the most comprehensive definitions of globalisation is the one provided by Urzua (2000):

"Globalisation is a multi-dimensional process characterised by:

- The acceptance of a set of economic rules for the entire world designed to maximise profits and productivity by universalising markets and production, and to obtain the support of the state with a view to making the national economy more productive and competitive;
- technological innovation and organisational change centred on flexibilisation and adaptability;
- the expansion of a specific form of social organisation based on information as the main source of productivity and power;
- the reduction of the welfare state, privatisation of social services, flexibilisation of labour relations and weaker trade unions;
- de facto transfer to trans-national organisations of the control of national economic policy instruments, such as monetary policy, interest rates and fiscal policy;

- the dissemination of common cultural values, but also the re-emergence of nationalism, cultural conflict and social movements."[276]

On the other hand, Keohane and Nye (2000, pp. 105) define globalisation as: "Globalism is a state of the world involving networks of interdependence at multicontinental distances. The linkages occur through flows and influences of capital and goods, information and ideas, and people and forces, as well as environmentally and biologically relevant substances (such as acid rain or pathogens). Globalisation and deglobalisation refer to the increase or decline of globalism."[277] Furthermore, they emphasise that globalisation means the reduction in distance. Furthermore, Keohane and Nye recognise different forms of globalism such as: economic globalism, military globalism, environmental globalism, and social and cultural globalism.[278]

Some definitions take into account only one aspect of globalisation. One of the most commonly examined aspects of globalisation is globalisation in economic terms. O'Rourke and Williamson (2000) who define globalisation as: "the integration of international commodity markets."[279] Globalisation can be hardly though as a new phenomenon–it is present for centuries and even milliennia. O'Rourke and Williamson refute the fact that globalisation, according to their definition, occurred gradually, but rather that, from 1400 onwards, we can distinguish between three different eras of commodity exchange and specialisation. First era, which took place before 18th century, was marked by the trade of the non-competing goods and specialisation. 19th century was marked by a fall in transportation costs and it was period during which commodity price convergence occurred. Second era of globalisation started in the 19th century and it was marked by trade in some of the competing goods.[280] Examining the world trade in the period 1870-1939, Estevadeordal, Frantz and Taylor (2002) discuss the impacts on the world trade and list the following impacts as the relevant ones: (1) increases in the total output levels, (2) payment frictions (gold standard), (3) transport frictions (shipping costs) and (4) removal of protectionist measures.[281]

Third era of globalisation is the era we are still in. The current era of globalisation is marked with the following set of characteristics: (1) liberalisation in terms of international trade and finance, (2) increases in the volume of trade, foreign direct investments (FDI) and other financial flows, and (3) novel methods of organisation of production and trade.[282]

Globalisation and gender equality

This section marks the beginning of the discussion of the link between globalisation and gender equality and it will comparatively present scores on KOF

[276] Raul Urzua, 'Globalisation', UNESCO, http://www.unesco.org/new/en/social-and-human-sciences/themes/international-migration/glossary/globalisation/

[277] Robert O. Keohane and Joseph S. Nye Jr., 'Globalization: What's New? What's Not? (And so What?)', *Foreign Policy* 118 (2000), 104-119, http://www.asu.edu/courses/pos445/Keohane%20and%20Nye--Globalization%20What%27s%20New%3F%20%20What%27s%20Not%3F.pdf

[278] Robert O. Keohane and Joseph S. Nye Jr., 'Globalization: What's New? What's Not? (And so What?)', 104-119.

[279] Kevin H. O'Rourke and Jeffrey G. Williamson, 'When did globalization begin', National Bureau of Economic Research, Working Paper 7632, http://www.nber.org/papers/w7632.pdf

[280] Ibid.

[281] Although they believe that the impact of the removal of protectionist measures is lower than usually discussed.

[282] Amelita King Dejardin, 'Gender (in)equality, globalization and governance', International Labour Office, Working Paper No. 92, http://www.ilo.org/wcmsp5/groups/public/---dgreports/---integration/documents/publication/wcms_108648.pdf

Globalization Index and Gender Inequality Index, in order to examine whether there appears to be the link between the two. KOF Globalisation Index represents a comprehensive measure of globalisation and it examines the extent to which countries are globalised. The Index takes into account: "actual economic flows, economic restriction, data on information flows, data on personal contact and data on cultural proximity"[283].

Gender Inequality Index primarily measures the costs of gender inequality to human development and it takes into account the extent of inequality between genders in three segments that have an impact on human development: (1) reproductive health, (2) empowerment, and (3) economic status. Higher values of Gender Inequality Index[284] indicate greater inequalities between genders. This, at the same time, means that there are larger costs to human development. [285]

Table 1: KOF Globalisation Index ranks and Gender Inequality Index values for selected countries in 2015

Country	**KOF Globalisation Index rank**	**Gender Inequality Index**
Ireland	1	0.127
Netherlands	2	0.044
Belgium	3	0.073
Austria	4	0.078
Singapore	5	0.068
Sweden	6	0.048
Denmark	7	0.041
Portugal	8	0.091
Switzerland	9	0.040
Finland	10	0.056
Slovenia	30	0.053
Croatia	32	0.141
Montenegro	48	0.156
Bosnia and Herzegovina	50	0.158
Serbia	56	0.185
Macedonia	74	0.160
Tonga	181	0.659
Sudan	182	0.575
Afganistan	184	0.667
Bhutan	185	0.477
Lao PDR	188	0.468

Source: KOF Globalisation Index, Gender Inequality Index[286]

In Table 1, countries that are ranked as the most globalised in the world as ranked by KOF Globalisation Index for 2015, such as: Ireland or the Netherlands, are listed. It also presents the countries that are ranked as the least globalised as measured by KOF Globalisation Index such as: Bhutan or Lao PDR.[287] If we compare Gender Inequality Index scores of the countries at the top of the list (such as: Ireland or the Netherlands) and the bottom of the list (for countries such as: Bhutan or Lao PDR), we can observe large discrepancies in Gender Inequality Index values. Ireland and the Netherlands have Gender Inequality Index values of 0.127 and 0.044, respectively, which can be regarded as fairly low, while Bhutan and Lao PDR have scores of 0.477 and 0468, respectively. From this, it appears that more globalised countries are more equal countries in terms of gender equality.

[283] http://globalization.kof.ethz.ch

[284] Gender Inequality Index values range between 0 and 1.

[285] http://hdr.undp.org/en/content/gender-inequality-index-gii

[286] http://globalization.kof.ethz.ch, http://hdr.undp.org/en/composite/GII

[287] Coutries ranked as the least globalised as measured by KOF Globalisation Index, but for which Gender Inequality Index is not measured, are not included in the Table 1.

Countries that were part of former Yugoslavia are also included for comparison in the Table 1. Most globalised country out of former Yugoslav countries is Slovenia which is also the most equal country in terms of gender equality. On the other hand, the least globalised country is Macedonia, but it does not have the largest gender inequality. Former Yugoslav countries belong to the first half of the KOF Globalisation Index rank list. They appear to have slightly higher gender inequality than countries ranked at the top of the list, but significantly lower gender inequalities than countries at the bottom of the list.

By examining the presented data, we can observe that there might exist the actual link between gender equality/inequality and globalisation, as more globalised countries also appear to be more equal in terms of gender equality. Next section will explore existing research evidences of the link between gender equality and globalisation.

Globalisation and gender equality: Evidences

One of the often mentioned impacts of globalisation is its influence on economic growth, that is primarily believed to be caused by increases in efficiency and job expansion. Although researchers have found varying evidences of globalisation on growth, some studies do show that the overall impact of globalisation on growth is positive. As measured, certain dimensions of globalisation in particular have a positive impact on growth and those are: (1) actual economic flows, (2) restrictions imposed on trade and capital in developed countries, and (3) flows of information.[288] Furthermore, due to the greater availability of goods and services and many efficient, cost-saving solutions implemented in the production process, globalisation can lead to lower prices of goods and services being consumed.[289]

Akhter and Ward (2015) empirically have shown that countries that have larger foreign direct investments also do have a higher share of education of women within the country. Another conclusion of their study is that long-term foreign direct investments can have a positive impact on education of women. Furthermore, their research suggests that, compared to men, larger foreign direct investments have a positive impact on access of women to service sector, the impact on access of women to the agricultural sector is negative. Another conclusion is that larger foreign direct investments are related to lower number of women being part of informal economy. According to the same study, higher commodity concentration[290], often suggested as a very good measure for developing countries, is related to lower share of education for women, labour force and empowerment. One of consequences of large commodity concentration is a lack of employment opportunities within the formal economic sectors and therefore, women are often forced to find the employment within informal sectors. Results also suggest strong and positive impact of economic development on empowerment of women, in terms of access to secondary education, access to resources or power to make decisions.[291]

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[288] Alex Dreher, 'Does globalization affect growth? Evidence from a new index of globalization', Thurgauer Wirtschaftsinstitut an der Universitaet Konstanz: Research Paper Series (2005), 11-12, http://www.twi-kreuzlingen.ch/uploads/tx_cal/media/TWI-RPS-006-Dreher-2005-04.pdf

[289] Stephanie Seguino, 'Gender, distribution and growth in developing countries', The World Bank (2011), 22, http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTGENDER/0,,contentMDK:23055474~pagePK:210058~piPK:210062~theSitePK:336868,00.html

[290] Small commodity concentration means that the number of products aimed at exporting is low.

[291] Rifat Akhter and Kathryn B. Ward, 'Globalization and gender equality: A critical analysis of women's empowerment in the

It was believed that discriminatory practices will not persist in a globalised world and that hence, that gender-based discrimination would be completely alleviated. This would make the skills the most important criteria for employment, increased importance of education and changes in the social norms.[292] Economists recognise two types of discrimination on the labour market: taste and statistical discrimination. Refusing to hire an employee due to their affiliation to certain group(s) results with taste discrimination, while statistical discrimination is based on the prevailing beliefs about the productivity of certain demographic group(s). Becker (1957) believed that competition on the product market would lead to alleviation of discrimination. Discriminatory practices are causing additional costs for the employer them and due to the competitive pressures, employer will be forced to discontinue the practice. Also, international pressures further increase the costs of discrimination for discriminatory employer. Following the rationale of the theory, if everything else is equal, smaller gender wage gap in competitive markets should be observed compared to concentrated markets.[293] Black and Brainerd (2002) tested the impact of globalisation on gender equality using the data on manufacturing industries in the United States of America. The growth or increase in international trade was taken as a sign of increased competition. As hypothesised, the results suggest that the gender wage gap was lowered more rapidly in concentrated industries that experienced a trade shock in comparison to competitive industries that experienced a trade shock. Furthermore, relative employment of women increased more than in competitive industries and the percentage of female managers increased as well in concentrated industries.

Using the data for Latin America and the Caribbean, Seguino (2006) conducted a detailed analysis of determinants of gender equity in well-being. The author found out that the following factors have a positive effect: (1) the share of manufacturing and services value-added in GDP, (2) growth in government consumption, and (3) share of women in labour force.[294]

Many companies have made efforts of different kind to combat discrimination within the companies. Green, Alhadeff, Akhmetova and Tracey (2017) have conducted a research among 20 companies in Australia. The research indicates that, although there is a clear growth in commitment to gender diversity, there is a still long way to go to achieve the gender diversity goals. Data shows that, for example, in 2016, gender gap in Australia's largest 200 public companies was largely present and only 5 % of CEOs in these companies were women.[295] It was argued that women are better off when employed within multinational rather than domestic company.[296] Proni and Proni

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global economy', *Perceiving gender locally, globally, and intersectionally* (2015), 141-173.

[292] Marcelo Giugale, 'Globalization: Has it helped or hurt women?', *Huffington Post*, 15 February 2012, https://www.huffingtonpost.com/marcelo-giugale/globalization-women_b_1149516.html

[293] Sandra Black and Elizabeth Brainerd, 'Importing equality? The impact of globalization on gender discrimination', NBER Working Paper Series (2002), 3-6, http://www.nber.org/papers/w9110

[294] Stephanie Seguino, 'The great equalizer? Globalization effects on gender equality in Latin America and the Caribbean', (2006), https://www.uvm.edu/~sseguino/pdf/equalizer.pdf

[295] Anna Green, Michaela Alhadeff, Zhanar Akhmetova and Claire Tracey, 'What's working to drive gender diversity in leadership', The Boston Consulting Group (2017), http://image-src.bcg.com/Images/BCG-Whats-Working_tcm9-155374.pdf

[296] Amelita King Dejardin, 'Gender (in)equality, globalization and governance', International Labour Office, Working Paper No. 92 (2009), http://www.ilo.org/wcmsp5/groups/public/---dgreports/---

showed, on the example of the three multinational companies operating in Brazil: Volkswagen, Unilever and Nestle, that there is a commitment among employers towards achieving gender equality, however, that it still largely remains work in progress.[297] By looking at the data between 1996 and 2010 that covers companies that are part of manufacturing sectors in Norway, Boler (2015) show that gender wage gap exist in the companies operating in this sector. However, the difference in exporters is lower than the overall difference when comparing all firms, 19 % compared to 24 % respectively. However, if the set of unobservable characteristics that do have an impact on whether a person is employed within exporting company are taken into account, then it appears that higher wage gap[298] is present within exporting firms, than overall among all manufacturing companies. Perceived commitment to work also affects gender wage gap.[299]

Dejardin (2009) noted that increase in paid employment of women in developing countries can explain increase in demand for female workers being part of the exporting sector. Increased employment of women leads to the increase in bargaining power of women within their households, impacts the distribution of resources, and ability to firmly defend their personal interests and those of their households and society. Another evidence suggests that trade liberalisation and greater availability of jobs leading to larger employment of women leads to different allocation of time and resources among household members. It usually leads to greater consumption of all household members due to larger available resources and to greater education expenditures. Furthermore, research evidences suggest that trade liberalisation may actually increase differences between genders in economies that are mainly agricultural, however, lowers gender differences in economies that are manufacturing. Once again, it was noted that gender inequalities are detrimental for the societies, as through their impact on human capital and investment in human capital, they can negatively impact economic growth in the long term. [300]

Some evidences suggest that, besides trade liberalisation, spread of information and communication technology has lead to increase in wages, increase in job opportunities[301] and better ties to the market (i.e. enabling better access to information and reducing transaction costs related to time and mobility). It has also caused political and social empowerment of women. Also, increased access to information can have a great influence in changing the attitudes and behaviours. As a result of increased demand for workers in export oriented and ICT sectors, women have progressed from agricultural sector to manufacturing or service sectors and this progression occurred faster in developing compared to developed countries. Increases in employment of women in exports occurred through the increases of employment of women in non-traditional and high-value added exports. Some evidences suggest that even access to mobile phones lead to the greater access of women to income

integration/documents/publication/wcms_108648.pdf

[297] Thafssa Tamarindo da Rocha Weishaupt Proni and Marcelo Weishaupt Proni, 'Gender discrimination in multinational corporations and the labour law in Brazil', X Global Labour University Conference

[298] Only for college graduates.

[299] Esther Boler, 'How does globalisation affect the gender wage gap', World Economic Forum, https://www.weforum.org/agenda/2015/05/how-does-globalisation-affect-the-gender-wage-gap/

[300] Maurizio Bussolo, 'Globalization (Trade) and the wellbeing of (poor) women and children', The World Bank, http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTGENDER/0,,contentMDK:23055474~pagePK:210058~piPK:210062~theSitePK:336868,00.html

[301] However, advancements in technology also led to job losses for women in manufacturing.

and to economic opportunities, and the evidence was even more significant for female entrepreneurs.

Besides the perceived positive impacts of globalisation on gender equality, some believe that impacts are not necessarily only positive. Some of considered negative effects that globalisation has caused are: (1) job security is questionable, (2) despite larger number of jobs available, women are often employed at the bottom of global supply chain[302], and (3) women are often being employed within sectors that regarded as "female".[303]

Conclusion

Globalisation is a complex phenomenon. It assumes the existence of complex networks of interdependence within numerous activities that take place in everyday life. Globalisation, mostly described through its economic aspect, has gone through two eras before reaching the era we are in now. First era was characterised by trade of non-competing goods and specialisation, whereas second era was characterised by the beginning of trade in competing goods. Current era, third era, is characterised by liberalisation of international trade and finance and larger volumes of international trade, finance and other financial flows.

Globalisation has brought significant changes in many areas of life. Evidences suggest that globalisation has positive impact on economic growth. It has lead to faster exchange of information. Many believe that it also has a positive impact on gender equality. It appears to be true, if we simply compare the rankings of KOF Globalisation Index and Gender Inequality Index values. Countries ranked as the most globalised appear to be more equal in terms of gender equality, while countries that are ranked at the bottom of the list appear to be largely unequal.

Evidences suggest that globalisation in general had a positive impact on gender equality. Increased trade and economic liberalisation have led to the new employment opportunities. Access to income in general had a positive impact on women's empowerment. However, wage gaps still exist and persist, regardless of the fact that the gap in education and skills level between men and women significantly diminished. Even though exporting companies are often believed to better in terms of gender equality and diversity of their workforce, evidences suggest that after controlling for unobservable characteristics, gender wage gap is actually larger.

It was believed that discrimination in labour market will fully disappear as discrimination in competitive market is costly. However, we can also testify that gender based discrimination in the labour market still represents a huge problem. Furthermore, larger foreign direct investments are related to higher education levels and increased access of women to service sector. Higher commodity concentration is related to lower education of women, labour force and lack of employment within formal sectors.

However, set of negative effects is also present. Although it is not arguable that globalisation has led to the increase in employment opportunities, the problems of low wages (i.e. women being regarded as a cheap labour force), job security and women often being employed at the bottom of supply chain or so-called "female" sectors does remain. The paper presents only a set of evidences on the link between gender equality and globalisation. Due to the complexity of both phenomena, there are many ways in which this link can be examined. However, what is certain is that globalisation has, to some extent, positively impacted gender equality.

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[302] Wages are assumed to be lower, jobs less secutre and working conditions poor within the bottom of supply chain.

[303] Amelita King Dejardin, 'Gender (in)equality, globalization and governance'

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The right to public interest information under regional human rights law: a comparison of the European and the Inter-American approach

By Marjolein Schaap-Rubio Imbers*

ABSTRACT

This article discusses the development of the right to public interest information by the European Court of Human Rights and Inter-American Court of Human Rights in two steps. Firstly, the article discusses the content and scope of the right to public interest information and compares the approach taken by the two Courts in recognizing this right to information. Secondly, the research maps the extent to which the Courts in their judgments reference to other (international) case law, refer to each other's case law and maps the ways in which both Courts interacts with other organs in their regional organization.

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Introduction

A society that is not well informed is not a society that is truly free[304]

Former International Court of Justice judge Weeramantry wrote in 1995 a novel article in which he reasoned that the right to public interest information[305] is a *new* human right.[306] He saw sufficient evidence to conclude that the right to information was not solely a privilege but it is a right however that:
…its concept and procedures have yet to be developed considerably but the first broad brush strokes delineating the right have appeared on the canvas of human rights.[307]

Although there is no explicit provision recognizing a right to public interest information, the right by now has a firm basis in international (human rights) law. The Inter-American Court of Human Rights was one of the first to recognize a strong right to public interest information.[308] The European Court of Human Rights has only recently recognized a general right to public interest information, albeit of more limited nature. This research compares the approaches of the two regional human rights courts and identifies the general standard across the international human rights instruments and the extent to which the two Courts offer further or less protection. Additionally, this research maps the extent to which there is normative interaction between the ECtHR and the IACtHR in the development of the right to public interest information. The research will do so in two interrelated steps. Firstly, in Section one this research discusses the content and scope of the right to public interest information and how the right is interpreted and (further) developed by the IACtHR and the ECtHR. Sections two and three explore the characteristics of the normative interaction identified, who interacts with whom and to what extent?

Right to public interest information
The right to public interest information is discussed in light of its legal basis, the holder of the right, the scope of the right and concomitant duties for authorities, the procedure to request information, and lastly, the limitations to the right. The different elements of the right to public interest information were identified on the basis of an extensive legal survey conducted of the relevant human rights instruments. Accordingly, the following paragraphs set out what the general standard is across the human rights instruments and reference is made to the case law of the ECtHR and the IACtHR to illustrate their respective position.

Legal basis

Even though, there is no explicit legal provision stipulating a right to public interest information in international human rights treaties, the right is recognized by various treaty monitoring bodies. The legal basis for the right lies in the provision of freedom of expression, which can be traced back to Article 19 of the 1948 Universal Declaration of Human Rights.[309] Both the American Convention on Human Rights (ACHR) and the European Convention on Human Rights

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[304] IACHR, *advisory opinion, OC-5/85*, §70.

[305] Note that Weeramantry referred to the term governmental information. In this research the term a right to public interest information will be used instead of the more commonly used state-held information or government-held information. The latter terms seem to indicate - falsely - that other informational rights do not deal with information held by authorities.

[306] G. Weeramanty (1994) 'Access to information: A New Human Right. The Right to information' *Asian Yearbook of International Law* 99-125.

[307] Idem 111.

[308] IACtHR, *Claude-Reyes et al. v. Chile,* Judgment,
Series C No. 151(September 19, 2006), §77.

[309] UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III).

(ECHR) recognize a right to public interest information, although the scope of the right differs. The Inter-American Court of Human Rights has read a right to access to public interest information into Article 13 ACHR (the right to seek, receive and impart information).[310] Other organs of the Organization of American States (OAS) have similarly recognized a right to public interest information for individuals.[311] The ECtHR has recognized a right to public interest information[312] in light of Article 10 ECHR (the right to receive and impart information), albeit only under particular conditions.[313] The Court reasons that the right to public interest information forms part of the right to *receive* information.[314] Interestingly, the Inter-American Court of Human Rights, the Human Rights Committee and the African Commission on Human and Peoples' Rights have read the right to public interest information into the freedom *to seek* information. As the following paragraphs will show, this difference in reasoning has implications for the content and scope of the right to public interest information.

Defining public interest information

The right to public interest information contains two components, (1) the information is in the possession of public authorities and (2) the information is of public interest.

1. Public authorities

Both the ECHR and the ACHR recognize a right to information held by public authorities. The concept of public authorities is defined broadly. All branches of state (governmental, legislative and judicial bodies) constitute public authorities. Thus, all authorities exercising administrating powers similarly constitute public authorities However, several treaty regimes exclude legislative and judicial authorities as duty bearers of the right to access information.[315]

2. Information of public interest

The second component is that the information held by public authorities is of *public interest*. The question is therefore which information falls within the ambit of the right to public interest information? Both within the OAS[316] and the COE[317] a

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310 IACtHR, *Claude Reyes v Chile*, Ser. C. No. 151 (Sept 19, 2006), §77.

311 See e.g. Inter-American Juridical Committee, Principles on the right to access to information, CJI/RES. 147 (LXXIII-O/08); Inter-American Commission on Human Rights, Annual Report of the Special Rapporteur for Freedom of Expression (2003) Inter-Am. CHR OAS Doc. OEA/SER.G, CP/Doc. 3790/03, at 8.

312 ECtHR, *Magyar Helsinki Bizottság v Hungary* §156.

313 Article 10 (European) Convention for the Protection of Human Rights and Fundamental Freedoms, ETS no 5, 213 UNTS 222, 4 Nov. 1950 [ECHR].

314 For instance, in the explanatory note to the CoM Recommendation Rec (2002) the Committee also notes:

> … that Article 19 of the Universal Declaration on Human Rights and Article 19 of the International Covenant on Civil and Political Rights appear to grant a wider right of access to official information than the European Convention on Human Rights as these provisions also contain a right seek information.

Recommendation Rec (2002) 2 of the Committee of Ministers (21 February 2002) at 10.

315 See e.g. with regard to the Council of Europe, Committee of Ministers recommendation No. r (81) 19 On the Access to Information Held by Public Authorities, (25 November 1981), 340th Meeting of Ministers' Deputies, Appendix 1, principle 1; Committee of Ministers Recommendation Rec (2002) 2 on Access to Official Documents, at 2 (1).

316 Inter-American Commission on Human Rights, Annual Report of the Special Rapporteur for Freedom of Expression, (Aug 29, 2003) at 8.

317 In the Council of Europe the focus is *on access to documents* instead of access to information: Committee of Ministers Recommendation Rec (2002) 2 on access to official documents, definitions, provision 1.

broad definition is adopted which *type* of information is included.[318] For example, the OAS Model Law on Access to Information states that public interest information includes 'all information in possession of public authorities, including all information which is held or recorded in any format or medium'.[319]

However what constitutes public interest information is decided on a case-by-case basis. For instance, the IACtHR in the *Claude Reyes v Chile* case concluded that the information to which access was requested was of public interest as:
…it related to the foreign investment contract signed originally between the State and two foreign companies and a Chilean company (which would receive the investment), in order to develop a forestry exploitation project that caused considerable public debate owing to its potential environmental impact.[320]
Thus, the parties involved with the contract and the subject of the contract were considered relevant factors to determine whether the information was of public interest. Furthermore, the reasons provided for asking the information, to hold the authorities to account for a proper exercise of power, was considered of relevance.[321] The ECtHR held in *Magyar Helsinki Bizottság v Hungary* that what constitutes public interest information is depended on the circumstances of the case, but that as a general guidance:

> [T]he public interest relates to matters which affect the public to such an extent that it may legitimately take an interest in them, which attract its attention or which concern it to a significant degree, (…) matters which are capable of giving rise to considerable controversy, which concern an important social issue, or which involve a problem that the public would have an interest in being informed about.[322]

The ECtHR determined, for instance, that documents at the Ministry of the Interior regarding the functioning of the State Security Services in Hungary in the 1960s were considered to be of public interest.[323] Hence, it is difficult to deduce generalizable criteria for each situation to determine the public interest nature of the information, instead a contextual analysis is required on a case-by-case basis.

Who has a right to request for information?
This research identified two different approaches as to *who* has a right to the information. Firstly, the general standard identified across the human rights treaties is that it is a right for everyone (i.e. no interest to be stated). Secondly, the deviating (or less progressive) standard is that the right to public interest information exist only for those involved with the legitimate information gathering, such as social watchdogs. This is also

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Article 1(2)(b)of the COE CETS 205 Convention on access to official documents (2009, not yet entered into force).

[318] See also Bishop, *Access to information*, at 75.

[319] General Assembly of the OAS, Model Inter-American Law on Access to Public Information AG/RES. 2607 (XL-O/10) (October 8, 2010); Inter-American Commission on Human Rights, Annual Report of the Special Rapporteur for Freedom of Expression, (Aug 29, 2003) at 8; Inter-American Juridical Committee, Principles on the right to access to information, CJI/RES. 147 (LXXIII-O/08), principle 1 & 3.

[320] IACtHR, *Claude Reyes v Chile*, §73.

[321] Ibid., §73.

[322] ECtHR, *Magyar Helsinki Bizottság v Hungary,* §162.

[323] ECtHR, *Kenedi v. Hungary,* App No 31475/05 (May 26, 2009), §43; However in the *case of Sdruženi Jihočeské Matky v. Czech Republic* (no. 19101/03, 2006, admissibility decision) the Court stated that there is a limit to public interest information and that article 10t:

> … should not be interpreted as guaranteeing the absolute right to have access to all the technical details relating to the construction of a power station as, … such data should not be of general public interest.

where the approach of the ECtHR and the IACtHR differs the most, the ECtHR adopts the latter approach and the IACtHR the former.

The Inter-American Court of Human Rights held in *Claude Reyes v Chile* that authorities should provide access to public interest information requested and that authorities may not make the access conditional upon proof of interest or personal involvement.[324] The rationale is that information held by public authorities is information gathered or produced for the people, and that, therefore, the information belongs to the people.[325] The Court's approach has been reaffirmed widely by other OAS organs.[326] A similar approach is adopted by the Human Rights Committee[327] and the African Commission on Human and Peoples' Rights.[328]

Contrary to the IACtHR, in the case law of the ECtHR, the reason for which information is requested does matters.[329] The European Court of Human Rights recognizes a right to public interest information under limited circumstances only. In *Magyar Helsinki Bizottság v Hungary*, the Court confirmed its previous case law and held that it does matter *who* requests public interest information and for *which purpose.*[330] The Court draws an analogy with the ECtHR's long-established practice of according special protection to the press in a democratic society by restating that the gathering of information was an essential preparatory step in journalism and an inherent, protected part of press freedom. Accordingly, the Court recognizes an implied right of access to public interest information for the media. It is in this light that the Court examines whether the person seeking access to the information in question does so with the intent to inform the public in the capacity of a public "watchdog."[331] However, the question is who receives such special protection. Previously, the

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[324] IACtHR, *Claude Reyes v Chile*, §77; IACtHR, *Case of Gomes Lund et al. v. Brazil (Guerrilha do Araguaia)*, judgment (November 24, 2010) Series C No. 219, §197.

[325] IACtHR, *Claude Reyes v Chile*, §77.

[326] E.g. principle 1 of the Inter-American Juridical Committee's Resolution CJI/RES.147 (LXXIII-O/08) on "Principles on the Right of Access to Information"; 2001 Annual Report of the Special Rapporteur for Freedom of Expression, §182003 report of the OAS Special Rapporteur on the Situation of Freedom of Expression in Haiti, §28; Annual report of the Inter-American Commission on Human Rights, 2003 report of the Inter-American Special Rapporteur, (August, 29, 2003), at 7-8; 2003 Report of OAS Special Rapporteur on the Situation of Freedom of Expression in Panama, §128.

[327] HRCee, *Toktakunov v Kyrgyzstan*, §6.3; note that this phrase is exactly the same as the phrase used in the *Claude Reyes v Chile* case of the IACtHR (compare §77) which preceded this case by several years.

[328] African Commission on Human and Peoples' Rights Declaration of Principles on Freedom of Expression in Africa, (2002), principle IV. The African Commission on Human and Peoples' Rights, Resolution nº 167 Securing the Effective Realization of Access to Information in Africa (2007). Articles 2(a), 12(1) of the Model Law on Access to Information for Africa (2011), http://www.achpr.org/instruments/access-information/.

[329] Note that even though the Court held in *Claude Reyes v Chile* that no interest needed to be stated, the Court emphasized that the information was of public interest and that the information was needed to examine whether a state body acted appropriately. IACtHR, *Claude Reyes v Chile* (2006), §73.

[330] ECtHR, *Magyar Helsinki Bizottság v Hungary*, §156.

[331] Idem, §168; ECtHR, *Youth Initiative for Human Rights v. Serbia* - 48135/06 (25 June 2013), §20; See for further case law confirming this line of reasoning of the ECHR, ECtHR [GC] *Animal Defenders International v. the United Kingdom*, (April 22, 2013), 48876/08, §103; ECtHR, *(TSAZ) v. Hungary* 37374/05 (merits) (April 14, 2009) §36; ECtHR, *Jersild v. Denmark*, (September 23, 1994) Series A no. 298.

Court had established that NGOs as social watchdogs should be offered such protection.[332] Similarly, the Court recognized the crucial role of academic researchers and authors of literature and accorded them special protection.[333] The ECtHR does not rule out future categories; for instance, 'bloggers and popular users of the social media' might warrant similar protection under Article 10 in the future.[334]

Interestingly, other organs of the Council of Europe do embrace a wider substantive right and recognize a right for everyone to request public interest information.[335] A 1981 recommendation of the Committee of Ministers provided already that '[e]veryone within the jurisdiction of a member state shall have the right to obtain, on request, information held by the public authorities.'[336] The COE Convention on Access to Official Documents also recognizes the right to seek public interest information for everyone, with no interest to be stated.[337]

The obligation for authorities to disclose information

This research stipulates that there is a general standard to disclose public interest information requested unless one of the limitation grounds apply. In other words, there is a presumption of disclosure. Various OAS bodies have declared that the right to public interest information is guided by the principle of maximum disclosure.[338] The Inter-American Court of Human Rights held in *Claude Reyes v Chile* that the right of the individual to seek public interest information entails that the state has a positive obligation to provide the requested information unless legitimately restricted.[339]

The approach by the European Court of Human Rights is less straightforward. The Court held there is a corollary positive obligation for authorities to disclose public interest information requested, albeit only under limited circumstances.[340] In ECtHR's case law, it always has been a central question whether Article 10 can be interpreted as including a positive obligation for authorities to disclose information upon request by individuals. Already in 1987, the Court established in *Leander v Sweden* that 'the right to freedom to receive information prohibits a Government from restricting a person

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[332] E.g. ECtHR, *OVESSG v Austria,*39534/07 (November 28, 2013).

[333] ECtHR, *Kenedi v. Hungary,* 31475/05 (May 26, 2009), §43.

[334] ECtHR, *Magyar Helsinki Bizottság v Hungary*.

[335] See e.g. COE Committee of Ministers Recommendation R (81) 19 (1981).

[336] Ibid.; Committee of Ministers, *R(2002)2 on Access to Official Document* §III.

[337] Article 2(1) & 4 of the Council of Europe Convention on Access to Official Documents, CETS No.205 (not yet entered into force); Explanatory report to the COE Convention on access to official documents, §17-19.

[338] OAS Declaration of Principles on Freedom of Expression (2000), principle 4; 2004 Joint Declaration by the UN Special Rapporteur on Freedom of opinion and Expression, OSCE Representative on Freedom of the Media and OAS Special Rapporteur on Freedom of Expression, (December 6, 2004); Inter-American Commission on Human Rights, Annual Report of the Special Rapporteur for Freedom of Expression, (Aug 29, 2003), at 8; IACHR, Office of the Special Rapporteur for Freedom of Expression, *A Hemispheric Agenda for the Defense of Freedom of Expression,* OEA/Ser.L/v/II/CIDH/RELE/INF.4/09 (February 25, 2009) §15.

[339] IACtHR, *Claude Reyes v Chile*, §77.

[340] Note that this research does not address the approach of the European Court of Human Rights in the context of other informational rights. For example, the Court held that there is a right to be informed for those affected by decisions on environmental matters or by environmental threats in the context of in the context of Article 8 (right to family life) and Article 2 (right to life). See, e.g. ECtHR, *Di Sarno and others v Italy*, 30765/08 (January 10, 2012).

from receiving information that others wish or may be willing to impart to him.'[341] Thus – in principle – Article 10 cannot be interpreted as imposing positive obligations on authorities to disclose information upon request.[342] Even though the Court still adheres to these 'classic principles,'[343] it has advanced by identifying two situations in which there is a right of access to information coupled with a positive obligation to disclose the information. First, authorities are required to disclose information when imposed to do so by a judicial order which has gained legal force.[344] Second, authorities have a duty to disclose where the access to information is instrumental for the individual's exercise of his or her right to freedom of expression, in particular, the right to receive and impart information.[345] The Court established four threshold criteria to determine when this is the case: (i) the information is of public interest, (ii) the information is requested with the idea to contribute to public debate, (iii) the applicant should be a social watchdog or alike, and lastly, (iv) the information needs to be ready and available to public authorities.[346] The first three criteria have already been discussed; the latter criterion implies that authorities cannot be expected to have to actively collect the information requested. Thus, the positive obligation for authorities only embraces a duty to disclose public interest information sought by social watchdogs and alike for the purpose to contribute to the public debate which is ready and available. Note though that other COE organs have embraced a wider positive obligation for authorities, including a presumption of disclosure.[347]

Procedure to request information

Each of the treaty regimes prescribe that authorities should have procedures in place for the individuals to seek information, but leave it up to the member states to arrange it. The requirements for a procedure to request information seem to be rather similar across the various treaty regimes; they ought to be low-cost, simple, fast procedures.[348] What constitutes low-cost, simple and or fast procedures seems to be decided on a case-by-case basis per treaty regime.[349]

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[341] ECtHR, *Leander v Sweden*, §74. In *Magyar Helsinki Bizottság v Hungary* the Court recently confirmed that this view is still authoritative for the Court in interpreting the right to public interest information as established under article 10 ECHR, §156.

[342] ECtHR, *Leander v Sweden* §74; *Guerra and others v Italy*, §53.

[343] ECtHR, *Magyar Helsinki Bizottság v Hungary,* §156.

[344] See *Youth initiative for Human Rights v Serbia* where the ECtHR concluded that the Serbian intelligence agency's 'obstinate reluctance' to comply with the order of the Serbian Information Commissioner to disclose the information' constituted a violation of article 10 ECHR; see also *TSAZ v Hungary* (§ 35).

[345] ECtHR, *Magyar Helsinki Bizottság v Hungary* §156.

[346] Idem, §156.

[347] Council of Europe, Committee of Ministers recommendation No. R (81) 19 (1981), Appendix 1; COE Convention on Access to Official Documents, preamble (not yet entered into force, 2009).

[348] 2006 Joint Declaration by the UN Special Rapporteur on Freedom of opinion and Expression, OSCE Representative on Freedom of the Media and OAS Special Rapporteur on Freedom of Expression; Report of the OAS Special Rapporteur for Freedom of Expression, Inter-American Commission on Human Rights 2009, chapter IV, The Right of Access to Information, §26-28; Inter-American Juridical Committee, Principles on the right to access to information; article 5 COE Convention on Access to Official Documents.

[349] See e.g. principle 5, Principles on the Right to Access to Information, Inter-American Juridical Committee; HRCee, GC 34, §19 & 34; COE Committee of Ministers, Recommendation Rec (2002) 2, principle VIII; Inter-American Juridical Committee, Principles on the right to access to information, principle 5; COE, Committee of Ministers Recommendation R (81) 19, Appendix 1, principle VI; article 5(4)

Limitations to the right

The principle of maximum disclosure applies to the right to public interest information, which implies that access to the information is presumed, and that any limitation to this right – whether refusing access in full or partly – needs to be justified in accordance with the Convention rights. In general, limitations are to be interpreted restrictively[350] and a limitation imposed may not render a right illusory.[351] Despite the small differences in phrasing, both the ACHR and the ECHR require that a three-part test should be fulfilled to restrict the right to public interest information legitimately.[352] The three-part, generally speaking, is defined as the tests of legality, legitimacy, and necessity.[353]

The first criterion that any restriction needs to be in accordance with the law has been interpreted relatively similarly by both treaty regimes.[354] In general, the legality criterion demands more than merely a legal basis for the limitation in a domestic law and instead the law should be of a certain quality.[355] One of the quality criteria is that law should define the conditions under which information may be withheld and as such define the discretion of authorities.[356] For instance, unfettered discretion for authorities to determine what to do with public interest information and the requests to access this information results often into a violation of the principle of legality. The criterion of legality is mainly intended to prevent an arbitrary withholding of information.[357]

Secondly, the restriction should pursue a legitimate aim or purpose. When comparing the legitimate aims recognized, both the ACHR and the ECHR list as grounds for limitations the protection of the rights or reputation of others, national security or public order and public health or morals.[358] The ECHR also list other grounds for limiting access to the information.[359] Thirdly, the restriction should be necessary (in a democratic society). The treaty monitoring bodies do not always distinguish clearly between the requirement of the necessity of the restriction imposed and the question whether the chosen restriction is proportional in achieving the legitimate aim. First, the necessity principle will be

COE Convention on Access to Official Documents (2009).

350 See e.g. IACtHR, *Claude Reyes v Chile*, §85-87.

351 See e.g. HRCee *GC 34*, §21. African Commission for Human Rights, *Media Rights Agenda and others v Nigeria* (2000) AHRLR 200 (Oct 1998), §70.

352 See e.g. HRCee GC 34, §22; ECtHR, *Kenedi v Hungary,* §43.

353 Article 10 (2) ECHR; Article 13 (2) IACHR; article 19(3) ICCPR; article 9 ACHR, African Commission, Resolution on the Adoption of Declaration of Principles on Freedom of Expression in Africa, ACHPR/Res. 62 (XXXII) (Oct. 2002), principle II.

354 ECtHR, *Delfi AS v. Estonia* [GC], no. 64569/09, ECHR 2015; IACtHR, *The Word "Laws" in Article 30 of the American Convention on Human Rights*. Advisory Opinion, OC-6/86 of May 9, 1986. Series A No. 6, §26-29.

355 See e.g. in regard to the positon of the ECtHR, Sunday Times v UK (1979-1980) 2 EHRR 245, §49 and ECtHR, *Hasan v Bulgaria* (2000) 24 EHRR 55.

356 In this context, the ECtHR for instance stipulates a requirement of foreseeability. See e.g. ECtHR, *Kenedi v Hungary,* 44.

357 The ECtHR in *Kenedi v Hungary*, came to the conclusion that the government's refusal to comply with a domestic court ruling to disclose the information resulted into a defiance of domestic law and arbitrary exercise of power, (§ 44-45). See also IACtHR, *Claude-Reyes v Chile*, §89.

358 Article 13 ACHR; Article 10 ECHR.

359 ECHR 10(2) includes further territorial integrity, prevention of disclosure of information received in confidentiality, maintaining the authority and impartiality of the judiciary.

discussed, thereafter, the principle of proportionality. Despite the different terminology used by the two Courts, the meaning of the requirement of necessity is fairly similar. For instance, the ECtHR requires a 'pressing social need,'[360] and the Inter-American Court of Human Rights a 'compelling public interest[361] to justify a refusal to disclose the information. In the case law, it often ends up in a balancing act of competing interests, where the public interest in disclosing information are balanced against the state interest protected by the restriction.[362] The parameters for such balancing act are decided in a case-by-case analysis by the Courts. As such, there is certain discretion or room for maneuver for the administrative authorities to determine what constitute a proper balancing of the interests. This research identified that in the context of limitations for national security reasons, treaty monitoring bodies have been more explicit in defining the extent to which authorities have administrative discretion. These limitations seem to be subject to a more strict scrutiny by the treaty monitoring bodies than other limitations to the right to public interest information.[363] For example, the Inter-American Court of Human Rights considered it to be even more pertinent to properly define the discretionary power of authorities to classify information when information is withheld for national security reasons in order to prevent an arbitrary refusal of access to information.[364] Similarly, the Inter-American Juridical Committee imposes a high standard for limiting the right to access public interest information, to only those situations of 'real and imminent danger that threatens national security in democratic society.'[365]

The proportionality principle implies that authorities should choose the least restrictive means to achieve the legitimate aim. Note, that there is not one uniform methodology used across the treaty regimes to assess the proportionality of a given interference.[366] The need to choose the least restrictive means implies in this context that when the legitimate aim can be achieved by partial disclosure, authorities are obliged to do so.[367] When limiting access to information, files may only be classified for a particular period of time, the law describing the limitations should address who has the power to classify information and for which period the documents will be withheld from the public.[368]

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[360] ECtHR *Delfi AS v. Estonia* [GC], no. 64569/09, ECHR 2015 §131. The ECtHR's approach to the principle of proportionality is closely connected to the margin of appreciation doctrine. See for a critical discussion of this approach e.g. M. Ambrus, 'Comparative Law Method in the Jurisprudence of the European Court of Human Rights in the Light of the Rule Of Law' (2009) 2(3) *Erasmus Law Review* 353-371; E. Benvenisti 'Margin of Appreciation, consensus and universal standards (1999) 31 *International law and politics* 843.

[361] Inter-American Commission on Human Rights, Report of the Special Rapporteur Marino 'The Inter-American Legal Framework regarding the Right to Access to Information, OEA/Ser.L/V/II. CIDH/RELE/INF. 9/12 (Mar ch 7, 2011) §53.

[362] See e.g. IACtHR, *Claude Reyes v. Chile,* 88-90; HRCee, *Rafael Rodriquez Castañeda v. Mexico* §7.5-7.7.

[363] *Claude Reyes v Chile*, §58; see also IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter III (The Right to Access to Public Information in the Americas). OEA/Ser.L/V/II. Doc. 69 (Dec. 30, 2011), §343.

[364] *Claude Reyes v Chile,* §98.

[365] Inter-American Juridical Committee, Principles on the Right to Access to Information, principle 4; *Claude Reyes v Chile,* §98.

[366] See in general e.g. J Rivers 'Proportionality and variable intensity of review (2006) 65 *Cambridge Law Journal* 174 at 195-206.

[367] Idem, §45-47; see also article 5(6) COE Convention on Access to Official Documents.

[368] Joint Declaration (2004) by the UN Special Rapporteur on Freedom of opinion and Expression, OSCE Representative on Freedom

As a separate requirement, any refusal to disclose information, whether it concerns a denial to a partial or to a full disclosure, needs to be provided in writing. Authorities ought to provide the reasons underlying the refusal.[369] Furthermore, whenever the information is refused or partly refused, applicants should have a possibility to appeal the decision and be informed about this option.[370]

Conclusions

The right to public interest information has a firm basis both within the American human rights regime and within the European human rights regime. This section highlighted the content and scope of the right to public interest information and the approach adopted by the European Court of Human Rights and the Inter-American Court of Human Rights. The following section address the possible normative interactions between the Courts.

Treaty interpretation and references to foreign case law

This section discusses the extent to which the ECtHR and the IACtHR refer to, and/or rely on, international instruments and case law of other treaty monitoring bodies in their interpretation of the right to freedom of expression.

The pivotal case of the Inter-American Court of Human Rights was the 2006 *Claude Reyes v Chile* case in which the Court for the first time recognized a right to public interest information. The Court, firstly, interpreted article 13 ACHR to contain a right to public interest information, and thereafter, it discussed the extent to which there is the regional and international consensus that there should be such a right.[371] The IACtHR referred to the consensus within the OAS, which is evidenced by the OAS General Assembly resolutions on the subject matter, article 4 of the Inter-American Democratic Charter, and the Nueva Leon Declaration. Thereafter, the Court listed the relevant international provisions on access to information as stipulated in the UN Convention against Corruption, the RIO Declaration on Environment and Development, the Aarhus Convention on Access to Information, Participation in the Decision-Making and Access to Justice and the relevant work within the context of the Council of Europe.[372] The Court seemed to refer to these international cases and instruments to further support its interpretation of article 13 ACHR. Note, that the European Court of Human Rights - at the time of the judgment - held a(n even) more limited position, the IACtHR did not refer to the (deviating) case law of the ECtHR.

The European Court of Human Rights in the *Magyar Helsinki Bizottság v. Hungary* extensively discussed its current position on a right to public interest information for individuals under article 10 ECHR. The Court referred to international case law at two instances: at the listing of all relevant international instruments and practices and in the merits phase. The list of relevant materials included: the case law of the Human Rights Committee, the

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of the Media and OAS Special Rapporteur on Freedom of Expression.

[369] See e.g. COE, Committee of Ministers recommendation No. r (81) 19, Appendix 1, principle VII; 2009 Report of the OAS Special Rapporteur for Freedom of Expression, §26; Inter-American Juridical Committee, Principles on the right to access to information, principle 5; IACtHR, *Claude Reyes v Chile*, §55.

[370] See e.g. COE Committee of Ministers recommendation No. r (81) 19, Appendix 1, principle VIII; Inter-American Juridical Committee, Principles on the right to access to information, principle 8; 2009 Report of the OAS Special Rapporteur for Freedom of Expression, §26.

[371] IACtHR, *Claude Reyes v Chile*, §77.

[372] COE Parliamentary Assembly, Recommendation No. 582 (January 23, 1970); Committee of Ministers, Declaration on the Freedom of Expression and Information (April 29, 1982); Recommendation No. R (2002)2.

C*laude Reyes v Chile* case by the IACtHR, and the various non-binding documents produced within the context of other Council of Europe organs. Thereafter, the Court discussed the relevance of these instruments and case law within the merits phase, something that is rare in the context of the ECtHR. The Court explained the methodology used to interpret article 10 ECHR, it relied on articles 31-33 of the Vienna Convention on the Law of Treaties (VCLT).[373] The Court extensively discussed its own case law on the matter, but also relevant developments within and outside the Council of Europe, including the *travaux preparatoires* of the ECHR, case law of other human rights bodies; and conducted a comparative analysis of relevant domestic legislation. The Court, relying on article 31(3)(c) of the VLCT, examined whether there was an emerging consensus at the international level and at the national level which should be taken into account when clarifying the scope of a Convention provision.[374] In this context, the ECtHR referred to the *Claude Reyes v Chile* case of the IACtHR and the case law of the UN Human Rights Committee to emphasize that they both recognized a right to public interest information. However, the HRCee case law was considered to be particularly relevant as:

For the UN bodies, the right of public watchdogs to have access to State-held information in order to discharge their obligations as public watchdogs, that is, to impart information and ideas was a corollary of the public's right to receive information on issues of public concern.[375] This reasoning is similar to the ECtHR's reasoning for according a right to limited public interest information. The Court concluded that it was not 'prevented' from reading a right to access public interest information into article 10 ECHR.[376]

Concluding, the approach of the ECtHR and the IACtHR towards foreign case law is quite comparable in these two cases. However, in general, the Inter-American Court of Human Rights appears to refer more often to other instruments and case law in its judgements than the European Court of Human Rights.

Normative interaction within a human rights organization

Normative interaction cannot only be detected by searching for explicit references to foreign cases or instruments in judgments. This research identified another form of normative interactions or influence. Through the years and across the various documents from various organs of the Organization of American States and of the Council of Europe, similar language can be found. For instance, even though the first case (*Claude Reyes v Chile*) recognizing a right to public interest information was only in 2006, in the various non-binding instruments of organs of the OAS, the right to public interest was already acknowledged, stipulating a general right belonging to everyone guided by the principle of maximum disclosure. Further, on various occasions the OAS Special Rapporteur on the right to information has adopted joint declarations with Special Rapporteurs of other human rights organizations, affirming the joint position.[377] Whereas the other organs of the OAS further support and strengthen the position of the IACtHR., with the European Court of Human Rights it is a bit more complicated. For instance, the Committee of Ministers of the Council of Europe adopted already in 1981 a recommendation stipulating a right to access public interest information for everyone.[378]

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[373] *Magyar Helsinki Bizottság v. Hungary,* §118.

[374] *Magyar Helsinki Bizottság v. Hungary*,§ 124.

[375] §143.

[376] Ibid, at 148.

[377] 2006 Joint Declaration by the UN Special Rapporteur on Freedom of opinion and Expression, OSCE Representative on Freedom of the Media and OAS Special Rapporteur on Freedom of Expression.

[378] Council of Europe, Committee of Ministers recommendation No. r (81) 19 On the Access to Information Held by Public Authorities,

Consecutive recommendations affirmed this position and further defined the scope and content of the right to public interest information.[379] In these documents, references are made to other developments, including the IACtHR's case law on the matter. Similarly, the 2009 COE Convention on Access to Information (not yet in force)[380] does acknowledge the right of everyone to access public interest information and embraces the principle of maximum disclosure. In the explanatory report to the convention, explicit reference is made to the *Claude Reyes v Chile* case as a proof of a broader consensus that a right to public interest information exists.[381]

The discrepancy between other organs and the ECtHR's approach could be explained on the basis of the different mandate and role that both organs have within the organization. While a court is limited to deal with the cases brought to them, within their competence and jurisdiction, and other organs function at more diplomatic level and are therefore more able to make rather general statements beyond jurisdictional and substantive interpretation questions. Therefore, whenever one wants to map the normative influence of certain regimes or its case law, it is important to take the broader context into account. Strict admissibility criteria might result into a body of case law which gives a bit distorted picture. The ECtHR has, for example, a strict victim requirement, which includes a prohibition of *actio popularis*. As a result, NGOs and members of the general public are not in position to enforce those human rights obligations that are owed to the public. This does not per se imply that members of the general public do not have such right, rather that it is difficult to enforce the right at the international level.

Overall conclusions

This research has set out the content and scope of the right to public interest information as recognized by the Inter-American Court of Human Rights and the European Court of Human Rights. Remarkably, although there are some essential differences between the two approaches, there is a large degree of normative agreement of the elements of a right to public interest information. When comparing the various judgments and non-binding documents from other organs of the OAS and COE, the similarities in language and overlap between the norms identified is striking. This demonstrates that the norms do not operate in a vacuum and that accordingly the context is relevant for both the practitioner and the academic. First, the context matters to determine the precise content and scope of the right to information. For example, what constitutes public interest information is determined on a case-by-case basis. Similarly, the legality, necessity and legitimacy of limitations to the right to public interest information is determined on a case-by-case basis, the legal norms only set the outer parameters. Second, whenever one studies normative interactions between courts or other (quasi)judicial bodies a contextual analysis is required to understand the position of a Court within its organization, its interpretation methodology, and its approach towards external sources. For example, one should keep in mind that a lack of explicit references does not entail per se that there was no form of interaction. Courts might have a different style of drafting their judgments. Courts might have different motives for referring to case law of other courts depending on the context of the case. They may rely on other case law to (further) legitimize their

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(November 25, 1981), 340th Meeting of Ministers' Deputies, Appendix 1.

[379] Committee of Ministers Recommendation Rec (2002) 2 on Access to Official Documents.

[380] Note that the COE Convention would be the first binding instrument in which the general right to public interest information is stipulated, in comparison to the IACtHR interpretation of reading it into article 13 ACHR.

[381] Explanatory Report to the COE Convention on Access to Information, II.

interpretation, while in other situations, preference could be given to maintaining a clear line of jurisprudence within a Court and therefore paying less (explicit) attention to external sources. Without a contextual analysis, or contextual sensitivity, wrong conclusions can easily be drawn in these cases.

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Book Review: 'Globalising Transitional Justice: Contemporary Essays' by Ruti G. Teitel, Oxford University Press. 2014.

By Helga Molbæk-Steensig*

ABSTRACT

Ruti G. Teitel is an established authority within the field of transitional justice. She coined the term in the late 1980s and in the year 2000 she published her monograph 'Transitional Justice', which is still for many scholars the entry point into the field, but also a starting point for expanding the field beyond the strict adherence to the legal aspects of ensuring the right to justice.

In 2014, Teitel published her new book, 'Globalising Transitional Justice'. In which she takes stake of the development of the field she founded several decades earlier, and its expansions. 'Globalising Transitional Justice' is not a monograph but a collection of Teitel's essays published elsewhere between 2000 and 2014 along with an introduction and an epilogue detailing the development of the field, both academically, legally, and normatively. It is well worth a read, but the reader should not expect a monograph in the style of her 2000 book, nor a textbook-type final coining of terminology and practical uses of transitional justice. 'Globalising Transitional Justice' is a portrait of a field in motion from a scholar that moves with it.

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Introduction

Since Teitel published 'Transitional Justice' in 2000, the field – then described as a legal field ripe for interactions and interdisciplinary cooperation with other fields – has moved in an even more interdisciplinary direction, encompassing aesthetic, economic, social and humanistic fields as well as the field of law, and utilising ground-up theorising and constructivist approaches along the way. This development appears to be the starting point for Teitel's new 2014 'Globalising Transitional Justice'. The new volume takes stake of the current academic, political and practical field of Transitional Justice, and sets out to re-coin the terminology once again:

"If, before, the centrality of the transitional problem was the predecessor regime and its excesses, and the related aim—constitution-style delimitation of state power—now, the challenge of contemporary transformation is that it engages directly nonstate actors at all levels … In an increasing number of weak and failed states, … the overriding goal is the assuring of a modicum of security and the rule of law that, even without other political consensus, one might say, has become a route to contemporary legitimacy."[382]

In a rather refreshing manner, Teitel asserts no negative judgement on the sprawling field that has moved far from her initial delimitation, but rather aims to recalibrate, re-assess, and reset the gold standard for the academic introduction to the field of transitional justice.

The new book is, however, not a monograph, nor the textbook style introduction to Transitional justice that transitional justice teachers and instructors have been yearning for.[383] It is rather a compilation of Teitel's previously published essays on Transitional justice – reviewing the change the field has gone through since the late 1980s and especially since the year 2000. It starts out with the essay with the same namesake as the book itself 'Transitional Justice Globalised' from 2008, which presents broad tendencies in the fields response to political events in the post Cold-war period. Following this introductory essay, the book has four parts, *Overview, Roots, Narratives,* and *Conflict, Transition, and the Rule of Law.*

Overview

"One cannot help but be struck by the humanist breadth of the field, ranging from concerns in the fields of law and jurisprudence, to those in ethics and economics, psychology, criminology, and theology." [384]

The first part of the book has just one essay 'Transitional Justice Globalized'. In this essay, originally published in 2008, Teitel reviews the political focus on the academic field, and how it has changed the questions the field asks, and the results it hopes to achieve. It is a historical account of the conflicts and thus post-conflict efforts that took place from the end of the Cold war until the late 2000s.

She notes that transitional justice was originally conceived to attempt to understand the post-communist transitions in the former Soviet Union in the early 1990s, and that the theory further developed in the meeting with other kinds of transition. The end of the illiberal South American transitioning regimes, of the South African apartheid regime, and the reckonings after the crimes against humanity in Rwanda and Sierra Leone, each represented different challenges. Finally, the development in local transitional justice efforts and hybrid courts in the post Yugoslavian states is noted as contributing a significant political focus on transitional justice and

382 Teitel 2014: xiv
383 Simic 2016: xiv
384 Teitel 2014: 3

meriting a change in the approach of the academic field.[385]

The first essay repeats several of the points furthered in the introduction, and specifically notes how the initial debate of impunity versus justice led to a demand for judicialisation in a positivist tradition. This is countered by transitional justice institutions, such as the ICTY having to some extent replaced strict positivism with a more teleological approach to transitional justice in which criminal justice is not merely an end in itself, but should also serve a broader goal of contributing to peace and prosperity in the region.[386]

In short, the first part of the book presents the strong connection there is in transitional justice between political goals, institutional solutions, and academic thought and theorising. The initial essay sets the tone for a book that updates the definition of transitional justice, from a legal discipline to a cross-disciplinary endeavour and normative goal undertaken by states, international institutions, courts and civil society as well as academia.[387]

Roots

The second part of the book, Roots, has two articles: 'The Universal and the Particular in International Criminal Justice' published in 1999, and 'Transitional Justice: Post-War Legacies' published in 2006.

This part of the book explores the connection between international criminal law and transitional justice. 'Transitional Justice: Post-War Legacies' returns to the famous Nuremberg trials and reviews how the trials can be a starting point for transitional justice studies. It has a focus on how the trials have influenced current understandings academic and political,[388] and can as such be viewed as a conceptual history analysis in category with Koselleck, Schulz-Forberg, Kølvraa and others.

Debating the use of criminal proceedings in transitional justice

In 'The Universal and the Particular in International Criminal Justice' from 1999, Teitel debates the apparent dichotomy between the individualisation of guilt and the crimes against a collective – a group-identity of one sort or the other. Individualisation of guilt is both the form of international criminal justice and to a degree, the point of it. Teitel cites the prosecutor for the ICTY on this *"[a]bsolving nations of collective guilt through the attribution of individual responsibility is an essential means of countering the misinformation and indoctrination which breeds ethnic and religious hatred."*[389] The argument expressed initially at Nuremberg and perfected at the ICTY is that individualisation of guilt contributes to peace by ending the need for group vengeance.

In this article, Teitel challenges this notion, because she notes that it is difficult to decipher individual motive as is traditional in criminal proceedings in cases where there are crimes against humanity. Because often, there is none. The acts are political and collective, not individual.

" […] the insistence on proof of individual motive can be misleading, as it obscures the extent to which persecutory policy is a social and above all political construct".[390]

With this rationale, the foundation for the problem and the cause of the crime, the political narratives and collective characterisations are not addressed. In

385 Ibid.: 4-5
386 Ibid.: 5-6
387 Ibid.: 7-8
388 Ibid.: xx
389 Ibid.: 19
390 Ibid.: 21

her 1999 article, it is yet unclear how this insight can contribute to transitional justice efforts and the goal of peace or justice.

In the 2006, 'Transitional Justice: Post-War Legacies', Teitel continues this discussion with a specific focus on the Nuremberg trials. She touches upon the question of how to establish guilt for crimes committed by a modern bureaucracy,[391] and arrives at a hybrid solution utilised by post war Germany and evident in contemporary recommendations on transitional justice: Individual criminal responsibility to avoid group vengeance, conceived under the shadow of the Versaille failure after the First World War, and collective responsibility of institutions.

The collective responsibility was established in post-war Germany as a de-nazification of the bureaucracy that carried out the crimes of holocaust. This is mirrored in contemporary transitional justice as vetting and lustration mechanisms as well as institutional reform. Which in turn deals with the dilemma between the need to remove elements from the civil service the cannot claim individual integrity, and the need for experience and continuity in the civil service. This is especially difficult when dealing with the end of an illiberal regime.

Narratives
The next part of the book consists of three articles. The 'Human rights in Transition: Transitional Justice Genealogy' from 2003, the 'Bringing the Messiah through law', originally a chapter in the 1999 book 'From Gettysberg to Bosnia', and finally the 'Transitional Justice as a Liberal narrative, originally published in 2002.

In each their way the three articles deal with the concepts of time and collective/individual in the field of transitional justice. The chapter-header 'narratives' deal with the narratives on transitional justice rather than the narratological efforts that are part of modern and contemporary transitional justice storytelling and truth-telling.

Genealogy – the narrative of progression in transitional justice
The 2003 article on the genealogy of transitional justice policies suggests three main phases in the development of the field. The first phase developed in the post-war periods after the First World War and the Second World War. This phase had a strong emphasis on individual responsibility while the post-crime justice moved from the national to the international sphere.

The second phase is described as following the Cold War moment and it delivered a broader view of transitional justice, which included truth and reconciliation as key terminology and normative notions of forgiveness and storytelling as central goals. In a genealogical sense, the second period suggested progression.

"There is a complicated relationship among transitional justice, truth, and history. In the discourse of transitional justice, revisiting the past is understood as the way to move forward. There is an implied notion of progressive history."[392]

The third phase described in this article is the contemporary use of transitional justice to address conflicts that have not yet had their end, nor, to some extend can have an end. The use of humanitarian arguments for military interventions in conflict zones or in the war of terror suggests a break with the notion of progressive history, and makes the transitional goal of questioning state action, a difficult one.[393]

[391] Ibid.: 35

[392] Ibid. 61
[393] Ibid.: 64

"*As a genealogical perspective illustrates, interest in the pursuit of justice does not necessarily wane with the passage of time. This may be because transitional justice relates to exceptional political conditions, where the state itself is implicated in wrongdoing and the pursuit of justice necessarily awaits a change in regime"*[394]

In the midst of war – a narrative of timing in transitional justice

The second article, the 1999 'Bringing the Messiah through law' also deals with the timing of transitional justice. Specifically in questions why the ICTY was created in 1993, in the midst of the war, rather than at the end of the war. On the one hand, the timing of the court suggests the new normative goal of transitional justice efforts – to further peace. On the other hand, the creation of the court can be viewed as a small effort by an international community that failed to further peace politically or militarily. In an almost pre Second World War legal philosophy, the ICTY can be viewed as an effort to create peace through law.

"If the ICTY's lack of political authority undermines its efforts to achieve pacification through deterrence and to accomplish reconciliation through the creation of historical narratives, perhaps the relationship of the ICTY to peace might be conceptualized along different lines. Those who created the ICTY spoke feelingly of the expectation that international criminal justice would establish a form of individual accountability that would break "old cycles of ethnic retribution" and thus advance ethnic "reconciliation." They propounded a traditional account of liberal legalism, in which the punishment of the law would hold individuals responsible, so as to limit and displace private vengeance."[395]

In this essay, Teitel also touches upon the development, that the ICTY ended up – perhaps because of its timing in the midst of the conflict rather than afterwards – sitting on a large amount of documentation on the crimes committed during the wars in the Balkans in the 1990s, and as such could act as a catalyst for truth-telling and establishment of new narratives. She also notes, however, that the collective nature of the narrative and the individual nature of criminal justice created tension and kept the ICTY from fulfilling this role wholeheartedly.[396]

Positioning – a narrative of transitional justice as political endeavours

The third article in the 'Narratives' part of the book, the 'Transitional Justice as a Liberal narrative' from 2002 explores the symbolic significance of post-conflict trials and asks whether transitional justice is always about furthering a new liberal order.

"The point of departure in the transitional-justice debate is the presumption that the move toward a more liberal, democratic political system implies a universal norm. Instead, my remarks here propose an alternative way of thinking about the law and political transformation. In exploring an array of experiences, I will describe a distinctive conception of justice in the context of political transformation."[397]

Teitel notes that the act of individualising guilt, as is a precursor for transitional justice criminal trials, is an expression of a liberal understanding of society. The responsibility of the individual for crimes of the regime furthers an almost existentialist understanding of personal responsibility despite collective pressures. Meanwhile, the extensive use of amnesty and forfeiture of punishment, suggest that the criminal proceedings have a symbolic nature rather than a punitive nature.

In periods of political upheaval, legal rituals offer the leading alternative to the

394 ibid. 60
395 Ibid.: 86
396 Ibid.: 85-86
397 Ibid.: 96

violent responses of retribution and vengeance. The transitional legal response is deliberate, measured, restrained, and restraining, enabling gradual, controlled change. As the questions of transitional justice are worked through, the society begins to perform the signs and rites of a functioning liberal order.[398]

In an almost Durkheimian way, Teitel argues that the criminal proceedings against the individual has the purpose of freeing the successor regime from the criminal legacies of the earlier state.[399] While that is certainly not a liberal method of transition, the end result can be liberal change when the individual trials are used to further collective narratives of change and reconciliation across old divides.

The main contribution of transitional justice is to advance the construction of a collective liberalizing narrative. Its uses are to advance the transformative purpose of moving the international community, as well as individual states, toward liberalizing political change.[400]

Conflict, Transition, and the Rule of law

The third and final part of the book is also the lengthiest. It is comprised of five articles. The first from 2005, 'The Law and Politics of Contemporary Transitional Justice'. Hereafter, 'Rethinking Jus Post Bellum in an Age of Global Transitional Justice' from 2013. Third, 'Transitional Rule of Law, chapter in Rethinking the Rule of Law after Communism' from 2005. Fourth, 'The Alien Tort and the Global Rule of Law' from 2005, and finally 'Transitional Justice and the Transformation of Constitutionalism' from 2011.

As is suggested by the title of the third part of the book, the themes of the articles span a broad range of topics, but on a general note, they all concern the conceptualisation of 'transition', 'justice' and 'transitional justice'. Thus, the first article deals with the use of transitional justice in ongoing conflicts and the risk of endangering peacebuilding by engaging in adjudication in the midst of conflict. It notes how humanitarian intervention and transitional justice have common goals and philosophical basis, but how they may also conflict in terms of timing.

"As the trend toward juridicization continues apace, contemporary adjudications of international humanitarian rights violations serve as both a basis of, and a constraint upon, humanitarian intervention."[401]

The second article conceptualises transitional justice in relation to jus post bellum and notes that there is a need for both, because transitional justice has a broader perspective than the restorative nature of jus post bellum. Specifically, contemporary conflicts take place in a space where humanitarian intervention is an option, and this expands the need and use for international justice, to before, during and after conflict, and with a broader pragmatic view towards peace and human security.

"There is a new relationship between the three strands of the law of war. The justification for war, especially where humanitarian justice considerations are prominent, sets the stage for higher expectations of humanitarianism, both in relation to how war is waged and in the responsibilities of the victors post-conflict."[402]

The third article continues the conceptualising debate, by constructing transitional justice within the framework of the rule of law. Essentially asking whether transitional justice represents a kind of extraordinary jurisprudence as

398 Ibid.: 104
399 Ibid.: 102
400 Ibid.: 105
401 Ibid.: 134
402 Ibid.: 146

opposed to the rule of law or whether it has the potential of closing a temporal legality gap in much the same way international law and humanitarian law attempts to close a legality gap in relation to space and conflict. It also repeats large parts of 2002-article on liberal narratives of transitional justice, specifically the point about the constructing and symbolic-ritualistic role of law in transition.[403]
The fourth article compares the constructs of transitional justice and international universality with the American statute that allows aliens to bring tort claims to U.S. courts. The limitations of this statute to cases with a significant connection to the U.S. is also debated in relation to the transitional justice nature of the statute.[404]

The final article, originally published as a chapter in the seminal work on comparative constitutional law by Ginsburg and Dixon, deals with the construction of transitional justice in relation to constitutionalisation. Specifically, the essay continues the temporal discussion on the dichotomy between the inherent impermanence of transitional justice measures, and the institutionalisation of the field, effectively making the measures permanent, on occasion directly in the new post-conflict constitutions or in the constitutionalisation of international law. The article also debates the unit of analysis. What happens when transitional mechanisms are made part of identity construction, for example in the accession process for the Balkan states to the EU, which include transitional justice goals and measures? The article questions how transitional justice can be used in an environment where the state is not the centre of analysis.

The very problem of justice is being reconceptualized, and it no longer centers on the state. If the classic understanding of the role of the state is to protect its citizens, via its central control of use of force, then these contemporary instances point to instances where there has been a loss of such control.[405]

Epilogue – a conclusion
The book ends with a short epilogue, concluding on the previous essays, which for the most part ask more questions than they answer. Therefore, the conclusion also reflects what kind of supra-questions the decade and a half worth of essays asked:

"The questions that lie at the heart of the global paradigm, such as of what the relationship ought to be of the local to the international, as the experiences of the last decade reflect, cannot be answered in a categorical way. We currently lack and urgently need to have a meaningful understanding of "complementarity,""[406]

The book ends on a note about the future. Considering how the development of the judicial as a potent international tool for democratisation and the introduction of the rule of law, among other things through the mechanisms of transitional justice, has politicised the judicial, which will create new challenges in the future.

"The turn to international law and judicialization is often seen as anti-political, when in fact the international criminal tribunal's statutes are themselves often justified in broader terms of political goals such as peace and security, especially so of tribunals convened during conflict with particular aims in mind. As such, the legitimacy of the international judiciary will be implicitly relativized."[407]

Since this book review has the benefit of being three years into the future from when Teitel published the book in 2014,

[403] Ibid.: 156-158 and 103-105
[404] Ibid.: 177
[405] Ibid.: 202
[406] Ibid.: 210
[407] Ibid.: 210

we can conclude that she was certainly right about the attempts to relativise the judicial, both internationally, within transitional justice and in established rule of law states. One has to look no further than Great Britain's threats to leave the European Convention on Human Rights, Milorad Dodik's proposed referenda on the legitimacy of the Bosnia and Herzegovinian Constitutional Court, or the American President Donald Trumps repeated fights with the judicial branch of his government, to see the relativizing of international, transitional and established national judicial in action.