40 years
Faculty of Security-Skopje

University "St. Kliment Ohridski"-Bitola
Faculty of Security-Skopje

INTERNATIONAL SCIENTIFIC CONFERENCE

# CONTEMPORARY TRENDS IN SOCIAL CONTROL OF CRIME

Volume III

CONTEMPORARY TRENDS IN SOCIAL CONTROL OF CRIME

www.fb.uklo.edu.mk

ISBN 978-608-4828-00-6

Skopje

# МЕЃУНАРОДНА НАУЧНА КОНФЕРЕНЦИЈА
# СОВРЕМЕНИТЕ ТРЕНДОВИ НА ОПШТЕСТВЕНАТА КОНТРОЛА НА КРИМИНАЛОТ

# INTERNATIONAL SCIENTIFIC CONFERENCE
# CONTEMPORARY TRENDS IN SOCIAL CONTROL OF CRIME

# МЕЃУНАРОДНА НАУЧНА КОНФЕРЕНЦИЈА

# СОВРЕМЕНИТЕ ТРЕНДОВИ НА ОПШТЕСТВЕНАТА КОНТРОЛА НА КРИМИНАЛОТ

**30-31 Мај 2016, Охрид**

**Том III**

**Скопје 2016**

# INTERNATIONAL SCIENTIFIC CONFERENCE

# CONTEMPORARY TRENDS IN SOCIAL CONTROL OF CRIME

**30-31 May 2016, Ohrid**

**Volume III**

**Skopje 2016**

**Издавачи:**

Универзитет „Св. Климент Охридски“
Битола
Факултет за безбедност – Скопје

**За издавачите:**

проф. д-р Сашо Коруновски, ректор на Универзитетот „Св. Климент Охридски“ – Битола
проф. д-р Оливер Бачановиќ, декан на Факултетот за безбедност – Скопје

**Компјутерска обработка:**
Оливера Трајанова Ѓорѓијовски
Кемал Рушид

**Печати:**
АД „Ван Гог“ - Скопје

**Адреса на издавачите:**

Факултет за безбедност 1000 Скопје
П. Фах 103
тел: 022546211

Универзитет „Св. КлиментОхридски“
1ви Мај б.б. 7000 Битола,
тел: 047223788

**Publishers:**

University “St. Kliment Ohridski”
Bitola
Faculty of Security- Skopje

**For the Publishers:**

Sašo Korunovski, Dr.Sc Rector of the University “St. Kliment Ohridski”- Bitola
Oliver Bačanović, Dr.Sc Dean of the Faculty of Security- Skopje

**Computer Processing:**
Olivera Trajanova Gjorgjijovski
Kemal Rushid

**Print:**
“Van Gog” - LTD Skopje

**Address of the Publishers:**

Faculty of Security1000 Skopje
P.O. Box 103
tel: ++389(0)22546211

University “St. KlimentOhridski”
1 Maj b.b.7000 Bitola
tel: +++389(0) 47223788

**PROGRAMME COMMITTEE:**

Dr. Sc. Oliver Bacanovic, Dean of the Faculty of Security Skopje
Dr. Sc. FerencBánfi, Director of CEPOL (European Police College)
Hélène Martini, President of the Association of European Police Colleges
Dr. Sc. MladenBajagic, Acting Dean of the Academy of Criminalistics and Police Studies, Serbia
Dr. Sc. Gheorghe Popa , Rector of the Police Academy " AlexandruIoanCuza", Romania
Dr. Sc. BoikaIvailovaCerneva, Rector of the Academy of the Ministry of Interior, Bulgaria
Dr. Sc. Andrej Sotlar, Dean of the Faculty of Criminal Justice and Security, Slovenia
MilicaPajovic, Director of Danilovgrad Police Academy, Montenegro
Dr. Sc. Ivan Toth, *Dean of the University of Applied Sciences,* Velika Gorica, Croatia
Dr. Sc. Ivica Radović**,** Dean of the Faculty of Security Studies,
University of Belgrade, Serbia
Dr. Sc. Mile Sikman, Head of the Administration for Police Education of RepublikaSrpska, Bosnia and Herzegovina
Dr. Sc. NedzadKorajlic, Dean of the Faculty of Criminalistics, Criminology and Security Studies,
University of Sarajevo, Bosnia and Herzegovina
Dr. Sc. Denis Čaleta, President of the Council of the Institute of
Corporative Security Studies (ICS), Ljubljana, Slovenia
Dr. Sc. JoškoVukosav, Dean of the Police College,
Police Academy, MoI, Zagreb, Croatia
*Dr. Sc. Goran Ajdinski**, Dean of the Faculty of Philosophy,***
*University "St. Cyril and Methodius" Skopje*
Dr. Sc. VesnaTrajkovska, Faculty of Security Skopje, Secretary of the International Programme Committee

**ORGANIZING COMMITTEE:**

Cane Mojanoski, Dr.Sc., Chairman
Tome Batkovski, Dr.Sc.
Nikola Dujovski, Dr.Sc.
SnežanaMojsoska, Dr. Sc.
Svetlana Nikoloska, Dr. Sc.
Vesna Stefanovska, Dr. Sc.
Bogdancho Gogov, Dr. Sc
Aleksandar Ivanov, Dr. Sc.

## CONTENTS:

**INTERNATIONAL LAW AND SECURITY**

**RADICALIZATION ON RELIGIOUS AND ETHNIC GROUNDS - THE MIDDLE EAST AND THE BALKANS PERSPECTIVES**

**GEOSTRATEGIC RESTRUCTURING IN THE INTERNATIONAL POLITICAL ORDER AS A BACKGROUND TO THE MIGRANT CRISIS**

**MIGRATION AS A GLOBAL AND SECURITY CHALLENGE**

# INTERNATIONAL LAW AND SECURITY

# RADICALIZATION ON RELIGIOUS AND ETHNIC GROUNDS - THE MIDDLE EAST AND THE BALKANS PERSPECTIVES

# GEOSTRATEGIC RESTRUCTURING IN THE INTERNATIONAL POLITICAL ORDER AS A BACKGROUND TO THE MIGRANT CRISIS

# MIGRATION AS A GLOBAL AND SECURITY CHALLENGE

UDK:341.645:343]:355.012:28

# ISIL, WAR CRIMES AND INTERNATIONAL CRIMINAL COURT

***Vladimir Ortakovski, Dr.Sc***
*Faculty of Security - Skopje*

**Abstract**

The Islamic State in Iraq and the Levant (ISIL) has caused considerable loss of live, bodily injury and destruction of property and infrastructure in Iraq and Syria since its emergence in 2013.[1] ISIL has used terrorism as a tactic to gain control over large portions of territories.[2] There have been allegations of ISIL's indiscriminate attacks against civilians including religious and ethnic minority groups, widespread and systematic sexual enslavement and rape, recruitment of child soldiers, and extrajudicial killings, abductions and torture. On August 15, 2014, the UN Security Council adopted Resolution 2170 requesting member states to take "all measures as may be necessary and appropriate and in accordance with their obligations under international law to counter incitement of terrorist acts … perpetrated by individuals or entities associated with ISIL" and bring them to justice.[3] In the Report of the UN High Commissioner for Human Rights, published on March 13, 2015, members of ISIL have been alleged for committing crimes against humanity, war crime against civilian population, and genocide by perpetrating killings, serious bodily harm, and the forcible transfer of members of the Yezidi community aimed at the destruction of the group.[4]
This paper deals with and comments on the questions: How ISIL has become an unprecedented threat to international peace and security? What are possible responses of the international community, to be consistent with international human rights law? What is the role of international criminal law in bringing members of ISIL to justice? What is the procedure before the International Criminal Court in such cases?

## 1. INTRODUCTION

The Islamic State in Iraq and the Levant (ISIL) has caused considerable loss of live, bodily injury and destruction of property and infrastructure in Iraq and Syria since its emergence in 2013. ISIL has used terrorism as a tactic to gain control over large portions of territories. There have been allegations of ISIL's indiscriminate attacks against civilians

[1]Smith,Samuel,UN Report on ISIS: 24,000 Killed, Injured by Islamic State; Children Used as Soldiers, Women Sold as Sex Slaves, The Christian Post (October 9, 2014),
[2]Laub, Zachary & Masters,Jonathan,The Islamic State, Council on Foreign Relations (May 18, 2015),
[3]See: S/RES/2170 (2014), 15 August 2014,
http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2170(2014).
[4]UN Human Rights Council, Report of the Office of the United Nations High Commissioner for Human Rights on the Human Rights Situation in Iraq in the Light of Abuses Committed by the So-Called Islamic State in Iraq and the Levant and Associated Groups, UN Doc. A/HRC/28/18, at 5-14 (March 13, 2015).

including religious and ethnic minority groups, widespread and systematic sexual enslavement and rape, recruitment of child soldiers, and extrajudicial killings, abductions and torture. On August 15, 2014, the UN Security Council adopted Resolution 2170 requesting member states to take "all measures as may be necessary and appropriate and in accordance with their obligations under international law to counter incitement of terrorist acts … perpetrated by individuals or entities associated with ISIL" and bring them to justice. In the Report of the UN High Commissioner for Human Rights, published on March 13, 2015, members of ISIL have been alleged for committing crimes against humanity, war crimes against civilian population, and genocide by perpetrating killings, serious bodily harm, and the forcible transfer of members of the Yezidi community aimed at the destruction of the group.

This paper deals with and comments on the questions: How ISIL has become an unprecedented threat to international peace and security? What are possible responses of the international community, to be consistent with international human rights law? What is the role of international criminal law in bringing members of ISIL to justice? What is the procedure before the International Criminal Court in such cases?

## 2. WHAT IS ISIL?

The **Islamic State of Iraq and the Levant** (**ISIL)** is a Salafi jihadist militant group that adheres to an Islamic fundamentalist, Wahhabi doctrine of Sunni Islam.[5]The group has referred to itself as the **Islamic State** or **IS**[6]since it proclaimed a worldwide caliphate in June 2014[7]and named Abu Bakr al-Baghdadi as its caliph. As a caliphate, it claims religious, political and military authority over all Muslims worldwide.[8] However, the concept of it being a caliphate and the name "Islamic State" has been rejected by governments and Muslim leaders worldwide.

The group has control over vast territories in Iraq and Syria, where it enforces Sharia law. In early 2014 ISIL drove Iraqi government forces out of key cities in its Western Iraq offensive, followed by the capture of Mosul[9] and the Sinjar massacre[10]almost causing a collapse of the Iraqi government. In Syria, the group has continued to conduct ground attacks on both government forces and rebel factions.[11]

---

[5]Tharoor, Ishaan (18 June 2014), "ISIS or ISIL? The debate over what to call Iraq's terror group", The Washington Post.

[6]"What is Islamic State?",BBC News, 26 September 2014.

[7]Withnall, Adam (29 June 2014), "Iraq crisis: ISIS changes name and declares its territories a new Islamic state with 'restoration of caliphate' in Middle East", The Independent (London).

[8]"What does ISIS' declaration of caliphate mean?", Al Akhbar English. 30 June 2014.

[9]Al-Salhy, Suadad; Arango, Tim (10 June 2014), "Sunni Militants Drive Iraqi Army Out of Mosul", New York Times.

[10]Arango, Tim (3 August 2014), "Sunni Extremists in Iraq Seize Three Towns From Kurds and Threaten Major Dom", The New York Times.

[11]In August 2011, al-Baghdadi delegated a mission into Syria, which under the name al-Nusra Front, established a large presence in several Sunni-majorityprovinces. Led by a Syrian known as Abu Mohammad al-Julani, this group began to recruit fighters and establish cells throughout the country.Al-Nusra grew rapidly into a capable fighting force, with support among Syrians opposed to the Assad government.In April 2013, al-Baghdadi decreed the reunification of the Syrian al-Nusra Front with ISI to form the "Islamic State of Iraq and the Levant" (ISIL). However, Abu Mohammad al-Julani and Ayman al-Zawahiri, the leaders of al-Nusra and al-Qaeda respectively, rejected the

In July 2014, ISIL recruited more than 6,300 fighters;in September 2014, the group began kidnapping people for ransoming, in the name of ISIL.[12] On 11 October 2014, it was reported that ISIL had dispatched 10,000 militants from Syria and Mosul to capture the Iraqi capital city of Baghdad, and on 13 October, ISIL fighters advanced to within 25 kilometres of Baghdad Airport.

At the end of October 2014, 800 radical militants gained partial control of the Libyan city of Derna and pledged their allegiance to Abu Bakr al-Baghdadi, thus making Derna the first city outside Syria and Iraq to be a part of the "Islamic State Caliphate".In early February 2015, ISIL militants in Libya managed to capture part of the countryside to the west of Sabha, and later, an area encompassing the cities of Sirte, Nofolia, and a military base to the south of both cities.

ISIL is the world's wealthiest terrorist organization. Its funding sources derive mostly from the exploitation of the natural and economic resources of the territories it occupies (including oil fields and refineries and agricultural land), as well as from bank robbery, extortion, confiscation of property, donations from foreign terrorist fighters and the looting of antiquities. ISIL uses income from oil sales to buy supplies, including weaponry, military equipment and ammunition. ISIL has developed a sophisticated system for the confiscation of goods and property, including from banks. It also confiscates the homes of officials and others who leave the territory and sells them in local markets, providing discounts to its members. ISIL sells oil and agricultural products at discount prices using established historical smuggling routes in and out of Iraq and the Syria. It imposes "taxes" and fees on anyone living in the territories under its control.[13]

ISIL continues to benefit from external donations and ransom payments by families of hostages, particularly from the Yazidi community. ISIL has used sexual violence to mobilize resources and fund its operations, including the ransoming and sale of women and girls through human trafficking and slave markets.

Important difference between ISIL and other Islamist and jihadist movements, including al-Qaeda, is the group's emphasis on eschatology and apocalypticism - a belief in a final Day of Judgment by God, and specifically, a belief that the arrival of one known as Imam Mahdi is near. ISIL believes that it will defeat the army of "Rome" at the town of Dabiq, in fulfilment of prophecy.In June 2014, ISIL published a document in which it claimed to have traced the lineage of its leader al-Baghdadi back to Muhammad,[14]and upon proclaiming a new caliphate on 29 June 2014, the group appointed al-Baghdadi as its caliph. As caliph, he demands the allegiance of all devout Muslims worldwide.

According to German journalist, Jurgen Todenhofer, who spent ten days with ISIL in Mosul, the view that he kept hearing was that ISIL wants to "conquer the world" and all who do not believe in the group's interpretation of the Koran will be killed. He was struck by the ISIL fighters' belief that "all religions who agree with democracy have to die", and

---

merger. After an eight-month power struggle, al-Qaeda cut all ties with ISIL by February 2014. See more in: Sly, Liz (3 February 2014), "Al-Qaeda disavows any ties with radical Islamist ISIS group in Syria, Iraq", The Washington Post.

[12]See in: Oltermann, Philip (24 September 2014), *"Islamists in Philippines threaten to kill German hostages", The Guardian.*

[13]See more in: Report of the Secretary-General on the threat posed by ISIL (Da'esh) to international peace and security and the range of United Nations efforts in support of Member States in countering the threat (S/2016/92), 29 January 2016, paragraphs 16-20.

[14]Johnson, M. Alex (3 September 2014), *"Deviant and Pathological: What Do ISIS Extremists Really Want", NBC News.*

by their "incredible enthusiasm" - including enthusiasm for killing "hundreds of millions" of people.[15]

As a caliphate, ISIL claims religious, political and military authority over all Muslims worldwide, and that "the legality of all emirates, groups, states, and organisations, becomes null by the expansion of the caliphate's authority and arrival of its troops to their areas".[16]

## 3. ISIL HAS COMMITTED WAR CRIMES, CRIMES AGAINST HUMANITY AND GENOCIDE

ISIL became notorious for its videos of beheadings of both soldiers and civilians, including journalists and aid workers, and for the destruction of cultural heritage sites. The United Nations holds ISIL responsible for human rights abuses and war crimes, and Amnesty International has charged the group with ethnic cleansing on a "historic scale" in northern Iraq.[17]

The Report[18],requested by the UN Human Rights Council at the initiative of the Government of Iraq, finds that widespread abuses committed by ISIL include killings, torture, rape and sexual slavery, forced religious conversions and the conscription of children. All of theseamount to violations of international human rights and humanitarian law. Some may constitute crimes against humanity and/ or may amount to war crimes. The manifest pattern of the attacks against the Yezidi "pointed to the intent of ISIL to destroy the Yezidi as a group," which "strongly suggests" that ISILhave perpetrated genocide.

ISIL committed brutal and targeted killings of hundreds of Yezidi men and boys in the Ninewa plains on August 2014. In numerous Yezidi villages, the population was rounded up. Men and boys over the age of 14 were separated from women and girls. The men were then led away and shot by ISIL, while the women were abducted as the 'spoils of war.' "In some instances," the report found, "villages were entirely emptied of their Yezidi population."Some of the Yezidi girls and women who later escaped from captivity described being openly sold, or handed over as "gifts" to ISIL members.

Boys between the ages of eight and 15 were separated from their mothers and taken to locations in Iraq and Syria. They were forced to convert to Islam and subjected to religious and military training, including how to shoot guns and fire rockets. One child was told, "this is your initiation into jihad….you are an Islamic State boy now."

---

[15]Withnall, Adam (21 December 2014), *"Middle East. Inside ISIS: The first Western journalist ever to be given access to the 'Islamic State' has just returned – and this is what he discovered", The Independent.*

[16]Johnson, M. Alex (3 September 2014), *"Deviant and Pathological: What Do ISIS Extremists Really Want", NBC News.*

[17]*"Ethnic cleansing on a historic scale: The Islamic State's systematic targeting of minorities in northern Iraq", Amnesty International. 2 September 2*014.

[18]The report, compiled by an investigation team sent to the region by the UN High Commissioner for Human Rights, draws on in-depth interviews with more than 100 people who witnessed or survived attacks in Iraq between June 2014 and February 2015. See: Report of the Office of the United Nations High Commissioner for Human Rights on the human rights situation in Iraq in the light of abuses committed by the so-called Islamic State in Iraq and the Levant and associated groups, A HRC 28/18, 13 March, 2015.

Brutal treatment was meted out by ISIL to other ethnic groups, including Christians, Kurds, Shi'a, Turkmen. In June 2015, thousands of Christians fled their homes in fear after ISIL ordered them to convert to Islam, pay a tax, or leave.

In June 2015, around 600 males held in Badoush prison, mostly Shi'a, were loaded onto trucks and driven to a ravine, where they were shot by ISIL fighters. Survivors told the UN team that they were saved by other bodies landing on top of them.Those perceived to be connected with the Government were also targeted. Between 1,500 to 1,700 cadets from Speicher army base, most of whom are reported to have surrendered**,** were massacred by ISIL fighters on 12 June 2015.

ISIL has often used water as a weapon of war. The closing of the gates of the smaller Nuaimiyah dam in Fallujah in April 2014, resulted in the flooding of surrounding regions, while water supply was cut to the Shia-dominated south. Around 12,000 families lost their homes and 200 km² of villages and fields were either flooded or dried up. The economy of the region also suffered with destruction of cropland and electricity shortages.

In late January 2015, it was reported that ISIL members had infiltrated the European Union and disguised themselves as civilian refugees who were emigrating from the war zones of Iraq and the Levant. An ISIL representative claimed that smuggled fighters were planning attacks in Europe in retaliation for the airstrikes carried out against ISIL targets in Iraq and Syria.

## 4. ASPECTS OF THE LAW ON THE USE OF FORCE AGAINST THE ISIL

When requesting U.S. military assistance, the Iraqi government had already lost control over significant parts of its territory to ISIL. With the apparent collapse of the Iraqi regular forces over the summer 2014, ISIL appeared close to be marching on the capital, Baghdad.[19]

According to International law, a government can continue to represent a state until it has been entirely displaced by a popular uprising or armed opposition movement - until it has lost control over virtually all territory, including the Presidential Palace, as it were. Up to that point, the government will claim the right to request and receive military assistance in its struggle to survive. On the other side, any military support given to the opposition movement would be considered as intervention.

By that time, ISIL had imposed itself upon the Iraqi population, seizing large parts of territory. Iraq reported this development to the UN Security Council over the summer 2014, indicating that ISIL was terrorizing citizens; carrying out mass executions; persecuting minorities and women; and destroying mosques, shrines, and churches.[20]The Iraqi government remained the principal agent of the responsibility to protect its population from such outrages. The UN Security Council urged the international community "to further strengthen and expand support for the government of Iraq as it fights ISIL and associated armed groups."[21]

[19]*Extremists in Iraq Continue to March Toward Baghdad*, Time, June 11, 2014.

[20]Permanent Representative of Iraq to the U.N., Letter dated 25 June 2014 from the Permanent Representative of Iraq to the United Nations addressed to the Secretary-General, U.N. Doc. S/2014/440 (June 25, 2014).

[21]U.N. President of the Security Council, Statement by the President of the Security Council, U.N. Doc. S/PRST/2014/20 (September 19, 2014).

The Iraqi letter to the UN Security Council requesting international support refers to the fact that ISIL "has secured for itself the ability to train for, plan, finance and carry out terrorist operations across our borders. The presence of this safe-haven has made our borders impossible to defend and exposed our citizens to the threat of terrorist attack."[22]

The UN Security Council Statement following the letter finds that a "large scale offensive" by ISIL is taking place.[23] This confirms that the campaign is of sufficient military character, intensity, and breadth to qualify as an armed attack triggering self-defense under Article 51 of the Charter.

## 5. UN SECURITY COUNCIL RESOLUTIONS RELATING TO ISIL

Under Chapter VII of the UN Charter, the Security Council has adopted several Resolutions relating to ISIL.

The **UN Security Council Resolution 2170 (2014), on August 15, 2014**, after condemning "the terrorist acts ofISIL and its violent extremist ideology, and its continued gross, systematic and widespread abuses of human rights and violations of international humanitarian law", calls upon all Member States to take national measures to suppress the flow of foreign terrorist fighters to, and bring to justice, in accordance with applicable international law, foreign terrorist fighters of ISIL of the *Al-Nusra* Front and all other individuals, groups, undertakings and entities associated with *Al-Qaida*.[24]

In the **UN Security Council Resolution 2178 (2014), of 24 September 2014,** terrorism is qualified as one of the most serious threats to international peace and security. In this Resolution the Security Council, acting under Chapter VII of the Charter of the United Nations, condemns the violent extremism, which can be conducive to terrorism, sectarian violence, and the commission of terrorist acts by foreign terrorist fighters, and demands that "all foreign terrorist fighters disarm and cease all terrorist acts and participation in armed conflict"[25].

Member States of the United Nations shall commit themselves to prevent and suppress the recruiting, organizing, transporting or equipping of individuals who travel to a State other than their States of residence or nationality for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts.The Resolution points out "the particular and urgent need to prevent support for foreign terrorist fighters associated with the Islamic State of Iraq and the Levant", and the *Al-Nusra* Front, *Al-Qaida*,"its cells, affiliates, splinter groups, and derivative entities"[26].

With the **UN Security Council Resolution 2249 (2015), on November 20, 2015**, Council calls upon member States to take all necessary measures on the territory under the

[22] Permanent Representative of Iraq to the U.N., Letter dated September 20, 2014 from the Permanent Representative of Iraq to the United Nations addressed to the President of the Security Council, U.N. Doc. S/2014/691 (September 22, 2014).

[23]Statement by the UN President of the Security Council, U.N. Doc. S/PRST/2014/20 (September 19, 2014).

[24]S/RES/2170 (2014), 15 August 2014,
http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2170(2014).

[25]S/RES/2178 (2014), 24 September 2014,
http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2178%20(2014) .

[26] Preamble of S/RES/2178 (2014), 24 September 2014.

control of ISIL to prevent terrorist acts committed by ISIL and other Al-Qaida affiliates[27]. The UN Security Council defines the terrorism in all forms and manifestations as "one of the most serious threats to international peace and security" and affirms that any acts of terrorism are "criminal and unjustifiable regardless of their motivations, whenever and by whomsoever committed".

This Resolution defines ISIL as a "global and unprecedented threat to international peace and security". The Resolution deals with the Islamic State's violent extremist ideology, its terrorist acts, its continued gross systematic and widespread attacks directed against civilians, the abuses of human rights and violations of international humanitarian law, including those driven on religious or ethnic ground, as well as its eradication of cultural heritage and trafficking of cultural property. Another point is its control over significant parts and natural resources across Iraq and Syria and its recruitment and training of foreign terrorist fighters whose threat affects all regions and Member States, even those far from conflict zones.

The Resolution condemns, in the strongest terms, what are defined as "the horrifying terrorist attacks perpetrated by ISIL", which took place on 26 June 2015 in Sousse, on 10 October 2015 in Ankara, on 31 October 2015 over Sinaï, on 12 November 2015 in Beirut and on 13 November 2015 in Paris. The Resolution also condemnsthe "continued gross, systematic and widespread abuses of human rights and violations of humanitarian law, as well as barbaric acts of destruction and looting of cultural heritage carried out by ISIL"[28].

**The UN Security Council resolution 2253 (2015), adopted at the meeting of the Council on 17 December 2015**, included the participation of Ministers of Finance from around the world. The Council expressed its determination to address the threat posed to international peace and security by the groups and individuals and the importance of cutting off their access to funds, including the illicit trade in oil, antiquities and other natural resources, as well as their planning and facilitation of attacks.

Pursuant to paragraph 97 of this Resolution[29], the Security Council requested the Secretary-General to provide an initial strategic-level report that demonstrates and reflects the gravity of the threat posed to international peace and security by Islamic State in Iraq and the Levant (ISIL) and associated individuals, groups, undertakings and entities, including foreign terrorist fighters, provides information on the sources of their financing, including through illicit trade in oil, antiquities and other natural resources, as well as their planning and facilitation of attacks, and reflects the range of United Nations efforts in support of Member States in countering this threat.

## 6. UN SECRETARY GENERAL REPORT ON THE THREAT POSED BY ISIL TO INTERNATIONAL PEACE AND SECURITY

On 29 January 2016, UN Secretary General issued the First UN Report on ISIL.[30] He pointed out that the growing threat posed by ISIL to international peace and security is

[27]S/RES/2249 (2015), 20 November 2015,
http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2249(2015)
[28]Ibid, Paragraph 3 of the dispositive.
[29]S/RES/2253 (2015), 17December 2015,
http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2253(2015) .
[30]Report of the Secretary-General on the threat posed by ISIL (Da'esh) to international peace and security and the range of United Nations efforts in support of Member States in countering the

reflected in its strategy of global expansion, the development of which may reflect a reaction to recent territorial losses inflicted in Iraq and the Syria. Many groups and individuals have pledged allegiance to Abu Bakr al-Baghdadi and the proclaimed "caliphate" since 2014, although only its affiliates in Libya and Afghanistan currently control territory of any significance.

Secretary General underlined that ISIL continues to perpetrate grave human rights violations against populations under its control, like executions, torture, amputations, lashings, ethno-sectarian attacks and floggings in public places, etc. ISIL systematically targets communities and members of communities who refuse to subscribe to its extremist ideology, including Christians, Yezidis, Shia and Sunnis. The sexual and gender-based violence used as a tactic of terrorism by ISIL has become part of its strategy for controlling territory, dehumanizing victims and recruiting new supporters. According to the Special Representative on Sexual Violence in Conflict, extremist groups like ISIL view female bodies as vessels for producing a new generation that can be raised in their own image, according to their radical ideology, and control over women's sexuality and reproduction is integral to the nation-building aspirations of ISIL and its affiliates.

Thousands of children have also become victims, perpetrators and witnesses of ISIL's atrocities. The group is systematically indoctrinating and grooming children as young as five years old to be future militants. ISIL has been forcibly recruiting and using children in military operations. The systemic recruitment and abuse of children by ISIL and the reported emergence of youth training camps in several regions are cause for grave concern.

Systematic destruction and looting of cultural sites that is also part of the ISIL strategy highlights the strong connection between the cultural, humanitarian and security dimensions of conflicts and terrorism. This has been recognized also by the Security Council in its resolution 2199 (2015), by which the Council established a ban on trade in antiquities illegally removed from Iraq since 6 August 1990 and from the Syrian Arab Republic since 15 March 2011 and which recognized illicit trafficking in antiquities as a potential source of financing for terrorist organizations.

## 7. ISIL BEFORE THE INTERNATIONAL CRIMINAL COURT

According to Article 13 of the Rome Statute, the International Criminal Court may exercise jurisdiction with respect to genocide, war crimes, or crimes against humanity in one of three ways:

(1) **a State Party** refers to the Prosecutor a situation in which one or more of such crimes appears to have been committedpursuant to Article 14. At this moment there are 124 member states of the Rome Statute;

(2) **the U.N. Security Council**, acting under Chapter VII of the U.N. Charter, refers such a situation to the Prosecutor;or

(3) **the Prosecutor** initiates his or her own investigation in respect of such a crimeunder Article 15 on the basis of information on crimes within the jurisdiction of the Court.[31]

---

threat, S/2016/92, 29 January 2016,
http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2016/92 .

[31]Rome Statute of the International Criminal Court, art. 13, July 17, 1998, 2187 U.N.T.S. 90.

To date, twenty three cases in ten situations have been broughtbefore the Court; all but last one[32]have related to African countries. Four of the situations have been State referrals: Democratic Republic of Congo, Northern Uganda, the Central African Republic, and Mali. The situations in Libya and Darfur, Sudan, both non-states parties, are Security Council referrals. Pre-Trial Chambers have authorized the Prosecutor to open investigations *proprio motu* in Kenya[33] and Côte d'Ivoire.[34]

It should be noted that on 1 March 2016 the International Criminal Court opened its first war crimes trial against a member of an Islamic terrorist group for the destruction of cultural property. Ahmad al-Faqi al-Mahdi is charged with having destroyed "medieval shrines, tombs of Sufi saints and a mosque dating back to the 15th century" in Timbuktu (Mali), during a conflict that displaced over 280,000 people.[35] Prosecutor Fatou Bensouda stated that "the charges we have brought against Ahmad al-Faqi al-Mahdi involve most serious crimes... They are about the destruction of irreplaceable historic monuments, and they are about a callous assault on the dignity and identity of entire populations, and their religious and historical roots".[36]

Given that Iraq and Syria are not parties to the Rome Statute and are unlikely in the near future to either accede to it or make an Article 12(3) decree, the International Criminal Court can only exercise jurisdiction over members of ISIL either where the Security Council refers the situation to it or where the prosecutor, Fatou Bensouda, opens a preliminary examination *proprio motu*under Article 15.[37] It means that the prosecutor would not have territorial jurisdiction under Article 12(2)(a) to open an investigation. If there is sufficient evidence she could initiate prosecutions against high-ranking members of ISIL under Article 12(2)(b) if they are nationals of states that are a party to the Rome Statute.

In a statement released on April 8, 2015, the prosecutor Fatou Bensouda stated that the Court may "exercise personal jurisdiction over alleged perpetrators who are nationals of a State Party, even where territorial jurisdiction is absent."[38] She also revealed that her office had reviewed allegations of international crimes with a view to exercising personal jurisdiction over nationals of state parties in the higher ranks of ISIL. The information available to the office indicates that several thousand foreign fighters has joined the ranks of ISIL, including significant numbers of state party nationals from, inter alia, Tunisia, Jordan, France, the United Kingdom, Germany, Belgium, the Netherlands

[32] On January 27, 2016, Pre-Trial Chamber I authorized the Prosecutor to proceed with an investigation for the crimes within the ICC jurisdiction, allegedly committed in and around South Osetia, Georgia, between 1 July and 10 October 2008.

[33]On March 31, 2010, Pre-Trial Chamber II granted the Prosecution authorization to open an investigation proprio motu in the situation of Kenya.

[34]On October 3, 2011, Pre-Trial Chamber III granted Prosecutor's request for authorization to open investigations proprio motu into the situation in Côte d'Ivoire.

[35]Al-Mahdi was a leader in the Ansar Dine jihadist organization. Mali is a member state of Rome Statute (ratification on 16 August 2000).

[36]**See:** Al Mahdi case: ICC Prosecutor Fatou Bensouda, Opening Statements, 1 March 2016, https://www.youtube.com/watch?v=vPbVXHhc_rA .

[37]Rome Statute of the International Criminal Court, arts. 12(3), 15, July 17, 1998, 2187 U.N.T.S.

[38]Statement of the Prosecutor of the International Criminal Court, Fatou Bensouda, on the alleged crimes committed by ISIS, 8 April 2016, https://www.icc-cpi.int/en_menus/icc/press%20and%20media/press%20releases/Pages/otp-stat-08-04-2015-1.aspx.

and Australia. Some of these individuals may have been involved in the commission of crimes against humanity and war crimes. A few have publicized their heinous acts through social media.

Since the information available to the office suggested that the leadership of ISIL is composed of nationals from Iraq and Syria, the prosecutor concluded that prospects for exercising personal jurisdiction in order to open a preliminary examination was limited.[39] She also has pointed out that the decision of non-Party States and the UN Security Council to confer jurisdiction on the International Criminal Court is wholly independent of the Court.

Actually, the Rome Statute seeks to reach a compromise between two competing interests: sovereignty of states and the international rule of law.

Although the prosecutor's policy is to only indict those high-ranking leaders most culpable, she could still opt to pursue mid-ranking leaders of ISIL if they are nationals of a party to the Rome Statute.[40]However, this approach would likely be criticized by the international community since the highest members of the group would be beyond reproach.

It would seem that a Security Council referral of the situation to the ICC would be the only reasonable option for prosecuting members of ISIL and would also sidestep the sticking-point that Iraq is not a party to the Rome Statute. However, this avenue for investigating and prosecuting the highest ranking members of ISIL is also problematic in view of the composition of the Security Council. The United States, as well as United Kingdom and France, hold a permanent seats on the Security Council and they have launched military operations in Iraq since September 2014. Namely, on September 20, 2014, the government of Iraq informed the UN Security Council that it had requested the United States to lead international efforts to strike Islamic State in Iraq and the Levant (ISIL) sites. The strikes would end the constant threat posed by ISIL to Iraq, protect Iraq's citizens, and enable Iraq to regain control of its borders.[41]

In considering whether to acquiesce to a potential referral they may be concerned that a potential investigation by the ICC would also scrutinize their military operations. Therefore, it would perhaps seek reassurances from the office of the prosecutor that its operations would not be the subject of an investigation. So members of the UN Security Council could advocate foran exclusion of jurisdiction clause for their own nationals to be included, as was the case with previous referral resolutions on Darfur and Libya.[42]

[39]Ibid.

[40]Rome Statute of the International Criminal Court, art. 12(2)(b), July 17, 1998, 2187 U.N.T.S. 90.

[41] Permanent Representative of Iraq to the U.N., Letter dated September 20, 2014 from the Permanent Representative of Iraq to the United Nations addressed to the President of the Security Council, U.N. Doc. S/2014/691, September 22, 2014.

[42]See more in: Brennan, Anna Marie, *Prosecuting ISIL before the International Criminal Court: Challenges and Obstacles*, ASIL Insights, Issue 21, Volume 19, September 17, 2015.

## 8. CONCLUSION

ISIL represents a global and unprecedented threat to international peace and security. The reaction of international community was UN condemnation of the "continued gross, systematic and widespread abuses of human rights and violations of humanitarian law, as well as barbaric acts of destruction and looting of cultural heritage".[43] According to this UN Security Council Resolution S/RES/2249 (2015), all member states "that have the capacity to do so to take all necessary measures…to redouble and coordinate their efforts to prevent and suppress terrorist acts… and to eradicate the safe haven they have established over significant parts of Iraq and Syria". Member States should intensify their efforts to stem the flow of foreign terrorist fighters to Iraq and Syria and to prevent and suppress the financing of terrorism".

UN Security Council Resolution S/RES/2253 (2015) emphasized that ISIL operated as a state and it required more funds than other terrorist organizations, which means that "money is its biggest vulnerability".[44] In territories under its control ISIL ran a multimillion-dollar economy, and raised money through oil trade, extortion, cash couriers, kidnapping, trafficking of humans and arms and racketeering. That is why UN Security Council underlined the member state's obligation to ensure "that their nationals and persons within their territory do not make available any funds, financial assets or economic resources for ISIL's benefit."

The paper is dealing also with the application of the Rome Statute to members of ISIL in order to gain an understanding of the challenges in prosecuting them before the International Criminal Court.Considering how the Rome Statute is supposed to place "state and non-state actors side-by-side in the international arena,"[45] one of the fundamental challenges confronting the ICC with regard to ISIL is its jurisdiction to enforce, which is insignificant. This is because the Rome Statute seeks to reach a compromise between two competing interests: sovereignty and the international rule of law. The Statute completely relies on the international community and state party cooperation to accomplish even the most rudimentary of judicial functions such as the execution of warrants.[46]

Although these challenges could be barriers to prosecutions of members of ISIL before the International Criminal Court, it is important this Court to prosecute them for war crimes, crimes against humanity and genocide and send a strong message that such crime cannot be unpunished.

[43]See: S/RES/2249 (2015), 20 November 2015,
http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2249(2015).
[44]See: S/RES/2253 (2015), 17 December 2015,
http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2253(2015).
[45] Sadat,Leila,*The International Criminal Court and the Transformation of International Law: Justice after the New Millennium* 8, 11 (2002).
[46]Broomhall,Bruce,*International Justice and the International Criminal Court* 151–162 (2003).

## 9. BIBLIOGRAPHY


Al-Salhy, Suadad; Arango, Tim (10 June 2014).”Sunni Militants Drive Iraqi Army Out of Mosul”, New York Times

Arango, Tim (3 August 2014). “Sunni Extremists in Iraq Seize Three Towns From Kurds and Threaten Major Dom”, The New York Times.

Brennan, Anna Marie, Prosecuting ISIL before the International Criminal Court: Challenges and Obstacles, ASIL Insights, Issue 21, Volume 19, September 17, 2015.

Broomhall,Bruce, International Justice and the International Criminal Court (2003).

Cullen, Anthony, Concept of Non-International Armed Conflict in International Humanitarian Law (New York, Cambridge University Press, 2010).

Dormann, Knut, Elements of War Crimes under the Rome Statute of the International Criminal Court. Sources and Commentary, International Committee of the Red Cross, 2004

Henham, Ralph, Behrens, Paul, Criminal Law of Genocide. International, Comparative and Contextual Aspects, Ashgate Publishing Company, 2007.

Laub, Zachary & Masters, Jonathan, Islamic State, Council on Foreign Relations (May 18, 2015).

Oltermann, Philip (24 September 2014), “Islamists in Philippines threaten to kill German hostages”, The Guardian.

Ортаковски, Владимир, Миленковска Марија, Меѓународно јавно право, Факултет за безбедност, 2014.

Sadat, Leila, International Criminal Court and the Transformation of International Law: Justice after the New Millennium (2002).

Schabas, William A., Genocide in International Law. The Crime of Crimes, second ed., Cambridge University Press, 2009.

Shaw, Malcolm N., International Law, sixth ed., Cambridge University Press, 2008.

Sly, Liz (3 February 2014) “Al-Qaeda disavows any ties with radical Islamist ISIS group in Syria, Iraq”, The Washington Post.

Smith, Samuel, UN Report on ISIS: 24,000 Killed, Injured by Islamic State; Children Used as Soldiers, Women Sold as Sex Slaves, The Christian Post (October 9, 2014).

Tharoor, Ishaan (18 June 2014), “ISIS or ISIL? The debate over what to call Iraq’s terror group”, The Washington Post

Withnall, Adam (29 June 2014),”Iraq crisis: ISIS changes name and declares its territories a new Islamic state with ‘restoration of caliphate’ in Middle East”, The Independent (London).

Withnall, Adam (21 December 2014), “Middle East, Inside ISIS: The first Western journalist ever to be given access to the ‘Islamic State’ has just returned – and this is what he discovered”, the Independent.

**UDK:342.737/.738:342.5-021.463(4-672ЕУ:497.7)**

# PROPORTIONAL PRAGMATISM AMONG THE RIGHT TO PRIVACY AND THE PUBLIC AUTHORITY IN EUROPEAN LAW AND THE LAW OF THE REPUBLIC OF MACEDONIA

***Mirjana Ristovska***
*"St. Kliment Ohridski University"-Bitola*
*e-mail: mimaristovska@yahoo.co.uk*

***Natasa Pelivanova***
*"St. Kliment Ohridski University"-Bitola*
*e-mail: n_pelivanova@yahoo.com*

**Abstract**

The right to privacy as one of the fundamental human rights represents wide-ranging concept which is expressed through four dimensions: protection of the private life, protection of the family life, protection of the home and protection of the correspondence. Accordingly, any unauthorized intrusion into the privacy of a person, means a violation of his personality, dignity and reputation. However, the right to privacy in contemporary national and international law is not determined in an absolute frame. Namely, it is allowed for public authority, on the grounds of pre-defined legal basis to intervene in the privacy of a person as a necessary measure for the interests of national and public security. The subject of this paper is to scrutinize the relationship among the right to privacy and national and public security protection trough the principles of legality, proportionality, subsidiarity and necessity. The paper consists of an introduction, three parts and a conclusion. It begins by presenting the theoretical definitions of the right to privacy. In the first part the legal framework and judicial practice for the right to privacy in European law is analysed, while in the second part the legal and institutional framework for the right to privacy in the Republic of Macedonia is considered. The third part includes an empirical data on the right to privacy, published by the competent authorities, as well as certain assessments and recommendations regarding that empirical data.
***Keywords****: public authority, proportionality, security, the right to privacy.*

## 1. INTRODUCTION

The right to privacy is a fundamental, universal, inalienable, indivisible and absolute human right which protects the personlaity, dignity and reputation of the individual and protects privacy and freedom of his private life.This right protects three types of interests: a) human interests of autonomy in decision-making about intimate and personal relationships; b) the interest of the individual to be protected from disclosure of personal circumstances; c) the interest of the individual to be secured from arbitrary surveillance by public authorities(Dimitrijevic, 2011).In this respect the right to privacy was defined by the judges Samuel Warren and Louis Brandais as the "*right to be left alone*" (Warren, Brandais, 1890)

Privacy is the right to protect ourselves from the influence of the outside world. It is a measure that we use to establish certain limitations on the requirements of the organizations and people. It is the right that we seek to protect our personal freedom, our autonomy, and our identity(Davies, 2012).In the broadest sense, we can conclude that the right to privacy encompasses all aspects of human life that contribute for its free development, such as personal health, philosophical, moral, religious beliefs, family and emotional life, friendships and other social relations.

In the legal-theoretical framework, the right to privacy can be seen from several aspects: as an international human right; as a constitutionally guaranteed right and as an individual right protected by the instruments of civil law. The right to privacy is a particularly complex concept, which is characterized by exceptional dynamism in its content and whose direction of further development cannot be determined, especially if we take into account the rapid technological and technical development, as well as the unstoppable process of globalization.

The right to privacy has absolute nature or acts *erga omnes*. However, although it acts with respect to all, the right to privacy is not unlimited (Boban, 2012). So, the right to privacy may be restricted in a vertical context, in terms of public authority, or in a horizontal context in terms of other individuals or third parties. Our focus will be put on the limitations of the right to privacy, particularly in terms of public authorities, as well as on the interventions with the right to privacy by the public bodies: when and under what conditions it is allowed and how to maintain a balance between respecting the right to privacy on the one hand, and the permitted interference by the public authority with the right to privacy, on the other.

## 2. INTERNATIONAL LEGAL CONCEPT OF THE RIGHT TO PRIVACY

The right to privacy as a fundamental right initially is regulated by the Universal Declaration of Human Rights. The provision of Article 12 states:

*"No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honor and reputation. Everyone has the right to the protection of the law against such interference or attacks."*

Furthermore, the right to privacy is confirmed by the provision of Article 17 of the International Covenant on Civil and Political Rights:

*"1.No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honor and reputation.*

*2. Everyone has the right to the protection of the law against such interference or attacks."*

The Charter of Fundamental Rights of the European Union (2000 / C 364/01) regulates the right to privacy in article 7 as follows:

*"Everyone has the right to respect for his or her private and family life, home and communications."*

The European Convention on Human Rights (ECHR) also determinates the right to privacy. Namely, the provision of Article 8 provides that:

*"1. Everyone has the right to respect for his private and family life, his home and his correspondence.*

*2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."*

From the presented determinations of the right to privacy in the international legal acts, we can conclude that the European system compared to the universal system, defines this right in narrower terms. Namely, the concept of the right to privacy under the Charter of Fundamental Rights of the European Union and the ECHR is defined in a similar way as in the universal international documents, leaving out the "honor" and "reputation" of the individual as part of his privacy. Additionally, the right to privacy is relativized by the ECHR with a range of situations in which this right is allowed to be "disturbed" by the public authorities.

However, the right to privacy is interpreted in a wide-range way that goes far beyond the convention regime by the European Court of Human Rights in its case law. So, according to the Court, the right to privacy includes the concepts of:

a) Private life that includes the following areas: individual's physical, psychological or moral integrity (X and Y v. The Netherlands), including medical treatment and psychiatric examinations (Glass v. the United Kingdom), the physical integrity of pregnant women in relation to abortion (Tysiąc v. Poland), and the physical and psychological integrity of victims of domestic violence (Hajduová v. Slovakia); individual's physical and social integrity (Mikulić v. Croatia); the name and the surname of the individual (Guillot v. France); marital status of the person (Dadouch v. Malta); the right to one's image and photographs of an individual ( Reklos and Davourlis v. Greece); an individual's reputation (Chauvy and others./France); gender identity (Christine Goodwin v. the United Kingdom);sexual orientation(Dudgeon v. the United Kingdom); sexual life ( Laskey, Jaggard and Brown v. the United Kingdom); right to establish and develop relationships with other human beings and with the outside world(Niemietz v. Germany); social relations between settled migrants and the community in which they live, regardless of whether there is a "family life" or not(Üner v. the Netherlands); emotional relations between two same sex individuals (Mata Estevez v. Spain); the right to personal development and personal autonomy (Pretty v. the United Kingdom); the right of individual to decide when and how should end his life, considering the fact that he is able to create free will in this respect(Haas v. Switzerland); the right to respect for the choice to become or not to become a parent, in the genetic sense (Evans v. the United Kingdom); activities of a professional or business nature(Niemietz v. Germany); files or data of a personal or public nature collected and stored by security services or other government agencies(Rotaru v. Romania); information about person's health( Z. v. Finland); ethnic identity (S. and Marper v. the United Kingdom); information about personal religious and philosophical convictions(Folgerø and Others v. Norway); certain rights of persons with disabilities(Glor v. Switzerland);

b) Family life, which includes: the right to become a parent (Dickson v. the United Kingdom); relations connected with children (Mustafa and Armağan Akın v. Turkey); other de facto "family ties" where the parties are living together outside marriage (Johnston and Others v. Ireland); other family relations (Boyle v. the United Kingdom); material nature interests ( Marckx v. Belgium);

c) Home, that: includes a house that belongs to another person as a place to live, if this is for certain periods on an annual basis (Menteş and Others v. Turkey); It is not restricted to habitats that are legally constructed (Prokopovich v. Russia); may be applicable to social housing occupied by the applicant as a tenant, even though the right of occupation under domestic law has come to an end (McCann v. the United Kingdom); is not limited to traditional residence so will include, for example caravans and other non-fixed abodes (Buckley v. the United Kingdom); may cover a second home or vacation home (Demades v. Turkey); it may be applied to business premises in case there is no clear distinction between a person's office and private residence or between private and business activities (Niemietz v. Germany); it may apply to the registered office of a company, subsidiaries or other business premises (Société Colas Est and Others v. France); does not extend to the intention to build a home on a plot of land, or to the fact of having one's roots in a particular area (Loizidou v. Turkey);

d) Correspondence, which implies the right to respect the confidentiality of private communications (B.C. v. Switzerland); letters between individuals, even when the sender or recipient is a prisoner (Silver and Others v. the United Kingdom), including packages detained by customs officials (X v. the United Kingdom); phone calls (Klass and Others v. Germany and Malone v. the United Kingdom), including information related to them, such as date, time, and numbers that were dialed (P.G. and J.H. v. the United Kingdom); pager messages (Taylor-Sabori v. the United Kingdom); older forms of electronic communication, such as telex (Christie v. the United Kingdom); electronic messages (email) and information derived from the monitoring of personal Internet use (Copland v. the United Kingdom); Private radio (X and Y v. Belgium), but not when it is on a public wavelength and is thus accessible to others (B.C. v. Switzerland); correspondence intercepted in the course of business activities or from business premises (Kopp v. Switzerland); electronic data seized during a search of a law office (Wieser and Bicos Beteiligungen GmbH v. Austria)(Practical Guide on Admissibility criteria, Council of Europe / European Court of Human Rights, 2011).

The Court also recalls that although the purpose of the provision of Article 8 essentially is to protect the individual from public authorities' arbitrary interference, it does not oblige the state to abstain from such interference. Namely, besides this primarily negative obligation also there is a positive obligation inherent to effective respect for private life (X and Y v. The Netherlands, Johnston v. Ireland).

### 2.1 The Limitations to the Right to Privacy

We had already concluded that ECHR defines the right to privacy in the narrowest frames. Namely, in accordance with the provision of Article 8 paragraph 2, public authorities may still limit the right to privacy, if only cumulatively are fulfilled the following three conditions: a) the limitation to comply with the law; b) the limitation to be qualified as the necessary measure in a democratic society and c) the limitation to be taken in the interests of national security, public safety, protection of health or morals or for the protection of the rights and freedoms of others.

The first condition practically is an expression of the principle of legality and means that the interference of public authorities must have a legal basis in domestic, national law. In addition, the phrase legal basis covers all legal rules contained in the constitutional, legal and administrative acts as well as those contained in the customary (unwritten) law. In this context, the legal basis must be clear, precise and concise and must contain measures and remedies against public authorities' arbitrariness. With regard to this

requirement, the European Court of Human Rights insists to the existence of the legal basis certain standard of quality as well as the legal basis to be available and equal for all individuals (Malone v. the United Kingdom, 1984, par.67). According to the Court, the restriction of the right to privacy is not in accordance with the principle of legality, if it cumulatively not met the following elements: a) determination of the categories of persons to whom the restriction may be applied; b) determination of the crimes for which it may be determined limit; c) determination of the measure time limit; d) determination of the manner and procedure for the data destruction which are derived from the restriction implementation; e) determination of the procedure for playback recording that occurred with the application of the restriction; and f) determination of the measures to prevent the abuse and arbitrariness possibilities.

The second condition, according to the Court case law implies that the right to privacy restriction may be permitted if it is a "necessary social need, which is proportional to the legally established purpose" of the restriction (Olsson v. Sweden, 1988). This condition is the concretization of the principles of proportionality and subsidiarity. Namely, the need to diverge from a fundamental human right such as the right to privacy must be assessed by the proportionality and subsidiarity of the legally set aim, i.e. to answer the questions: whether that deviation in the concrete case will achieve the legitimate aim? Are previously exhausted all means to achieve the legally determined aim? In this regard, the Court has not set a specific definition of a democratic society, so this qualification is considered case by case, *in concreto*.

The third condition means that the right to privacy may be restricted only if there is a need for protecting the high social interest. Practically, this requirement is an expression of the principle of necessity. Additionally, the provision of Article 8 states that as a high social interest will be considered as follows: the national security, public safety, health protection, protection of morality, protection of the rights and freedoms of others. Reasonably speaking, it can be concluded that the right to privacy may be limited in the interest of the national public order protection. This requirement also is examined and assessed *in concreto.*

## 3. THE RIGHT TO PRIVACY IN THE REPUBLIC OF MACEDONIA

The right to privacy in the Republic of Macedonia is a constitutionally guaranteed right, provided by the provision of Article 25:

*"Every citizen is guaranteed the respect and protection of the privacy of personal and family life and of dignity and reputation."*

The right to privacy also is expressed through the provision of Article 26 as follows:

*"(1)The inviolability of dwellings is guaranteed.*

*(2) The right to the inviolability of dwellings may be restricted only by a court decision in cases of the detection or prevention of criminal offences or the protection of people's health."*

Also, the right to privacy in our constitutional system is defined by the provision of Article 17:

*"1. The freedom and privacy of correspondence and other forms of communication are guaranteed. There can only be an exception to the right of inviolability of correspondence and other forms of communication, with a court decision, under terms and by procedure stipulated by law, if this is necessary for the prevention or revelation of*

*criminal acts, for the course of a criminal procedure or where required in the interests of security and defense of the Republic. The law is adopted by a two-thirds majority of votes of the total number of Representatives."*

As well as by the provision of Article 18:

*"(1) The security and privacy of personal information are guaranteed.*

*(2) Citizens are guaranteed protection from any violation of their personal integrity deriving from the registration of personal information through data processing."*

Analyzing the constitutional provisions that govern the right to privacy in our country, a several conclusions can be drawn:

The subject (*ratione materiae*) of this right has the broader range compare to the ECHR provision, as explicitly provides the person's dignity and reputation protection, despite the protection of private life, personal and family life, home and correspondence;

The vertical and horizontal limitations are determinate regarding the right to inviolability of the home and the inviolability of correspondence and other forms of communication. Consequently, the right of inviolability of the home may be restricted only by a court decision in cases a) of the detection or prevention of criminal crimes or b) the protection of people's health. While the right of inviolability of correspondence and other forms of communication may be limited on the basis of a court decision, under conditions and by procedures specified by law if it is necessary a) for preventing or revelation of criminal acts b) for the course of criminal procedure or c) where required the interests of the security and defense of the Republic of Macedonia.

In addition, the right to privacy in Macedonia is further developed in the specific laws of which as the most important could be mentioned the following: Criminal Code[1] and Criminal Procedure Act[2], as the systemic acts and the Interception of Communications Act[3], the Electronic Communications Act[4], Protection of Personal Data Act[5] and others, as *lex specialis acts.*

The Criminal Code protects the right to privacy in Macedonia through the determination of the crimes whose object or subject of protection is precisely privacy. Namely, the protection of privacy is expressed through the following crimes: violation of the inviolability of the home (article 145), unlawful search (article 146), violation of confidentiality of letters or other parcels (article 147), unauthorized publication of personal notes (article 148), misuse of personal data (article 149), prevention of an access to a public information system (article 149-a), unauthorized disclosure of a secret (article 150), unauthorized tapping and audio recording (article 151), unauthorized recording (article 152), disclosing and unauthorized acquisition of a business secret (article 281), disclosing an official secret (article 360), violation of the confidentiality of the procedure (article 369) and hindering a religious ceremony (article 399).

On the other hand, the new Criminal Procedure Act[6] explicitly provides certain restrictions to the right to privacy with two types of measures:

[1]Official Gazette of the Republic of Macedonia, no. 37/96

[2][2]Official Gazette of the Republic of Macedonia, no. 150/2010

[3]Official Gazette of the Republic of Macedonia, no. 4/2009

[4]Official Gazette of the Republic of Macedonia, no. 39/2014

[5]Official Gazette of the Republic of Macedonia, no. 7/2005

[6]In this article the term "newCriminal Procedure Act" refers to theCriminal Procedure Act adopted in 2010, while the term "Criminal Procedure Act" refers to the Criminal Procedure Act of 1997, with all its later amendments. At this point apply both laws.

a) measures for finding and securing persons and objects (Chapter XVII) and
b) special investigation measures (Chapter XIX).

The first types of measures are undertaken for successful and efficient criminal procedure and are applying according to the innocence presumption principle and the persons' protection of privacy, as its imperative. Measures for finding and securing persons and objects can be applied if the following conditions are met: a) there is a reasonable doubt that the defendant committed a crime and there is a potential damage occurrence if not applied those measures; b) exclusively measures that are enumerated in the law may be applied; c) applying the principle of proportionality and subsidiarity: in deciding which of several measures to be undertaken, the competent authority shall comply with the requirements established for the implementation of individual measures, taking care not to apply a more severe measure if the same purpose can be achieved with a milder measure; d) authorities are obliged to take account that, as soon as the reasons for some of the applied coercive measures will stop to exist, to abolish it or to replace it with a more lenient measure when there are conditions for it.[7]

The second type of measures, i.e. the special investigative measures significantly interfere with the right to privacy and can be ordered only when it is probable that data and evidence will be ensured, necessary for successful conducting of the criminal procedure, which cannot be obtained in any other way. Special investigative measures are exhaustively listed in the new Criminal Procedure Act and cannot be changed or supplemented with other law or bylaw. The new Criminal Procedure Act provides the following special investigative measures:

1. monitoring and recording telephone and electronic communications;
2. monitoring and recording in a home, closed or enclosed premises;
3. secret surveillance and recording of persons and objects with technical means;
4. covert inspection and search of computer systems;
5. automatic search and comparison of personal data;
6. access to telephone calls and other electronic communications;
7. simulated purchase of objects;
8. simulated giving and receiving bribes;
9. controlled delivery and transport of persons and objects;
10. using undercover agents;
11. opening bank accounts; and
12. simulated registration of legal entities.

Special investigative measures in our legal system for the first time were introduced in 2004 with the adoption of the amendments to the Criminal Procedure Act of 1997, under the direct influence of European law. Thus, in accordance with point 19 of the Annex to the Recommendation R (2001) 11 of the Committee of Ministers of the Council of Europe to the member states on the guiding principles for combating organized crime is stated that: *"Member states should introduce legislation allowing or extending the use of investigative measures that enable law enforcement agencies to gain insight, in the course of criminal investigations into the activities of organized crime groups including surveillance, interception of communications, undercover operations, controlled delivers and the use of informants. To enable the implementation of such techniques, Member states*

[7] http://www.pf.ukim.edu.mk/images/File/Januari%20%20vtori%20kolokviumi/merki%20za%20obezbeduvanje-final.doc

*should provide law enforcement agencies with the required technology and appropriate training"* (Karovska-Andonovska, 2013).

Special investigative measures represent practical mechanism to the public authorities in the efficient fight against organized crime. However, considering the fact that these measures seriously violate the individual privacy, states have obligation to be very careful during their practical realization and implementation. So, from the essential importance is the application of special investigative measures to be accomplished in terms of human rights protection, the rule of law and democratic values of a country.

Special investigative measures can be ordered only for criminal offences punishable with a sentence of at least four years for which there is a grounded suspicion that they have been committed by an organized group, gang or other joint criminal enterprise, as well as for some criminal offences clearly indicated in the Criminal Code. The measures that interfere more intensively with the right to privacy (as referred to in Article 252, paragraph 1, points 1 to 5 of the Criminal Procedure Act) are ordered, upon reasoned request from the public prosecutor, by the judge of the preliminary proceedings with a written order. The other measures as referred to in Article 252, paragraph 1, points 6 to 11 of the Criminal Procedure Act are ordered by the public prosecutor with a written order. Any data, statements, documents and objects gathered by applying special investigative measures, under terms and conditions and in a manner as prescribed in the Act, can be used as evidence in the criminal procedure (OSCE, 2010).

## 4. THE RIGHT TO PRIVACY THROUGH THE PRISM OF JURISPRUDENCE AND EMPIRICAL DATA

In Table 1 the total number of cases in which the ECJ has found violation of the provision of ECHR Article 8 is presented. In this context, it can be concluded that out of 422 cases against Republic of Macedonia, in 33 (8 percent of the total number) there was a violation of the right to privacy. De facto, the proportion between the total numbers of positive decisions adopted by the Court and the number of cases in which the Court has found out the violation of the right to privacy in listed countries is not very enormous, which suggests that states respect the right to privacy. On the other hand, even this number of recognized violations of the provision of Article 8 is not so negligible, so in the future, countries should undertake mechanisms to prevent the violations of the fundamental right to privacy, or to reduce the violations to minimum.

**Table 1: Total number of cases in which a violation of the provision of Article 8 of the ECHR is found (Source:http://hudoc.echr.coe.int/eng)**

| State | Total number of cases in which violation of human rights and freedoms is found out | Total number of cases in which a violation of the provision of Article 8 of the ECHR is found out (indicated in %) |
|---|---|---|
| Albania | 116 | 2 (2%) |
| Austria | 1000 | 147 (15%) |
| Bulgaria | 1782 | 195 (11%) |
| Croatia | 993 | 128 (13%) |
| Greece | 1733 | 68 (4%) |

| | | |
|---|---|---|
| Montenegro | 48 | 2 (4%) |
| Serbia | 357 | 50 (14%) |
| Slovenia | 668 | 47 (7%) |
| **Macedonia** | **422** | **33 (8%)** |
| Switzerland | 635 | 129 (20%) |
| United Kingdom | 1964 | 315 (16%) |

From the cases which are submitted against the Republic of Macedonia, for the purposes of this paper, three will be presented: Popovski v. Macedonia, Mitovi v. Macedonia and El Masri v. Macedonia.

In the case Popovski v. Republic of Macedonia, the ECHR has found a violation of Article 8 of the Convention:*"…Without making any conclusions as to what the outcome of the proceedings should have been (had the courts decided the merits of the applicant's claim), the Court considers that the manner in which the criminal-law mechanism was implemented in the instant case was defective to the point of constituting a breach of the respondent State's positive obligations under Article 8 of the Convention (see, mutatis mutandis, Sandra Janković v. Croatia, no. 38478/05, §§ 57 and 58, 5 March 2009). Accordingly, the Court considers that in the present case there has been a violation of Article 8 of the Convention."*

In the case Mitovi v. Republic of Macedonia, the ECHR also has found a violation of Article 8 of the Convention: *"…Having regard to the foregoing, and notwithstanding the sensitivity of the matter, the Court concludes that the domestic authorities failed to make adequate and effective efforts to enforce the applicants' right to respect for their family life, as guaranteed by Article 8 of the Convention. There has consequently been a violation of this Article."*

In the judgment adopted in the case El Masri against the Republic of Macedonia, the Court stated as follows: *"…the Court considers that the State's actions and omissions likewise engaged its responsibility under Article 8 of the Convention. In view of the established evidence, the Court considers that the interference with the applicant's right to respect for his private and family life was not "in accordance with the law". Accordingly, it finds that in the present case there has been a violation of Article 8 of the Convention."*

In table 2 a statistics on the number of requests for application of special investigative measures submitted by the public prosecutor to the judge of the preliminary proceedings are presented. [8]

[8]Annual Report of the Public Prosecutor's office in the Republic of Macedonia for 2010, 2011, 2012 and 2013. These Reports are prepared according to the Criminal Procedure Act from 1997.

**Table 2: Number of requests for application of special investigative measures submitted by the public prosecutor to the judge of the preliminary proceedings (Source: http://jorm.gov.mk/?page_id=31)**

| Type of special investigative measure | **2013** | **2012** | **2011** | **2010** |
|---|---|---|---|---|
| 1. Wiretapping and recording in one's home, closed or fenced area belonging to said home or private business premises marked as such or in a private vehicle, without the affected person being aware of it and entering those premises for purposes of creating conditions to monitor communications | 29 | 33 | 28 | 14 |
| 2. Insight in the data of computer system, confiscation of the computer system or part of it or confiscation the computer storing base data | 2 | 5 | 1 | 5 |
| 3. Secret monitoring, following, audio and visual recording of persons and items with technical means | 22 | 31 | 19 | 27 |
| 4. Simulated offering and receiving bribe | 3 | 11 | 13 | 19 |
| 5. Controlled delivery and transport of persons and items | 1 | 2 | 1 | 4 |
| 6. Use of persons with concealed identity in order to perform monitoring or gathering information or data | 1 | 8 | 9 | 14 |
| 7. Registering legal entities or using existing legal entities for the purpose of gathering data | 1 | 0 | 0 | 0 |

From the statistics it can be concluded that the number of requests fluctuates depending on the calendar year and the application of special investigative measure. Nevertheless, it is noticeable that for the application of the measure Wiretapping and recording in one's home, closed or fenced area belonging to said home or private business premises marked as such or in a private vehicle, without the affected person being aware of it and entering those premises for purposes of creating conditions to monitor communications the highest number of requirements are submitted, while for the application of the special measure Registering legal entities or using existing legal entities for the purpose of gathering data the lowest number of requests are submitted. Also for the application of special investigative measure secret monitoring, following, audio and visual recording of persons and items with technical means there are significant number of requests.

In the table 3 the application of special investigative measure wiretapping and recording in one's home, closed or fenced area belonging to said home or private business premises marked as such or in a private vehicle, without the affected person being aware of it and entering those premises for purposes of creating conditions to monitor

communications (Article 142-b 1, paragraph 1 of the Criminal Procedure Act) is presented. Thus, this particular measure in 2012 was applied in 33 cases against 124 persons, while in 2013 the number of cases in which this measure was applied is for 6 more than the previous year, but the number of defendants against it was applied is decreased to 30. There is a large number of persons against whom this measure was applied in 2010, 175, which differs from all the presented calendar years.

**Table 3: The application of special investigative measure-wiretapping and recording in one's home, closed or fenced area belonging to said home or private business premises marked as such or in a private vehicle, without the affected person being aware of it and entering those premises for purposes of creating conditions to monitor communications (Source: http://jorm.gov.mk/?page_id=31)**

| 2013 | 2012 | 2011 | 2010 |
|---|---|---|---|
| In 29 cases against 111 people with known and unknown identity | In 33 cases against 124 people with known and unknown identity | In 39 cases against 94 people with known and unknown identity | In 29 cases against 175 people with known and unknown identity |

In general, orders were issued by a judge of the preliminary proceedings, and proposals submitted on grounds of reasonable doubt to carry out the following criminal crimes: unauthorized production and sale of narcotic drugs, psychotropic substances and precursors, misuse of official position and authority, receiving bribes, giving bribes, illegal mediation, money laundering and other proceeds from crime, tax evasion, criminal association, terrorist organization, terrorism, organizing a group and inciting the perpetration of acts of trafficking in persons, trafficking in minor person and migrant smuggling, smuggling of migrants.

In Macedonian case law three famous cases in which special investigative measures are applied can be mention: The case "Cocaine" in which on the territory of the Republic of Macedonia following special investigative measures have been applied: secret monitoring, following, audio and visual recording of persons and items with technical means and use of persons with concealed identity in order to perform monitoring or gathering information or data, the case "South", in which special measure controlled delivery and transport of persons and items was applied and the case "Dora" in which on the territory of the Republic of Macedonia following special investigative measures have been applied: secret monitoring, following, audio and visual recording of persons and items with technical means and controlled delivery and transport of persons and items (OSCE, 2010).

In this context, in our country the case with codename "Putsch" is of great interest. It is assumed that allegedly more than 20,000 people were illegal wiretapping, but on the other hand the legitimate way of getting those audio materials is questionable.

## 5. CONCLUSION

The right to privacy as "the most sacred law of human behavior" (Skarik, 2006) is governed by the highest international and domestic legal acts. Although the right to privacy acts *erga omnes*, it may be limited by actions taken by the public bodies, above all, to protect national security and human rights and freedoms. In this context, the right to privacy may be waived only in accordance with the principles of legality, proportionality, subsidiarity and necessity. The right to privacy in the Republic of Macedonia is a constitutionally guaranteed right, determined in accordance with the international legal regime. Deviations from this right are defined by special laws, according to the aforementioned principles. However, according to the empirical data of the ECHR it can be concluded that the right to privacy in certain cases is infringed by Macedonian public authorities. While, according to the statistics of the Public Prosecutor's office and the case law in our country, we can notice that the special investigative measures, as measures that invade the individual's privacy, has been applied in many cases. At the same time it is evident fact that the right to privacy in our country is limited in the interest of the public and state security, as well as in the crimes that endangers the individual's and society's safety. Thus, for the Macedonian public authorities it is of particular importance to evaluate and try to find a balance between the right to security of the individual and the right to his privacy in each particular case. In this context, a legal challenge in our country is the case "Putch" that will be subject to the judicial review in the near future. Lastly, the public authorities have an obligation to take special care the right to privacy does not turn into a privilege of privacy.

## 6. REFERENCES

1. Annual Report of the Public Prosecutor's office in the Republic of Macedonia (2010, 2011, 2012 and 2013).
2. Annex to the Recommendation R (2001) 11 of the Committee of Ministers of the Council of Europe
3. Boban, M.(2012). Right to privacy and right to access to information in the contemporary information society, Compilation of Works of the Faculty of Law in Split
4. Charter of Fundamental Rights of the European Union (2000), Official Journal of the European Communities, C 364/1.
5. Constitution of the Republic of Macedonia, Official Gazette of RM no. 52/1991.
6. Criminal Procedure Act, Official Gazette of RM no. 150/2010.
7. Criminal Code, Official Gazette of RM, no. 37/96.
8.Davies, S. (2012) How to Beat Goliath: The Strong Privacy Protection Is the Best Defense against Information Warfare, Privacy Law and Policy Reporter (p. 23), Australia.
9. Dimitrijević, P. (2011) Legal regulation of electronic communication and the right to privacy, Compilation of works (p.203) Faculty of Law at the University of Eastern Sarajevo.
10. European Convention for the Protection of Human Rights and Fundamental Freedoms, (1950), Council of Europe.
11. Interception of Communications Act, Official Gazette of RM, no. 4/2009.
12. International Covenant on Civil and Political Rights, (1966), General Assembly resolution 2200A (XXI).

13. Karovska-Andonovska, B. (2013) Deviation from the right to secrecy in the communication in the function of prevention and suppression of organized crime, (p.31) Centrum,Skopje.
14. OSCE, (2010) Investigative activites, A guidebook for practioners, Skopje.
15. OSCE, (2010) Special Investigative Measure, Skopje.
16. Practical Guide on Admissibility criteria (2011) Council of Europe / European Court of Human Rights.
17. Personal Data Protection Act, Official Gazette of RM, no. 7/2005.
18. Skaric, S. (2006) Constitutional Law, Matica, Skopje.
19. The Electronic Communications Act, Official Gazette of RM, no. 39/2014.
20. Universal Declaration of Human Rights (1948), United Nations General Assembly, Paris.
21. Warren Samuel, L. Brandais, L. (1890) the Right to Privacy, Harvard Law Review.

CASE-LAW

22. Case of X and Y v. the Netherlands 8978/80, (1985).
23. Case of Glass v. the United Kingdom 9/2004, (2004).
24. Case of Tysiąc v. Poland 5410/03, (2007).
25. Case of Hajduova v. Slovakia2660/03, (2011).
26. Case of Mikulic v. Croatia53176/99, (2002).
27. Case of Guillot v. France52/1995/558/644 (1966).
28. Case of Dadouch v. Malta 38816/07 (2010).
29. Case of Reklos and Davourlis v. Greece 1234/05 (2009).
30. Case of Chauvy and others v. France 64915/01 (2004).
31. Case of Christine Goodwin v. the United Kingdom 28957/95 (2002).
32. Case of Dudgeon v. the United Kingdom 7525/76, (1981).
33. Case of Laskey, Jaggard and Brown v. the United Kingdom109/1995/615/703-705, (1997).
34. Case of Niemietz v. Germany, 13710/88, (1992).
35. Case of Üner v. the Netherlands, 46410/99, (2006).
36. Case of Mata Estevez v. Spain, 56501/00, (2001).
37. Case of Pretty v. the United Kingdom, 2346/02, (2002).
38. Case of Haas v. Switzerland, 31322/07, (2011).
39. Case of Evans v. the United Kingdom, 6339/05, (2007).
40. Case of Rotaru v. Romania, 28341/95, (2000).
41. Case of Z v. Finland, 22009/93, (1997).
42. Case of S. and Marper v. the United Kingdom, 30562/04, (2008).
43. Case of Folgerø and Others v. Norway, 15472/02, (2007).
44. Case of Glor v. Switzerland, 13444/04, (2009).
45. Case of Dickson v. the United Kingdom, 44362/04, (2007).
46. Case of Mustafa and Armağan Akın v. Turkey4694/03, (2010).
47. Case of Johnston and Others v. Ireland, 9697/82, (1986).
48. Case of Boyle v. the United Kingdom, 55434/00, (2008).
49. Case of Marckx v. Belgium, 6833/74, (1979).
50. Case of Menteş and Others v. Turkey, 23186/94 (1997).
51. Case of Prokopovich v. Russia, 58255/00, (2011).
52. Case of McCann v. the United Kingdom, 18984/91,(1995).

53. Case of Buckley v. the United Kingdom, 20348/92, (1996).
54. Case of Demades v. Turkey, 16219/90, (2008).
55. Case of Société Colas EST and Others v. France, 37971/97, (2002).
56. Case of Loizidou v. Turkey, 15318/89, (1995).
57. Case of Silver and Others v. the United Kingdom, 5947/72, 6205/73, 7107/75, 7113/75 and 7136/75, (1982).
58. Case of X v. the United Kingdom, 10295/82, (1983).
59. Case of Klass and Others v. Germany, 5029/71, (1978).
61. Case of Malone v. the United Kingdom, 8691/79, (1984).
62. Case of P.G. and J.H. v. the United Kingdom, 44787/98, (2001).
63. Case of Taylor-Sabori v. the United Kingdom, 47114/99, (2002).
64. Case of Copland v. the United Kingdom, 62617/00, (2007).
65. Case of X and Y v. Belgium, 2332/64, (1966).
66. Case of B.C. v. Switzerland, 29002/06, (2009).
67. Case of Kopp v. Switzerland, 23224/94, (1998).
68. Case of Wieser and Bicos Beteiligungen GmbH v. Austria, 74336/01, (2007).
69. Case of Olsson v. Sweden, 10465/83, (1992).
70. Case of Popovski v. Macedonia, 12316/07, (2013).
71. Case of Mitovi v. Macedonia, 53565/13, (2015).
72. Case of El Masri v. Macedonia, 39630/09, (2012).

UDK:343.988:316.344.7

# TACKLE INSECURITY IN MARGINALIZED AREAS – MARGIN PROJECT: INDICATORS AND MEASURES OF INSECURITY

***Silvia Ciotti, Dr.Sc***
*CEO and Senior Researcher at EuroCrime - Research, Training and Consulting*
*email: silvia.ciotti@eurocrime.eu*

***Filippo Balistreri***
*Senior Researcher at EuroCrime - Research, Training and Consulting*
*email: filippo.balistreri@eurocrime.eu*

**Abstract**

The purpose of the paper is to present a transnational and multi-sector research on the factors influencing perceptions of (in)security among different demographic, socioeconomic and victims groups. MARGIN involves some of the leading EU institutions in Crime Victimization Surveys from Spain, Italy, France, Hungary and the UK. The research provides policy makers with evidence-based tools for developing and assessing strategies targeted at the reduction of insecurity among different groups.

**Keywords:** *perception of (in)security, crime victimization surveys, victimology, policy making.*

## 1. INTRODUCTION

The MARGIN project is a transnational and multi-sector EU funded research project on the perception of (in)security among different demographic and victims groups. The initiative intends to contribute to the creation of sustainable tools and strategies of cooperation between stakeholders dealing with security issues. The research provides policy makers with evidence-based tools for developing and assessing strategies targeted at the reduction of insecurity among different demographic and socioeconomic groups. The project sets up an international environment for knowledge exchange involving some of the leading EU institutions in Crime Victimization Surveys (CVSs). Along with police statistics, CVSs have become an internationally recognized tool for identifying and analyzing factors affecting public and personal perceptions of insecurity. Perception of insecurity arises, as a very heterogeneous concept, not limited to actual crime rates but encompassing a wide range of other aspects including personal wellbeing, trust in public institutions, justice and social integration. MARGIN addresses the topic of insecurity by taking into account its heterogeneity.

By deepening the understanding of the root causes of insecurity, MARGIN is expected to foster the creation of community resilience practices empowering citizens (especially among those at risk of exclusion) to better face risks and to increase the public and personal perception of security.

Following a general presentation of the project design, this paper aims at deepening the preliminary results achieved by MARGIN at this stage of its implementation (January 2016). Those results regard the data analysis of factors assessing public and personal insecurity, and in detail: 1) the conceptual report on indicators defining demographic, socio-economic and socio-geographic determinants of insecurity; 2) the cartography of objective and subjective measures of insecurity.

## 2. PROJECT OVERVIEW

### 2.1 MARGIN - A European funded project

MARGIN research is funded by the European Union and leaded by the University of Barcelona (Spain). The project has been approved by the European Commission in 2015 within the Horizon 2020 Programme dedicated to support the Scientific Research and the Technological Innovation, in the first Secure Societies call. The initiative is funded by the EC for the 100% of the total budget (1.881.399,50 euro). The duration of the project is scheduled to last 24 months, from May 1, 2015, until April 30, 2017. MARGIN sets up an international environment for knowledge exchange involving 7 leading EU institutions in CVSs from 5 EU countries:

- Universitat de Barcelona (project leader, Spain);
- EuroCrime – Research, Training and Consulting SrL (Italy);
- National Institute of Criminology (Hungary);
- Institut National des Hautes Etudes de la Sécurité et de la Justice (France);
- Università degli Studi di Milano-Bicocca (Italy);
- University College London (United Kingdom);
- Departament d'Interior-Generalitat de Catalunya (Spain).

### 2.2 Objectives

Based on previous and on-going research activities, the general objectives of the MARGIN project are:

1. to identify, validate and analyze factors influencing public and personal perception of insecurity;
2. to analyze the relationship between socio-economic inequalities, victimization and crime, exploring the impact of insecurity among different demographic and socio-economic groups.

MARGIN specific objectives are:

1. to compare and analyse two different sources of data (police and criminal justice recorded crime events and CVS data) that usually are treated separately;
2. to analyse the relation between socio-economic inequalities, victimization and crime; to map the unequal distribution of victimization in relation to social divisions and inequalities, and to examine how victimization impacts upon and is experienced differently by a range of groups and individuals;
3. to investigate the relevance of neighbourhood effects (as primary scale of analysis) on the public and personal assessment of insecurity;
4. to provide qualitative information about how citizens assess their own security; to explore the cultural and social context of victimization and review key methodological and empirical approaches, which are important in understanding

victimization in contemporary society with a main focus on marginalized urban areas;

5. to explore the socio-political potential of CVSs as tool of policy-making; to evaluate the various political and policy responses to crime victims and victimization and assess the role of CVSs in supporting policy makers in the field of security.

### 2.3 Work phases

The MARGIN project is organized around 5 Phases:

*1. Desk-based review*

During this phase, the project Consortium generates a database for "smart aggregation", comparing two different kinds of data sources:

- Official crime statistics;
- CVSs data (including both the "dark figure" of crime and the subjective dimension of insecurity).

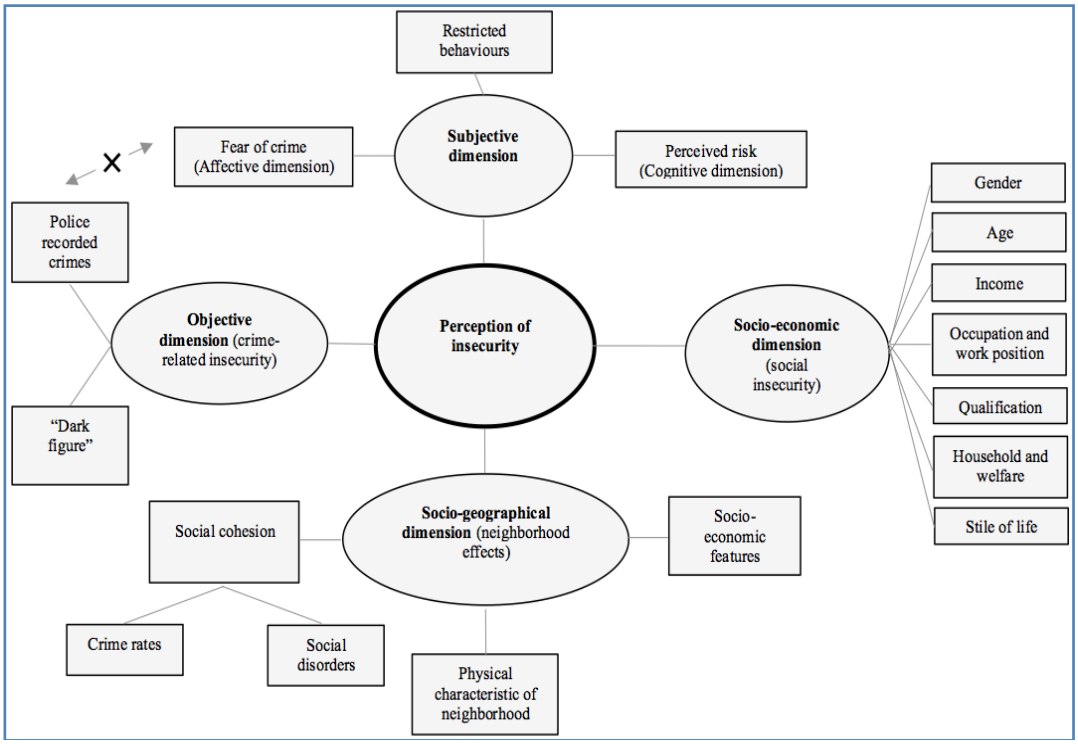
Thanks to this tool, a desk-based review defines the state of the art including all relevant information that will inform the following activities and the policies aimed at reducing insecurity. This preliminary step is fundamental for the following research phases because it allows the comparison of two aspects: real victimization, based on the official crime statistics of target countries, and perception of (in)security, distinguishing crime victims from non crime victims, thanks to CVS data.

*2. Dimension of insecurity*

This second phase is aimed at the conceptualization of the socio-economic and socio-geographic determinants of insecurity perception. A data analysis of factors assessing public and personal insecurity is implemented. The work takes into account four dimensions of insecurity (Table 1):

- objective (e.g. crime);
- subjective (e.g. perception);
- socio-geographic;
- socio-economic.

**Table1**




*3. Assess the impact of insecurity*

This phase is dedicated to develop an assessment on the impact of insecurity among different demographic and socio-economic groups. A thematic survey is developed and validated in order to assess the impact of demographic, socio-economic and socio-geographic variables on the perception of insecurity. A survey module is designed thanks to the use of the Delphi method, through the involvement of a panel of 13 experts in order to select and validate a set of items. These items constitute the MARGIN module. The tool is tested in Italy through a stratified sample of around 15.400 respondents contacted via CATI system and data from the answers provided by the respondents are collected and analyzed. Simultaneously the module is translated and applied in the four remaining countries of the project's partnership, interviewing around 100 face-to-face respondents in each country. According to this double methodology, the survey is both qualitative (thanks to the direct random interviews to a limited sample of population living in some selected EU cities), and quantitative (thanks to the phone interviews to a relevant sample of citizens in Italy).

**4. Anthropological fieldwork**

This step is aimed at investigating the anthropological dimension of insecurity and the socio-cultural determinants of its perception. This work is implemented in five EU urban locations: Barcelona, London, Milan, Paris and Budapest. The anthropological fieldwork foresees a preliminary training phase, that is organized in Barcelona for the researchers who will carry out the interviews and collect data in their respective countries. The data collection methodology adopted in each country includes:

a) in-depth interviews;
b) focus groups;
c) participant observation.
Each one of this techniques will be carried out in two different research fieldworks (neighborhoods) per city.

*5. Dissemination and exploitation*

This phase accompanies all project activities accordingly to a Dissemination Plan, and includes publications, participation to congresses, conferences and workshops, networking, public events, etc., and an Exploitation Plan for further application of the MARGIN tools and outcomes. Moreover, the project foresees to share best practices and to create a framework enabling end-users dealing with security issues to contrast objective and subjective causes of insecurity. For this reason, MARGIN includes the development of an Agenda of Best Practices targeting different sector stakeholders.
During the entire duration of the project, great attention is paid to Ethics issues. Considering the sensitiveness of the victimization surveys to be carried out, researchers to be involved both in the qualitative and quantitative surveys will be specifically trained and Ethics rules of conduct and guidelines will be provided, regarding e.g. informed consent. Moreover, privacy and data management and protection specific practical guidelines have been developed since the beginning of the project and are included in the MARGIN Ethics Manual, which will be implemented and updated during the project.

## 3. FOCUS ON DATA ANALYSIS OF FACTORS ASSESSING PUBLIC AND PERSONAL INSECURITY

### 3.1 Objectives

Within the MARGIN project, a whole work package is dedicated to the data analysis of factors assessing public and personal insecurity.Its general objective is to analyze data on crime and victimization while consideringcontextual and situational differences among EU countries. The analysis is based on the data gathered during the previous phase of desk-based review of CVSs at national and international level, mainly focusing on the five partner countries and the respective national editions of the CVSs. These are the Crime Survey for England and Wales (UK), the Cadre de vie et sécurité (France), the Victims and Opinions (Hungary), the Sicurezza dei Cittadini (Italy) and the Encuesta de Seguridad Pública de Cataluña (Spain). The data analysis aims at identifying thekey demographic, socio-economic and socio-geographic factors associated with public and personal insecurity. A set ofindicators of insecurity has been selected, defined and classified. This set of indicators informed the conceptualization of the dynamics of public and personal insecurity that underpins the subsequent activities in the project. This work package has thefollowing specific objectives:

- Compare objective and subjective measures of insecurity;
- Analyze the influence of social divisions in understanding insecurity;
- Define the socio-geographic dimensions of insecurity;
- Provide a working conceptual framework for assessing insecurity.

### 3.2 Research Overview

The University College of London leadedthis work package (WP3) and the connected research activities with the collaboration of all partners,providing knowledge and feedback in order to elaboratea first consensual definition of factors assessing insecurity that will inform the following research activitiesof the project.
The carried out tasks have been:

*1. Compare crime statistics and CVS data*
Police recorded crime (PRC) and CVS data serve different purposes, have different strengths and weaknesses, and can provideconfirmatory, contrasting and complementary pictures of crime and insecurity. Addressing the challenge of producing"smarter indicators" for insecurity assessment (Hunt et al., 2010), this task examined the relationship between subjectiveand objective measures of crime, and assisted in the development of a more complete understanding of the problem.

*2. Conceptualize social insecurity*
This task explored how the perception of insecurity might be conceptualized from the point of view of key socio-economicdimensions (income, cultural capital, ethnic background, etc.). By introducing the concept of social insecurity,it is expected to complement core statistics on crime with secondary statistics from institutions dealing with socialgroups at risk of exclusion to identify a set of indicators enabling an assessment of socio-economic determinants of insecurity.

*3. Conceptualize the socio-geographic dimensions of insecurity*
Neighborhood effects on individual and public perceptions of insecurity are examined through two levels of
analysis. First, physical characteristics of neighborhoods had been identified that have general effects on residents'feelings of insecurity and that push them to adopt a restricted range of behaviors. Second, the interaction betweenresidents and the space in which they live had been examined through an analysis of individual lifestyles. The aim was toselect a set of indicators and analyze whether levels of perceived insecurity depend on where people live.

*4. Develop taxonomy of neighborhoods according to the degree of insecurity*
The findings from the previous tasks informed a process of classification of urban areas according to the degree ofinsecurity. This taxonomy will lead to the selection of a sample of neighborhoods in urban areas for the implementation of the anthropological fieldwork.

*5. Define a set of factors assessing insecurity*
A set of indicators for assessing insecurity will be identified and defined in order to provide a provisional conceptualframework that will be used as a consensual base for discussion throughout the project activities.

### 3.3 Achieved results

CVS and PRC data have been provided to the University College of London, lead partner in the data analysis of factor assessing public and personal insecurity, by the other partners of the MARGIN project. Those data regards the Spanish region of Catalunya,

England and Wales for the UK, and Italy, France and Hungary. In addition, CVS and PRC data have been provided for the cities of Barcelona and London, and PRC data have been provided for Milan, Florence, Paris and Budapest. Thanks to the work leaded by the Institut National des Hautes Etudes de la Sécurité et de la Justice with the cooperation of all the other project partners, MARGIN set up a database for "smart aggregation"enabling a comparative analysis between PRC data and CVSs across the five EU target countries.
On this basis, the data analysis of factors assessing public and personal insecurity leaded by the University College of London produced two main results: 1) a conceptual report on indicators defining demographic, socio-economic and socio-geographic determinants of insecurity; 2) a cartography of objective and subjective measures of insecurity.

### 3.3.1 Result 1: Conceptual report on indicators defining demographic, socio-economic and socio-geographic determinants of insecurity[1]

The MARGIN conceptual report presents the results of the analysis carried out in order to identify a range of demographic, socio-economic and socio-geographic determinants of insecurity. The authors of the report are the University College of London team members, Peter Baudains, Spencer Chainey, Kate Bowers, Aiden Sidebottom and Richard Wortley.

The available data allow to address two dimension of insecurity. The first, *victimization*, can be measured through two data sources: police recorded crime data and answers to questions regarding victimization in a CVS. This dimension of insecurity is know in the MARGIN project as the *objective dimension,* as it attempts to capture individuals' *actual* experiences with crime. The second, *perceived insecurity*, relates to questions in the CVS surrounding respondents' thoughts about crime and safety, and about how their perceptions regarding crime alter their habits. This aspect is known as the *subjective dimension*. Although related, perceived insecurity and victimization capture different aspects of insecurity. Moreover, in some cases people subject to a very limited risk of experiencing victimization in fact have very high level of perceived insecurity (for a review, see: Doran and Burgess, 2012).

The consistencies in the MARGIN database with respect to a range of indicators of insecurity have been analyzed. It is important to determine indicators of insecurity in order to identify marginalized communities that tends to experience a disproportionate amount of victimization and that have high levels of perceived insecurity and fear of crime. Identification of such communities can enable the decision makers to elaborate policies aimed at reducing the levels of insecurity. The results of this analysis are intended to inform the development of the MARGIN victimization survey, whose module is actually under development.

In the report the objective dimension is conceptualize by examining victimization rates across the different study areas, as obtained from both PRC and CVS data. Then, the subjective dimension is considered by examining questions relating to different aspects of perceived insecurity. After the description of a number of problems that arise when attempting to directly compare questions across the different victimization surveys, the analysis turns to the identification of a range of demographic and socio-economic indicators to be associated with particular aspects of perceived insecurity. The results of a

[1] The Conceptual report is the deliverable no. 3.2 of the MARGIN project. It can be downloaded in .pdf format from http://marginproject.eu/wp-content/uploads/2016/01/Conceptual-report_MARGIN.pdf

range of regression analyses performed with these data are presented. Finally, a range of potential socio-geographic indicators of insecurity are discussed, focusing particularly on the example of street robbery in Barcelona. A range of issues to be considered in the identification of marginalized communities are discussed as well.

The identification of such indicators enables taxonomy of neighborhoods to be developed in the ongoing project phase. During this phase, two neighborhoods within each MARGIN target city (Barcelona, Milan, London, Paris, and Budapest) are selected as locations to undertake the fieldwork on the anthropological dimension of insecurity.

The objective dimension of insecurity is presented as measured by victimization rates in both PRC and CVS data. The authors of the report identified eight crimes that enable some comparisons in the five study areas considered in the MARGIN project (violence against the person, harassment and threats, street robbery, theft from the person, burglary in a dwelling, vehicle related theft, bicycle theft, criminal damage). The objective dimension of insecurity represents one component of a forthcoming taxonomy of neighborhoods in the study areas; however, the importance of a fine geographic scale of analysis when selecting the neighborhoods via victimization rates has been noted. The rate of crime is well-known to vary spatially at local levels, and therefore the indicators of victimization need to correspond to these levels in order to represent more accurately the experiences of the individuals in those neighborhoods.

The subjective dimension of insecurity is also considered, and it is concluded that, due to the differences in the victimization surveys of the five study areas, a direct comparison of the questions is not possible. The analysisconsidersinstead a series of regression models that enabled to test a range of demographic and socio-economic variables in terms of their association with different aspects of perceived insecurity.

The conclusions are that:

- Being female is a strong indicator of insecurity relating to feelings of safety, fear of crime, and crime perceptions;
- Younger people are less trusting in police and tend to perceive higher levels of crime, yet typically feel safer in their neighborhood;
- Unemployed people are more likely to feel unsafe in their neighborhood and home;
- Being a student is a consistent indicator of rating the police highly;
- Those born outside the country where the survey takes place are more likely to rate the police highly;
- Degree educated respondents tend to feel safer yet are often concerned about crime levels (though there is no evidence that this concern affects their habits);
- Single people tend to rate the police highly and have fewer concerns about crime than those living with partners;
- Living in a house or owning a house is associated with feeling safer in the neighborhood;
- People who have spent longer in the neighborhood are more likely to have high levels of perceived insecurity across all aspects considered;
- In the UK, poor health is a strong indicator of all forms of perceived insecurity but this variable is not measured elsewhere;
- Being a victim of crime is associated with all forms of insecurity.

Despite these encouraging findings, it is also evident that different indicators are associated in different ways with different aspects of perceived insecurity. Thus, any

taxonomy of different neighborhoods that adopt those indicators should take this issue into consideration and should be very precise in defining the results achieved by the analysis of the subjective dimension of insecurity. Identifying socio-geographic indicators using the CVS is difficult,most of all owing to the small size of the samples involved at the neighborhood level, and any findings will not necessarily be representative of the population at this fine geographic scale. Because of this, a study using the PRC data has been used to identify a range of socio-geographic indicators of victimization. With any use of PRC data, the 'dark figure' of crime has the potential to serve as a source of bias when considering individual experiences of victimization. Nevertheless, seven socio-geographic indicators have been described and explored in relation to PRC data at the neighborhood level of three different crimes in Barcelona. Focusing particularly on robbery, it has been shown how a geographic weighted regression analysis can be used to examine consistencies between the neighborhood effects and socio-geographic indicators. The difficulty in obtaining consistent data on socio-geographic aspects at the neighborhood level in the five cities selected in the project has been examined anddiscussed. These points are currently being elaborated for the description of the taxonomy used to select the neighborhoods for the fieldwork in the following phase of the project.

### 3.3.2 Result 2: Cartography of objective and subjective measures of insecurity[2]

The MARGIN project has developed a further document accompanying the abovementioned Conceptual report. The author of this document is a member of the University College of London, Spencer Chainey. This deliverable is constituted by a set of digital maps showing the results of the comparison between CVSs data and PRC.

In the Cartography information on the crime categories chosen for analysis and cartographic presentation is provided:

- violence against the person;
- harassment and threats;
- street robbery;
- theft from the person;
- burglary in a dwelling;
- vehicle related theft;
- bicycle theft;
- criminal damage.

The crime categories have been chosen for making comparison between CVS and PRC incident rates, and for making comparison between the five countries and the cities involved in the project. These crime categories have been selected because they provided the most consistent set of crime categories to enable those comparisons.

The differences in incidence rates determined from CVS and PRC data for the five MARGIN countries for each crime category are analyzed, and the differences in the dark figure of crime for these countries are explained. In addition, as data on CVS and PRC have been provided for Barcelona andLondon, the dark figures for those two cities are also presented.

[2] The Cartography is the deliverable no. 3.1 of the MARGIN project. It can be downloaded in .pdf format from http://marginproject.eu/wp-content/uploads/2016/01/Cartography_MARGIN.pdf

Furthermore, the differences in the incidence rates from PRC data for each city are presented, by each crime category. Finally, crime at the neighborhood level for Barcelona is shown as an example to illustrate how crime typically varies across a city.

## 4. CONCLUSIONS

This paper is based on the preliminary findings of the MARGIN project about the data analysis of factors assessing public and personal insecurity, fully presented in the Conceptual report written by the University College of London project team, and based on the data and information collected and provided by the members of the Consortium. As such, this is still a work in progress, and its main aim is to constitute the basis for the further tasks and activities planned in the project, and most of all for the qualitative and quantitative surveys that will be carried out in the second part of MARGIN.

However, some interesting findings presented in the report can be taken into consideration analyzing perceived insecurity, and most of all the demographic and socio-demographic variables associated to insecurity. If it is confirmed that the differences in collected data also among EU countries (and most of all in CVS, e.g. regarding considered socio-demographic variables) make somehow difficult to compare data and findings, it emerged that some comparisons are definitely possible, and offer really promising results. As previously mentioned (paragraph 3.3.1), some variables emerged as commonly influencing perception of insecurity in the different countries; and, most interesting, in some cases they are not connected to a real risk (or a relevant risk) of being victim of crime.

This phenomenon has been already examined in relation to some demographic groups, as the elderly, whose perception of insecurity is usually higher than their effective risk to be victimized. However, a correlation with a full range of socio-demographic variables and indicators through specific surveys addressing (in)security, carried out in different EU countries with a common methodology, has not been done before on such a scale as planned by the MARGIN project.

The preliminary findings presented in the report will be verified during the surveys, and integrated with further data and results. The Cartography presented in the project deliverable no. 3.1 offers a further dimension of the analysis (the geographic one), allowing the inclusion of multiple variables in the exam of the phenomena of objective and subjective insecurity, providing a complete framework analysis.

The expected outcomes of the project will provide standards for the analysis of the perceived insecurity and guidelines to proactively face it, supporting at the same time decision makers and other stakeholders in tackling perceived insecurity while facing the objective dimension of crime.

## 5. REFERENCES

Clarke A., Lewis M. (1982). Fear of Crime among the Elderly. An Explanatory Study. *British Journal of Criminology*, Volume 22, no. 1, page 49.

Clarke R., Ekblom P., Hough M. and Mayhew P. (1985). Elderly Victims of Crime and Exposure to Risk. *The Howard Journal of Criminal Justice*, Volume 24, Issue 1, pages 1 – 9.

Doran, B.J. and Burgess, M.B. (2012). *Putting Fear of Crime on theMap:InvestigatingPerceptionsofCrimeUsingGeographicInformation Systems.* New York: Springer.

Efron, B. and Tibshirani, R. (1986). Bootstrap methods for standard errors, confidence intervals, and
Other measures of statistical accuracy. *Statistical Science, 1(1)*: 54 – 77.

Hunt P., Kilmer B. and Rubin J. (2010). *Development of a European Crime Report. Improving safety and justice with existing crime and criminal justice data.* RAND for European Commission – DG Home Affairs, http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/pdf/final_for_website_2tr936_color_ec_en.pdf

Tseloni, A., Mailley, J., Farrell, G. and Tilley, N. (2010). Exploring the international decline in crime rates. *European Journal of Criminology, 7(5):* 375 – 394

Van Dijk, J.J.M., Manchin, R., Van Kesteren, J., Hideg, G. and Nacala, S. (2005). *The burden of crime in the EU. Research Report: A Comparative Analysis of the European Survey of Crime and Safety*. Gallup Europe.

**UDK:341.231.14:340.114**

# JUDGED FIGURE AUTHORITIES AND DIFFICULT KNOTS ASSOCIATED WITH THE PRINCIPLE“*NE BIS IN IDEM’’*

***Lorenc Danaj, Dr.Sc***
*University of Vlora*
*e-mail:lorenc.danaj@gmail.com*
***Lisien Damini***
*University of Vlora*
*e-mail:l.damini@gmail.com*
***Skender Damini***

**Abstract**

*Ne bis in idem* is a well-known phrase, although Latin, which translated literally in English means: "not again about the same" - terminology preserved by modern definition which is made to this principle by different legal tools, nationally and internationally. The issue invokes one of the most prominent principles of law in general and human rights in particular, that of *ne bis in idem* (known also *as non bis in idem* or double *jeopardy* - the latter is about the right in *common law*).

*Ne bis in idem* principle is a well-known principle of international criminal law and strongly rooted in its internal law of all countries with modern legislation. Currently it is also one of human rights, protected by the main legal instruments regulating relations in this field.The paper which follows took encouragement from a matter recentlyregistered in the Constitutional Court, by requesting the Court of Shkodra, objecting as unconstitutional the expression "more than once" of the fourth paragraph of Article 278 of the Criminal Code.

The paper take into account the respective legislation, a theoretical treatment envisaged by all the elements of the principle in question, as well as its concretization through case law, which is supposed to facilitate the understanding and shows that paper is not only interesting but also valuable for the future.

***Keywords:*** *International law; human right; respective legislation;*

## 1. INTRODUCTION

It is understood that, for those who are faced with (in violation or not) the principle of *ne bis in idem* right back to the same, two criteria implemented simultaneously must be met, *"again"* and *"the same"*.

International legal doctrines and practices are helpful to us with respect to the explanation of these two criteria. Thus, under Article 20 of the Rome Statute of the International Criminal Court (ICC), the criterion "again" means that "the Court has decided a matter, then it cannot adjudicate “the same issues again." Let us emphasize some parts of the Legislation in the Republic of Albania:

**Legislation**

Constitution of the Republic of Albania, Article 34;

*"No one may be punished more than once for the same offense, nor tried again, except in cases where retrial of the case by a higher courtis established, in the manner provided by law*".

- International Covenant on Civil and Political Rights, the UN, dated 16.12.1966, Section 14/7;

*"No one may be prosecuted or punished again for an offense for which he was convicted or released once with the final decision in accordance with the law and penal procedure of each country".*

## 2. OBERVANCE OF SUCH PRINCIPLES AND ANALYSIS

The European Court for Human Rights (ECHR) in Strasbourg stated that "the observance of this principle results that an individual can neither be prosecuted nor be tried by jurisdictions and the same state for a violation, to which she is expressed par guilty or is convicted on the basis of a final court judgment lawfully". It refers to the criminal process with the same meaning as in section 6 [process] of the European Convention on Human Rights. Surely this is valid for all other courts within the same jurisdiction, even in terms of the Statute of Rome, also for different jurisdictions, enough for relevant agreements ratified between states (among them) or countries and international organizations to exist.

Let us give an example on what happens when such agreements exist: if the Republic of Albania, which has ratified the Rome Statute, through its court, judged an individual killings and afterwards the International Criminal Court (established Statute of the middle) (re) judged the same person for genocide based on the same crime (the same murder), then we would be facing violation of the principle of ne *bis in idem* by the ICC here.

In those cases where there is no agreement between the countries, "the application of Article 4 [of Protocol 7 ECHR - in this case] .... is not in contradiction with special opening criminal cases in different countries".[3]

Protocol No. 7 of the "European Convention on Human Rights" of the EC dated 11/22/1984, Article 4/1:

*"No one may be prosecuted or punished again in criminal proceedings under the jurisdiction of the same State for an offense for which he was acquitted or convicted once with a final decision in accordance with the law and penal procedure of that State".*

- "Tract on the Transfer Model Procedures in Criminal Matters", adopted Resolution 45/118 dated 02.14.1990, the General Assembly of the UN

- "The European Convention on the International Validity of Judicial Decisions", the EC, dated 28/05/1970

[3]The decision "Gastria vs.Italise", dated 01.16.1995, the ECtHR in Strasbourg

As long as we respect the criterion of "the same", while Article 20 of the Statute of Rome is not as well defined thereon, it again allows us to state that this criterion refers to "the same action, behaviour, actually crime and legal qualification of their... which form the basis of the crime for which the person is convicted or acquitted".

Since many may be similar, even have a *reusactas identical*[4], there are other elements of the offense[5] that distinguish one from another crime. Obedience of whether or not we are in violation of the principle of ne bis in idem cannot be achieved by reason **only of the crime** or the entity only on **criminal behaviour**. The idea is that it would be impossible for a court to take a position on the attitude that the same behaviour (clearly defined in time and space) is the basis for more than one crime.

*Ne bis in idem* can be applied in those cases (and the only ones) when the behaviour (with all its elements in time and space) and the offense (elements of) are analysed at the same time, we respect the law that it refers to the same facts (facts are identical) and the same law (article, paragraph). At this point, we need to reaffirm the necessity of the existence of:

a) final judicial decision,
b) given previously,
c) by a court (criminal jurisdiction) legally

### 2.1 Types of penalties under the Criminal Code of the Republic of Alabnia

The Criminal Code of the Republic of Albania represents the followings:

- *The main penalties:*
- punishment with life imprisonment,
- punishment with imprisonment and
- punishment with fine

(punishment of life imprisonment is imposed only against the perpetrators, and the sentence of imprisonment or a fine also imposed against perpetrators of violations (Article 29 of the Criminal Code).

- *Supplementary Penalties* which can be adopted together with the main punishment to persons who have committed crimes or criminal offenses (Article 30 of the Criminal Code)
- *Alternatives to imprisonment (*Articles *58,59,59 / a, 63.64 CC)*
- *Medical and educational measures (Article 46 of CC)*

In 1995, the Penal Code foresaw four types of alternatives to imprisonment, the imposition of which was the basic requirement, the court had appointed prison sentence to the convicts. These alternatives were the following:

- Fragmentation of imprisonment (Article 58)

[4]Actus reus (Latin) - "criminal action", consisting of a primary, muscle movement (p.sh pulling the trigger of the weapon) of willful and consciousness (intentionally or not) the active subject of the offense.

[5]Typical elements that would make the difference in similar cases are: action / inaction manner of commission of the offense (the order of actions, methods, tools used, the character chronological and features of the movements of the person committing the criminal criminal), the country and environment commission of the offense, the time of commission of the offense etc..

- Suspension of imprisonment and put on probation - known as penalty (Article 59);
- Suspension of execution of sentence of imprisonment and compulsion to perform work of public interest (Article 63)
- Release on parole (Article 64).

The presentation of these alternatives was not associated with executive structure necessary for supervising their implementation. This absence is defined as the dominant factor in poor practical implementation of these alternative measures of the Albanian court jurisprudence. Due to the lack of supervisory structure, equal alternative measures perceived effects of decisions to dismiss criminal proceedings or decisions of innocence.[6]

Through the changes introduced by Law no. 10023 dated 27.11.2008, "On some amendments to Law no. 7895, dated 27.01.1995, the Criminal Code of the Republic of Albania changedand it has five options:

- semifreedom (Article 58);
- suspension of the execution of a sentence and put on probation (Article 59);
- stay at home (Article 59 / a);
- suspension of the execution of imprisonment and compulsion to perform work of public interest (Article 63); and
- parole (Article 64).

Two new alternativesare presented, one of which replaced the fragmented alternative sentencing, and is changing the content of the three existing alternatives (despite the fact that they were in the alternative, they are the same).The method a state punishes those who commit crimes and executes sentences given to them is undoubtedly indicative of its civilization.The answer to the question is how contemporary reality penal sanctions against persons convicted are always a matter related to critical reviews of legislation and are the legal basis for the execution of criminal sanctions as well as relevant surveys conducted at institutions penitentiary.

In order to make an objective analysis regarding the manner in which criminal sanctions are actually executed in Albania, we have to deal with many components that have to do not only with the reading of laws and regulations applicable at this stage of the procedure, but also the study reports and monitoring results of penitentiary system links with the implementation of the suggestions, study reports of international partners, to study the level of coordination of the system, the existence of staff, etc. It requires that all analyses and deductions you answer the question: *Is last stage of the criminal proceedings effective? Is the penitentiary system to all categories of prisoners well-managed? Does the approach exist and how much access is there to the international standards?*

All Albanian legislation and the justice system have been subject to a process of continuous reform. After ratification of the ECHR and after the adoption of the Constitution in 1998, reforming the legal system and criminal justice in that size was not only quantitative but also qualitative. These as well as other documents enabled the safe path towards well-defined standards.

This reform is still unsure if the penitentiary system works well and challenges to achieve the best are increasingly raised.

It is necessary that the penitentiary system in every stage should respond to the demands of the present and future prospects, to the penitentiary procedures, to the

[6]OSCE "Manual for the application of alternatives to imprisonment", 2010, p.37

institutions involved in the stage of execution of criminal sanctions, which should be worth in a lot of rehabilitation of convicts and prisoners.

What really accounts?

What accounts for the effect typical of *res iudicata - res judicata*– offense is the maintaining of its meaning originally derived from Roman law, to the action and power to start prosecuting on a fact when the same fact has firstly been the subject of a another judicial process.[7]

Our experience is to help determine if we are in violation of the principle of *ne bis in idem* when we face complex legal situation coming from the constitutional jurisprudence of USA. Thus, in its decision 282 US 299 (1932) on the issue "Blockburger vs. United States' the Supreme Court held that "when the same action constitutes a violation of two provisions of the various legal action, the test that should be used to determine the date of crimes [offense] or only one consists in the fact that one of the provisions requires a further test rather than other provisions for which there is no need "; "The same action can be considered as a violation of two laws [standards]; and if one of them requires proof of an additional fact which the law [rate] excludes other the defendant from prosecution and punishment by another"[8]

Let us see what is stated in "United States v. Dixon", 509 US 688 (1993), the Supreme Court held that "as in the context of the sentence,there is multiple criminal prosecution where two crimes cannot stand Blockburgerit – if it [otherwise known as] tests "elements of the same",[9] then the principle of*double Jeopardy* is applied.[10] The test of the "elements of the same" investigates whether one of the crimes contains an element which is not found in the other [the previous]. If there is no such element, they are "the same offense and double Jeopardy principle prohibits any other penalty or further proceedings."[11]

Commonly the result could be developed in relation to the same offense / criminal act with processesdifferentin character, e.g. criminal and disciplinary[12]. We recognize "Gotkan v. France" [13], the Strasbourg Court stated that "a single act of crime constitutes [in the case under consideration] two separate offenses: an offense under criminal law and a breach of customs legislation". As in the case "Oliviera v. Switzerland"[14], this should be seen as an example of the same action which falls under some legal definitions (ideal concurs de-qualification[15])

[7]Dott, Rocco Lotierzo, "Ne bis in idem: l`effete tipico della Res Iudicata penale".
[8]Internet web "Find Law for Legal Professionals" – http: www.caslaw.findlaw
[9]In English "same elements" test
[10]Anglo-American concept of the principle of ne bis in idem. The forecast by the Fifth Amendment of the Constitution of the SH.BA
[11]http: www.caslaw.findlaw
[12]Marek Antoni Nowicki "About the European Convention - Brief Commentary on the ECHR" Morava 2003 fq.375
[13]Decision dated 07/02/2002
[14]Decision dated 07/02/2002
[15]French vocabulary - French "Legal Trema" tenth edition of DALLOZ Publishing, Paris, 1995, pg.130, the explanation given for this term following "ideal qualification competition - the situation in which the act or omission of the perpetrator provides a priori by some dispozia criminal, although you can ask the question of unity or disunity of criminal offenses settings in competition (p.sh

### 2.2 Some minor relations with USA

Freedom is essentially fundamental for the United States and we already have to determine which of the offenses is performed through a single act that will have to be followed. However, this provision (Article 4 of Protocol 7 of the ECHR) is not an obstacle for repeated penalties because of the behaviour being carried out one after the other, even if the behaviours are similar. We issue "Raninen v. Finland", the Commission found that the sentences continued the refusal of military service and civil service and it meant no resentencing a substitute for performing the same violation. Paragraph 2[16] in rare cases allows for the possibility of the renewal process (in terms of the Convention, this means renewing or reopening) provided the presence of the circumstances expressly mentioned in it.[17]

As seen and understood by this analysis, the idea of the principle of *ne bis in idem* does not stand in the prohibition to two (bis) or more times for the same (idem) rate in (article, paragraph), but no punishment or trial against the active subject of the same offense / criminal act for which he was previouslyconvicted with a final decision by a legitimate court with a fair trial.

As the consequence, we have further undergone with the results and the example of Shkodra City, where the issue were returned to consideration to the Constitutional Court, and on request, judges of the Court of Shkodra District were not concerned with the fact thatjudgmentput back against the defendant in the case as the violator is the same criminal rate (Article 278 of the Criminal Code - the first time under paragraph 2 and the second paragraph 4), but that (quote) "the sentence under article 278/4 of the Criminal Code in the form more than once falls contrary to the constitutional principle of non-punishment twice for the same offense (*non bis in idem*), provided for by Article 34 of the Constitution and Article 4 of Protocol 7 of the ECHR."

Judges reasoned that the defendant RJ was previously sentenced (period of detention) with a final judgment by the same court for the same offense (Article 278 of the Criminal Code "Production and illegal possession of military weapons and ammunition"). Paragraph 2 (violating the first time) has the sanction "fine or imprisonment up to 7 years." If he had not been previously convicted as the above, the defendant (supposedly) would go to paragraph 3, which has the sanction "fine or imprisonment up to 2 years". This is already provided (by Shkodra District Court) and this offense was consumed more than once, then it qualifies under paragraph 4 and is punished "with imprisonment of 5 to 15 years".

Hence, (first), the defendant (who certainly must be punished, there is no doubt) is much more deteriorated, taking upon himself the punishment for an offense

---

presentation of a balance sheet with the aim of obtaining a loan can be considered as use of forged documents and fraud - together)".

[16]Protocol 7 of the ECHR, Article 4/2

"The provisions of the preceding paragraph do not prevent the reopening of the process, in conformity with the law and penal procedure of the State concerned, if the evidence of new or newly discovered, or a fundamental flaw in the original proceedings, are of a similar nature that may affect the decision of giving".

[17]M.A.Novicki, ibidem.

committed before, and for which he was once convicted and has undertaken this sentence.

Arguing thus, the officials expressed against it, and even find the phrase "more than once" unconstitutional, even though they had "clear that the fourth paragraph of Article 278 of the Criminal Code ... has to do with the severity of the punishment policy, in specific terms of repeaters for this work (production and illegal possession of military weapons and ammunition)[18]

Rather, "the commission of the offense more than once ... when it is performed two or more times, e.g. [person] has stolen private property five times, with the condition not to be convicted and the sentence has become final for previous theft ", is clarified by the Commentary of Criminal Law.

## 3. CONCLUSION

I believe it is clear that in the cases taken into account the considerations are not such. If there is violation against one law (norm), it is absolutely the same criminal act. I also believe that you have understood the analysis of the principle, which is in violation of *ne bis in idem*, the criminal offenses may be previously given a criminal decision as final and a new proceedingreopensfor the same criminal action. Numerous elements are sufficiently distinct to say it.

With regard to the Court of Shkodra, it seems wrong according to the meaning of *more than once* and particularly its application in the specific case before them. This term does not mean repeater (recidivist). It would be really a violation of *ne bis in idem* if the legislator would have given a so severe penalty in terms of recidivism. If the defendant would be a recidivist, then let it serve as an aggravating circumstance (in further evaluation of the judge) pursuant to Article 278/3 of the Criminal Code in connection with "aggravating circumstances" of the Criminal Code, but not as a measure to determine the punishment in a separate paragraph (Article 278/4).

According to the Albanian law, the logic indicates that, according to the Article 50 of the Criminal Code, "aggravating circumstances" has divided recurrence (recidivism) by placing it in paragraph "c": Performing a crime after a conviction for a crime made before, while the case "more than once "is set in paragraph "h".

The open meaning is that "in the case under consideration by the Court of Shkodra the defendant was convicted previously and received a sentence (now) in its final form." Exactly no one denies it, but it does not own the phrase "more than once", Article 278, paragraph 4, to be inconsistent with the Constitution.

In a case so specific in judgment by the Court of Shkodra, if the defendant is realistic, he will be punished by this Court pursuant to the phrase "with imprisonment of 5 to 15 years", whilethe principle of *ne bis in idem* was not complied with, but not determined as*"wrong"* legislator, but the implementation of ill-treatment by the court; the decision was certainly refutable as the fruit of a process rather than a regular court in terms of Article 34 and 42 of the Constitution and the 6-th of the KEDHNJ.

In one of its decisions no. 5, dated 08. 03.2005, it is stated that "the Constitutional Court, using an interpretation method of the provisions of the Criminal Code to assess the constitutionality of these provisions, concludes that the phrase "*more than once*"provided

[18]Quote of the request addressed to the Constitutional Court.

in Article 278/4 of criminal Code, is not in contradiction with the principle of non-punishment twice for the same offense".

In this case, Article 278/4 of the Criminal Code are apparent, as well as the resolution of the actual case / issue[19] and there are precisely such requests and decisions that promote and advance the knowledge of theory and practice too.

## 4. REFERENCES


1) Nowicki, Marek Antoni ( 2003 .375) "About the European Convention - Brief Commentary on the ECHR"
2) Nowicki, Marek Antoni ( 2003 .376) "About the European Convention - Brief Commentary on the ECHR"
3) Lotierzo, Rocco, (1998.pp 34) “Ne bis in idem: l`effete tipico della Res Iudicata penale” Rome, Italy
4) Protocol 7 of the ECHR, Article 4/2
5) Internet web “Find Law for Legal Professionals” – http://www.caslaw.findlaw
6) Protocol 7 of the ECHR, Article 4/2


[19]For solving the case, the Constitutional Court starts not from the way in which is understood and implemented by the relevant authorities [....] Provisions that are treasured that come in conflict with the Constitution, but by how much these provisions are in accordance with the constitution and the constitutional standards of international acts from the state. This distinction is necessary because it relates closely to become what constitutes the function of the Constitutional Court and precisely control the compliance of laws with the Constitution and not the manner of their implementation, or the alignment between them. Ways of understanding and implementation of the law of harmonization between its provisions by other laws, there are matters which belong to constitutional control and therefore are not subject matter before the Constitutional Court (decision no. 11 of the Constitutional Court of the Republic of Albania, dated 27.05.2004)

UDK:343.23:349.6(497.11)

# BRIEF ANALYSIS OF THE ENVIRONMENTAL PROTECTION THROUGH THE CRIMINAL CODE OF THE REPUBLIC OF SERBIA

***Darian Rakitovan***
*PhD student, Faculty of Law, West University of Timisoara, Romania*
*e-mail: drakitovan@yahoo.com*

**Abstract**

Nowadays, environmental protection is one of the most important tasks of human society, at national and international level. There are various ways of environmental protection. One of the most important ways of protection of human environment is legal protection, where beside civil and administrative protection, which are the oldest forms of legal protection, in contemporary conditions criminal protection has high importance. This paper analyses criminal environmental protection in terms of legislation of the Republic of Serbia, more precisely, this paper analyses and briefly comments on Chapter XXIV of the Criminal Code of this country which regulates eighteen criminal offenses against the environment.

***Key words:*** *criminal environmental protection, criminal offences against the environment, Criminal Code of the Republic of Serbia.*

## 1. INTRODUCTION

Today, the issue of environmental protection is a social topic frequently talked about, in the broadest sense of the word. It is not only an issue of extreme importance of a national, regional or global perspective, but at the same it is a serious danger to the survival of humankind that the modern society is already facing.

In modern time, nature pollution seriously jeopardizes all life on earth. Apart from the gigantic advantages that it had brought to the world, permanent urban, economic and technological development caused direct negative effects on the environment. The general development of civilization, industry, agriculture, traffic and other economic branches as well as the continuous growth of the population, have all disturbed the original harmony between the human and nature. The ever intensive use of natural resources, global warming and sudden climate changes due to the damages made to the Ozone layer, with a significant decrease of protective forest belt, piling up of waste, especially toxic waste; all seriously jeopardize the survival of our planet.

Unregulated discharge of waste into nature makes the environment uninhabitable for life and leads to endangering and disappearance of many species of flora and fauna. Discharge of exhaust gases from industrial facilities and motor vehicles into air leads to the creation of acid rains. Industrial and sewage waste, various chemicals, fats, oils, mineral salts, artificial fertilizers etc., all have a disastrous effect on the aquatic and terrestrial animal and plant life. Due to everyday development, waste disposal, particularly of radioactive waste whose negative effect on nature endures for a long number of years, is becoming a more complex problem.

It is natural that a person changes their working and living environment. A great number of changes include achievements of civilization that in fact protect the population from natural disasters, epidemics, infectious diseases etc. However, on the other hand, there are certain human activities, whether conscious or unconscious, imprudent or encouraged by current interests that lead to a disturbance in the natural processes and climate changes, to a rapid decrease of non-renewable natural resources, and to the disappearance and extinction of entire species of plants and animals, to a decrease of fish stocks in the seas and the oceans, as well as to numerous other problems that negatively affect the life and health of people. In a modern industrial development, the pollution has gone so far as to produce an ecological crisis. As a result, one of the basic tasks of modern society, necessary for further sustainable development of humankind, is to create ecological awareness and change the relation between nature and people, and the treatment of natural environment.

Natural environment can be protected by different actions, starting from nurturing and protecting the forests, rivers and other waters, using protective installments and filters in industrial facilities, using ecological machines and substances, toxic waste recycling, all the way to scientific research and a widespread education of the population, and to making legal and executive regulations aimed at prescribing the manners and actions of environmental protection and preservation that also sanction the opposite behaviors using repressive measures towards the offenders.

## 2. ENVIRONMENTAL PROTECTION THROUGH THE CRIMINAL CODE OF THE REPUBLIC OF SERBIA

In the past, on the national and the international plan, the environment was primarily protected through administrative and civil law. However, the intensive development of industry and technology over time, conditioned the need for protection via criminal law, considering that jeopardizing certain elements of the environment could no longer be protected in any other way. In this manner, protection via criminal law became necessary, but at the same time a much more effective measure.

In the criminal justice system of the Republic of Serbia, environment was primarily protected by some of the prescribed criminal acts, such as, for example, crimes against human health, crimes against economy, crimes against public safety, etc.

However, as of year 2005, with the application of the new Criminal Code[1] (in continuation CC), criminal offenses regarding the protection of the environment have been grouped in one place for the first time. All these crimes are classified in Chapter XXIV of the CC, titled "Criminal Offenses against the Environment". Such legislative solution represents a significant progress in the criminal legislature of Serbia. From that point on, criminal offenses against the environment do not protect certain "classic" rights, such as human life and health, but they protect a common good – the human right to a preserved environment. Therefore, the consequence of these criminal offenses is in harming or jeopardizing some good – the environment.

In the current Criminal Code of the Republic of Serbia, there are eighteen criminal offenses that endanger or damage the environment.

These criminal offenses can be divided into four sub-groups:

[1] Published in the "Official Gazette of RS", no. 85/2005, 88/2005 – corr. 107/2005 – corr. 72/2009 and 111/2009, 121/2012, 104/2013 and 108/2014).

I. General criminal offenses against the environment;
II. Criminal offenses related to harmful materials;
III. Criminal offenses against plant or animal life;
IV. Criminal offenses of poaching game or fish (division according to: Čejović, 2006).

A sub-group of general criminal offenses against the environment are:

1. Environmental pollution (Art. 260 of CC);
2. Failure to undertake Environmental Protection Measures (Art. 261 of CC;
3. Illegal Construction and Operation of Facilities and Installations Polluting the Environment (Art. 262 of CC);
4. Damaging Environmental Protection Facilities and Installations (Art. 263 of CC);
5. Damaging the Environment (Art. 264 of CC);
6. Destruction, Damage, Transfer into a Foreign Country or Into Serbia of Protected Natural Asset (Art. 265 of CC);
7. Violation of the Right to be Informed on the State of the Environment (Art. 268 of CC).

The second sub-group of criminal offenses regarding hazardous materials consists of:

1. Bringing Dangerous Substances into Serbia and Unlawful Processing, Depositing and Stockpiling of Dangerous Substances (Art. 266 of CC);
2. Illegal Construction of Nuclear Plants (Art. 267 of CC).

The third group consists of criminal offenses against animal and plant life:

1. Killing and Wanton Harming of Animals (Art. 269 of CC);
2. Transmitting of Contagious Animal and Plant Diseases (Art. 270 of CC);
3. Malpractice in Veterinary Services (Art. 271 of CC);
4. Producing Harmful Products for Treating Animals (Art. 272 of CC);
5. Pollution of Livestock Fodder and Water (Art. 273 of CC);
6. Devastation of Forests (Art. 274 of CC);
7. Forest Theft (Art. 275 of CC).

Finally, the fourth group consists of two criminal acts of poaching game and fish as their titles suggest:

1. Poaching game (Art. 276 of CC);
2. Poaching fish (Art. 277 of CC).

In the following sections of this paper, the author will record and shortly analyze the criminal offenses and their most important elements, as itemized in the Criminal Code, and in the end will give a brief commentary on the general and individual characteristics of these criminal acts.

*The criminal act of Environmental Pollution from Article 260 of CC.* The action of the incriminatory offense is polluting the air, the water or soil by violating the regulations on the protection, preservation and improvement of the environment by various actions, such as emitting poisonous gasses into the air, draining wastewater containing toxic substances, not installing air or water purifying devices, etc., to larger extent or over a wider area. The offender can be any person, and the offense can be conducted with premeditation or from negligence, and it also has a more severe form if the offense resulted in more severe consequences to animal or plant life, as determined in para. 3 and para. 4 of Art. 260 of CC. The basic form of this criminal offense carries the possibility of imprisonment of six months to five years, as well as a monetary fine, however, if this offense resulted from negligence, the offender can receive a monetary fine or

imprisonment of up to two years. For the more severe forms of this criminal act, the offender will be punished by imprisonment of one to eight years, and if it is a severe offense resulting from negligence, with imprisonment of six months up to five years, as well as a monetary fine. In the case of suspended sentence for all forms of this offense, a possibility is provided that the offender is given the obligation to undertake certain stipulation measures of protecting, preserving and improving the environment within a set period of time. This provision is fully justifiable taking into consideration the aims and the need for environmental protection which is partially ensured by this and other criminal acts from this chapter of CC.

*The criminal offense of Failure to undertake Environmental Protection Measures from Art. 261 of CC.* The action of this criminal offense is alternatively posed and can include in failure to apply proper measures or failure to act on the decision of authority on taking measures of environmental protection. Therefore, this is an offence that, as most other from this chapter, has a blanket disposition. The perpetrator can only be an official or a responsible person in the legal sense. The criminal offense can be premeditated or result from negligence, while the consequence of the offense is an abstract danger and it has its severe form if there is environmental pollution. For the basic act, the perpetrator can be fined monetarily or by imprisonment of up to three years, for the severe form of the offense with the same sentence provided for Art. 260, and for an offence from negligence, the perpetrator can be fined monetarily or by imprisonment of up to one year. In case that the offender is granted suspended sentence for this offense, as for the previously mentioned criminal act from Art. 260, the court can order the offender to undertake certain stipulated measures of protecting, preserving and improving the environment within a set period of time.

*The criminal offense of Illegal Construction and Operation of Facilities and Installations Polluting the Environment from Article 262 of CC.* The action of basic form from para. 1 of this Article is issuing permit for construction, start up or operation of facilities or installations, or use of technologies that to larger extent and over a wider area pollute the environment, thus creating a difference in relation to numerous other offenses and economic violations from this area, similarly as with other criminal offenses against the environment. The perpetrator can only be an official or a responsible person. This criminal offense only takes the form of intent, and the qualified (severe) form exists in the case of large scale destruction of plant or animal life or such pollution of the environment to such degree that clean up would require a long period of time or great expense. The punishment for the basic form of the offense is imprisonment from six months up to five years, and for the qualified form carries imprisonment of one up to eight years. As in two previous cases, the possibility is expressly provided that the perpetrator of the offense conditioned that they are given a suspended sentence, is ordered to undertake certain stipulation measures of environmental protection.

*The criminal offense of Damaging Environmental Protection Facilities and Installations from Article 263 of CC.* The act of the basic form of this offense is damaging, destroying, removing or making facilities or installations for environmental protection inoperable in any other way, which disables the intended function of such facilities and installations. This criminal offense has several forms that can result in abstract danger, but also in severe consequences. The offense can be made from negligence as well. The prescribed punishment for this action is up to three years of imprisonment, and for the severe form is imprisonment of up to five years, and if the act was committed from negligence, monetary fine or imprisonment up to a year is issued. Stipulating measures of

protecting, preserving and improving of the environment is expressly provided for this criminal offense in case of suspended sentence.

*The criminal offense of Damaging the Environment from Article 264 of CC.* The action of the offense is violating the use of natural resources, construction or other action that leads to damaging of the environment, to large extent or over a wider area. This is a causal action, meaning that the offensive action is any that causes damage to the environment. The offense is of blanket character as it is conducted by violating regulations and has a premeditated form and one resulting from negligence. The prescribed punishment for this offense is imprisonment up to three years, and if the offense resulted from negligence, monetary fine or imprisonment up to one year can be imposed. The court can order the offender to take stipulated measures of environmental protection if given a suspended sentence, as it is the case in previous criminal offenses.

*The criminal offense of Destruction, Damage, Transfer into a Foreign Country or Into Serbia of Protected Natural Asset from Article 265 of CC.* This criminal offense takes two forms. The basic form in para. 1, the offending action consists of destroying or damaging a particularly protected natural asset, and the second form in para. 3 the offending action consists of exporting or taking abroad, or importing a protected species of plant or animal into Serbia, contrary to the regulations. The first form carries a sentence from six months to five years, in the case of negligence a monetary fine or up to six months of imprisonment, while for the form from para. 3, the sentence of three months to three years of imprisonment as well as a monetary fine is proposed. With this criminal offense the attempt of action from para. 3 is particularly incriminating, and it requires a mandatory confiscation of particularly protected species of plants or animals that are the object of the offense.

*The criminal offense of Bringing Dangerous Substances into Serbia and Unlawful Processing, Depositing and Stockpiling of Dangerous Substances from Article 266 of CC.* The basic form of this action includes the act of importing radioactive or other hazardous materials or hazardous waste into Serbia, their transport, processing, depositing, collecting or stockpiling contrary to the regulations (this offense is of blanket type as well). The object of the criminal offense is radioactive and other hazardous materials and waste. Other suitable regulations determine what are considered to be hazardous materials and hazardous waste. Para. 5 of this Article proposes the punishment for the organizer of this act. The offense has a severe form that consists of enabling the acts from para. 1 by abusing position of authority or power (para.2) and results in destructive consequences to animal and plant life, and the environment in general. The criminal act can only be done with premeditation, and the offender must be aware of the radioactive or other hazardous materials or waste. The proposed punishment for the basic form is in the span of six months to five years of imprisonment, and the severe form from para. 2 carries from one to eight years of imprisonment as well as a monetary fine, for the severe form from para.3 the offender can be punished by imprisonment of two to ten years and a monetary fine, while according to the form from para. 5 the organizer of the criminal act can be punished by imprisonment from three to ten years as well as a monetary fine.

*The criminal offense of Illegal Construction of Nuclear Plants from Article 267 of CC.* The criminal action consists of permitting or commencing the construction of a nuclear power plant or a facility producing nuclear fuel or a processing plant for nuclear waste, contrary to the law. The act is exclusively premeditated. The offender can be any person authorized to issue permits or a person that has realistic possibilities to commence

the construction of a nuclear facility. The proposed punishment for this act is imprisonment of six months up to five years.

*The criminal offense of Violation of the Right to be Informed on the State of the Environment from Article 267 of CC.* The citizens have a constitutional and legal right to be informed accurately and in due time about the condition of the environment. Violating that right, under certain conditions, is a criminal offense proposed by this Article of CC. The offending act can be non-action (withholding data) or action (giving false information on the state of the environment and the events significant to evaluating environmental hazard and undertaking measures of protection). The offense is of blanket type, meaning that it can be conducted only by violating regulations. What needs to be emphasized, is that, in certain cases, the Law on Environmental Protection limits the right to be informed (e.g. if the information would negatively affect international relations, defense and safety of the country, the work of judicial organs, etc.) and in those cases there is a basis for excluding unlawfulness, meaning in those cases the criminal offense will not exist. The criminal offense can only be done with premeditation with awareness of the offender that withholding information or giving false information is against the regulations. The offender can be fined monetarily or by imprisonment of up to a year.

*The criminal offense of Killing and Wanton Harming of Animals from Article 269 of CC.* The basic form of this criminal offense includes unlawful killing, injuring, torturing or harming animals in any other way. The object of the act can be any (a single) animal. The offender can be any person, which includes the owner of the animal. The severe form exists in case that the act is committed upon a larger number of animals or upon a specially protected species of animals. There is another form of this criminal offense, where out of gain as a motive one organizes, finances or hosts animal fights between animals of the same or different species, or, alternatively organizes or partakes in wagering in such fights. The criminal offense can only be premeditated and needs to include the awareness of violating certain regulations by engaging in such action. The basic form proposes a monetary fine or imprisonment of up to a year and the severe form of the act proposes a monetary fine or imprisonment up to three years. The form of this criminal act from para. 3 proposes the punishment of three months to three years of imprisonment and a monetary fine.

*The criminal act of Transmitting of Contagious Animal and Plant Diseases from Article 270 of CC.* There are two forms of this criminal act, as well as a qualified form. The act of the first form of this criminal offense from para. 1 consists of non-acting, i.e. failing to observe regulations, decisions or orders determining measures for suppression or prevention of animal diseases. The second form from para.2, also consists of non-action, taking into consideration that this form refers to the plant life and failing to observe regulations aimed at suppression or prevention of diseases or pest-control. The qualified form exists if the execution of the act resulted in death of animals, destruction of plants or other considerable damage. Apart from the premeditated act, negligence is also incriminatory. The punishment can be a monetary fine or imprisonment up to two years for both forms of this act, however, in the case of serious consequences the offender can be punished by a three year imprisonment. Negligence is punishable by a monetary fine or imprisonment up to one year.

*The criminal act of Malpractice in Veterinary Services from Article 271 of CC.* Incrimination of this act protects the right of the owner or keeper of an animal to suitable medical protection of the animal, which indirectly protects the animals as well as an integral part of the environment. The act consists of prescribing or applying obviously

inadequate means, method of treatment or otherwise unconscientious treatment of animals by a veterinarian while rendering veterinary assistance, when it results in death of the animal or other considerable damage. The perpetrator can only be a veterinarian or authorized veterinary staff. Apart from the premeditated form, the criminal offense has a form of negligence as determined by para.2 of this article. The proposed punishment is monetary fine or imprisonment up to two years, and if the act is a result of negligence – a monetary fine or imprisonment up to six months.

*The criminal act of Producing Harmful Products for Treating Animals from Article 271 of CC.* The act of this criminal offense consists of producing for sale or putting into circulation products for treatment or prevention of disease of animals that are dangerous to life and health of animals. The basic form results in an abstract danger, i.e. life or health of animals is not necessarily endangered, but the possibility of animal endangerment is sufficient, while the qualified form prescribed in para. 2, requires the act resulting in death of an animal or other considerable damage. Apart from premeditation, para. 3 predicts that the act can be from negligence. The punishment is a monetary fine or imprisonment up to a year, while the qualified form can carry a monetary fine or imprisonment up to two years, and for negligence – a monetary fine or imprisonment up to six months.

*The criminal offense of Pollution of Livestock Fodder and Water, respectively of water supply of animals from Article 273 of CC.* This criminal act has two basic forms. The act of the first form (para. 1) is contaminating fodder or water that serves for feeding livestock or for supplying water to animals by using harmful substances, and thereby endangering animal life or health. The second form (para. 2) consists of contaminating water in a fish-pond, lake, river or canal by harmful substances, or by stocking with fish from contaminated waters. The consequence of both forms is a specific danger, considering that it requires causing the danger to fish and other water animals by polluting, which must be determined in every specific case. A qualified form also exists when the act results in the loss of life of animals or other considerable damage. The form from para. 1 can be from negligence, while the second form can only be premeditated. The proposed punishment for both forms is a monetary fine or imprisonment up to two years, for the qualified form a monetary fine or imprisonment up to three years, and if the offense from para. 1 resulted from negligence, the punishment can be monetary or imprisonment up to six months.

*The criminal act of Devastation of Forests from Article 274 of CC.* The forests represent assets of general interests, and apart from the economic significance, are an important segment of the environment. Maintaining and regeneration of forests is of extreme importance for the preservation of the natural balance of the environment. There are several regulations in the Republic of Serbia that regulate the measures for the preservation and the protection of forests, and the criminal justice protection is ensured by incrimination in this group of criminal offenses, which we deem a good solution in the valid Criminal Code. Taking into consideration the significance of the forests for preservation of the environment, the criminal act of Devastation of Forests (as well as Forest Theft from Art. 275) should be included in the Criminal Code. The act of the basic form is unlawful cutting or clearing forests, or damaging trunks, or otherwise cutting down forests, or one or more trees in a park, avenue or elsewhere where cutting down of trees is prohibited, and such is done contrary to regulations or orders of competent authorities. The qualified severe form (para. 2) exists when the action of the basic form is conducted in a protected forest, national park or other forest intended for special purpose. The offender can be any person, even the owner of the forest. Both forms can only be done with

premeditation, however, the second form requires awareness about the state of protected forest, national park or other forest intended for special purpose. The punishment for the form in para. 1 is a monetary fine or imprisonment up to one year, and if the act was committed in a protected forest, national park or other forest intended for a special purpose, the imprisonment can be from three months up to three years.

*The criminal offense of Forest Theft from Article 275 of CC.* This is a particular criminal offense of theft that differs from theft only by the object of the criminal offense. In this case, the object is a forest, or more precisely, a tree in a forest, park or an avenue of trees. This criminal act consists of felling trees in a forest, a park or an avenue for the purpose of theft, of one or more trees and in the quantity exceeding one cubic meter. The felling is most commonly done by cutting; however, it is possible to fell a tree in another way, for example, by ripping, extracting etc. The act is concluded by the felling of the trees. The offender can be any person that acts with premeditation. Apart from that, it requires the intent of preempting and therefore acquiring unlawful gain for oneself or for another person. The more severe form from para. 2 exists if the offense is committed with intent to sell the felled tree, or if the quantity of the felled timber exceeds five cubic meters, or if the offense is committed in a protected forest, a national park or other forest intended for special purpose. It is expressly proscribed that the attempt of such is also punishable. The prescribed punishment for the basic form is a monetary fine or imprisonment up to one year and for the severe form from para.2 the punishment can be a monetary fine or imprisonment up to three years.

*The criminal offense of Poaching Game from Article 276 of CC.* This criminal regulation protects the wildlife game as a natural wealth and a fundamental part of the environment. This area is regulated in several regulations, the most important of which is the Law on hunting[2]. This criminal offense takes four forms, one basic form (para.1) and three severe forms (para. 2, 3 and 4). The first form of this criminal offense consists of hunting game during closed season in territory where hunting is prohibited. The offender of this criminal act can be any person that acts with premeditation. The second form of this criminal act consist of unauthorized hunting, killing, wounding or catching game in another's hunting preserve. Para. 3 of this article predicts a severe form of this criminal act when the offense from para.2 is committed against big game. The third form of this criminal act, stated in para. 4, consists of hunting game whose hunting is prohibited or whoever hunts particular game without a special permit for that particular kind of game, or when hunting in a manner or with means which destroy game in large numbers. As with most cases, this is a blanket criminal offense as the special regulations regulate the issues regarding this criminal offense. The proposed are: a monetary fine or imprisonment up to six months for the offense from para.1; a monetary fine or imprisonment up to one year for the offense from para.2; a monetary fine or imprisonment up to two years for the offense from para. 3; imprisonment up to three years for the form of offense from para. 4. What needs to be mentioned is that the hunted game and the means of hunting will be seized in the case of the execution of this offense.

*The criminal offense of Poaching Fish from Article 277 of CC.* Similarly to game, fish and other aquatic animals are of great significance to the environment, which justifies categorizing this criminal offense into offenses against the environment. This criminal act has a basic form and two severe forms. The act of the basic form consists of catching fish or other aquatic animals during closed season or in waters where fishing is forbidden. The

[2] Published in "The Official Gazette of RS", no. 18/2010

act is completed even in the case that no fish was caught. The severe form from para. 2 is characterized by a forbidden manner or the means of catching, such as explosive, electricity, poisons, stunning, or a manner harmful to breeding or that results in a mass destruction of aquatic animals. The severe form also exists when the fish or other aquatic animals of significant biological value are caught, or in larger quantity or a large quantity of these aquatic animals is destroyed while fishing. Although the description of this form does not state so, such fishing must be contrary to the regulations, considering that under certain conditions provided in the Law on Fishery[3] and other regulations it is permitted to catch larger quantities of fish and other aquatic animals. The criminal act can be done only with premeditation. The proposed punishment for the form of the offense from para. 1 is a monetary fine or imprisonment up to six months, and the forms of the offense from para. 2 and para. 3 carry imprisonment up to three years. As with the criminal act of Poaching Game from Article 276 of CC, it is prescribed that the catch and the fishing implements will be seized.

## 3. CONCLUSIONS

In regards to the criminal offenses from Chapter XXIV of the CC, the general conclusion would be that they are predominantly criminal acts of a blanket character, meaning, criminal acts whose legal description does not contain all the elements of a criminal offense, but it is necessary to supplement the criminal norm with a legal norm contained in another law.

All proposed criminal acts are under the jurisdiction of lower courts, as the upper limit for possible punishment is ten years of imprisonment. The span of possible punishments for these criminal acts is in the span ranging from a monetary fine to five year imprisonment for basic forms of the offenses, while the qualified forms carry the punishment of up to ten years of imprisonment.

Most of the criminal acts from this chapter of the CC contain in their titles their basic protected object– the environment. So, the criminal act from Art. 260 of the CC is titled – Environmental Pollution, Art. 261 – Failure to Undertake Environmental Protection Measures, Article 262 – Illegal Construction and Operation of Facilities and Installations Polluting the Environment, Art. 263 – Damaging Environmental Protection Facilities and Installations, Art. 264 – Criminal offense of Damaging the Environment, Art. 265 – Criminal offense of Destruction, Damage, Transfer into a Foreign Country or Into Serbia of Protected Natural Asset, and Art. 268 – Criminal offense of Violation of the Right to be Informed on the State of the Environment.

However, even those criminal offenses that do not contain the term "environment" in their title are used to preserve assets that are a part of the environment. Such case is with the criminal acts provided in the provisions of Art. 270 – 277 of the CC. Therefore, these criminal offenses also serve to protect the environment, but always in the function of the human right to dignified conditions of life, which includes the right to a healthy and productive life in accordance with a healthy and preserved nature. Protection of animals and plants, and other overgrowth is also placed in this context as an unavoidable and an essential part of nature (Vrhovšek, 2007, p. 16).

What is characteristic of this, is the criminal offense of Killing and Wanton Harming of Animals from Art. 269 of the CC, by which, as it was previously mentioned,

[3] Published in the "Official Gazette of RS" No. 35/94, 38/94 and 101/05

environment is also indirectly protected. Namely, it is a matter of putting an animal as the object of the act and not a protected object. This criminal offense in fact partially protects the human and not the animal, as it protects the sentiments and the responsibility one should nurture towards animals.

All the listed criminal offenses against the environment are prosecuted according to official duty, i.e. all criminal proceedings are initiated by the authorized public prosecutor.

As far as the forms of guilt are concerned, most of the criminal acts can only be premeditated. However, there is a certain number of criminal acts against the environment that can be done from negligence, such as: the criminal offense of Environmental Pollution from Art. 260, para. 2 of CC, the criminal offense of Failure to Undertake Environmental Protection Measures from Art. 261, para. 2 of the CC, the criminal offense of Damaging Environmental Protection Facilities and Installations from Art. 263, para. 2 of CC, the criminal offense of Damaging the Environment from Art. 264, para 2 of CC, the criminal offense of Destruction, Damage, Transfer into a Foreign Country or Into Serbia of Protected Natural Asset from Art. 265, para. 2 of CC, the criminal offense of Transmitting of Contagious Animal and Plant Diseases from Art. 270, para. 4 of CC, the criminal offense of Malpractice in Veterinary Services from Art. 271, para. 2 of CC, the criminal offense of Producing Harmful Products for Treating Animals from Art. 272, para. 3 of CC, the criminal act of Pollution of Livestock Fodder and Water, respectively of water supply of animals from Art. 273, para. 4 of CC.

With most of the criminal offenses against the environment the offender can be any person, while with a smaller number of offenses the offender can only be an official or a responsible person, as in the criminal offense Failure to undertake Environmental Protection Measures from Art. 261 of CC, the criminal offense of Illegal Construction and Operation of Facilities and Installations Polluting the Environment from Art. 262 of CC, the criminal offense of Bringing Dangerous Substances into Serbia and Unlawful Processing, Depositing and Stockpiling of Dangerous Substances from Art 266 of CC, and the criminal offense of Malpractice in Veterinary Services from Art. 271 of CC.

With criminal offenses Destruction, Damage, Transfer Into a Foreign Country or Into Serbia of Protected Natural Asset from Art. 265 of CC, Poaching game from Art. 276 of CC, and Poaching fish from Art. 277 of CC, along with the punishment a safety measure of seizure is proscribed of the objects obtained through a criminal offense or used to conduct the offense.

With criminal offenses of Environmental Pollution from Art. 260 of CC, Failure to Undertake Environmental Protection Measures from Art. 261 of CC, Illegal Construction and Operation of Facilities or Installations Polluting the Environment from Art. 262, Damaging Environmental Protection Facilities and Installations from Art. 263 of CC, and Damaging the Environment from Art. 264 of CC, the court can, conditioned by a suspended sentence, order the offender the obligation to take certain stipulated measures of protection, preservation and improvement of the environment, and with the criminal act of Bringing Dangerous Substances into Serbia and Unlawful Processing, Depositing and Stockpiling of Dangerous Substances from Art. 266 of CC, the court can also order protection measures from ionizing radiation or other proscribed protection measures.

With certain criminal offenses against the environment, it is proscribed that the offender shall also be punished for attempting the offense. Although the general provisions of the Criminal Code proscribe the offender to be punished for the attempt of a criminal offense if that offense carries imprisonment of five years or more or a more severe

punishment (Art. 30 para. 1 of the CC), the legislator has expressly predicted that the offender is to be punished for the attempt of certain criminal acts against the environment that carry a milder sentence than five years of imprisonment. This has been done precisely for the importance of the environment and the particular interest of the society to combat criminal offenses that can jeopardize the environment. The offender is to be punished for the criminal offense of Destruction, Damage, Transfer Into a Foreign Country of Protected Natural Asset from Art. 265 of CC, however, exclusively when this offense is committed contrary to the regulations of export or transfer into a foreign country of protected natural asset or particularly protected plants and animals. In this case, the proposed sentence is three months up to three years of imprisonment (Art. 265, para. 3 and 4 of CC). Furthermore, the offender is to be punished for the attempt of the criminal act of Bringing Dangerous Substances into Serbia and Unlawful Processing, Depositing and Stockpiling of Dangerous Substances from Art. 266 of CC, in the section that relates to the import into Serbia contrary to the regulations regarding radioactive and other dangerous substances or dangerous waste, or the offense relating to transporting, processing, depositing, collecting or stockpiling of such substances and waste. The execution, as well as the attempt of committing this offense carries imprisonment up to 3 years (Art. 266 para.1 of CC).

Apart from these two criminal offenses, the offense of Forest Theft from Art. 275 of CC carries the punishment for the attempt of execution, for both forms of this offense. Therefore, for the attempt, any offender is to be punished that fells one or more trees in a forest, a park or an avenue for the purpose of theft, and the quantity of felled timber exceeds one cubic meter. The proposed punishment for the attempt is a monetary fine or imprisonment up to one year. Furthermore, the offender is to be punished for attempting the severe form of this criminal offense, i.e. if this offense was done with the intention to sell the felled tree or if the quantity of the felled timber exceeds five cubic meters of if this offense was conducted in a protected forest, national park or other forest intended for a special purpose. For the attempt of this form of forest theft, the offender is to be punished with a monetary fine or imprisonment up to three years (Art. 275 of CC).

It is necessary to mention that for many of offenses from this group, the Criminal Code expressly proscribes the possibility of suspended sentence. This is proscribe for the following criminal offenses: Environmental Pollution (Art. 260 of CC); Failure to Undertake Environmental Protection Measures (Art. 261 of CC); Illegal Construction and Operation of Facilities or Installments Polluting the Environment (Art. 262 of CC); Damaging Environmental Protection Facilities and Installments (Art. 263 of CC); Damaging the Environment (Art. 264 of CC); and Brining Dangerous Substances into Serbia and Unlawful Processing, Depositing and Stockpiling of Dangerous Substances (Art. 266 of CC).

With all of these criminal offenses, when given suspended sentence, the court can order the offender the obligation to undertake within a set period of time particular stipulated measures for environmental protection, preservation and improvement.

For the criminal offenses of Poaching game and Poaching fish, it is proposed to seize the means of executing the criminal offense as well as the object of the criminal offense (Art. 276 of CC and Art. 277 of CC).

Finally, what needs to be pointed out is in regards to legal regulations, from the given overview and the analysis of the criminal acts proscribed in the valid Criminal Code, taking into consideration international law as well, particularly the legislature of the European Union that is accepted and is being applied in the legal system of the Republic of

Serbia, is that it can be concluded that the regulations in this area are not faulty and are, as a whole, adequate.

However, the situation is completely different in the field of application of positive regulations in practice. Only then are the numerous shortcomings visible, as well as the problems in this area (see: Cavoški & Trajković, 2011). It is certain that in order to provide a more reliable and a more credible evaluation on this, it is in fact necessary to conduct a different type of research, different from the one conducted in this case.

Such research, in essence one of a larger span, would need to include a systematic gathering of data and expert analysis of court cases prosecution, inspection and other authorities of supervision, detection and prosecution, as well as the data of hunting and fishing unions, public companies and citizen unions that conduct their activities in the field of environment and its protection in the area where the research is being conducted.

We are of opinion that such expert criminal-criminological research studies are not sufficiently represented in our region, which should and must definitely be corrected in the following period.

In this sense, this paper can serve as a form of initiative and a theoretical basis for such future research.

## 4. REFERENCES


1. Bogdanović, S. (ed.) (2008). *Protection of the Environment of the Republic of Serbia* – Compilation of Works, Novi Sad, Yugoslavian Association for law on waters;
2. Čavoški, A., & Trajković, D. (2011). *Analysis of the Statistical Data on the legal protection of the environment in Serbia*, Belgrade, Mission of OEBS in Serbia;
3. Čejović, B. (2006). Criminal Law, general and special part, Belgrade, Dosije;
4. Pavlović, Z., Bjelajac, Ž.,&Spalević, Ž. (2011). Beograd, Energy Security as a Basis for Affirmation of Environmental Policy of the EU, *The Review of International Affairs*, vol. 62, no. 1144, p. 78 - 97;
5. Plaznić, M. (ed.) (2010). *Tužilačka reč* (17), Beograd, Association of Public Prosecutors and deputy Prosecutors of Serbia;
6. Stojanović, Z. (2006). *Commentary of the Criminal Law*, Official Gazette, Belgrade;
7. Škulić, M., Čavoški, A., Trajković, D,. Matić, M., & Mrakić, V. (2011). *Handbook on protection of the environment,* Belgrade, Association of Public Prosecutors and deputy Prosecutors of Serbia;

Vrhovšek, M. (2007). Legal protection of the environment according to the new Criminal Law of Serbia. *Law – theory and practice*, Novi Sad, vol. 24, No. 7 - 8, p. 10 - 21.

**UDK:930.85:355.01]:341.24**

# INTERNATIONAL LEGAL ASPECTS OF PROTECTING CULTURAL PROPERTY IN CASES OF ARMED CONFLICTS

***Nikola Ambarkov***
*M.Sc.in European Studies, Ph.D.in Political Science*
*e-mail: ambarkov_nkl@yahoo.com, amvelbares@gmail.com*

**Abstract**

The purpose of this paper is to analyze the current international regime for protecting cultural property in the event of an armed conflict. Effectiveness of the the current international law in regulating this sphere is the key research issue here. The protection of cultural property in event of an armed conflict has been an issue of legal concern since therise of modern international law. The current international regime, in the context of cultural property, has two aspects – first, to protect cultural property during war times; second to regulate international trade in cultural property. But WWII events were followed by major destruction and removal of cultural goods, which was pivotal for the development of international regulation regarding this matter and which culminated with the adoption of the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict with Regulation for the Execution of the Convention 1954. Armed clashes in the early 1990s in Iraq, Kuwait,and former Yugoslavia, showed that the Hague Convention of 1954 had some weakness. For this purpose, in 1999 the Second Protocol to the Hague Convention was adopted. The Second Protocol aimed to overcome some of the shortcomings of the 1954 Convention, and it was designed to supplement, not supplant, the provisions of the Convention. Through a comparative analysis of The Hague Convention and its two Protocols this paper will attempt to demonstrate how the Second Protocol of 1999 contributed to the improvement of the provisions of the 1954 Convention. Recent developments in the Middle East, which has often been referred to as the Cradle of Civilization, where the Islamic State of Iraq and Syria (ISIS), destroyed cultural heritage for political and religious reasons, thereby doing a crime against humanity, have raised the question whether existing international regulation alone is sufficient to prevent such situations. It needs to be underlined that international customary law has developed a solid framework for the protection of cultural property sites in states participating in armed conflicts, but it does not provide any protection from radical religious militants who target such sites. If WWII was the overture for adoption of the Hague Convention, and the armed events from the early 1990s resulted in the upgrading of this Convention by adopting a Second Protocol, one cannot help but wonder if the phenomenon of destruction of cultural property by religious fanatics and militants in the Middle East, should be an introduction, to upgrading existing international frameworks for the protection of cultural property. This is another aspect that will be considered in this paper.

**Key words**: *international law, cultural property, Hague regime, the 1954 Hague Convention, the 1999 Second Protocol to the Hague Convention of 1954;*

## 1. INTRODUCTION

Cultural Property has always reflected the historical development and the existence of a state or nation (Fiedler 1996, p. 175, 179 - 80). Cultural heritage is part of our identity, it is a symbol of our experience throughout history, but it is also a marker of a common past and a tangible reminder of the millennia of human experience (The WAC Dead Sea Accord, 2015, p. 1). Achievement in the field of art, reflected trough artifacts and cultural property, have symbolized not only their history and tradition, but also the values, aesthetics, and ideals of the peoples. Attacking, taking or destroying those objects is kind of attempt to eliminate that which makes people unique (Macartney, 2012, p. 2). According Chadha (2001), the armed conflict over the ages was the major reason for the destruction and the looting of cultural property.

During an armed conflict, "cultural property can be damaged for numerous reasons, either internationally as a target, particularly if used to 'shield' military hardware or personnel; or inadvertently as 'collateral damage', often arising from ignorance as to the cultural value of the property" (Forrest, 2006, p. 178).

Protection of cultural property is undeniably a crucial issue that humanity is facing these days, due to the conflicts that are taking place in multiple regions in the world. All these conflicts once again raise the question of the effectiveness of the existing international regime and framework for protection of cultural heritage. (ThessISMUN, 2015, p. 5)

The position of the traditional thinkers is that protection of cultural property is a special body of the law within the complete body of humanitarian law. But the object of humanitarian law as whole is to protect civilians and their property which is slightly different from the objective of the Law on Protecting Cultural Property (O'Keefe, 2006). According the same author, "the protection of cultural property in armed conflict has been a matter of legal concern since the rise of modern international law in the sixteenth and seventeenth centuries"(O'Keefe, 2007, p. 3).

But for Ashlyn Milligan (2003, p. 92) some of these issues began to be more serious articulated trough the 19$^{th}$ century, but the widespread destruction and looting of art during World War II were the key moments for overview of the inadequate solutions that exist in international law at that time. Since then the legal aspects for protection of cultural property during armed conflict have begun to be systematized in a specialized legal regime with increasing and significant relevance.

The legal aspects of protection of cultural property in armed conflict have developed not as mechanic incorporation of norms which refer to this issue in the complete framework of humanitarian law, but also there was some anticipation and incorporation of humanitarian ideas developed in the non-legal sphere of social and cultural ethics into humanitarian law (Baufeld, 2006, p. 2).

## 2. HISTORICAL DEVELOPMENT OF INTERNATIONAL LEGAL ASPECTS FOR PROTECTING CULTURAL PROPERTY IN ARMED CONFLICT

Hugo Grotius is one of the pioneers who wrote for the confining the right to take enemy cultural property. He refers to Napoleon's defeat and the restitution of the cultural objects taken by France as war booty. This case turned the attention to the need for the protection of cultural property during and following the wars. (Moustaira, 2003, p. 2)

For Alcala (2015, p. 211), the Lieber Code of 1863, which can be seen as one of the earliest attempts for codification of the Law on Armed Conflict, also outlines the basic rules for the protection of cultural property. With the Lieber Code, "the United States became the first nation to codify the protection of cultural sites. Because the primary goal of the Civil War was to reestablished authority over seceded states, preserving such sites was considered crucial to maintaining a national identity" (He, 2015, p. 169).

At the turn of the XIX up to the XX century, the matter of protection of cultural heritage was covered by The Hague Conventions with respect to the Laws and Customs of War on Land which were signed in 1899 and 1907. These pacts are complementary to each other because in terms of protection of cultural property and historical sites they anticipate the leading principle of planning land warfare. Article 56 of the 1899 Hague Convention treated all property of the arts and sciences as private property and forbade the pillaging of those sites. The 1907 The Hague Convention extended these protections to any buildings dedicated to religion, art, science, or charitable purpose, as well as historical monuments (see in Ibid., p. 170).

The harrowing experience of World War II was the reason why after this war, "there was strong motivation amongst states to work out a special legal instrument to improve the protection of cultural property in armed conflict" (O'Keefe, 2006, p. 61). The need for a comprehensive international agreement about protection of movable and immovable cultural property during and following war resulted with an adoption in 1954 of the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict and a Protocol (Moustaira, 2003, p. 3).

"The 1954 Hague Convention includes a Preamble, forty articles of General Provisions, twenty-one articles of regulations, and a three-part Protocol" (He, 2015, p. 173).

This convention, according to Oyer (1999, p. 52) is very important because for the first time the term "cultural property" was explicitly used to collectively described buildings, monuments, and objects in an international agreement.

The Convention also established two categories of protection, the "general" (defined in Chapter I) and the "special" (defined in Chapter II). These two Chapters determined in which case each protection may be set aside (Moustaira, 2003, p. 3). One of the major aspects of general protection, among others, is the refraining from any military use of cultural property and from any act of hostility directed against such property (O'Keefe, 2006, p. 118). On the other hand "special protection ostensibly provides a higher standard of protection, although ultimately, the difference between the two protection regimes is minor" (Alcala, 2015, p. 236).

For Milligan (2008) "the Convention necessarily invokes an internationalist perspective of cultural property" (p. 93). The language of the Preamble of the 1954 Hague Convention for the protection of Cultural Property in the Event of Armed Conflict, according Macartney (2012, p. 4) reflects this belief, stating:

> the damage to cultural property belonging to any people whatsoever means damage to the cultural heritage of all mankind, since each people make their own contribution to the culture of the world…the preservation of the cultural heritage is of great importance for all people of the world and that it is important that this heritage should receive international protection (Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, May 14, 1954).

The First Protocol, who is rather brief in comparison with the text of the convention "provides specific guidelines for the import and export of cultural property from an occupied territory during an armed conflict, and the return of such objects when held in protective custody abroad" (Milligan, 2008, p. 94).

The Convention in its Article 10 provides creation of a special emblem to mark cultural property, in a way to distinguish its significance from other surrounding objects. In Article 16 this emblem is defined as a shield, consisting of a royal-blue square, one of the angles of which forms the point of the shield, and of a royal-blue triangle above the square, the space on either side being taken up by a white triangle.

In the armed conflicts that have taken placed, in the early 1990s, such as Cambodia, Iraq, Kuwait, former Yugoslavia, the provisions of the 1954 Hague Convention had been tested, but they have also revealed the deficiencies of the Convention. The 1993 study by Professor Patrick Boylan, commissioned by UNESCO and the Netherlands, underlines the weakness of application of this Convention among the signatory nations (Moustaira, 2003; He, 2015; Chadha, 2001).

The recommendation of Prof. Boylan were the basis for adoption of the "Lauswolt Document", which was discussed among independent experts, and in the end resulted with adoption at a diplomatic conference in 1999 as the Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflicts (Chadha, 2001).

According to the same author, the Second Protocol has four important provisions (1) simplifying the procedure for the grant of special protection, (2) tightening the concept of military necessity, (3) establishing individual criminal responsibility, and (4) establishment of an institutional mechanism to promote respect for cultural property and monitor its implementation (ibid.,)

The Second Protocol, for Alcala (2015) "was adopted with the goal of updating the provisions of the 1954 Hague Convention" (p. 236) while for O'Keefe (2006) it was "designed to supplement, not supplant, the provisions of the Convention." (p. 127).

O'Keefe (2007), also stressed another importance of the 1954 Hague Convention and its Second Protocol, and that is the obligation that the signatories states have to "prepare in time of peace for the safeguarding of cultural property situated within their own territory against the foreseeable effects of an armed conflict by taking such measures as they consider appropriate" (p. 4).

He also underlines the fact that in comparison with earlier treaties which were only applicable for international conflicts, The Second Protocol is expressly applicable to both international and civil armed conflicts (O'Keefe, 2006, p. 246). Also, The Second Protocol used the terms "armed conflict" not the term war, in order to cover a broader range of cases in which it is not clear if war has been declared or not (Moustaira, 2003, p. 5).

Another important aspect of the Second Protocol is establishing the Committee for the Protection of Cultural Property in the Event of Armed Conflict which shall be composed of twelve Parties which shall be elected by the Meeting of the Parties and shall meet once a year in ordinary session and in extra-ordinary sessions whenever it deems necessary. The membership of the Committee shall seek to ensure an equitable representation of the different regions and cultures of the world (see Second Protocol, Article 24).

The Second Protocol also established a third category of protection - the so-called "enhanced protection", apart from the above-mentioned – "general" and "special". Under enhanced protection, according to Article 10 of The Second Protocol, we may place

cultural heritage (1) which is of greatest importance for humanity; (2) which is adequately protected by domestic legal and administrative measures due to it exceptional cultural and historical value; (3) which will not be used for military purpose or to the shield military sites.

The Second Protocol requires that parties ensure "the immunity of cultural property under enhanced protection by refraining from making such property the object of attack from any use of the property or its immediate surroundings in support of military action." (Article 12) The circumstances under which cultural property may lose its enhanced protection are defined in Article 13 of the Second Protocol. These circumstances include when enhanced protection "is suspended or cancelled in accordance with Article 14"or "if, and for as long as, the property has, by its use, become a military objective"(Second Protocol Article 13, 1 (a) (b)).

The language of Art. 7 of the Second Protocol, compared to The Hague Convention and its Art. 4, is stronger and more detailed because Art. 4 of the Convention, obligated states to "respect" cultural property, without further elaboration, by contrast Art. 7 of the Second Protocol states that the countries should "do everything feasible to verify that the objectives to be attacked are not cultural property." (Posner, 2006, p. 5)

## 3. THE DOCTRINE OF MILITARY NECESSITY IN CULTURAL PROPERTY PROTECTION

Over the years, as Chadha (2001) noted, one of the highest priorities of the review process of the 1954 Hague Convention was to renounce Article 4(2) which allows waiving of the provisions of this Convention in case of military necessity, because there was growing weight of opinion that regardless of the conduct of the enemy there has to be some element of absolutes in the conduct of war.

Military necessity from the American Civil War to the present, according to him (2015) "has been interpreted as both a justification for otherwise-inexcusable conduct and as a limiting consideration during war" (p. 176). Since the Lieber Code the principle of military necessity permits states to use "military necessity, as understood by modern civilized nations, consists in the necessity of those measures which are indispensable for securing the ends of the war, and which are lawful according to the modern law and usages of war."

Morris Greenspan (1959), who defined the military necessity as "the right to apply that amount and kind of force which is necessary to compel the submission of the enemy with the least possible expenditure of time, life and money" (p. 313 - 314). Black's law dictionary (2000, 7th ed.) states that military necessity is "a principle of warfare that permits enough coercive force to achieve a desired end as long as the force used is not more than is called for by the situation" (p. 806).

Article 23(g) of the 1907 Hague Regulations forbade the destruction or seizure of an enemy's property, "unless such destruction or seizure be imperatively demanded by the necessities of war." The 1907 Hague Regulations, according Alcala (2015) "have never defined the term 'necessities of war' but the concept was generally understood to encompass the unavoidable consequence of both offensive and defensive military action"(p. 213). The same author also noted that, "the general concept of military necessity continues to allow for the destruction of civilian property when indispensable for securing the complete submission of the enemy as soon as possible." (p. 214)

During World War II, armies began to apply different definitions of military necessity. Despite this fact, the 1954 Hague Convention, which was response to the widespread damages and removals of cultural property during this war, and its drafters did not, however, want to provide a more specific definition of the term military necessity because this concept was already an internationally-recognized principle (Hladik, 1999: O'Keefe, 2006, p. 122).

However, the concept of military necessity did not give unlimited and unreserved power to either attacking or defending force and accordingly the compromise was that its application would be limited to specific situations (Toman, 1996, p. 72; Boylan, 1993, p. 56 - 57).

One of the recommendations of Prof. Boylan in his Report from 1993, which preceded the adoption of the Second Protocol to the Hague Convention in 1999, was the entire elimination of the waiver for military necessity, since it allowed a ground commander to act as he pleased so long as any destruction he caused fell within "military necessity" (Boylan, 1993, p. 51, 57).

However, the Second Protocol, as mentioned by him (2015) did not remove the waiver, but did add a definition of military necessity: "An object which by its nature, location, purpose or use makes an effective contribution to military action and whose total or partial destruction, capture, or neutralization, in the circumstances ruling at the time, offers a definite military advantage" (p. 177).

What are the main substantive issues contained in the new definition of military necessity in the Second Protocol? By Hladik's (2006, p. 322) opinion

> Article 6 includes two new elements: first waiver of the obligation to respect the basic imperative military necessity when cultural property has now been transformed because of the manner in which it is being used into a military object - Article 6 (a)(i); and second, tightening the circumstances under which there is an obligation not to use cultural property for war purposes when it is likely to be exposed to destruction or damage, and Article 6 (b) may be waived.

The Second Protocol directly links the military necessity concept with the concept of military objective. This means that when a cultural property becomes a military objective it loses its protection. Thus, the Second Protocol limits acts of hostility against cultural property to only a situation where it becomes a military objective (Chadha, 2001).

The Second Protocol, that introduces the term "military objective" causes further confusion according to Foster (2006), because "while the term 'military objective' is defined, the terms 'military action' and 'military purpose' are not. Admittedly, the Article does limit the definition of a military objective only to its use, rather than its nature, location, purpose..." (p. 217). As he further notes, this does not, however, help to reconcile these three terms:

> Any tendency to regard these as synonymous is rejected in Article 13(2) since this Article concerns the circumstances when such property may be attacked if it has, by its use, become a military objective. The Article does not apply in the case of suspension or cancellation because of the property's use for "military purpose" or in support of "military action, which will subject the property to the exception on grounds of military necessity as provided for Article 6 (Ibid.,)

The conventional form of the concept of military necessity means legitimizing destructive action to privilege military consideration at the cost of humanitarian value. For

Forrest, (2007) "this result is particularly so when the military necessity is justified when it invokes a simple use of cultural property by an opposing belligerent or when its destruction is deemed to achieve a military advantage"(p. 219). In conflict-ridden, but archaeologically rich states, as some countries in the Middle East, this can result with potential danger to their cultural property.

But for O'Keefe (2006) the concept of military necessity remains to an open textured phrase that has to be interpreted in the light of subsequent state practice and subsequent customary international law. He recognizes that the concept of military objective is the contemporary state of development of the concept of military necessity. For him these two concepts - of military necessity and of military objective, are nothing more than different stages of development of the same principle.

The acknowledged expert on armed conflict, Carnahan (1998), referring to military necessity today will conclude:

> Today, military necessity is widely regarded as something that must be overcome or ignored if international humanitarian law is to develop, and its original role as a limit on military action has been forgotten. As a result, the principle has not been applied in new situations where it could serve as a significant legal restraint until more specific treaty rules or customs are established (p.213).

## 4. HAS THE EXISTING HAGUE REGIME FAILED?

One of the weaknesses of current Convention is the fact that it "does not address attacks that result in incidental damage to cultural property. The lawfulness of these latter forms of attack must be evaluated in accordance with more general principles of international law, particularly the principle of proportionality." (Alcala, 2015, p. 251).

For Mustaira (2003), "Serious violation of the 1954 Hague Convention or of the Second Protocol, shall entail criminal responsibility under domestic law. This does not preclude individual responsibility under international law" (p. 7).

Another aspect is an obvious discrepancy in the number of countries that have ratified the Convention, on the one hand and the two protocols on the other. From 193 UN member states, one hundred and twenty six states have ratified the 1954 Convention as of 2012. One hundred and three states have ratified the First Protocol as of 2013 and sixty eight states – most of them small and poor – have ratified the Second Protocol (South Africa was the 68$^{th}$ in 2015). One of the reasons for this, according Posner (2006) is the fact that some countries do not want stronger obligations that should result with greater cooperation. That is why 133 states have acquiesced in the vague Hague Convention, while only 68 states have consented to the Second Protocol.

Thus, as Posner (2006, p. 7) noted, it is clear why the Hague treaty regime has failed. First of all, the Governments aren't interested in protecting and harming the cultural property. The vague language of current international legal framework that deals with this mater, the lack of its ratification, and the absences of strong international organization is also an additional problem. In this constellation the governments do not want to spend their resources to protect foreign cultural property in peace or wartime.

Not only the Hague regime, but also the wartime regime has failed because some governments have a policy of destroying the cultural property of the enemy, as it was in the Yugoslavian civil war, where armies and parliamentary groups during the war have

targeted cultural property of the enemy in order to demoralize the local population and to drive it away from desired territory (Ibid.,)

Another problem, as Chadha mentions (2001), is the fact that military important States such as the United Kingdom, or the United States as well as many States in Africa, Asia, Latin-America, where armed conflicts actually takes place, have recently taken place or are likely to occur such as Afghanistan, Algeria, Angola, Burundi, El Salvador, Ethiopia, Korea (both), Philippines, or Somalia have not ratified either the 1954 Hague Convention or its two Protocols. Although US delegates signed it in 1954, the United States Senate did not ratify it until 13/03/2009. However, in the period between the assignation and ratification, the USA has already announced that it regards the general principles as rules of customary international law.

The US ratification of the Hague convention, according Macartny (2012, p.11), on one side reflects that legitimacy of the Hague Convention's principles is growing, and on the other side it also shows the hesitancy of the US to bind itself in such way. But the USA is still not a Member State of the First and Second Protocol. Also, "The UK signaled its intention in 2004 to ratify the 1954 Hague Convention" (Gaimster, 2004, p. 699). "Although this has yet to come to fruition, it seems to be an indication that some of the most influential actors in the field are changing their positions" (Miligan, 2008, p. 102).

The dilemma for the success of the existing Hague regime, with current developments in the Middle East, which was always perceived as the Cradle of Civilization, is again in doubt. The main reason, according to particular group of authors lies in the fact that "international customary law has developed to protect cultural property sites from state action in armed conflict, but does not provide any protection from radical religious militants who target such sites" (He, 2015, p. 189).

Here, they primarily refer to the violent Islamists who have a long tradition in the destruction of cultural property. Radical Islamists, practice Islam in accordance with practices of the time of Muhammad. Thus, they complete reject the polytheism and other forms of idolatry. Thus, they target and destroy sites that represent a form of person or idolatry because of their connection to some cult or event (Shavit, 2012, p. 415, 416, 427 - 428).

In the past decade or so, the most significant sites that were destroyed by organizations with Islamist provenances were two statues of the Buddha in the Bamiyan Valley in Afghanistan, destroyed by the Taliban in 2001 (Bosco, 2005, p. 245, 246); The bombardment of Lahore shrine in Pakistan (Tavernise & Gillani, 210, p.8); the destruction of Abdel Salam al-Asmar shrine in Ziltan Libya (Kilpatrick, 2012); UNESCO's Heritage Site was attacked by militant Islamists in 2013 (Tunisia's Shrines, 2013).

The most recent organization that is a threat to the cultural heritage of the Middle East is The Islamic State of Iraq and Syria "an organization that has advocated the destruction of cultural property for both political and religious reasons" (He, 2015, p. 179). Victims of their destruction were chiefly Shiite mosques and shrines, churches and synagogues, such as the tomb of Jonah in Mosul in Northern Iraq, St. Ephrem's Cathedral, Eliyahu Hanavi synagogue in Damascus, Church of the Virgin Mary in Mosul, The Great Mosque of Aleppo, but also ancient and medieval sites, such as Nineveh Wall in al-Tahrir, destruction of various ancient artifacts in the Mosul Museum, demolition of Nimrud, bulldozing of Hatra, destruction of Bash Tapia Castle in Mosul. The culmination was demolishing Palmyra – the city's World Heritage site.

Pinholster (2014) is of the opinion that the destruction of cultural property in Iraq and Syria, are the result of internal conflict, due to the fact that many of the ISIS rebels are

their citizens. Also, both sides are blaming each other for the destruction made. But we should not underestimate the fact that neither Iraq nor Syria are parties to the Second Protocol. Thus, the duty to protect cultural sites during domestic conflicts does not apply in this case. However, by using an archaeological site for a military purpose "Syria violated international law, with disastrous consequences. Due to the fact that the 1954 Hague Convention was written to govern states and national armies, a new set of rules will have to be developed by the nations fighting ISIS if cultural sites are to be protected" (He, 2015 p. 184).

In order to protect cultural sites from destruction during the conflict with ISIS, He also recommends that "the Second Protocol's waiver of protection for sites being used for military purpose must be removed, and an analysis balancing military necessity and protection must be instituted in all decisions to targeted cultural sites" (p.186).

From all above mentioned it can be concluded that "none of this proves that the Hague regime has had no effect, but if it had an effect, it has been quite limited (Posner, 2006, p. 7).

## 5. CONCLUSION

Cultural property remains to be a subject of two international legal regimes, one of which refers to the protection of cultural property during wartime, and the other of which regulates international trade in cultural property. Both regimes do not have notable success, because cultural property remains to be a victim during wars (Posner, 2006, p.1).

The recognition to the transcendent quality of cultural property, by the international law has evolved to provide greater protection for cultural objects in armed conflict (Alcala 2015, p. 253). For O'Keefe (2006) the legal protection of cultural property has become stricter but it has never been transformed into a special body of law distinct from the rest of the laws of war.

Kastenberg (1997, p. 277) underlines that with "the creation of UNESCO and of the 1954 Hague Convention, signify the growing recognition, (…) that the importance of cultural property extends beyond territorial boundaries, and that cultural property is an irreplaceable resource that must be preserved".

But other authors said that additional efforts need to be made to prevent the destruction of cultural heritage "that is of shred value to all of humanity will necessarily depend on the political will and foresight of the international community to prioritize and insist on its protection" (Milligan, 2008, p. 102).

For this purpose, the political will of states to fulfill their obligations under international law, which should place greater emphasis on enforcement and deterrence, in order to be effective, will need to be enforced. However, the establishment of such measures in a treaty can result in what was mentioned above that the stronger determinants may reject states to ratify such agreements. Hence, the dilemma of whether it is better to have a strong treaty, but a small number of countries that would accede, or a weak treaty with broader ratification (Ibid.,).

Despite this fact, scholars still insist that the current legal regime be strengthened in a way that "the sanctions should be enhanced; states should be forced to devote greater resources to complying with treaties; treaty obligations should be made stricter and more detailed; and states that have not ratified the existing treaties should be pressured to do so" (Posner, 2006, p. 1).

Recent developments in the Middle East indicate a certain group of authors to raise the issue for further developments of existing customary law for protecting cultural property in a way to protect it from radical religious militants who target such sites. Destruction of cultural property should be the principle concern, in any conflict and all involved nations must be committed to stopping war crimes against human cultural history. If these principles can be followed, the heritage can be protected for future generations (He, 2015, p. 189 - 190).

## 6. REFERENCES


**Alcala, R.T.P. (2015).** Babylon Revisited: Reestablishing a Corps of Specialists for the Protection of Cultural Property in Armed Conflict. *Harvard National Security Journal* Vol. 6, 206-254.

**Baufeld, S. (2006).** The Protection of Cultural Property in Armed Conflict, by Roger O'Keefe, (book review), In *Global Law Books*- www.globallawlbooks.org, 1 - 11

**Bosco, D. (2005).** *Waking the Buddha*, 58 ARCHAEOLOGY 1, 18

**Boylan, P. J. (1993).** *Review of the Convention for the Protection of Cultural Property in the Event of Armed Conflict*, Paris: UNESCO.

**Carnahan, B. M. (1998).** Lincoln, Lieber and the Laws of War: The Origins and Limits of the Principle of Military Necessity. *The American Journal of International Law* Vol. 92, No. 2 (Apr.,), pp. 213 - 231.

**Chadha, N. (2001).** Protection of Cultural Property during Armed Conflict: Recent Developments, *ISIL Year Book of International Humanitarian and Refugee Law*.

**Fiedler,W. (1996).** Safeguarding of Cultural Property During Occupation – Modifications of the Hague Convention of 1907 by World War II? In M. Briat&J.A.Freedberg (Eds.), *Legal Aspects of International Trade in Art*. The Hague.

**Forrest, J.S.C. (2006).** The Doctrine of Military Necessity and the Protection of Cultural Property during Armed Conflict, *California Western International Law Journal*, Vol. 37, No. 2, Art 2, 177 - 219.

**Gaimster, D. (2004).** Measures against the Illicit Trade in Cultural Objects: The Emerging Strategy in Britain. *Antiquity*, Vol. 78

**Greenspan, M. (1959).***The Modern Law of Land Warfare*. Oakland, California: University of California Press.

**He, G.H. (2015).** Protecting Ancient Heritage in Armed Conflict: New Rules for Targeting Cultural Property during Conflict with ISIS. *Maryland Journal of International Law*, Volume 30 Issue 1 Symposium: "Investor-State Disputes" Article 12, 167-190.

**Hladík, J. (1999).** The 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict and the notion of military necessity, *International Review of the Red Cross*, No. 835.

**Hladík, J. (2006).** Protection of Cultural Property: The Legal Aspects. *International Law Studies*,Vol. 80 pp. 319-329.

**Kastenberg, J. E. (1997).** USAF, The Legal Regime for Protecting Cultural Property During Armed Conflict, *42 A.F.L. REV.* 277, 289-90.

**Kilpatrick, D. (2012).** Libya Officials Seem Helpless as Sufi Shrines Are Vandalized, *N.Y. TIMES*, http://nyti.ms/1Gdv1WL.

**Macartney, L. (2012).** Cultural Property Protection in the Post-Conflict Period: Exploring the Issue through the Example of the U.S. Experience in Iraq https://law.wm.edu/

**Milligan. A. (2008).** Targeting Cultural Property: The Role of International Law. *Journal of Public & International Affairs* Vol.19, 91-106.

**Moustaira, E. N. (2003).** International Protection of Cultural Property in the Event of Armed. *International protection of cultural objects: a view to the future*, Colloquium, Athens, 23 November 2001, Athènes : Sakkoulas, 115-132.

**O'Keefe. R.(2006).** *The Protection of Cultural Property in Armed Conflict*, New York: Cambridge University Press.

**O'Keefe. R.(2007).** The Protection of Cultural Property in Armed Conflict. *Amicus Curiae Issue* 71, Autumn, 3-7.

**Oyer, H. E. (1999).** The 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict – Is It Working? A Case Study: The Persian Gulf War Experience, *23COLUM.-VLA J.L. & ARTS* 49.

**Pinholster,G. (2014).** New High-Resolution Satellite Image Analysis: 5 of 6 Syrian World Heritage Sites "Exhibit Significant Damage," *Am. Ass'n. forTheAdvancementof SCI*. http://www.aaas.org/news/

**Polgreen, L. (2013).** As Extremists Invaded, Timbuktu Hid Artifacts of a Golden Age, *N.Y. TIMES* http://nyti.ms/18SAuVz.

**Posner, Eric A. (2006).** The International Protection of Cultural Property: Some Skeptical Observations. *Public Law & Legal Theory Working Paper No. 141*,1-20.

**Shavit, U. (2012).** The Wasati and Salafi Approaches to the Religious Law of Muslim Minorities*, 19 ISLAMIC L. & SOC'Y*.

**Tavernise, S. and Gillani, W. (2010).** Suicide Bombers Strike Sufi Shrine in Pakistan, *N.Y. TIMES* http://nyti.ms/1yHEDs8.

**Toman, J. (1996).** *The Protection of Cultural Property in the Event of Armed Conflict*. Brookfield: Dartmouth Publishing Company.

**OTHER SOURCES**

Convention for the Protection of Cultural Property in the Event of Armed Conflict with Regulations for the Execution of the Convention 1954, The Hague, 14 May 1954.

Protocol to the Convention for the Protection of Cultural Property in the Event of Armed conflict 1954, The Hague 14 May 1954.

Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict 1999, The Hague, 26 March 1999.

U.S. Dep't of War, Headquarters, Gen. Orders No. 100, Art. 34 – 38 (1863) [hereinafter Liber Code]

Convention (II) with Respect to the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. The Hague, 29 July 1899.

Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. The Hague, 18 October 1907.

The WAC Dead Sea Accord on the Protection of Cultural Property in the Event of Armed Conflict 2015

Black's Law Dictionary 7th ed. (West Group, 2000), Bryan A. Garner, editor, ISBN 978-0-314-61300-4

Tunisia's Shrines: Puritans on the Attack, THE ECONOMIST POMEGRANATE BLOG (Feb. 6, 2013, 4:32 PM) http://www.economist.com/node/21571376.

ThessISMUN, 2015 protecting cultural heritage during armed conflict; Challenges arising from implementation of the Convention for the Protecting Cultural Property in the event of armed conflict; University of Macedonia Thessaloniki, Greece

UDK:341.62:342.228.1(497.7:495)327(497.7)

# NAME DISPUTE BETWEEN MACEDONIA AND GREECE: A Matter of International Law or another Balkan Political Game A Challenge for a Real Leader

***Zoran Todorov***
*PhD. Student at the Faculty for Security, Skopje*
*e-mail: zoran_todorov2003@yahoo.com*

**Abstract**

The subject of my research is intended to focus on the International Law and Security. In the paper we will concentrate on analyses of the dispute / bilateral issue of the name of Macedonia, but observed from an, in my view, "unusual perspective" i.e. how a potential, hypothetical leader should approach this question and propose appropriate solution. The whole problem will be treated from the perspective of the International Law, as well, bearing in mind its sensitivity in the context of regional and international security. First and foremost, I will precisely define the problem in its entirety and complexity. Different methods and methodology of research, already applied in the modern theory and practice would be pursued, among which the case study would be a dominant one. Numerous quotations and data will be included in the work. The sources used in the research will be listed and presented in the Bibliography as integral part of the paper. The phenomena of the leadership and different methods and examples of leadership would be presented and systematized. However, the paper does not have intention/goal to give preference to any of different kinds of leadership which would be foreseen. Based on various experiences, it would endorse the approaches, which, in my opinion, would pave the way to the desired resolution of the identified problem. At this point, without any ambition, prejudice or speculation regarding the outcome of the research, I identify the International Law as a cornerstone of the whole research. International relations and diplomacy are intended to have significant participating role, as well. The conclusion of the work will precisely point out the proposed solution of the problem and steps which, in my opinion, should be overtaken in order to overcome the present unsatisfactory situation. The most important reference, in this regard, would be the context of International security and accomplishment of mutual confidence and cooperation among the different players and factors in international politics.

***Keywords:*** *Dispute, Macedonia, resolution, leader, International Law, International security.*

## 1. INTRODUCTION: SENSITIVITY OF THE PROBLEM

On September the 8th, 1991, the Republic of Macedonia, a federal constituent part of the Yugoslav Federation, declared its independence. The people of the landlocked country situated in the central part of the Balkan Peninsula, with rich cultural heritage finally reached its independence. An international recognition by most of the countries in the World followed shortly. Macedonia became a member of the main international inter-governmental organizations in the years that followed, as well. However, one of its immediate neighbors – Greece – did not follow this practice. In a disputable manner, its

Government continues to deny the right to its northern neighbor to use the name Macedonia as its constitutional and internationally recognized name, because of "historical reasons". What are the core reasons for this dispute and what solutions we could offer to overcome it? What a real leader/s can do to solve this problem?

## 2. HISTORICAL CONTEXT

In fact, the years that followed the World War 2 in Europe did not approved the correctness of the borders originating from the Treaty of Versailles in 1919 and the international order established in Yalta in early 1945, before the historical defeat of the forces of the Third Reich by the Allies. Half of Europe remained under the domination of the communist Empire – Soviet Union including two communist federations Czechoslovakia and, in that times, Federal People's Republic of Yugoslavia. Mentioning of these two federations in this context is not incidental. According to the agreement in Yalta they were supposed to improve stability in the region of Central and South-Eastern Europe and, at the same time, to address the aspirations of the smaller nations (predominantly of Slavic ethnic background) for national emancipation and affirmation. Even though the Agreement in Yalta established the dividing lines according to which Yugoslavia was supposed to be under equal domination of each of blocks (Agreement between Stalin and Churchill known as 50%-50%) the state until the year of 1948 remained under the domination of the Eastern Block. Macedonia was one of the constituent republics of the Yugoslav Federation. The most southern Republic of the Yugoslav Federation fulfilled the expectations only of the part of the whole Macedonian nation, whose parts, now as national minorities remained in the neighboring states: Greece, Bulgaria and Albania. Greece, according to the Agreement in Yalta remained under the domination of the Western Block (90 % -10%), Bulgaria under the domination of the Eastern Block (100 %) and Albania (100 % Eastern Block).

Macedonian people and the whole nation found itself divided not just in four different states, but also divided in two mutually antagonized blocks. On the other hand, Germany, until beginning of World War 2 a unique stat, was divided in two parts: one dominated by the West, the other one by the Eastern Block. The things worsened a lot for Macedonian people after the year of 1948 when Yugoslavia cut its links with the Russians and the entire Eastern Block. Until that day relatively opened Macedonian- Bulgarian border was closed, especially for the members of the Macedonian minority in Bulgaria. Starting from that date Bulgaria started its politics of denial of the existence of the Macedonian minority within the borders of this country.

But things have rapidly changed after the fall of the Berlin Wall in October 1089. Many smaller nations "felt" their opportunity to organize themselves and many movements for liberation were registered in this period. The result was evident: more than twenty countries, mainly members of robust communist federations (USSSR, Czechoslovakia and Yugoslavia0 in the years that followed (from 1990 to 1993) declared their independence.

The most éclat ant example was the position of the former French Prime Minister Pierre Mauroy and President of the Socialist International from 1992 to 1999, who made himself explicitly clear stating "Not every nation in the World is supposed to have its own independent country". The timing and the intonation of this statement was a discouraging message for some of the nations in Europe after the Cold War to "reconsider" their already expressed will for independence. This position of France influenced pretty much the

position of the European Union and delayed wider recognition of the independence of the Republic of Macedonia in 1992 and 1993.

Finally, on December 23, 1993 most of the countries-members of the EU established diplomatic relations with the Republic of Macedonia, recognizing its independence, except Greece. In fact, from the very first moment of the appearance of the idea for existence of independent Macedonia was not welcomed in the Greek public and by the Greek Government. In a disputable manner, its government started its policy of denial the right to its northern neighbor to use the name Macedonia as its constitutional and internationally recognized name, because of "historical reasons". Some experts have argued what these historical reasons could mean. As the Prof. Haralambos Kondonis explains, these historic reasons with the argument that: Greece has the exclusive right to use the name Macedonia, because its northern province has the same name. Any use of this term by other side, in fact, represents open threat to Greek's territory and act of aspiration to apart of the territory of an independent country.

When analyzing this period, one cannot speak about the declaring Macedonia's independence, and to ignore the following facts: setting the boundaries of a newly independent state was not an easy process, the army of the Former Yugoslav Federation left the territory of Macedonia peacefully and Macedonia became an independent country without any conflict unlikely other of the federal republics of the Former Federation who went through severe armed clashes, some of them experiencing bloody civil wars. In fact, the wider international recognition was not an easy process, as well. In the years to come Macedonia was recognized by almost 120 countries.

Most important events in this period were: recognition by the United States - opening of an American Embassy in Skopje, recognition by the countries of the European Union, all of them except Greece, "Interim Accord, the document/bilateral international agreement signed with a mediation of the US Special Envoy Richard Holbrooke, between the "two parties" (the paper uses this term to address the two nations), enabled establishment of diplomatic relations between Macedonia and Greece, but the problem with the name remained unsolved until today.

## 3. STARTING POINTS FOR SOLUTION OF THE PROBLEM TO BE TAKEN INTO ACCOUNT BY THE POTENTIAL LEADER

Draft solution would have to take into account and to address properly the main concerns of both sides: Greek's sensitivity on the use of term Macedonia, necessity of keeping the term Macedonia for Macedonia, which practically means recognition of the Macedonian identity, reaching a solution which would not affect third sides, or part of the population (citizens of different ethnic background) within the borders of both, Macedonia and Greece. Then, the question of the Macedonian minority in Greece should be addressed, as well and Greek's policy of denial of existence of any minority within the borders of the country should change in direction of full respect of internationally established and accepted standards. Facts and figures about the existence of Macedonian minority in Greece (Report of the US State Department, Reports of the Council of Europe, OSCE High Commissioner for National Minorities and other prominent non-governmental sources).

Border regime after the membership of Macedonia to the EU should be transformed into direction of introduction of the Concept of "Europe without borders" between the countries for the benefit of the citizens from both sides of the borders.

## 4. TASKS FOR THE POTENTIAL LEADER IN THIS CASE

The previous, pretty thorough explanations of the core of the problem, taking into account all its aspects, including the historical, security and political implications of the problem, were given in order to enlighten the complexity of the issue and to point out the so called "areas of engagement" and qualities that the potential leader who would try to find the solution of this problem will have to take into account. The task of the leader looks either simple: to find a solution of the "name problem". It does not look like a long lasting problem (so far), which does not minimize its complexity. However, the leader will have to manifest certain and very particular skills in leadership. What kinds of qualities and, at the end of the ends, what kinds of leadership should be applied?

The preliminary list, at this point, would certainly include: Visionary Leadership, Personal Leadership, Political Leadership, Organizational Leadership and, to certain extend, team Leadership.

### 4.1. Visionary Leadership

In her book "Leadership for the Common Good" Prof. Barbara Crosby underlines the task of the visionary leaders: "Visionary leaders create and communicate meaning about historical events, current reality, group mission, and prospects for the future. To be effective in tackling public problems and achieving the common good, the y need to:

- Seize the opportunity to be an interpreter and direction giver in a situation of uncertainty and difficulty
- Offer a compelling vision of the future
- During a crisis, postpone a full-fledged vision while detailing actions that need to be taken and the anticipated consequences
- Adeptly design and use formal and informal forums.

The quoted paragraph gives more than a precise overview of the steps to be followed and applied by the visionary leader in addressing and (if there is a success) finding appropriate solution to the problem.

In my case, I already "communicate meaning" (to use the language of Prof. Crosby) of the historical events (in fact, my impression is that the introductory part of this paper is probably even overburdened with history); there is a certain reference to the current reality, and in overview of the group mission and prospects for the future. Those are, literally, requirements for a good visionary leadership.

In the worlds' history there were many visionary leaders: I will refrain, in this occasion, from mentioning their names, in order to avoid giving certain qualifications or even worse (in my view) make certain order of preference according to what they achieved or were remembered of. For this occasion, I would just stress that the aforementioned methods or skills of achieving certain goals should not be identical, or we should not be guided by certain pattern in defining the appropriate ways of finding the desired solutions. Every case and every leader is unique in the way of approaching the problem, and in the way of finding the appropriate solution.

In the Greek-Macedonian dispute about the name of the Republic of Macedonia, the potential leader who would find a solution to the problem would have to express sensitivity for the historical context and future prospects of the solution in regional context.

### 4.2. Personal Leadership

Barbara Crosby in the already quoted book defines personal leadership as 'understanding and deploying personal assets on behalf of beneficial change" (page 34). Moreover (on page 49), she adds that "the work of understanding oneself and others and using this understanding to achieve beneficial change is a lifelong process". She continues, than, with a suggestion for three especially helpful practices for achieving such understanding in relation to leadership for the common good:

- Discerning the call to leadership
- Assessing other personal strengths and weaknesses
- Appreciating diversity and commonality."

So, the emphasis is on self-awareness. Which, in my view, does not necessarily mean that every person or every leader manifest a same kind of awareness. I could even add that, even though some other authors support the same position (Kouzes and Posner, for instance in their remarkable Credibility: How leaders gain and lose it? Why people demand it?), this element should not be considered as mandatory for a modern leader. Because, there are plenty of examples of so called "born leaders" which are even not aware of some of their (in this case) qualities, as the work on understanding, as B. Crosby puts it in the citations presented above.

### 4.3. Political Leadership

As a necessary prerequisite for a political leadership under the terms defined in B. Crosby's "Leadership for the common good" is his or her own behavior. Furthermore, many leadership analysts (prominently, Kouzes and Posner, 2002) note that "effective leaders are exemplars of the organization's mission and values. They manifest the behavior they seek from others; they tell stories that reinforce desired norms: they communicate excitement and confidence about the organization' mission and values. They manifest the behavior they seek from others; they tell stories that reinforce desired norms: they communicate excitement and confidence about the organization and the people in it. They convey a sense of what's important by what they pay attention to (Osborn, Hunt, and Jauch, 2002). As Margaret Wheatley says, they become broadcasters of the organizations vision "(Quotation from Barbara Crosby's book).

However, when it comes to political leadership, we should differentiate, for the purposes of this case, at least, three perspectives of the political leadership which will lead to a possible solution of the problem.

I will start with brief presentation of the position of the Government of the Republic of Greece, outlined and elaborated in the analyses of Haralambos Kondonis in his survey named "Bilateral Relations between Greece and Macedonia" published by Macedonian Heritage.

In his article, the author, prominent Greek professor in Public International Law at the Athens University gives an overview of the bilateral relations between the two neighboring countries after the signature of the Interim Accord, a bilateral treaty, which normalized their relations. He refers to the political proposals from Macedonian side and analysis their accuracy or acceptability for the Greek side. The article has a brief reference to a level of Greek investments into Macedonia, after the conclusion of the Agreement. The author speculates with a possibility for a more intensive regional cooperation, motivated with successful practice registered in the international organizations.

A core idea in the article is Greek active support to Macedonia in its process of association with the EU and NATO. We could evaluate the article as a modest presentation

of the Greek perspective of the relations (including the name issue) aimed at finding appropriate solutions for the existing problem.

However, the Governments change in today's world of democracy, and the policy changes consequently. The above summary of the Greek – Macedonian relations explains, predominantly, the period between 2002 and 2006, when a right wing conservative Government leaded the country. Some steps overtaken by this Government were overtaken as a part of the implementation of the bilateral agreement, signed between the two countries in 1995, called Interim Accord.

When it comes to the policy (or the political leadership) of the Government of the Republic of Macedonia, with regard and concerning the name issue, we could say it has a constant character in terms of protecting the constitutional name of the country, which is Republic of Macedonia. In the period from 1991 to 2007, in four election circles and Governments leaded by seven Prime Ministers, three presidents of the Republic and ten ministers for foreign affairs, with some minor changes in tactics, had permanently struggled to protect the constitutional name of the country.

However, the small country had to accept certain conditions in order to be admitted as a fully fledged member of the United Nations, the main one being to be referred within the Organization under the "provisional reference" the Former Yugoslav Republic of Macedonia. In the concluding part of this paper a more detailed, profound explanation of the dispute will be explored.

### 4.4. Organizational Leadership

In the framework of the part dedicated to organizational leadership, my intention is to give more thorough explanation of the context in which modern and independent state of Macedonia, and especially, the main characteristics of its internal political system which are, from its own perspective, giving the bases for consistent foreign policy, especially regarding its neighbors.

The centrally-positioned independent country in the Balkan Peninsula, acquired its independence in 1991. Splitting from the than existing communist Yugoslav Federation small and tiny country a size a little bigger than the US state of Vermont), did not inherited a very friendly environment: the biggest challenge came from its southern neighbor Greece, powerful member of the EU and NATO, who disputed the right to a new born country to use its constitutional name – The Republic of Macedonia. Greek argument in this dispute, which has not been resolved until today is, basically that Greece should have an exclusive right to the notion "Macedonia", the name of a northern Greek province, and that exclusive right should apply to the ancient Macedonia of the Alexander the Great.

Other Macedonian neighbors had, at that time some, not less important claims vis-a-vis Macedonia: Serbia, in that time, still dominated by the dictator Milosevic, kept postponing the recognition of the independence of Macedonia for six years, disputing the identity of Macedonian Orthodox Church and existence of the international borders between the two countries. Bulgaria, a country which was the first who recognized the independence of Macedonia, even nowadays, claims that there is no particular and authentic Macedonian nation with its own language, and that majority of Macedonians are, in fact, Bulgarians. Albania, in spite of its economic and in many times manifested weakness as a state structure, uses its influence towards the large Albania speaking minority in Macedonia to express, although in different contexts, territorial claims vis-a-vis Macedonia, explaining that as "its legitimate concern for its minority in Macedonia". All the enumerated challenges should be, especially these days, put into the context of the

extensive efforts of the entire International Community to resolve the problem of Kosovo, perhaps the most serious political problem in the post WW 2 Europe. The Province of Kosovo, at the moment governed by the UN administration, is situated on the North Western borders of Macedonia.

In spite of the unfriendly and unfavorable context, the leadership of the new born country did not have many doubts about the nature and the physiognomy of the country. Leaded by the liberal ideas, and having in support most of the citizens of Macedonia, the Concentration government consisted of all main political parties in the country, proposed a very liberal citizen's oriented Constitution, influenced primarily by the main documents in the field of human rights in Europe and the UN (European Convention on Human rights of the UN from 1966). In the part of organization of power, the authors of the Constitution were inspired by the US Constitution from 1787, Constitution of the Federal Republic of Germany from 1949, Constitution of France and the Constitution of Italy from 1948.

As a consequence of those commitments, the Parliament of the new born Republic of Macedonia adopted the new Constitution on 17 November 1991. The country was defined as parliamentary republic, in which the sovereignty derives from and belongs to its citizens, and in which the leading principle of the organization of power is the division of power among the legislative, executive and the judiciary. One of the main leading principles, according to Article 8 of the Constitution is the principle of the Rule of Law.

This constitutional provision, at that time, was completely new and unique in the entire legal and constitutional history of Macedonia. The other provision which was completely new and revolutionary was the provision laid dawn in Article 118 of the Constitution, providing that "all international treaties ratified by the Parliament of the Republic of Macedonia become integral part of the internal domestic legal order of the country and relevant source of Law." In fact, this provision establishes a monist system of validity of international treaties, meaning that they become highest source of law ranked in the hierarchy of the legal acts. The importance of this constitutional provision increases especially in the context of our deliberations of the principle of Rule of Law and deeper analysis of this principle in Macedonian legal system. Therefore, one cannot speak about the application of this principle purely and exclusively taking into account the provisions of the national legal acts, but as well and inevitably the relevant provisions of international treaties, ratified by the Macedonian Parliament."

From the organizational perspective, there is nothing to add to this presentation. The possible solution has to respect the internal domestic order, established with the Constitution, and the stakeholders of the whole process are already enlisted in the Constitution. The encouraging sign or circumstance in the whole process is the existence of the constitutional provision for direct application of the international treaties , ratified by the Macedonian Parliament (already quoted provision 118 of the Macedonian Constitution) The analysts of the whole problem, and he Macedonian position accordingly, should take into account the provision of the Amendment 1 to the Constitution, adopted on January 16$^{th}$ 1992, so immediately after the adoption of the normative text of the Constitution in the year of 1991. The purpose of those amendments to the Constitution was to ensure the International Community, and especially, the neighboring states that the new born country does not have territorial aspirations towards the other countries and that its aspirations are to be considered only in compliance with the principle of building good neighborly relations.

### 4.5. Team Leadership

According to the widely spread idea, the team leadership is defined as a capability to build a work group. It seems that this kind of leadership has longest tradition, even though some sources do present some different views. However, for the purposes of this paper, it seems that this definition is satisfactory.

At this point, I should underline that any solution that will be reached would mean involvement or participation primarily, by the teams of experts, from both sides, including the mediation team of the United Nations. Certainly, the participation of all these teams of experts would not, necessarily mean seeking for solutions which are reachable, hypothetically by the individuals. And from the procedural or even substantial perspective, there is nothing wrong with involvement of individuals. However, bearing in mind the complexity of the issue, and long lasting character of the desired solution, it seems to me as self-explanatory that the decisions made by the teams of experts would certainly mean more quality and more wise approach to the problem and consequently, acquired solution.

## 5. POSSIBLE SOLUTION: DOUBLE FORMULA

An independent state – the Republic of Macedonia has the full right, observed, both, politically and legally to use and keep its constitutional name, name of the generations of Macedonians grown in passed centuries and millenniums, on the territory whose geographical name is Macedonia, as well. This fact is recognized by more than 120 countries from all over the world, including the countries permanent members of the UN Security Council – USA, People's Republic of China and the Russian Federation. This dispute is to be resolved with Greece in friendly and civilized manner. This work offers an appropriate solution and friendly settlement of the dispute.

What is double formula?

Briefly, it is a long standing proposal of the Macedonian Government which stays firm in its commitment to keep the constitutional name of the country both: before the international organizations and bilaterally, in the country's relations and contacts with other subjects of the international law (predominantly independent countries), the use of the country's name domestically, seems as a self-evident factor. The double formula allows "the other side in the negotiations" to choose a name which it considers appropriate to address its northern neighbor.

But, it seems that this offer is not acceptable for the Greek side, and they are rejecting any possibility for accepting "double formula" solution of this problem. Their preference, as stated above would be a name which would "describe the geographic notion of Macedonia".

## 6. CONCLUSION

In conclusion, it seems that use of leadership techniques, and in that sense, literally all listed above, is an evitable choice. Therefore, even though in some terms, the use of those requisites is not until the last detail explained, elaborated or precisely foreseen, the purpose of this purpose is, among other things, to give a kind of a guidelines, and at the same time - overview of the necessary steps and certain roles of different sorts of leadership in the process of overcoming this, in reality, big and complex problem for the sake and benefit of the people from the both sides of the border, and the region as whole.

## 7. REFERENCES


Crosby, Barbara C. and Bryson M. "Leadership for the Common Good" Jossey Bass, San Francisco, 2005, Second Edition

Danforth, Loring M. "Macedonian Conflict" Princeton University Press, 1995. Pages 187 - 20

Dennis, Sandole J.D. "Capturing the Complexity of Conflict: Dealing with Violent Ethnic Conflicts in the Post-Cold War Era", Routledge, 1999, pages 147-149, 13-17 etc.

Feldman, David J. "Human Rights and Liberties", textbook, Oxford Press, 1996

Hudson M.O., International Legislation, London, 1988

Kondonis, Haralambos. "Bilateral Relations between Greece and Macedonia". Macedonian Heritage. 7 June 2007,
http://www.macedonian-heritage.gr/InterimAgreement/Downloads/Interim_**Kondonis.**pdf

Kouzes, James M., and Posner, Barry z.1993. Credibility; How Leaders Gain and Lose it, Why people Demand it. San Francisco: Jossey-Bass

Roudemetof, Victor "Collective Memory, National Identity, and Ethnic Conflict: Greece, Bulgaria and the Macedonian identity" Praeger / Greenwood, 2002

British Yearbook of International Law, 1997

Constitution of the Republic of Macedonia, amended with Amendments from I to XXX
http://www.sobranie.mk

Interim Accord, Official Gazette of the Republic of Macedonia, No.38/95 of 2 October 1995

http://www.coe.int/nationalminorities

http://www.dushkin.com/connectext/wpold

http://www.un.org/ohchr

UDK:341.653/.654:355.45-027.511(4-672ЕУ)

# IMPLEMENTATION OF THE INTERNATIONAL RESTRICTIVE MEASURES ACCORDING TO THE MACEDONIAN LAW ON INTERNATIONAL RESTRICTIVE MEASURES: CHALLENGES AND SUGGESTIONS

***Ivica Simonovski***
*Co-founder of Cyber Security, Corporate Security and Crisis Management Incentive – Skopje*
*e-mail: ivceC3I@yahoo.com*

***Kristina Misheva, Dr.Sc***
*Assistant Professor at the Faculty of Law, Goce Delcev University – Stip*
*e-mail: kristina.miseva@ugd.edu.mk*

**Abstract**

Determining the rules of the game in the international law and international relations from the point of view of all stakeholders means establishment and maintenance of collective security on an internal and external plan. Any violation, any distancing and denial of the existence of these rules is to be followed by adequate consequences. But, in conditions of existence of concentration of power, inherent and characteristic for the vertical and hierarchical structure of the state domestic laws, which is the mechanism through which sanctions in international law are introduces, binding for all states. These rules do not depend on the desire of the entity in international law. They rules are provided with an international instrument (resolution) or legal custom and they must be respected and implemented by the entity.

After declaring independence, the Republic of Macedonia started the process of establishing and positioning on the international platform. The country created a profile of active and responsible factor in the promotion of international security, especially in the South-East Europe region. The membership in the United Nations which is based on the basic principles and tenets of the UN Charter imposes an obligation for the Republic of Macedonia to respect and implement the obligations deriving from one side, and the aspiration to give a contribution to collective security by respecting the decisions of the Security Council, on the other side.

***Keywords****: restrictive measures, international security, collective security, resolutions, international law*

## 1. INTRODUCTION

After entering into force, the Charter of the United Nations (The Charter of the United Nations, 1945) became the main accelerator and pillar to maintenance of the international peace and world security and safety, developer and keeper of the good neighbour relations, economic cooperation, tolerance, and respect for the fundamental human rights and freedom.

Related to Article 24 and Article 39 of the UN Charter, the primary responsibility and basic duty of the Security Council is to maintain international peace and security, determining the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken.

On the other side, the European Union promotes the basic principles: peace, democracy, rule of law, the fundamental human rights and international cooperation through the Common Foreign and Security Policy, may also impose measures, based on article 29 of the Treaty on the European Union and article 215 of the Treaty of the Functioning on the European Union (TFEU). "Where a decision, adopted in accordance with Chapter 2 of Title V of the Treaty on European Union, provides for the interruption or reduction, in part or completely, of economic and financial relations with one or more third countries, the Council, acting by a qualified majority on a joint proposal from the High Representative of the Union for Foreign Affairs and Security Policy and the Commission, shall adopt the necessary measures. It shall inform the European Parliament thereof "(Treaty on the European Union; Treaty of the Functioning on the European Union, 2012).

The EU may adopt all measures that are imposed by the UN. But, also it may be more restrictive in some of those imposed measures. Also, we must notice that EU may bring measures based on the decisions of the Council against natural or legal persons and groups or non-State entities. (Anthony, 2002)

The aim of this paper is to analyze the actual procedures and process of bringing and implementing the decisions for the restrictive measure that are imposed by the UN Council, the EU and any other international organization with which the Republic of Macedonia has signed an Agreement. So, the purpose is to see which are the advantages and the disadvantages of the existing Act on the international restrictive measures, to bring up the suggestions and the proposals for better efficiency on this Act, or to consider that the adoption of amendments of Act on the international restrictive measures is needed.

## 2. IMPLEMENTATION OF THE INTERNATIONAL RESTRICTIVE MEASURES BY THE REPUBLIC OF MACEDONIA

The legal base for full and consistent implementation of international restrictive measures in the Republic of Macedonia is the Law on International Restrictive Measures (Hereinafter: the Law). Through the realization of the Law, the Republic of Macedonia gives its contribution to the process of creating and maintaining international peace and security, respect for human rights and freedoms, development of democracy and the rule of law at the national, regional and global levels.

As a country - member of the United Nations (A/RES/47/225, 1993), the implementation of restrictive measures in accordance with Chapter VII of the Charter, is international legal obligation for the Republic of Macedonia.

Based on the conclusions of the Thessaloniki Summit of October 2003, the Council of the European Union approved a separate document for the implementation of the provisions of the political dialogue and cooperation in the field of the Common Foreign and Security Policy (CFSP) between the EU and the countries of the Stabilization and association Process (SAP). Based on this document, the EU is inviting the SAP countries to align declarations and common positions in the CFSP, in which among other joining the documents in the domain of international restrictive measures is included.

The procedure for implementation includes several state institutions and agencies that undertake activities for the implementation of restrictive measures. In order to improve

the overall implementation and coordination between the institutions involved, in 2007 the first Law on international restrictive measures was adopted, which defines the responsibility of each institution, depending on the type of the introduced restrictive measure. Following the recommendation of the Moneyval Committee assessment mission in Macedonia in 2010, based on the shortcomings in the implementation of the above mentioned restrictive measures, in March 2011 the Assembly adopted new Law on implementation of international restrictive measures (The Law on International Restrictive Measures, 2011). The law introduced several novelties such as:

- Harmonization to the internationally adopted definition for financial measures, property, etc.
- Procedure for implementation of the financial measures;
- Introduction of the misdemeanours;
- Establishment of the National Coordination Body and Register of International Restrictive Measures.

### 2.1. Procedure for the introduction and abolition of the international restrictive measures

Upon the proposal of the Ministry of Foreign Affairs, the Government of the Republic of Macedonia shall adopt a Decision introducing a restrictive measure. The decision shall specify the type of restrictive measure, the national authorities competent to implement it, the method of implementation and the time period within which the restrictive measure is to be applied. The Government decision for the introduced restrictive measure and the annex document with the entities for which the restrictive measures are applied, are published in the Official Gazette.

### 2.2. Shortcomings, recommendations and solutions to improve the national procedure

For the purposes of this paper, we conducted a survey and analysis of the procedure for implementation of the legal obligations arising from the international restrictive measures for the period 2014 to 2015 inclusive. Based on the research and the analysis we propose the following recommendations:

#### 2.2.1. Need for establishing a Committee / Directorate for implementing restrictive measures.

Based on the analysis we found that the period since the introduction of restrictive measures by the Security Council at the UN and EU and the decision of the Government for the introduction of restrictive measures is large. The difference of this period is very important especially when required to introduce restrictive financial measures and freezing assets. Therefore, the entities under international sanctions which have property or funds in financial institutions in the country have enough time and space to transfer funds in locations safe for them or withdraw funds in cash and thus to lose further monitoring (Guidelinesonimplementationandevaluationofrestrictivemeasures, 2009). The same goes for the ban on entry / exit, the embargo of goods and services, the embargo of weapons etc. Considering the key element of resolution 1373 of the Security Council according to which, the states have the obligation to freezing without delay funds and assets linked to terrorism (Technical Guide to the Implementation of Security Council Resolution, 2001). In fulfilling this obligation the private sector or financial institutions should be included to undertake activities to identify the customers (whether they are of sanction lists) identifying their property in order for it to be frozen. From here it is necessary to have a

fast-track procedure in order to promptly freeze the assets and funds of entities which are under sanctions. We mentioned that sanctions imposed by the European Union are not legally binding for Macedonia. Macedonia can join them in a suitable way. But the resolutions adopted by the Security Council of the United Nations are legally binding for Member States (as well as the Republic of Macedonia). These decisions should be implemented immediately by Macedonia as a member country (S / RES / 2161, S / RES / 2170, S / RES / 2178, 2014). According to the Guidelines on implementation and evaluation of restrictive measures under the CFSP of the EU, EU Member States may consider the possibility of introducing temporary national measures in relation to financial measures in cases of introduction of restrictive measures by the Security Council UN where the European Union has a obligation to decide on the implementation of resolutions of the Security Council of the United Nations within 30 days. There are two possible solutions to this shortcoming: to the first is to form a separate Directorate for the implementation of international restrictive measures in the framework of the Ministry of Foreign Affairs, and the second solution is to establish a Committee for the implementation of international restrictive measures under the jurisdiction of the Government. In both cases, the institutions mentioned would be responsible for the following:

- Submitting a proposal to the Government to implement the resolutions of the Security Council of the UN for the introduction of restrictive measures immediately upon their publication in the Official Gazette of the United Nations;
- Submitting a proposal to the Government to join the restrictive measures imposed by the EU.
- Submitting a proposal to the Government to join the restrictive measures imposed by other international organizations and third countries;
- Submitting a proposal to the Government for the introduction of restrictive measures for the entities that are proposed by the competent institutions in the country.
- Submitting a proposal to the Government for abolition of the restrictive measures which are previously introduced.
- Preparation of integrated sanction list – all list of entities under sanctions in one integrated list (The UN consolidated sanction list, 2014) that will be managed (Procedure for listing and delisting by decision of the Government) by the Committee / Directorate.
- Procedure for submitting a request for listing / delisting of individuals or entities from the Republic of Macedonia which are suspect or there is a criminal proceedings for the person, group, organization or entity that is involved in the financing, planning, assistance, preparation or execution of acts or actions independently and on its own behalf or by, in conjunction with, under the name of, on behalf or in support of terrorist organizations (Al-Qaida, ISIS, etc.), according to the Criminal Code of the Republic of Macedonia. (S/RES/2253, 2015; S/RES/2083, 2012)
- The Committee / Directorate will be the appointed authority to monitor the implementation of Resolutions 1267, 1373, 2178 and 2253.

### 2.2.2. Integrated list of entities under restrictive measures.

According to Article 6 of the Law, the Government shall make a decision towards the implementation of international restrictive measures imposed on the basis of legally binding resolutions of the UN, the EU legal acts and other international organizations where the Republic of Macedonia is a member. In this section, the law does not give the possibility for the state to impose sanctions against persons in accordance with its domestic legislation. Bulgaria (Measures Against the Financing of Terrorism Act, 2003), Great Britain (Terrorist Assets - Freezing Act, 2010) and Israel (Prohibition on Terrorist Financing Law, 2004) in accordance with its legislation may impose sanctions on entities which maintain criminal proceedings for acts of terrorism or for which the relevant authorities have a solid basis to prove that the persons are terrorists or involved in terrorist activities. In terms of keeping the preventive security policy, the next recommendation would be as follows: the Government on the proposal of the Committee / Directorate for implementing restrictive measures, after receiving a recommendation from the competent institutions on the basis of a reasonable belief that the person is a terrorist, finances, helps encourage terrorism or pursues terrorist activities, is to make judgment / decision for the introduction of restrictive measures. For the above mentioned proposals in the role of recommendations, it should to contribute to amend the Act under which the Government upon the proposal of the Directorate for the implementation of restrictive measures, in the framework of the Ministry of Foreign Affairs or the Committee for the implementation of restrictive measures under the authority of the government, to decide to introduce or terminate the sanctions to entities based on:

- Legally binding UNSC Resolution;
- Legal acts of EU;
- Legal acts of the other International Organizations in which the Republic of Macedonia is a member.
- To join the sanction imposed by third countries;
- Upon the proposal of the Committee/Directorate to implement the restrictive measures after previously received references with justifiable explanations from competent state institutions that the person, group, organization or entity is involved in the financing, planning, assistance, preparation or execution of acts or activities by in conjunction with, under the name of, on behalf or in support of a terrorist organization or independently in their own name;

For all persons for whom the Government made the decision for introducing of restrictive measures, Committee / Directorate will develop an integrated list. The list will be managed (entry and deletion from the sanction list) by the above mentioned institutions. The list will be available for the public and will be posted on the website of the Commission / Directorate, where all persons, companies and institutions will be able to use it.

### 2.2.3. Procedure for listing and delisting (Guidelines of the committee for the conduct of its work, 2002).

In accordance with Resolutions 1267, 1983, 2083 and 2253 of the Security Council of the United Nations, in cases where individuals or entities for which there is a reasonable belief that they are linked to terrorist organizations ISIL (Da'esh) and Al -Qaida, Macedonia is obliged to submit an application to the special committees in the Security Council, in order for these people to be placed on the sanction list. The basis for the

application for an individual, a group or an entity to be placed on the sanction list is as follows:

- To be included in the financing, planning, assistance, preparation or execution of acts or activities by, in conjunction with, under the name of, on behalf or in support of terrorist organizations ISIL (Da'esh) and Al-Qaida;
- Purchase, sale or transfer of arms and related material to the terrorist and terrorist organizations;
- Recruiting for, or other supporting acts or activities of ISIL (Da'esh) and Al-Qaida, or any cell, splinter group or supporters.

Here it should be noted that the funds involved in financing terrorist activities are not limited as a funds only from illegal sources acquired through criminal activity or sale of drugs and other intoxicants, but also covers assets acquired from legal sources. Also, the basis for listing on the list will have the person, group, organization or any entity (entity) that is owned, co-owned or controlled, directly or indirectly, by, or otherwise supported by any individual, group, or entity associated with the ISIL (Da'esh) or Al-Qaida. The Republic of Macedonia will submit to the Committee of the Security Council the application with the proposal for the person, group, organization or entity through the Permanent Mission. The application should be in the standard form prescribed by the Committee on the Security Council. At the same time the Republic of Macedonia will provide information to INTERPOL as a responsible institution to issue a special reminder which must contain the following information:

- For person: surname, first name, other relevant names, date of birth, place of birth, nationality, citizenship, gender, aliases, employment, Country on residence, passport or other travel document or national identification number (ID Number), current and previous address, current status (sought, detained or convicted) possible location.
- For a group, organization or entity: name, registered name, short name (acronym), other names under which the entity is known or was known, address, headquarters, activities, organizational relationships, country, countries of operation, owners and managers, registration number, current status (in liquidation, bankruptcy or active), web address.

After completion of the listing, Committee on the Security Council shall inform the country (in this case the mission of the Republic of Macedonia) that the proposed person is included on a sanction list. For these persons, if the Committee / Directorate previously does not submit a proposal request for the introduction of restrictive measures, it is obliged to submit a proposal / request to the Government to adopt a decision for introducing restrictive measures and to place these persons / entities on the integrated sanction list.

The same procedure also applies to submission of an application for delisting or removing the person, group or entity from the sanction list of ISIL (Da'esh) Al-Qaida adopted by United Nations. Also, persons that have been placed on the list can submit request to the Ombudsman in the Committee on the Security Council in order to remove from the sanction list.

### 2.2.4. Procedure for submitting a request for the introduction of restrictive measures against persons for which criminal proceedings are initiated or are suspected of being terrorists or finance terrorism.

As mentioned above, the Committee / Directorate will be able, upon the proposal of a competent authority, to submit a request / proposal to the Government for the introduction of restrictive measures against individual, group, organization or entity for whom there are justified doubts or initiated criminal proceedings for crime in the area of terrorism in accordance with the provisions of the Criminal Code of the Republic of Macedonia. In cases when the Government decides on the introduction of restrictive measures in accordance with a proposal request, it shall be obliged to inform the Committee / Directorate which has a duty to listing the person to the integrated list. The person, group or entity will be able to appeal the decision of the Government before the Administrative Court of the Republic of Macedonia. The Administrative Court, on the basis of the request, will submit a proposal to the Government for delisting person, group, organization or entity from the list. If the Government adopts a decision for abolitions of the sanctions, the decision should be submitted to the Committee / Directorate in order to delist the designated entities.

### 2.2.5. Procedure to join the restrictive measures introduced by third countries.

Upon a request of a third country, which under its domestic legislation has introduced restrictive measures against certain individuals, groups, organizations or entities, the State may submit a proposal to the Ministry of Foreign Affairs of the Republic of Macedonia to join the restrictive measures imposed by that State. Together with a proposal request, the state should submit reasonable belief that the person is a terrorist, financing, supporting, encouraging terrorism or pursuing terrorists. The Ministry of Foreign Affairs will submit a proposal request for the introduction of restrictive measures introduced by third country to the Government. In the case when the Government decided to join the restrictive measures imposed by third countries, it shall inform the Committee/Directorate who shall make the update of the integrated list.

### 2.2.6. Freezing of the funds and other financial assets or economic resources.

Based on the Government decision for introducing financial restrictive measures, all funds derived from property owned or controlled directly or indirectly, by them or by person acting on their behalf or at their direction should be frozen. The Government shall submit the decision to the Commission / Directorate which will be obliged to update the integrated list and to submit the decision to the relevant competent institution which is obliged to implement. All financial institutions and Agency for Real Estate Cadastre and Central Securities Depository are obliged to frozen all funds and property of the designated entities. In cases where any of the persons for whom the government decided to introduce restrictive measures, wishes to establish business relationship with the abovementioned institutions, they shall to refuse to establish such relations. In case where the abovementioned institutions detect a client who is on the sanction list, they are obliged to freeze all funds and assets and to inform the Committee/Directorate for that. The Committee/Directorate is obliged upon the proposal of International Organization or third country to submit information about that case. For each case of frozen funds and property, the Committee/Directorate will keep a separate register.

### 2.2.7. Procedure for unfreezing part of the funds.

The person, group, organization or entity whose property and assets are frozen by a Government decision, will be able to apply to the competent court, in this case the Administrative Court of the Republic of Macedonia. For this purpose, part of the funds and property are to be available. The Administrative Court will consider the request and will decide for the grounds of using part of the funds or property of the person, group or entity. With the decision, the Administrative Court specifies the conditions of the part of the funds and property to be used. Then Administrative Court is obliged to inform the Committee / Directorate for the adopted decision. The Committee / Directorate note the decision in the registry. It is also obliged to inform the international organization or a third country that for a specific person, group or entity partial use of funds is approved.

### 2.2.8. Supervision of the implementation of the restrictive measures.

Supervising the implementation of the restrictive measures shall perform special teams composed of representatives from the Commission/Directorate, except when supervising financial restrictive measures, where a combined team from representatives of the Commission/DG and of the Financial Intelligence Unit shall be formed. At the same time the Financial Intelligence Unit has an inspection for supervision of implementation of measures and activities for prevention of money laundering and terrorist financing over financial and nonfinancial institutions.

## 3. CONCLUSION

An important precondition is to have faith in the system of the collective security and to participate together in the building of the system for its better functioning. The system for implementing restrictive measures is also an important precondition in building a system of collective security. This system should be effective. After analyzing over the manner of the implementation of restrictive measures in the country, we provide specific proposals in order to address the shortcomings.

Therefore, we suggest the establishment of a special committee who will be responsible for a procedure of introduction and abolition of restrictive measures, their implementation, coordination of implementation of restrictive measures, records keeping and other issues relating to restrictive measures. A novelty is the proposed preparation of an integrated list that shall include all entities for which Government has introduce restrictive measures. The Committee will manage the integrated list. It also suggests joining of the restrictive measures at the request of third countries in accordance with the recommendations by Moneyval and in accordance with international legislation, and opportunity for the Government on the proposal of the Committee and after the previously received justified knowledge that the person is a terrorist or involved in a terrorist organization, group or cell or finances terrorism restrictive measures are to be introduced. In line with the international documents, the Republic of Macedonia with new proposals for new legislation will have an opportunity to propose persons of sanction lists established by the international organizations and proposed to third countries to introduce restrictive measures against certain individuals, groups, organizations and entities which are terrorist, terrorist organization, financing of terrorism, etc.

## 4. REFERENCES


Anthony, I., (2002). Sanctions applied by the European Union and United Nation. SIPRI Yearbook. pp. 200 - 210.

Charter of the United Nations and Statute of the international court of justice. San Francisco. 1945.

Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union - Consolidated version of the Treaty on the Functioning of the European Union, Official Journal C 326, 26/10/2012 P. 0001 – 0390.

Council Decision 2012/35CFSP of 23 January 2012, Official Journal of the European Union from 24.1.2012.

Cremona, M. (2009). EC Competence "Smart sanctions" and the Kadi case. Yearbook of European law, 28(1).

Eckes C. (2009). EU Counter-Terrorism Policx and Fundamental Rights. Oxford University Press, Oxford.

EU sanction list http://eeas.europa.eu/cfsp/sanctions/consol-list_en.htm;

Giumelli, F. (2013). How EU sanctions work: a new narrative, Challot papers No.123, Institute for Security Studies.

Guidelines of the committee for the conduct of its work (Paragraph 6 and 7), 7 November 2002 as amended on 10 April 2003, 21 December 2005, 29 November 2006, 12 February 2007, 9 December 2008, 22 July 2010, 26 January 2011, 30 November 2011, and 15 April 2013, Security Council Committee pursuant to Resolutions 1267 (1999) and 1989 (2011) concerning Al-Qaida and associated individuals and entities, (p.4 - 8)

Guidelinesonimplementationandevaluationofrestrictivemeasures (sanctions) intheframeworkofthe EU CommonForeignandSecurityPolicy, General Secretariat of the Council of European Union, Brussels, 17464/09.

Law on restrictive measures on R. Macedonia, Official Gazette No.36/07 from 23.03.2007

Law on restrictive measures on R. Macedonia, Official Gazette No.36/11 from 23.03.2011

Measures Against the Financing of Terrorism Act, Official Gazette No. 16/18.02.2003, amended, SG No. 31/4.04.2003, amended and supplemented, SG No. 19/1.03.2005, amended, SG No. 59/21.07.2006, effective as from the date of entry into force of the Treaty of Accession of the Republic of Bulgaria to the European Union - 1.01.2007, amended and supplemented, SG No. 92/13.11.2007, SG No. 109/20.12.2007, effective 1.01.2008.

Poretela, C. (2010). European Union sanctions and Foreign Policy: when and why do the work, London: Routledge; Basic Principles on the Use of Restrictive Measures (Sanctions).

Portela, C. (2015). Member states resistance to EU foreign policy sanctions, European foreign affairs Review 20. p. 39-62.

Prohibition on Terrorist Financing Law. Chapter Two: Declaration That a Foreign Person is a Terrorist Activist or That a Foreign Organization is a Terrorist Organization in accordance with a Determination Outside of Israel. 5765 - 2004.

Resolution A/RES/47/225. United Nations. 1993.

Resolutions (S / RES / 2161, S / RES / 2170, S / RES / 2178) relating to the freezing of assets, travel ban, embargo of arms to entities ISIS terrorist organization, and Government has not adopted decison to implement them, Security Council, 2014.

Svoboda, P,; Sison II. (2012). EU non-contractual liability for damages and the so-called smart sanctions; The lawyer Quarterly Vol.4.
Technical Guide to the Implementation of Security Council Resolution 1373(2001), Complied by Counter-Terrorism Committee Executive Directorate. Public Information Office, 2009
Terrorist Asset-Freezing Act 2010. http://www.legislation.gov.uk/ukpga/2010/38/2010-12-17.
The Charter of the United Nations (1945), San Francisco. http://www.un.org/en/charter-united-nations/, last accessed 31.01.2016.
Trybus, M., White, N., (2007). European security law, Oxford university press, Oxford
http://curia.europa.eu/juris/liste.jsf?language=en&num=T-384/11%20R
http://eeas.europa.eu/cfsp/sanctions/docs/measures_en.pdf
http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:344:0093:0096:EN:PDF
http://www.sobranie.mk/the-constitution-of-the-republic-of-macedonia.nspx
S/RES/2253 (2015)
http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2253(2015), and
S/RES/2083 (2012) http://unscr.com/en/resolutions/doc/2083, last accessed 31.01.2016.
UN consolidated sanction list
https://www.un.org/sc/suborg/sites/www.un.org.sc.suborg/files/consolidated.pdf, last accessed 31.01.2016 .
US Department of the Treasury, https://www.treasury.gov/ofac/downloads/t11sdn.pdf
last accessed 31.01.2016.

UDK:341.231.14-022.326.5(4-672ЕУ)

# CRISIS MANAGEMENT OF THE EUROPEAN UNION AND THE HUMAN RIGHTS ASPECT – CASE STUDIES

***Ivica Josifovic, Dr.Sc***
*e-mail: ivicajosifovic@yahoo.com*

**Abstract**

The promotion and protection of human rights is one of the primary objectives of the European Union's foreign policy – and thus of the European Security and Defence Policy (ESDP). It is a guiding principle in the military operations of the EU, and with the strengthening of the civil-military co-operation and the development of purely civilian instruments for crisis management, human rights protection should and will increase in importance for crisis management of the EU. This paper examines the role which human rights protection plays today in ESDP operations. It reaches the conclusion that, from a normative perspective, a solid set of human rights rules and guidelines for ESDP operations have been developed. In practice, however, the integration of human rights components in ESDP missions has just begun. This paper considers the strengthening of the civil component and the integration of human rights as well as the implementation of fundamental steps for successful EU missions in conflict regions. For this purpose, case studies are included which have exclusive importance for the region and its security (Concordia and PROXIMA in Macedonia and ALTHEA and Police mission in Bosnia and Herzegovina). The study concludes with a set of recommendations for strengthening human rights as an element of the ESDP.

***Key words:*** *European Union, security, human rights, cases.*

## 1. INTRODUCTION

The European Security and Defence Policy was created at the European Council Summit in Cologne in June 1999, when stared the development of military and civilian capabilities for conflict prevention and crisis management in order to strengthen the EU's capacity for external actions (Cologne European Council, 1999). At the Nice Summit in December 2000 new innovations were created such as the High Representative for Common Foreign and Security Policy, the Political and Security Committee, the EU Military Committee and the EU Military Staff (Nice European Council, 2000). At the Laeken Summit in December 2001, the European Council officially confirmed that the Union is capable of undertaking wide range of military and civilian crisis management operations from peace missions and rule of law to protection of human rights (Council of the EU, 15891/05, 2005).

As far as the military capabilities, member-states at the Helsinki Summit in December 1999, introduced the Headline Goal declaring that EU is capable of setting 60.000 troops, deployable for 60 days and sustainable for one year (Helsinki European Council, 1999). In 2004, the Headline Goal was further elaborated introducing the battle groups, European Defence Agency, European Gendarmerie Force and civil-military cells. Regarding civilian crisis management capabilities, at the European Council Summit in

Santa Maria de Feira in June 2000 action areas were confirmed: police, rule of law, civil administration and civil protection, subsequently complemented with monitoring and support for EU's special representatives (Santa Maria de Feira European Council, 2000).

At the beginning, nearly 400 experts have been named by member-states to cover human rights, including a few human rights experts. Since 2008, member-states started to increase the number of human rights experts in line with EU human rights policy and presently more than 5.500 police officers, more than 600 rule of law experts, 500 for civil administration and nearly 5000 for civil protection are dealing with human rights issues.

In the ESDP frame, the human rights are included in the following structures:

- Council Working Group on Human Rights;
- CFSP's HR Personal Representative on Human Rights;
- Directorate-General IV dealing with Transatlantic Relations, UN and Human Rights, Directorate-General VII with ESDP, Directorate-General VIII with Defence Aspects, and Directorate-General IX with Civilian Crisis Management and Coordination.

However, it may be concluded that the human rights are not shaped as a separate category of tasks within ESDP activities of civilian crisis management.

## 2. ESDP AND HUMAN RIGHTS

The Lisbon Treaty in article 2 stipulates that the "The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights" as values common to the member-states, while in article 6 is stipulated that the "The Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union", as well as that the "Union shall accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms … as they result from the constitutional traditions common to the member-states" (Consolidated Versionsof the Treaty on European Union and the Treatyon the Functioning of the European Union, OJC 83/1, 2010). Regarding quoted standards, the Court of Justice of the EU draws its inspiration not only from the ECHR and constitutional traditions of the member-states, but also from the international instruments for protection of human rights to which member-states are signatories (European Court of Justice, Case C-540/03, 2006).

Title 5 of the Lisbon Treaty, in the CFSP provisions, underlines several goals, from which one of them points out that the "Union shall define and pursue common policies and actions … in order to … consolidate and support democracy, the rule of law, human rights and the principles of international law." Such commitment also covers the ESDP as a part of the CFSP. On one side, it is underlined that the EU's political goals are oriented towards all external actions, and on the other side, with its acts the Union is obliged with human rights.

Serious problem that might arise in every peace mission is the human rights violation from the member-states staff participating in the mission. Does the local population, in such case, have access to effective legal remedy? This reaches the issue of extraterritorial importance and applicability of human rights conventions ratified by member-states participating in missions (European Court of Human Rights, Appl. No. 52207/99, 2001).

As a consequence of EU's commitments on human rights, the Council adopted numerous guidelines for human rights: on death penalty (1998), on torture and other cruel,

inhuman and degrading treatment (2001), on dialogue with third countries regarding human rights (2001), on children in armed conflicts (2003), on the protection of human rights defenders (2004), conclusions on promoting gender equality and gender mainstreaming in crisis management (2006), as well as the guidelines on the promotion of international humanitarian law as an instrument for promoting human rights.

## 3. STANDARDS FOR MISSION'S PERSONNEL

In line with the EU's commitments, several legal obligations persist for the personnel engaged in ESDP operations. The personnel must apply provisions of the international law, including the law in armed conflicts and the law of the state subject of intervention. The operational plan for Concordia military operation in Macedonia underlines that the "the use of force by EU forces will be governed by the principles of necessity and proportionality (Council of the EU, 7855/03, 2003). While the bases of the EU's mission in Macedonia include UN determinations, EU forces will respect local law". Therefore, the confirmation for applying the law of the region at stake from the beginning of the intervention is a necessary precondition; if the local law reflects the human right in better manner, it must be applied. Mission personnel must respect international human rights and standards in all times and full cooperation is needed with all human rights mechanisms.

On the other side, the local population are the main victims of internal conflicts and in order to protect them it is of great importance to promote rules for appropriate use of force and code of conduct. Standards of behaviour were drafted after several accusations in Bosnia (Human Rights Watch, 2002). In November 2003, "Draft guidelines on Protection of Civilians in EU-led crisis management operations", were adopted, as well as the "Generic Standards of Behaviour for ESDP Operations" in May 2005 (Council of the EU, 14805/03, 2003; Council of the EU 8373/3/05, 2005). The Draft Guidelines were developed in order to secure that the needs for protection, right and assistance for civilians are fully addressed in EU's crisis management operations. The Generic Standards complement the Guidelines and legal obligations according international law and the law of the participating states.

What are the procedures if misconduct emerges, such as the human rights violations, which is considered to be quite serious and sensitive issue? There is no available information on cases of human rights violations in EU operations. However, there are examples of neglect of duty or malfeasance in EU operations, confirmed in PROXIMA and Aceh (International Crisis Group, 2006). In cases of misconduct or violation additional disciplinary measures are to be undertaken, independent of possible criminal procedures. Regarding criminal procedures, the mission's personnel are under exclusive jurisdiction of their states and such exclusivity may result in problematic jurisdiction gaps, especially in cases of misconduct against the local population. Regarding military operation, for example, Operation Artemis in Congo, underlines that in the time of the operation the personnel of the sending state is under immunity from arrest or detention and immunity from legal process regarding any act done by them (Joint Action 2003/423/CFSP).

Common for the civilian operations personnel are "granted all privileges and immunities equivalent to that of diplomatic agents, according Vienna Convention on Diplomatic Relations of 18 April 1961, subject to which the EU member-states shall have priority of jurisdiction" (Council of the EU, 15705/1/03, 2003). Only the HR may waive

the personnel's immunity "where such immunity would impede the course of justice," but only with explicit consent of the sending state (Council of the EU,13972/04, 2004). The Council Decision on Conclusion of an agreement between EU and Indonesia on the mission's monitoring status in Aceh (MMA) and its staff secured that the personnel shall not be liable to any form of arrest or detention and execution measures shall not be undertaken, except in civilian procedure cases regarding their official functions. Therefore, the MMA personnel had immunity from the jurisdiction of Indonesia, but was subject of jurisdiction from their sending states (Council of the EU, 12504/05 2005).

The rules and procedures for disciplinary measures for misconduct differ for civilian and military personnel. In the case of the military operation in Congo, EU secured that the personnel of the sending states remain members of their armed forces, thus under its command and under its law during the operation. In cases of misconduct by the mission's personnel, the Operational Command is responsible for disciplinary measures. If such case is reported to the authorities of the domestic state, the Operational Command shall be informed and the person in question shall be handed over the Operational Command; disciplinary measures shall be undertaken and, if necessary, effective repatriation (Council of the EU, 10773/03, 2003). For civilian missions, the Head of mission is usually responsible for disciplinary control over the staff. Regarding civilian personnel of member-states, third parties or EU institutions, full disciplinary jurisdiction is retained by relevant national authorities or authorities within the EU institutions (Council Joint Action 2005/643/CFSP). The final disciplinary sanction is dismissal and return to the sending state, which should undertake additional measures regarding criminal jurisdiction.

## 4. ESDP OPERATIONS AND HUMAN RIGHTS (CASE STUDIES)

**Concordia (Macedonia).** The first EU military operation Concordia in Macedonia started on 31st of March, upon the request of the government of Macedonia, and lasted until 15th of December with the objective to improve the overall security situation and contribute for stable and safe environment to allow implementation the Ohrid Framework Agreement from August 2001 (Council Joint Action 2003/92/CFSP). Regarding the human rights aspect, **human rights were not explicitly mentioned in the mandate.** The provisions for visible military presence, especially in areas of potential instable and ethnic tension, in order to support confidence building and stability and support for international community monitors, contributed for the stabilization and improvement of the security situation, which in turn had great meaning for the protection and promotion of human rights.

**EUFOR ALTHEA (Bosnia and Herzegovina).** In Bosnia and Herzegovina, EU sends its largest ESDP military operation, EUFOR ALTHEA, on 2nd of December 2004, in an environment where numerous regional and international actors are operating (Council Joint Action 2004/570/CFSP). The main responsibility for human rights is entrusted to the OSCE mission. In addition to its main mission for securing free and safe environment, ALTHEA also is tasked to secure fight against organized crime and to offer capacity building for local authorities and law enforcement agencies.

At the beginning, ALTHEA was criticized for its limited defined mandate, focusing more on the organized crime and for including monitoring tasks even though the EU already had two missions in Bosnia and Herzegovina which carried monitoring tasks and related to security and law enforcement issues (International Crisis Group, 2004). Despite the assumptions that ALTHEA might be a test for ESDP capabilities, there were

various activities in areas of human rights importance, **although the mission's mandate does not directly refer to human rights.** That includes special support for the International Criminal Tribunal for former Yugoslavia (ICTY) and relevant authorities, including detention of persons indicted for war crimes (Council of the EU 15891/05, 2005). In 2004 the Amnesty International called the EU to secure that the EUFOR ALTHEA actively seeks those indicted by the ICTY for genocide, war crimes and crimes against humanity, since the organization accused SFOR for human rights violations, including unlawful detention (Amnesty International, 2004). EUFOR collected intelligence on criminal networks supporting the suspects of war crimes and conducted search operations and attempts to apprehend fugitives. As a conclusion, EUFOR actively contributed for the environment in Bosnia and Herzegovina that is favourable for establishing a human rights culture. This was confirmed by the pools which showed that the population looked at the ALTHEA as an essential part for the security and stability (WEU Inter-parliamentary Assembly, 2006).

**EUPM (Bosnia and Herzegovina).** EU Police mission in Bosnia and Herzegovina started in January 2003with 500 international police officers, replacing the UN's international police officers established according the Dayton Agreement of 1995 (Council Decision 2002/845/CFSP). When the initial period of three years expired at the end of 2005 (EUPM I), EU agreed on a refocused mandate for lower-scale mission (EUPM II). EUPM I mandate focused mainly on strengthening the state security institutions, support for local police in the fight against organized crime, conducting inspections and monitoring of police operations and supporting the implementation of police restructuring. In EUPM mandate, **these responsibilities are not explicitly connected with human rights.** However, many of the EUPM tasks represent important steps to prepare the ground for human rights culture: capacity and institution building in the field of policing and the rule of law and protection of refugees. Regarding the importance of human rights within the mission's work, the HR in a letter from 2nd of December 2002 to Amnesty International, clarified that: "A professional, European police service is one that incorporates a human rights-based approach into all aspects of its work ... we will mainstream a human rights-based approach ... include human rights reporting in their reports from the field.

**EUPOL PROXIMA (Macedonia).** The second ESDP Police mission, EUPOL PROXIMA, started upon the request of the President Trajkovski – firstly from 15th of December 2003 until 15th of December 2004, but latter extended for an additional year (Council Joint Action 2003/681/CFSP; Council Joint Action 2004/789/CFSP). In line with the Framework Agreement from August 2001, PROXIMA focused on gradual stabilization of the country. According former Head of Mission, Jürgen Scholz, **PROXIMA had strong human rights focus (not mentioned in the mission's mandate)** which embraced the human rights tasks of monitoring and capacity building. Other activities directly connected with human rights included monitoring the treatment of detainees in police stations with subsequent reports to the government and international organizations. Included in the fight against human trafficking, PROXIMA's main objective regarding this matter was to raise the awareness and to improve the capabilities in investigating suspicious cases. It was confirmed that the human rights aspect found expression in the planning of the operation and in the work of the mission. Human rights knowledge was taken into consideration during the selection of the personnel and included in the training. One of the organizations PROXIMA cooperated was OSCE, which had special mandate for dealing with human rights issues.

**Artemis, EUFOR Congo and EUSEC Congo.** EU, in response to the UN's General Secretary Request, deployed its mission Artemis in Congo on 12th of June 2003, after a series of human rights violations in the Ituri province (Council Joint Action 2003/423/CFSP). The operation was first out of Europe and first autonomous outside NATO. Mission tasks were stabilizing the security conditions and improvement of the humanitarian situation in Bunia (Ituri's capital city), protection of the civil population, the UN staff and the humanitarian presence. Still, atrocities continued because of the mission's limited mandate, which, according Amnesty, contributed the human rights violations to continue during 2005 and 2006 and until today EU faces accusations that not enough effort has been made towards improvement of the situation in Congo (Amnesty International, 2006).

For that cause, EU undertook second autonomous mission in Congo that lasted from 25th of April till 30th of November 2006, in time of state elections and for purpose of stabilizing the situation. **Although human rights were not mentioned in the mandate,** this second mission was much more relevant for human rights protection and protection not only of the physical safety of the population but also of their ability to exercise political rights. The mission was the first to have Gender Advisor on the field for integration of gender perspective and strong focus on women's rights. Two central human rights focal points were assigned for the operation in Operation Headquarters and Field Headquarters responsible for all operational legal issues, particularly the Law of Armed Conflicts, human Rights Law and others. The decision not to appoint human rights advisors but focal points is because of the mission's short period (4 months) and the permanent presence of the UN and EU. Further, legal advisor in the Field Headquarters acted as a Gender Officer. These focal points were able to secure respect of human rights and establishment of efficient reporting system for controlling the personnel's conduct and evaluation of the human rights situation.

The third operation in Congo refers to security sector reform and started in June 2005. It is a mission for capacity building by assigning military experts in the administration with mandate to support the security sector reforms and to promote policies compatible with human rights and international humanitarian law, with democratic standards, rule of law, etc. (Council Joint Action 2005/355/CFSP) Human rights thus were specifically emphasized in the mandate. Practical goal of the mission was to assist the authorities in establishing a national army, by integrating all former rebels. Still, it was confirmed that although there were examples of positive conduct, also persisted the routine use of physical violence against civilians committed by soldiers. As a result, the army is still far the largest human rights violator.

**Monitoring mission in Aceh.** Monitoring mission in Aceh (MMA), established in September 2005 is the first ESDP monitoring mission and first mission in Asia (Council Joint Action 2005/643/CFSP). Mission activities opened the road for peace in Aceh, by signing the Memorandum of Understanding (MoU) between the Government of Indonesia and the Free Aceh Movement (FAM) on 15th of August 2005.The MMA goal was to help the Government of Indonesia and the FAM in their implementation of the MoU. According the MoU terms, the MMA had the task to monitor the human rights situation on the field. Monitoring focused on demobilization of the FAM and integration in the entire legal system and establishment of independent judicial system. Further, the mission had the duty to rule on amnesty cases. Still, the monitoring of human rights was limited on human rights violations that happened after the signing of the MoU, which meant that the MMA was not

mandate to inspect previous human rights violations and the EU was criticized for not including the transitional justice in the mission's mandate.

Another goal of the mission was strengthening the civil society and national institutions in the field of human rights with the intention of facilitating the implementation of the human rights. The mission thus explicitly had human rights in its mandate regarding the monitoring function. Human rights were also mentioned in the MoU as the basis of the Law of Governing Aceh and special training on human rights. For that purpose, the European Commission supported the creation of Human Rights Court and a Commission for Truth and Reconciliation. For the first time in one ESDP mission, the HR's personal representative on human rights was consulted to give advice on human rights aspects and for the first time the EU send human rights monitors in a context of a crisis management operation and for the first time one mission appointed a deputy head of mission for amnesty, reintegration and human rights.

## 5. CONCLUSIONS AND RECOMMENDATIONS

EU's military operations were able to contribute towards creation of safe environment in crisis regions which is a pre-condition for protection of human rights and prevention of further violence. For example, EU's mission mandate in Congo, explicitly mentioned that the policies are to be promoted compatible with mission tasks and be carried out in full respect of human rights.

Regarding civilian operations, only two of them – EUJUST LEX in Iraq and MMA – had explicit mandate in conducting human rights related tasks. However, all missions dedicated significant attention on human rights protection. Most of the human rights activities in ESDP crisis management operations are short-term measures for securing the protection of human rights and the rule of law, since most of the EU's operations had short-term instruments which cannot provide lasting results. The human rights aspects within the missions and operations, may contribute for stability and conflict prevention, particularly if embedded in a long-term strategy involving other civilian actors.

Although the human rights policy development in ESDP, it is still comparatively young. Progress is necessary in strengthening the human rights and gender mainstreaming, as well as the improvement of training and evaluation procedures of ESDP operations. The respect of human rights entered in many ESDP documents, but in practice, human rights are included only in limited extent. Still, there is an increase of efforts for strengthening the human rights in ESDP missions. Human rights and gender advisors are already part of some missions, while human rights experts opened discussions for including the human rights aspects in all future ESDP missions, as well as the education and training of mission's personnel on human rights issues. On the other side, it is still difficult to identify explicit and systematic approach for human rights as an aim within the ESDP frame.

These recommendations are of significant importance for human rights aspects in ESDP missions: (a) EU should emphasize the civilian aspect of ESDP missions and use their potential for proactive design of civilian intervention; (b) Human rights components in EU missions should be based on strong and comprehensive mandate, which should establish clear directions for mission's personnel to report on human rights violations by the conflicting parties; (c) Every mission should include permanent human rights and gender advisors in the headquarters; (d) All ESDP missions should implement EU's human rights guidelines; (e) EU should work on detailed regulations for dealing with allegations

on human rights violations by the mission's personnel; (f) EU should evaluate its missions with their impact on human rights and draw lessons for future missions; (g) EU member-states in cooperation with the EU Council, should work on human rights elements to be integrated in all education courses by the European Security and Defence College and to secure training on human rights for the mission's personnel; (h) EU should provide consultations and regular dialogues with international, national and local NGO's for human rights for the whole period of missions.

## 6. REFERENCES


1. Amnesty International (2004), Launch of EU Military Operation in Bosnia-Herzegovina; Operation ALTHEA-EUFOR;
2. Amnesty International (2006), Peacekeeping Best Practices Unit, AI Index: AFR 62/017/2006;
3. Cologne European Council (1999), Presidency Conclusions, Cologne, June 3-4;
4. Consolidated Versions of the Treaty on European Union and the Treaty on the Functioning of the European Union (2010), OJ C 83/1, March 30;
5. Council Decision 2002/845/CFSP (2002) concerning the conclusion of the Agreement between the EU and Bosnia and Herzegovina on the activities of the EU Police Mission (EUPM) in Bosnia and Herzegovina, OJ L 293, Brussels;
6. Council Joint Action 2003/423/CFSP (2003) on the EU military operation in the Democratic Republic of Congo, OJ L 143;
7. Council Joint Action 2003/92/CFSP (2003) on the European Union military operation in the Former Yugoslav Republic of Macedonia, OJ L 34, Brussels;
8. Council Joint Action 2003/681/CFSP (2003) on the European Union Police Mission in the Former Yugoslav Republic of Macedonia (EUPOL PROXIMA), OJ L 249, Brussels;
9. Council Joint Action 2004/570/CFSP (2004) on the European Union military operation in Bosnia and Herzegovina, OJ L 252, Brussels;
10. Council Joint Action 2004/789/CFSP (2004) on the extension of the European Union Police Mission in the Former Yugoslav Republic of Macedonia (EUPOL PROXIMA), OJ L 348, Brussels;
11. Council Joint Action 2005/355/CFSP (2005) on the European Union mission to provide advice and assistance for security sector reform in the Democratic Republic of Congo, OJ L 112 Brussels;
12. Council Joint Action 2005/643/CFSP (2005) on the European Union Monitoring Mission in Aceh, Indonesia, OJ L 234, Brussels;
13. Council of the EU 10773/03 (2003), Agreements between the EU and the Republic of Uganda and the Democratic Republic of Congo on the status of forces of the EU Military Operation in the Democratic Republic of Congo, Brussels;
14. Council of the EU 12504/05 (2005), Council Decision concerning the Conclusion of the Agreement in the form of an exchange of letters between the EU and the Government of Indonesia on the tasks, status, privileges and immunities of the EU Monitoring Mission in Aceh (Indonesia) and its personnel, Brussels;

15. Council of the EU 13972/04 (2004), Council Decision concerning the Conclusion of the Agreement between the European Union and Georgia on the status and activities of the EU Rule of Law Mission in Georgia EUJUST THEMIS, Brussels;
16. Council of the EU 14805/03 (2003), Draft Guidelines on Protection of Civilians in EU-led Crisis Management Operations, Brussels;
17. Council of the EU 15705/1/03 (2003), Agreement between the EU and FYROM on the status and activities of the European Union Police Mission EUPOL PROXIMA in the FYROM, Brussels;
18. Council of the EU 15891/05 (2005), Presidency Report on ESDP, Brussels, December 19;
19. Council of the EU 7855/03 (2003), Sanitised Version of the FYROM Operation Plan;
20. Council of the EU 8373/3/05 (2005), Generic Standards of Behaviour for ESDP Operations, Brussels;
21. European Court of Human Rights (2001), Bankovic and Others vs. Belgium and 16 other Contracting States, Appl. No. 52207/99;
22. European Court of Justice (2006), Judgement of 27 June 2006, Case C-540/03;
23. Helsinki European Council (1999), Presidency Conclusions, Helsinki, December 10-11;
24. Human Rights Watch (2002), Bosnia and Herzegovina, Hopes Betrayed: Trafficking of Women and Girls to Post – Conflict Bosnia and Herzegovina for Forced Prostitution, Vol. 14, No.9;
25. International Crisis Group (2004), EUFOR: Changing Bosnia's Security Arrangements, Europe Briefing N°31, Sarajevo/Brussels;
26. International Crisis Group (2006), Aceh: Now for the Hard Part, Asia Briefing N°48;
27. International Crisis Group (2006), Security Sector Reform in the Congo, Africa Report N° 104;
28. Nice European Council (2000), Presidency Conclusions, Nice, December 7-9;
29. Santa Maria De Feira (2000), Presidency Conclusions, Santa Maria de Feira, June 19-20;
30. WEU Inter-parliamentary Assembly of Security and Defence Policy (2006), ALTHEA – a symbol of ESDP success, Paris.

UDK:341.794-022.236.5(4-672ЕУ)

# INTERNATIONAL MISSIONS IN THE RULE OF LAW OF THE EUROPEAN UNION

***Marjan Arsovsku, Dr. Sc***
*e-mail: arsovskim@yahoo.com*
*Facultyof Security – Skopje, St Kliment Ohridski University - Bitola,*
*Republic of Macedonia*

**Abstract**

Following the Kosovo war in 1999, the European Council agreed that "the Union must have the capacity for autonomous action, backed by credible military and police forces, the means to decide to use them, and the readiness to do so, in order to respond to international crises without prejudice to actions by NATO. The creation of an EU capacity for crisis management has been set by the European Councils of Nice and Göteborg in order to be capable of covering a full range of police missions from training, advisory and monitoring missions to executive missions. In order to meet these EU goals at the Police Capabilities Commitment Conference in 2001 the Member States of the Union undertook responsibility to provide 5000 police officers by 2003, out of which 1400 police officers could be deployed within thirty days.Thus from 2003, EU's ESDP began to function effectively by conducting its first military, police and rule of law missions in the European concretely the Balkans, and at international level beyond the European continent, such as middle east. The ongoing EU Rule of Law mission in Kosovo (EUPLEX), EUBAM: European Union Border Assistance Mission to Moldova and Ukraine represent a test of EU crisis management capabilities. They were established for monitoring, mentoring and advising the countries' police and administration, thus helping to fight organized crime as well as promoting European democratic standards.
In this context the research paper aims to show the positive and negative experiences of the EU Rule of Law mission in Kosovo (EUPLEX), European Union Border Assistance Mission to Moldova and Ukraine (EUBAM) thus serving to point out the perspectives for future developments and improvements in conducting rule of law missions at the international scene by the European Union.

*Keywords: rule of law, European Union, crisis management missions.*

## 1. INTRODUCTION

Rule of law is a legal maxim which suggests that governmental decisions be made by applying known principles as the ancient philosophers Aristotle, wrote that "Law should govern". The Rule of Law is the foundation of a civilized society. It creates a transparent process accessible and equal to all. It ensures adherence to principles that both liberate and protect.

However there is a huge gap between the rule of law in theory and reality. Questions will be asked of whether the police fabricate the evidence, the prosecutor will bother to proceed and the case will be completed within a reasonable time.

The beginnings of the Rule of law in the Western philosophy can be found in the Ancient Greece where in deeply was analyzed the best form of government. Primarily, Plato promoted the theory that the best men (king) would be good at respecting established laws, explaining that "Where the law is subject to some other authority and has none of its own, the collapse of the state, in my view, is not far off; but if law is the master of the government and the government is its slave, then the situation is full of promise and men enjoy all the blessings that the gods shower on a state."[1] Moreover, Aristotle showed even closer the power of the highest officials by presenting them as guarding and serving the laws. In other words, Aristotle promoted the rule of law as that is more proper that law should govern than any one of the citizens, i.e. if it is advantageous to place the supreme power in some particular persons, they should be appointed to be only guardians, and the servants of the laws.

During the Roman Republic, controversial magistrates might be put on trial when their terms of office expired in which times the roman statesman Cicero stated that "We are all servants of the laws in order that we may be free."

In the middle Ages a similar development occurred in England in 1215 where King John by signing Magna Carta partially judges himself and England's future rulers which placed his ruling within the rule of law. Great ideas come from the distant past, without knowing exactly their initial development and their author. They penetrate us and change us with new content. And then they go to some other build the other horizons as universal ideas: "The group of such ideas includes the notion of separation of powers."[2] What better functioning of the legal state, the better democracy in terms of the functioning of the system values. A philosopher of law Michael Oakeshott said in his book "The rule of law does not make bread and cannot hungry to grant loaf and fish because it would, at the same time it cannot protect itself from the outside, but the rule the right remains unique conception of a state as such should be done.[3]

Nowadays, the principal of the Rule of law at international level is defined by the Secretary-General of the United Nations as:

"A principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards."[4]

## 2. INTERNATIONAL RULE OF LAW MISSIONS OF THE EUROPEAN UNION

The world is changing and Europe faces an increasingly complex and uncertain security environment. As the world's largest trading and economic bloc, there is a growing demand for the European Union to become more capable, more coherent and more strategic as a global actor.[5] The EU disposes of a unique array of instruments to help

[1] Svetomir Shkaric and Gjorgje Ivanov:*Political theories - Antique*, Faculty of Law, 2006

[2]Слободан Милачич, Далоз, Парис,2009,сттр- 31.

[3]Michael Joseph Oakeshott,*On History and Other Essays*(1983) Oxford, Basil Blackwell.

[4]Report of theSecretary-General of the UN (S/2004/616)
http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N04/395/29/PDF/N0439529.pdf?OpenElement

[5] Arsovski Marjan, " International police missions and operations of the European Union "Proceedings of the International Scientific Conference The Balkans Between Past and Future:

promote peace and security where needed. From the very beginning of the creation of the European Security and Defense Policy (ESDP) as part of the Common Foreign and Security Policy (CFSP) of the European Union (EU), there have never been stressed that there will be military component that in any way would be parallel the that of United States and would jeopardize its global ambitions. On many occasions it was stressed that there has been direction towards resolving regional crises and in no way implies the creation of a European army and police. With the end of the Cold War, Americans and Europeans on several occasions entered in conflict about the need for the existence of North Atlantic Treaty Organization (NATO) and American domination in it. This dilemma was resolved with the wars in Yugoslavia where for the first time from its existence, an action by NATO has been conduct, which justifies its existence. Unlike previous relations, marking the intervention in Iraq a split was made in transatlantic relations between the European Union nations which started seriously building of coherence and credibility in the European CFSP. Europe increasingly emphasized the need of autonomy for the European defense and security system, despite strong ties with NATO and dominant role of the United States in it. Taking into account all the circumstances, serious development of ESDP is seen after the Kosovo crisis in 1999 which later was the main encouragement for the spectacular growth of the second pillar. Thus from 2003 EU's ESDP began to function effectively by conducting its first rule of law and police missions in the European concretely the Balkans, and at international level beyond the European continent.

## 3. INTERNATIONAL MISSION OF RULE OF LAW OF THE EU IN KOSOVO

Negotiations on the status of Kosovo started after Special Representative of the Secretary General Kai Eide in October 24 presented a report that Kosovo still has not met the standards and that they would not be met and further if not start negotiations on the status, because the two opposing sides were with diametrically opposed views. Accordingly, ethnic relations remain tense with frequent accidents, stalled in the return of refugees and unresolved property relations. On the other hand, there is progress in the reform of the institutional structures.[6]Security Council of the United Nations accepts the report and agrees with the opinion of the Special Representative, stressing that still need to work on the protection of minorities, return of refugees and the development of decentralization in Kosovo. After finding of the report, the Secretary-General of the United Nations offers the former President of Finland Martti Ahtisaari as Special Representative of the UN negotiations on the future status of Kosovo, the Security Council elected on November 10, 2005.[7] Despite the reservations of the European Union that it takes more time, however negotiations on Kosovo's status formally begin with strong insistence by the United States in 2006 and through the United Nations. At least three basic conditionsare set before negotiations: 1 - There is no division of the province of separate entities (e.g. Serbian Mitrovica), 2 - No union with any other country (e.g. Albania) and 3 - No return to

---

Security, Conflict Resolution and Euro-Atlantic Integration, held in Ohrid, Faculty of Security, Skopje, Vol. I, 2013, p. 441-445

[6] Security Council Presidential Statement offers full support for the Start of Political Process to Determine Kosovo's Future Status. SC/85333, 24.10.2005 New York

[7] Secretary General appoints MarttiAhtisaari for Special Envoy for the Future Status process for the Kosovo, SG/A/955-BIO3714, 15.11.2005 New York.

the status before shelling NATO since 1999. During the negotiations with solid diametrically opposing views between Serbian independence and Albanian that will negotiate anything other than independence, soon became clear that additionally to the UN and the OSCE, the mission by the European Union Rule of Law and the establishment of public orderwill be necessary to be undertaken.

In July 2006 the High Representative for the Common Foreign and Security Policy of the European Union and EU Enlargement presented report on the future role, reliability, nature, scope and contribution of the international community and the European Union in Kosovo. It also suggests that future civilian missions should be based on the resolution of the Security Council of the United Nations to implement the agreement on status, and keep right for international intervention. Based on the report, the EU Council adopted a joint action establishing an EU team which should prepare the future international civilian mission that the union has its role to implement the agreement on the province's status. The mission is made up of legal team, planning team and the administrative team. [8] It establishes the possibility of involvement of the EU TAIEX program through expert assistance and it should develop a strategy for future intervention of the international communities in the area of rule of law. The riots and violent incidents in 2004 in which many minorities were deprived of life lead to the Council adopting the EU plans to set up a strong police presence in the EU mainly composed of French gendarmes. From a total of 2000 gendarmes, UNMIK had more than 100 citizens of the European Union.[9] However, the military component of the US-led KFOR remains a major factor in Kosovo that should operate in harmony with the mission of the European Union.

## 4. INTERNATIONAL MISSION OF THE RULE OF LAW OF THE EU IN MOLDOVA

The Mission of the EU to Moldova was launched because of longstanding conflict between Moldova and the secessionist region Transistria, it started in 1992 with the effort to create a federal state and a common army, but negotiations were repeatedly interrupted. Transistria declared independence shortly before Moldova seceded from the Soviet Union in 1991, followed by a brief military conflict in which the secessionist region Transistria supported by Russian troops, which was actually independent of Moldavans authoritiesfor a long time.[10] Until the entrance of Bulgaria and Romania the European Union in 2007, not enough attention was paidto the breakaway territory. With the entry of Romania into the European Union, there was a problem at the borders of the Union and decisive steps were takenby sending a mission to establish the facts.[11] Thus Transinstric conflict came on the

[8] Council Joint Action 2006/623/CFSP of 15 September 2006.

[9]Arsovski Marjan, "Instruments for implementation of international police missions conducted by the European Union ", Proceedings of the International yearbook of the Faculty of Security – Skopje 2013.

[10] Regulation (EC) No 1638/2006 of the European Parliament and of the Council of 24 October 2006 laying down general provisions establishing a European Neighborhood and Partnership Instrument.

[11]Council Joint Action 2005/776/CFSP of 7 November 2005 amending the mandate of the European Union Special Representative for Moldova.

agenda of European neighborhood policy and the Action Plan for Moldova.[12] Due to the situation, Presidents of Ukraine and Moldova sent a request to the President of the Commission of the High Representative of Foreign Affairs for greater involvement of European Union to strengthen the capacity of the border and establish an international customs control engagement.[13] After the signed memorandum, the mission officially started in 2006. The mission was a non-military assistance in order to raise the standards of Ukraine and Moldova to the level of standards that existed in the European Union as well as raise the professionalism of officials in the border regions. It was ensured through training of jobs and increasing trust between Ukrainian Moldovan authorities. Prime responsibility of the mission was to help prevent smuggling, trafficking, prevention of misuse of customs authorities, but also matters related to the rule of law inside the states. The mission was based in Odessa, it was led by the Hungarian Brigid General Ferenc Banfi, a senior political adviser to the Special Representative of the European Union in the region. As team leader, General BAFN performed political oversight in the implementation of the mission, while encouraging cooperation between the Ukrainian and Moldovan authorities. The team was comprised of 70 experts coming from 16 different member states and 50 representatives of local authorities. However, the situation was greatly aggravated by the presence of the Russian contingent of troops and economic aid levels due to the fact that Russians were the second largest ethnic community in the territory of Transistrija.[14] Secession government based in Tirasol, capital Transistrija organized a referendum in September 2006, led by the second largest community in Russia, but it was unsuccessful because the majority in the territory was Ukrainians, and they did not want to be under Russian control. A similar attempt at secession referendum was made in Crimea in 2014, it was successful and they became part of the Russian Federation, which had hitherto been part of Ukraine.

## 5. CONCLUSION

With the development of the ESDP, the Union's capacity to contribute to international peace security in accordance with the principles of the Charter of the United Nations was established. Along with the military capacity, which should serve as a last resort if other instruments fail, the Union also has developed a capacity for civilian crisis management in the field of police, justice, civil protection and civil administration. The reason for this is that, unlike other organizations such as NATO, that rely on "hard power" in resolving security crises, the EU has a broad and integrated approach to security, encompassing all its dimensions (political, socio-economic, demographic, cultural, and military). This approach of the Union was also due to the fact that September 11 attacks and the U.S. response showed that military intervention as a means cannot absolutely

[12]COMMISSION DECISION C (2008) 7804of 11 December 2008 on the ENPIAnnual Action Program 2008 in favor ofthe Republic of Moldova to befinanced under Article 19 08 01 03 of the general budget of the European Communities

[13] Remarks of Javier Solana, EU High Representative for CFSP, at the Launch of the EU Border Mission to Moldova – Ukraine, Odessa, 30 November 2005, S398/05.

[14]Forenet CFSP Forum, Volume 4, Issue 4 July 2006http://www.euconsent.net/library/FORNET/CFSP%20Forum%20vol%204%20no%204.pdf

guarantee the security of the world's most powerful state. It could immediately impose a solution, but could not eradicate the causes of security threats.
In this context, EU Rule of Law mission in Kosovo (EUPLEX), EUBAM: European Union Border Assistance Mission to Moldova and Ukraineare indicated as a success stories and provided the EU as a useful testing ground for future efforts in crisis management, including police reform and rule of law.
The EU experience in the Balkans has allowed the EU to mount up significant knowledge in the development of rule of law tools, capabilities and institutions in the European Commission and the Council Secretariat. The positive experience from implementing projects in the field of police work served as a model for establishing a standard that would serve all future police missions of the European Union.Under the Common Security and Defence Policy (CSDP),the EU operates civilian and military missions worldwide for the purpose of building security around the world. These missions carry out a variety of tasks from border management to local police training. Best example for that purpose is the EU Rule of Law mission in Kosovo (EUPLEX) and European Union Border Assistance Mission to Moldova and Ukraine (EUBAM). In this context, EU Rule of Law mission in Kosovo (EUPLEX) and European Union Border Assistance Mission to Moldova and Ukraine (EUBAM) are indicated as a success story and provided the EU as a useful testing ground for future efforts in crisis management, including police reform. The EU experience in the Balkan has allowed the EU to mount up significant knowledge in the development of crisis management tools, capabilities and institutions in the European Commission and the Council Secretariat. The Council of the European Union agrees that in addition to continuing with civilian missions and military operations, the EU has to improve its ability to foster rule of law cooperation and to use the Common Security and Defense Policy (CSDP) as part of coherent EU action, which should also include political, diplomatic, legal, development, trade and economic instruments. The positive experience from implementing projects in the field of police work served as a model for establishing a standard that would serve all future rule of law missions of the European Union.

## 6. REFERENCES


1. Michael Joseph Oakeshott,*On History and Other Essays* (1983) Oxford, Basil Blackwell.
2. Report of the Secretary - General of the UN (S/2004/616)
3. http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N04/395/29/PDF/N0439529.pdf?Open Element
4. Arsovski Marjan, " International police missions and operations of the European Union "Proceedings of the International Scientific Conference The Balkans Between Past and Future: Security, Conflict Resolution and Euro-Atlantic Integration, held in Ohrid, Faculty of Security, Skopje, Vol. I, 2013, p. 441 - 445
5. Security Council Presidential Statement offers full support for the Start of Political Process to Determine Kosovos's Future Status. SC/85333, 24.10.2005 New York.
6. Secretary General appoints Martti Ahtisaari for Special Envoy for the Future Status process for the Kosovo, SG/A/955-BIO3714, 15.11.2005 New York.
7. Council Joint Action 2006/623/CFSP of 15 September 2006.
8. Svetomir Shkaric and Gjorgje Ivanov, *Political Theories - Antique*, Faculty of Law, 2006.

9. Slobodan Milachic, Daloz, Paris,2009, p. 31
10. Arsovski Marjan, "Instruments for implementation of international police missions conducted by the European Union ", Proceedings of the International yearbook of the Faculty of Security – Skopje 2013.
11. Regulation (EC) No 1638/2006 of the European Parliament and of the Council of 24 October 2006 laying down general provisions establishing a European Neighborhood and Partnership Instrument.
**12.** Council Joint Action 2005/776/CFSP of 7 November 2005 amending the mandate of the European Union Special Representative for Moldova.
**13.** COMMISSION DECISION C (2008) 7804of 11 December 2008 on the ENPIAnnual Action Program 2008 in favor ofthe Republic of Moldova to befinanced under Article 19 08 01 03 of the general budget of the European Communities
14. Remarks of Javier Solana, EU High Representative for CFSP, at the Launch of the EU Border Mission to Moldova – Ukraine, Odessa, 30 November 2005, S398/05.
15. Forenet CFSP Forum, Volume 4, Issue 4 July 2006.

UDK:342.721Ч341.24(4-672ЕУ)

# LISBON TREATY AND THE PROTECTION OF PERSONAL DATA IN THE EUROPEAN UNION – A NEW REFORM

***Snezana Nikodinovska - Stefanovska, Dr.Sc***
*Faculty of Security - Skopje*
*e-mail: snikodinovska@fb.uklo.edu.mk*

**Abstract**

The protection of personal data is one of the basic values in Europe, for the Member States of the EU and for the EU institutions. The protection of persons in relation to the processing of their personal data is a fundamental right laid down in the Charter of Fundamental Rights of the EU (Article 8) and in the Treaty on the Functioning of the European Union (Article 16).
Lisbon Treaty brings fresh air not only to the future of the EU in general, but also to the relevance of fundamental rights-and in particular the right to the protection of personal data. Also, rapid technological developments and globalization have brought new challenges for the protection of personal data. The entry into force of the Lisbon Treaty provides a much needed opportunity to reflect on the main challenges for the protection of personal data and on how the European Commission intends to address these challenges in the future. In January 2012 European Commission proposed a comprehensive reform of the EU's data protection rules. The data protection reform is a legislative package to update and modernize the rules of the 1995 Data Protection Directive and the 2008 Framework Decision on data protection in judicial cooperation in criminal matters and police cooperation. It concerns two legislative instruments: the General Data Protection Regulation (intended to replace 1995 Directive on Data Protection) and the Data Protection Directive in the area of law enforcement (intended to replace the 2008 Data Protection Framework Decision). The Commission introduced again two sector-specific instruments rather than one of general application.

In these paper will be discuss briefly the EU legal framework on data protection before and under the Lisbon Treaty. Than the draft General Data Protection Regulation and Police and Criminal Justice Data Protection Directive will be comment and analyzed. Finally, a summary and some concluding remarks will be present.

***Key words:*** *Lisbon Treaty, protection of personal data, General Data Protection Regulation, Police and Criminal Justice Data Protection Directive.*

## 1. INTRODUCTION

Information relating to individuals, called ‘personal data’, is collected and used in many aspects of everyday life. An individual gives personal data when he/she, for example, registers for a library card, signs up for gym membership, opens a bank account, etc. Personal data can be collected directly from the individual or from existing data base. These data may subsequently be used for other purposes and/or shared with other parties.

Personal data can be any data that identifies an individual, such as a name, a telephone number, or a photo.

Advancement in computer technology along with new telecommunications networks is allowing personal data to travel across borders with greater ease. Therefore, as personal data is collected and exchanged more frequently, regulation on data transfer becomes necessary. Although national laws on data protection aimed to guarantee the same rights, some differences existed. For these reasons, there was a need for action at European level.

Effective data protection is at the heart of European Union and Council of Europe action. The Council of Europe Convention for the protection of individuals with regard to automatic processing of personal data so called "Convention 108"[1] can be considered as the first European legal framework for the fundamental right to protection of personal data. This Convention is a cornerstone of privacy and personal data protection in Europe. The right to data protection is closely related but not identical to the right to private life under Article 8 of the European Convention for Protection of Human Rights and Fundamental Freedoms[2] (ECHR). The right to data protection is recognized as an autonomous fundamental right in Article 8 of the Charter of Fundamental Rights of the European Union[3](EU Charter).

The principles of Convention 108 were refined in Directive 95/46/EC[4] (Data Protection Directive) which forms the main building block of data protection law within the EU. The European Union's Data Protection Directive has developed the Convention's principles further with a view to creating a common legal regime for its Member States.

 Other EU legislative instruments for data protection are Regulation (EC) No. 45/2001[5] applicable to data processing by EU institutions and bodies, Directive 2002/58/EC[6] on privacy and electronic communications (e-Privacy Directive) and Framework Decision 2008/977/JHA[7] on data protection in the area of police and judicial cooperation in criminal matters.

---

[1] Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, ETS No. 108, 28.01.1981,http://www.coe.int/en/web/conventions/full-list/-/conventions/rms/0900001680078b37
(accessed on 20.12.2015).

[2] European Convention for Human Rights and Fundamental Freedom, 4.11.1950, European Treaty Series- No. 5, available at: http:// conventions.coe.int.

[3] Charter of Fundamental Rights of the European Union, OJ 2010 C 83/02

[4] Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, OJ 1995, L 281, p. 31.

[5] Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data, OJ 2001, L 8, p. 1.

[6] Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications), OJ 2002 L 201, p. 37; as revised by Directive 2009/136/EC of the European Parliament and of the Council of 25 November 2009.

[7] Council Framework Decision 2008/977/JHA of 27 November 2008 on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters OJ 2008 L 350, p. 60.

The Lisbon Treaty[8] substantially overhauls the EU's legal bases, the Treaty on European Union[9] (TEU) and the Treaty Establishing the European Community (EC Treaty), the latter of which is renamed the Treaty on the Functioning of the European Union (TFEU). While much attention has been given to the Lisbon Treaty's reform of the EU's institutional arrangements, it also alters the legal grounds for legislation in the data protection area in ways that could impact privacy regulation.

Under the Lisbon Treaty, data protection has gained significant importance. Not only has the Charter of Fundamental Rights of the European Union become binding but, also, Article 16 of the Treaty on the Functioning of the European Union was introduced as a new legal basis for data protection. [10] The newly introduced Article 16 now provides a single legal base for measures related to the protection of personal data, covering not only all EU institutions and bodies but also Member States in all activities which fall within the scope of EU law to be adopted under *ordinary legislative procedure*, except for Common Foreign and Security Policy (CFSP) matters.

In this context, also the 'Stockholm Programme'[11] – multiannual programme of the EU dedicates much attention to data protection in an area of Freedom, Security and Justice protecting the citizen. The need to provide a "comprehensive protection scheme" on data protection, to "ensure that the fundamental right to data protection is consistently applied" and to "strengthen the EU stance in protecting the personal data of the individual in the context of all EU policies, including law enforcement and crime prevention, as well as in [the EU] international relations" has been stressed in the Stockholm Programme as well as in the Stockholm Action Plan[12].

In its Communication on "A comprehensive approach on personal data protection in the European Union", the Commission concluded that the EU needs a more comprehensive and coherent policyon the fundamental right to personal data protection.[13] On this basis and further input received from various stakeholders, the Commission in the beginning of 2012 proposed a comprehensive reform of the EU's data protection rules. The data protection reform is a legislative package to update and modernize the rules of the 1995 Data Protection Directive and the 2008 Framework Decision on data protection in judicial cooperation in criminal matters and police cooperation.

It concerns two legislative instruments: the General Data Protection Regulation (intended to replace 1995 Directive on Data Protection) and the Data Protection Directive

[8] Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, signed at Lisbon, 13 December 2007, OJ C 306,Volume 50, 17 December 2007.

[9] The Treaty on European Union keeps the name. Abbreviation TEU-L for the Treaty on European Union in the Lisbon Treaty will be used in the text.

[10] See more: Nikodinovska-Stefanovska, S. (2012). Lisbon Treaty and the protection of personal data in the European Union, In Dimitrijevic, D. Miljus, B. (eds.) *Harmonization of the legislation of the Republic of Serbia with the Law of the European Union*, Belgrade, Institute for international policy and economy, Institute for contrastive law, Hans Zajdel Foundation. p. 717 - 728

[11] "The Stockholm Programme – An open and secure Europe serving and protecting the citizens", COM(2009)262 final of 10.6.2009; OJ C115/1, 4.5.2010

[12] Stockholm Action Plan, COM(2010), 171 final of 20.4.2010.

[13] COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS "*A comprehensive strategy on data protection in the European Union*" Brussels,COM(2010) XXX final

in the area of law enforcement (intended to replace the 2008 Data Protection Framework Decision). The Commission introduced again two sector-specific instruments rather than one of general application, broadly following the older Pillar distinction.[14]

## 2. PROTECTION OF PERSONAL DATA AT THE EUROPEAN LEVEL

The protection of personal data is one of the basic values in Europe, for the Member States of the EU and for the EU institutions. The protection of personal data in the Union has been governed by Article 8 of the Charter of Fundamental Rights of the European Union and specified in the general Data Protection Directive as well as complemented by Directive 2002/58/EC on privacy and electronic communications. The processing by EU institutions and bodies is covered by Data Protection Regulation (EC) No 45/2001. Since 2008, the EU general framework for the protection of personal data in police and judicial cooperation in criminal matters is Framework Decision 2008/977/JHA.

### 2.1 Protection of personal data as a fundamental right

Article 8 of the EU Charter of Fundamental Rights enshrines the fundamental right of every individual to the protection of his/her personal data. Equally, Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms guarantees the right to respect private and family life, which includes the right to protection of personal data.

Article 8 of the EU Charter defines the basic principles for data protection in an exemplary way. It reads as follows:

*1. Everyone has the right to the protection of personal data concerning him or her.*

*2. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.*

*3. Compliance with these rules shall be subject to control by an independent authority.*

Therefore, Article 8 on the protection of personal data is in a position to play a role which goes far beyond the formal and symbolic proclamation as a fundamental right. In this perspective, firstly Article 8 confirms the broad scope of this right, to be respected throughout the whole range of activities of the European Union, under the supervision of independent authorities. Secondly, it gives a substantive contribution in spelling out its essential elements. In particular, paragraph 2 explicitly reaffirms that personal data must be processed fairly for specified purposes and on the basis of consent or some other legitimate basis laid down by law. Furthermore, it lays down the right of access and of rectification of one's personal data.

So these elements are explicitly recognized as crucial core values of the fundamental right to the protection of personal data. As such, possible limitations to their exercise must be provided for by law and respect the essence of those rights and freedoms. Limitations

[14] Pre-Lisbon, the EU comprised three legal pillars with separate legal bases for legislative action: (i) “Community” matters; (ii) Common Foreign and Security Policy; and (iii) Police and Judicial Cooperation in Criminal Matters.

may be made only if they are necessary and genuinely meet objectives of general interest recognized by the Union or the need to protect the rights and freedoms of others.[15]

Furthermore, since Article 8 is sufficiently clear and precisely stated, and is unconditional in conferring a specific right for the citizens, it will have direct effect, i.e. the citizens will be able to enforce these rights before national courts (and data protection authorities) even in absence of specific implementing measures.

Unlike other countries, notably the US, EU legal rules on data protection do not discriminate between EU citizens and foreigners – the fundamental right to personal data protection is guaranteed to "every person" in Europe, citizens and noncitizens alike.

### 2.2 The EU legal framework for the protection of personal data

To date, EU data protection laws have been primarily based on provisions in the EC Treaty empowering the EU to legislate in furtherance of the internal market. The EC-Treaty only dealt with data protection in one of its last provisions, Article 286, a somewhat "obscure corner in the Treaty"[16]. It was inserted by the Treaty of Amsterdam in 1999 and laid down that EU-data protection law applied to processing by institutions of the EU. Article 286 also gave the legal basis for the establishment of a European Supervisor. Both elements were further elaborated in Regulation (EC) 45/2001 which established the European Data Protection Supervisor (EDPS). In 1999, Article 286 was needed to avoid a legal vacuum, ensuring that also the EU institutions should respect the rules of data protection. Despite this limited purpose, Article 286 became the first real provision on data protection in the EC-Treaty.

The landmark Data Protection Directive 95/46/EC and the e-Privacy Directive 2002/58/EC were promulgated on this basis, and, consequently, they concern both protection of privacy and the free movement of personal data. Data Protection Directive is the central piece of legislation on the protection of personal data in Europe. It set a milestone in the history of the protection of personal data as a fundamental right.

The general Data Protection Directive enshrines two of the oldest aims of the European integration project: the achievement of an internal market (in this case, the free flow of personal data) and the protection of fundamental rights and freedoms of individuals and in particular the fundamental right to data protection. In the Directive, both objectives are equally important. The same goes for the e-Privacy Directive.

The Data Protection Directive applies to both the public and private sectors. It develops and specifies data protection principles in order to achieve harmonization throughout the EU. The Directive stipulates general rules on the lawfulness of personal data processing and the rights of the people whose data are processed ("data subjects"). The Directive also sets out that at least one independent supervisory authority in each Member State shall be responsible for monitoring its implementation. In particular, the Directive regulates transfers of personal data to third countries: in general, personal data

[15] See Article 52 of the Charter of Fundamental Rights of the European Union.

[16] As Peter Hustinx, European Data Protection Supervisor, states in his speech "*Data Protection in the Light of the Lisbon Treaty and the Consequences for Present Regulations*" on 11th Conference on Data Protection and Data Security - DuD 2009, Berlin, 8 June 2009, p.4, available at: http://www.edps.europa.eu/EDPSWEB/webdav/site/mySite/shared/Documents/EDPS/Publications/Speeches/2009/09-06-08_Berlin_DP_Lisbon_Treaty_EN.pdf (20.12.2015)

cannot be exchanged with a third country unless the latter provides guarantees for an adequate level of protection.

The area of police and judicial cooperation in criminal matters (ex - third pillar) contained a more or less general legal basis for data protection, albeit disguised. Article 30 (1) (b) of the EU-Treaty required that rules on storage and exchange of personal data were complemented by data protection rules. This provision was the legal basis for Council Framework Decision 2008/977/JHA on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters which is the general EU instrument in these areas. This instrument, while being a first step in establishing data protection rules for police and judicial authorities, cannot be considered to ensure a level of protection equivalent to that offered by the Data Protection Directive, and does not achieve consistency with other legal instruments. One of the major shortcomings of the Framework Decision is that it only applies to personal data that are or have been transmitted or made available between Member States, i.e., not to processing operations within the Member States, a distinction which is often very difficult to make in practice. In addition, since the Framework Decision only envisages minimum harmonization of data protection standards, it does not achieve a free flow of personal data between competent authorities. It also leaves a large room for maneuver to Member States for its implementation, without any common procedures at EU level in order to contribute to the uniform application of such measures.

Moreover, the data protection provisions and supervisory mechanisms of other ex-third pillar acts, in particular those governing the functioning of Europol, Eurojust, the Schengen Information System (SIS) and the Customs Information System (CIS), are not affected by the Framework Decision and thus maintain their specificities[17].

The present rules for police and justice are a patchwork of specific rules and a general framework of limited scope as it only applies to data flows between member states. A more comprehensive approach is therefore likely to lead to better rules overall.

## 3. THE EU DATA PROTECTION REFORM PACKAGE

In January 2012, the European Commission proposed a full reform of the current EU data protection rules. On 15 December 2015, after a lengthy legislative process and many months of negotiations, the European Commission, the European Parliament and the European Council finally found an agreement on the data protection reform package during the so-called "trilogy" meetings.

The Commission, while preparing the amended EU data protection framework, had two realistic options at hand: (1) to release a single, comprehensive, standard setting text that would set the general rules for all personal data processing within the EU, or (2) to continue distinguishing between commercial and security-related processing through the continued existence of the 1995 Directive and the 2008 Framework Decision, appropriately amended, respectively. Apparently, the Commission chose to replace both documents simultaneously, broadly following the model already in effect.

The proposed new legal framework consists of two legislative proposals:

[17] Joint Supervisory Authorities have been set up by the relevant instruments to ensure data protectionsupervision, in addition to the general supervisory powers of the European Data Protection Supervisor(EDPS) over Union Institutions and bodies, based on Regulation (EC) 45/2001

- a proposal for a Regulation of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation), and
- a proposal for a Directive of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data by competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and the free movement of such data. [18]

This proposal is based on Article 16 TFEU, which is the new legal basis for the adoption of data protection rules introduced by the Lisbon Treaty. This provision allows the adoption of rules relating to the protection of individuals with regard to the processing of personal data by Member States when carrying out activities which fall within the scope of Union law. It also allows the adoption of rules relating to the free movement of personal data, including personal data processed by Member States or private parties.

The key purposes of the data protection reform are (a) the creation of a single set of rules, (b) the affirmation and strengthening of the data subjects' rights, (c) increased responsibility and accountability of data controllers and data processors, (d)the removal of unnecessary administrative burdens and (e) a strengthened enforcement framework.

### 3.1 Main provisions of the new Data Regulation

During the JHA Council of 15-16 June 2015, a general approach was reached on the data protection regulation that is part of the reform of the EU's data protection legal framework. The Council reached a general approach on the general data protection regulation that establishes rules adapted to the digital era.

The EU General Data Protection Regulation (GDPR) aims at enhancing the level of data protection for individuals whose personal data is processed and increasing business opportunities in the digital single market including through reduced administrative burden. Topics covered in the draft regulations include:

- Rights of Data Subjects - Transparency, Access to Data, Rectification, Erasure, Right to Object to Profiling
- Obligations of Companies - Data Security, Data Protection Assessment
- Increased Powers for Data Protection Agencies and New Efforts for Coordination and Collaboration
- New Remedies and Sanctions

To ensure improved legal redress, data subjects will be able to have any decision of their data protection authority reviewed by their national court, irrespective of the member state in which the data controller is established.

A Regulation is considered to be the most appropriate legal instrument to define the framework for the protection of personal data in the Union. The direct applicability of a Regulation in accordance with Article 288 TFEU will reduce legal fragmentation and provide greater legal certainty by introducing a harmonized set of core rules, improving the

[18]Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the protection of individuals with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation), Communication COM (2012) 10 final. http://ec.europa.eu/justice/data-protection/document/review2012/com_2012_11_en.pdf p.2 (20.12.2015)

protection of fundamental rights of individuals and contributing to the functioning of the Internal Market.

The final draft of the new European General Data Protection Regulation was agreed on 15 December 2015 and, once it has been approved by the European Parliament in early 2016, is expected to take effect by early 2018. This reform aims to update data protection law to address the challenges of the digital age while simultaneously protecting the rights of individuals and enabling businesses to utilize personal data in a more consistent manner across the European Union.

## 4. MAIN PROVISIONS OF THE NEW POLICE AND CRIMINAL JUSTICE DIRECTIVE

The Commission stressed in its Action Plan implementing the Stockholm Programme[19] the need to ensure that the fundamental right to personal data protection is consistently applied in the context of all EU policies. The Action Plan underlined that "in a global society characterized by rapid technological change where information exchange knows no borders, it is particularly important that privacy must be preserved. The Union must ensure that the fundamental right to data protection is consistently applied. We need to strengthen the EU's stance in protecting the personal data of the individual in the context of all EU policies, including law enforcement and crime prevention as well as in our international relations."[20]

Framework Decision 2008/977/JHA has a limited scope of application, since it only applies to cross-border data processing and not to processing activities by the police and judiciary authorities at purely national level. This is liable to create difficulties for police and other competent authorities in the areas of judicial co-operation in criminal matters and police cooperation. They are not always able to easily distinguish between purely domestic and cross-border processing or to foresee whether certain personal data may become the object of a cross-border exchange at a later stage. Moreover, because of its nature and content, the Framework Decision leaves a large room for maneuver to Member States' national laws in implementing its provisions.

As it was mentioned, the Lisbon Treaty introduces a specific legal basis for the adoption of rules on the protection of personal data that also applies to judicial co-operation in criminal matters and police co-operation. Article 16 TFEU requires the legislator to lay down rules relating to the protection of individuals with regard to the processing of personal data also in the areas of judicial co-operation in criminal matters and police cooperation, covering both cross-border and domestic processing of personal data.

Data Protection Directive in the field of law enforcement is aimed at protecting personal data processed for prevention, investigation, detection or prosecution of criminal

[19]Stockholm Action Plan, COM(2010)171final, 20.4.2010.
.http://eur-lex.europa.eu/legal-ontent/EN/TXT/PDF/?uri=CELEX:52012PC0010&from=EN. (25.12.2015)

[20] Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the protection of individuals with regard to the processing of personal data by competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and the free movement of such data, COM(2012) 10 final, 25.1.2012 http://ec.europa.eu/home-affairs/doc_centre/police/docs/com_2012_10_en.pdf (25.12.2015)

offences or the execution of criminal penalties, including the safeguarding against and the prevention of threats to public security. The proposal is based on Article 16(2) TFEU, which is a new, specific legal basis introduced by the Lisbon Treaty for the adoption of rules relating to the protection of individuals with regard to the processing of personal data by Union institutions, bodies, offices and agencies, and by the Member States when carrying out activities which fall within the scope of Union law, and the rules relating to the free movement of such data. The proposal aims to ensure a consistent and high level of data protection in this field, thereby enhancing mutual trust between police and judicial authorities of different Member States and facilitating the free flow of data and co-operation between police and judicial authorities.

The Police and Criminal Justice Data Protection Directive is divided into 11 chapters, each regulating a specific data protection aspect. Chapter I contains its scope of application, that now extends to domestic processing too, as well as the definitions of terms used in the Directive – important additions refer to the terms of 'personal data breach', 'genetic' and 'biometric' data.

Chapter II of the Directive lays down the principles of the processing, expressly following those of the 1995 Directive and the Regulation intended to replace it. Explicit reference is made to the transparency and to the data minimization principles. It is mostly in this Chapter that flexibility options for the processing of personal data are afforded in the AFSJ context, enabling data controllers to process personal information (including sensitive data) of varied quality, for purposes other than those they were collected, using profiling techniques, if needed.

The rights of individuals/data subject are set in Chapter III of the Directive: the rights to information adding new elements for the information of the data subjects (on the storage period, their rights to rectification, erasure, or restriction and to lodge a complaint), access to data and objection to the processing are to be found among these provisions, properly adapted in the AFSJ context.

Chapters IV, VI and VII refer to the enforcement mechanism: this is to be composed of supervisory authorities at Member State level and a European Data Protection Advisory Board. These are complemented by provisions on 'remedies, liability and sanctions' set in Chapter VIII. Finally, international data transfers are regulated in Chapter V.

As expressly set in many instances in its 'detailed explanation', the Directive follows, whenever possible, the provisions of the General Data Protection Regulation and the 1995 Directive and also, at times, older suggestions by the Commission that were abandoned while introducing the 2008 Framework Decision.

The Directive appears to be making a positive contribution to the individual right to data protection; finally affording data subjects the means to protect their rights effectively. The new Directive should be adopted in spring 2016, after which member states will have two years to transpose the provisions of the new directive into their national laws.

## 5. CONCLUSION

Rapid technological developments and globalization have profoundly changed the world around us, and brought new challenges to the protection of personal data. In addition to the increasing technical possibilities, the growing appetite/interest for personal data for reasons of public interest in particular for public security matters is also an important

challenge for data protection. The collection and processing of personal information can be very valuable in order to secure important and legitimate public and private interests- if done in lawful way.

With the entry into force of the Lisbon Treaty, new perspectives were created for law making in the field of data protection. The pillar structure was abolished and with Article 16 TFEU-Treaty on the Functioning of the European Union a single legal basis is created for data protection in almost all areas of EU law. Article 16 paragraph 2 TFEU applies to all forms of data processing in the private and in the public sector and particularly includes the area of police and judicial cooperation in criminal matters, which was previously not the case.

The Treaty of Lisbon was envisaged by the Commission as a unique legal basis for the adoption of common rules for the processing and protection of personal data in both private and public sectors, including police and justice matters. In January 2012, the Commission proposed a comprehensive reform of the EU's data protection rules. Although the Commission has issued two different initiatives on this matter - the General Data Protection Regulation and the Data Protection Directive, the later focused on criminal matters, there is a consistent and common approach on this matter.

In January 2012, the Commission proposed a comprehensive reform of the EU's 1995 data protection rules to strengthen online data protection rights and boost Europe's digital economy. The Commission's proposal - the General Data Protection Regulation - will replace and modernize the principles enshrined in the 1995 Data Protection Directive implemented in Member States since 1998. The new proposal will substantially enhance data protection compliance throughout Europe and firms will face tough new fines for data breaches.

The Regulation will address one of the fundamental criticisms of the current data protection framework in that rules within Member States have been interpreted and implemented in a divergent manner by the very nature of the law emanating from a Directive. The rules in the form of a Regulation will be directly applicable in Member States thereby harmonizing the data protection rules - one of the key objectives of the European Commission.

As regard of the draft Directive on the protection of individuals with regard to the processing of personal data for the purposes of prevention, investigation, detection or prosecution of criminal offences it will be the first instrument to comprehensively harmonize 28 different law enforcement systems with respect to data processing for law enforcement purposes as well as set minimum standards for data processing for policing purposes within each member state. The Data Protection Directive takes account of the specific needs of law enforcement, respects the different legal traditions in Member States and is fully in line with the Charter of Fundamental Rights. EU countries may set higher standards than those enshrined in the directive if they so wish.

With the new Data Protection Directive, law enforcement authorities in EU Member States will be able to exchange information necessary for investigations more efficiently and effectively, improving cooperation in the fight against terrorism and other serious crime in Europe. The rules clarify police cooperation arrangements at all administrative levels and give citizens greater certainty as to the law.

Also, with the new Data Protection Directive better protection of citizens' data is provided. Individuals' personal data will be better protected, when processed for any law enforcement purpose including prevention of crime. It will protect everyone – regardless of whether they are a victim, criminal or witness. All law enforcement processing in the

Union must comply with the principles of necessity, proportionality and legality, with appropriate safeguards for the individuals. Supervision is ensured by independent national data protection authorities, and effective judicial remedies are provided. The Data Protection Directive provides clear rules for the transfer of personal data by law enforcement authorities outside the EU, to ensure that the level of protection of individuals guaranteed in the EU is not undermined.

The new Data Protection Directive should replace the current 2008 Framework Decision laying down a harmonized legal framework in the 28 EU Members States. It takes account of the specificities of the law enforcement sector while ensuring the respect of the fundamental right to data protection. It is crucial to ensure a consistent and high level of protection of personal data of individuals while at the same time facilitating the exchange of personal data between law enforcement authorities in the different member states.

## 6. BIBLIOGRAPHY


1. Charter of Fundamental Rights of the European Union, OJ 2010 C 83/389.
2. COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS "*A comprehensive strategy on data protection in the European Union*" Brussels, COM (2010) XXX final
3. Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, ETS No.: 108. 28.01.1981, http://www.coe.int/en/web/conventions/full-list/-/conventions/rms/0900001680078b37 (20.12.2015)
4. Council Decision 2008/615/JHA, of 23 June 2008, on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime, OJ 2008 L 210/1.
5. Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, OJ 1995, L 281, p. 31.
6. European Convention for Human Rights and Fundamental Freedoms, 4.11.1950, European Treaty Series- No. 5, http:// conventions.coe.int (20.12.2015)
7. Hustinx,P., (2009)."*Data Protection in the Light of the Lisbon Treaty and the Consequences for Present Regulations*" on 11th Conference on Data Protection and Data Security - DuD 2009, Berlin, 8 June 2009, p.4, http://www.edps.europa.eu/EDPSWEB/webdav/site/mySite/shared/Documents/EDPS/Publications/Speeches/2009/09-06-08_Berlin_DP_Lisbon_Treaty_EN.pdf . (20.12.2015)
8. Nikodinovska - Stefanovska, S. (2012). Lisbon Treaty and the protection of personal data in the European Union. In Dimitrijevic, D. Miljus, B. (eds.) *Harmonization of the legislation of the Republic of Serbia with the Law of the European Union*, Belgrade, Institute for international policy and economy, Institute for contrastive law, Hans Zajdel Foundation, p. 717 - 728.
9. Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the protection of individuals with regard to the processing of

personal data and on the free movement of such data (General Data Protection Regulation), Communication COM (2012) 10 final. http://ec.europa.eu/justice/data-protection/document/review2012/com_2012_11_en.pdf p.2 (20.12.2015)
10. Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the protection of individuals with regard to the processing of personal data by competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and the free movement of such data, COM (2012) 10 final, 25.1.2012 http://ec.europa.eu/home-affairs/doc_centre/police/docs/com_2012_10_en.pdf (25.12.2015)
11. Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data, OJ 2001, L 8, p. 1.
12. Stockholm Action Plan, COM (2010), 171 final of 20.4.2010.
13. The Stockholm Programme – An open and secure Europe serving and protecting the citizens", COM (2009)262 final of 10.6.2009; OJ C115/1, 4.5.2010.
14. Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, signed at Lisbon, 13 December 2007, OJ C 306, Volume 50, 17 December 2007.

UDK:327.36Ч341.231.14]:327.54-021.68

# INSTRUMENTALIZATION OF HUMAN RIGHTS FOR THE LEGITIMACY OF INTERVENTIONISM

***Sonja Dragović Sekulić***
*Faculty of law and bussines studies, University Union; e-mail: sonja.dragovic@hotmail.com*

**Abstract**

Decades before the end of the Cold War, it was presumed that there was a debate on the important issues of social relations and also it was discussed about international disputes. Of course, the protection of peace in the society was an undivided interest of all the people living in it. However, with the end of the Cold War and the end of bipolarity, the world has realized the new nature of social relations. The expected spread of freedom and democracy has denied ideological opposites as the old security dilemma, and the actions of democracy advocates have introduced human rights as a new security dilemma. In theory and in practice a huge space for interpretation and for dealing with this dilemma has been opened. In contrast to the international law in which the states are exclusive entities, human rights are in this security dilemma one time personal - individual and another social and collective. Secondly, in processes of installing democracy and liberating people from dictatorship, at the beginning of XXI century, there is frequent and harsh violation of international law wherein human rights appeared in duality: as a screen for someone's actions and also as a victim of someone's actions. The authors' intention is that in this paper, through the definition of human rights and a brief overview of the new security challenges after the Cold War, look for an answer regarding legitimacy of the speech act in the "securitization" of human rights. This is used in "legitimizing" actions for protection of human rights in order to achieve their instrumentalization[1] in the interests of economic expansionism of strongest capital groups.

***Keywords****: human rights, humanitarian law, security dilemma, the European Union*

## 1. INTRODUCTION - HUMAN RIGHTS

Human rights are defined as the rules by which states act in relations with individuals and groups. This coin is made up of two words, human and rights, where the rights include the *position of the advantages granted to individuals or groups with laws and ethical rules or other norms*. Human being always has a right for a certain status, but a characteristic of human rights is that we own them simply because we are humans.

In the philosophical debate about the rights, they are often divided into subgroups, so we can talk about the negative and positive rights, active and passive rights, special and general, and the like. However, the most common classification is: citizenship (protecting life, integrity, liberty, legal security, private and family life, freedom of expression, assembly and movement), political (protecting the right to participate in the government of

[1] Instrumentalization – to convert an epiphany , regulation , etc. into the means to achieve a goal

his country), economical (protecting the right to work, to establish and participate in the work of expert trade unions, the right to strike and to a satisfactory standard of living), social (protecting the right to assistance with unemployment, sickness, disability or other circumstances beyond our power) and cultural (protecting the right to education and participation in cultural life, as well as the use of the achievements of science and copyrights). The society is dynamic and constantly evolving and human rights are interpreted and accomplished in accordance with social changes and new challenges. Thus, new rights such as the right to peace, to clean environment and the right to development have been presented. (Đuliman & Karlsen, 2003)

The starting point for international human rights is the Universal Declaration of Human Rights of the United Nations in 1948. This declaration established that human rights apply to all, regardless of where one lives, and that it protects human life, personal life, physical integrity and social commitment. One of the main reasons for making this declaration, among other states:

> *Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people... Therefore THE GENERAL ASSEMBLY proclaims THIS UNIVERSAL DECLARATION OF HUMAN RIGHTS as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.*

For purpose of this paper only a few of the rights stated in this declaration will be cited: "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood." "Everyone has the right to life, liberty and security of person." "The will of the people shall be the basis of the authority of government; this will, shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures." "Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized." "*Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein*."[2] After this declaration, a number of other documents that have profound human rights were passed and adopted. In addition to the various international instruments relating to human rights and their protection, human rights are also regulated by the Constitution of individual states.

### 1.1 Humanitarian Law

Humanitarian law or the law of war includes written and unwritten rules, which limit the horrors of war. That, among other things, prohibits unlawful aims (civilian population, the wounded, sick...), illegal methods and illegal means.

[2] Extracted from The Universal Declaration of Human Rights,1948, United Nations

The doctrine of international law goes from the understanding that international humanitarian law and human rights is two completely independent and separate branch of law. This is one approach. Within the second approach authors believe that they are more or less related but separate branches of law. The third approach is in the perception that international humanitarian law is the right to the protection of human rights in armed conflicts. Although they are often identified, human rights and humanitarian law are not the same. Human rights refer to entities whose rights are guaranteed and refer to protection mechanisms. Humanitarian law points of the motives, methods and general care facilities, with the main objective to find balance and proportionality between military requirements and the principles of humanity, or mitigation of human suffering and the horrors of armed conflict. Therefore, international humanitarian law defines as a compromise between the need for freedom of warfare to achieve the goal of war and demands humanity. (Jončić, 2010)

## 2. NEW CHALLENGES AND HUMAN RIGHTS AS A SECURITY DILEMMA

Opinions about the importance of the state in relation to human security vary - some proponents of this concept have a strong centralistic orientation because they believe that a strong, democratic state is ultimately the best guarantee and the best instrument for its realization. Others believe that, given the account the changing nature and structure of the international system and the emergence of a number of transnational forces and factors, new forms of governance have to be created that go beyond territoriality and the traditional functions of state in order to improve human security. Understanding of the very concept of human security is also different among the authors and can therefore distinguish three approaches. The first approach to human security is based on human rights/rule of law. Second approach aims on humanitarian idea, according to which the safety of the people (absence of fear) is the highest goal of international intervention, and the third approach is sustainable human development. The notion of human security based on the first approach is based on liberal democratic theory and modern democratic state. According to this view the main threat to human security lies in the abandonment of basic human rights, including the right to national self-determination, and in the absence of the rule of law.

Freedom of expression is one of the standards in building a democratic will of society, which is based on the multiplicity of collective and individual knowledge. The quarrel that stems from that about some historical truths and political evaluations characterize intellectual being in wide parts of the world, and contribute significantly to the culture of enlightenment, which has since developed. Two generations of people after the Second World War grew up in most of Western European countries with just such a consciousness, that they can freely discuss differences in opinions and values as the basis of existence and the essence of beings.

However, in the western part of the continent, freedom of expression and debates about values in the decades after in 1945 was also only relative. Besides dictatorships in Spain and Portugal, the political repression was also not infrequently present in this part of the world. The Cold War was introduced with prohibiting parties in allegedly true democracy which presented itself as if they were spotless. Because of this, among other, contemporary intellectuals on democracy look only as another form of the inevitable struggle which decides *who does what, when and how he obtains*. The tragic illusion was the belief that the adoption of democratic procedures allow the release of all other

limitations of government and promote the belief that the democratic control of the government established by law, adequately replace traditional boundaries, while in reality, necessity of forming an organized majority to support program special activities for the benefit of specific groups, introduced a new source of arbitrariness and bias and lead to results that are inconsistent with the moral principles of the majority. (Hayek, 2002)

In the tradition of understanding of human rights, it is known that once it was explained as protection of ethnic and religious minorities, and that the interpretation at the time was burdened by numerous political and ideological elements. Since 1535 until 1941, the Christian world with these rights protected themselves of non-Christians, so that after the two world wars and nationalistic euphoria, the "peace treaty" brought the principle of "to ensure to all persons without distinction as to race, sex, language or religion, the enjoyment of human rights and fundamental freedoms, the freedom of assuming the words, press and publication, freedom of religion, freedom of speech and political beliefs." On December 10th in 1948 UN General Assembly adopted the "Universal Declaration of Human Rights", which includes 30 articles which include all the classic civil and political rights and freedoms.

Analyzing the international aspect of human rights, it is indisputable that the attitude of the government towards the citizens has constantly been subject of attention and instrumentation, and with the disappearance of absolute sovereignty of the state, the international community gain right to take austerity measures for each act of violation and endangerment of human rights. (Marković, 2012) The mere orientation is not disputed, but the practice has confirmed its instrumentalization for political purposes, so that the "human rights"[3] is recognized as a rhetorical weapon, "speech act", "securitizing importance", and often, a "support" for the implementation of the strategy so-called low-intensity conflict.[4]

End of systemic bipolarity with the collapse of the communist practice of countries and organizations in the years 1989-1991 brought with it substantive political and cultural changes in which as a logical sequence was expected progress in the realization of human rights. However, the practice has quickly proven that these expectations were realized in two different ways. In fact, it could be best seen in the post-Yugoslav reality - in the period of community Yugoslavia - Serbia and Montenegro and interpretation of problems of Kosovo and Metohija. According to this principle, what was on the one hand interpreted as a liberation movement, it was referred to as a terrorist organization on the other hand; what for one was interpreted as a modernization, for others it represented the destruction of traditional relationships and values and so on. In addition to this was the behavior of the international community towards this problem. In contrast to the UN Charter (Article 2), the support of revolt or ethnic minorities in another country did not have the character of unauthorized interference with the internal affairs of another country, but analogous to the doctrine of low intensity conflict it was presented as a development assistance and support to internal unrest. Blending national and human rights, international community, which was influenced by leading powers, has opened a Pandora's Box, marginalizing terrible consequences that will result from this experiment of "military humanism".

Instrumentalization of human rights provides an opportunity to analyze a number of cases of this kind, and in particular international-legal character of "human" intervention, theoretical understanding of "security dilemma" and, of course, the right to military intervention without a mandate from the UN Security Council, and at the end of

[3] More details: Theory of securitization Kopenhagen school; (B.Buzan,1998) and (A.Collins,2010)
[4] More details at FM-100-20 Low intesity conflict, Waschington, 1981.

the term, a legal character of war crimes in modern times. Truly, the issue of human rights, regulated by the United Nations Charter, according to which " individual guarantees protection against state repression" could be used in a literal interpretation to draw conclusions about the acquisition of the right to intervene anywhere in any country in the world, because the ideal state exists nowhere except in Plato's head. In order to prevent instrumentalization, or misuse in Article 2, paragraph 4 stands: "In terms of threat or its application that threatens the territorial integrity or political independence of any state... ", while in Chapter 7 stands: “The Charter does not allow the United Nations to intervene in matters which by their nature are within the domestic jurisdiction of a state."(Charter of the United Nations, 1945) In case that the state constantly violates human rights and fundamental freedoms, as sanctions are provided exclusion from membership of the United Nations (Article 6 ), but not performing armed intervention.

On the other hand, in practice it appears that "violation" of economic and geopolitical interests of the superpowers could be the reason for ignoring national borders and to undertake military interventions. However, it is not clear why military intervention by NATO beyond the protection of the safety of its members, is not a legal problem, how it should be qualified and if it may become out of date. Judging by some European view, this question cannot be interpreted "other way" than the official, because, according to Hanne’s Hofbauer "dissent from the official again becomes a criminal."

That the notion of human rights easily be instrumentalized shows precisely the period after the end of bipolarity. After collapse of the Soviet Union and Warsaw Pact, military intervention by the Western Alliance are performed with the explanation and pointing out the supposedly necessary protection of human rights, which are in the eye of a public a way to legitimize interventionism. (Hofbauer, 2012) This again increases the need and importance of a critical attitude towards the concept of securitization and the notion of dictatorship as does Barry Buzan et al. of the so-called Copenhagen school of thought, and that some problems cannot be treated as a security threat only because it is an authority that appointed - called social construction, or securitized. Ole Waever has conceptualized security as a discourse in which political elites identify threats and from society require legitimacy for the use of special measures to combat these threats. For him it is "speech act" that formulates a specific political problem as particularly important for the survival of the community and move it out of the field with established rules of the game. Special measures are one of the elements of the process of securitization and may include the use of force and coercion, suspension of human and civil rights, or take some other acts that steps out of the normal scope of the political process. (Marković, 2013) Especially, when we talk about human security, then there are three instruments that appear: sanctions, shaming and co-optation.

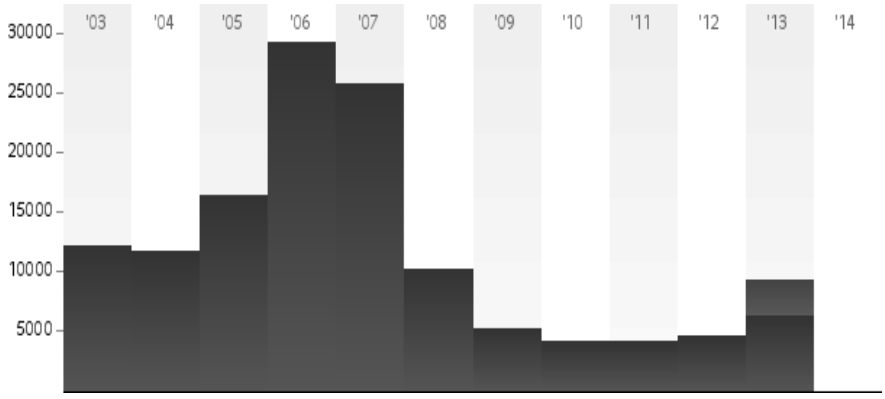
It is known that in the international political practices in the name of human rights were carried out several military interventions. However, when analyzing countries in which the interventions were performed and who performed them, it can be concluded that the human rights were not the true reason for these interventions. Specifically, without going into a deeper analysis of the actual objectives, even a superficial knowledge point to a completely new "security dilemma". In this dilemma, as well as throughout the history of human development, figures the importance of human rights to certain specifics related to development stage of society.

Thus, the first US troops intervened in Afghanistan in 2001 to protect people from the dictatorship, establish women's rights and introduce democracy. In Iraq as well, as the reasons were stated - unconvincing construction of Iraq's weapons of mass destruction as a

threat to neighboring countries, then the suppression of freedom of thought and freedom of the press, and the general protection of the people supposedly unpopular regime, led to the fact that in the first war in Gulf were killed hundreds of thousands of people and many generations have no longer any basis for survival in this area. Also, several months of bombing Libya in March 2011 was justified with arguments about the protection of human rights. Even the decision was made in the UN Security Council, in this conflict it is particularly important that NATO sided with the anti- Gaddafi forces and in that manner exceeded targets of humanitarian mission that was approved. (Bebler, 2012)

NATO intervention in Yugoslavia in March, 1999 was also undertaken to protect the human rights of the Albanian minority in Kosovo, and it was referred as a reason for war. This intervention sparked intense debate about the kind of right of NATO and the international communities have to intervene in the conflict. In addition, there was no clear UN Security Council mandate for military intervention, which eventually led to the escalation of violence instead of preventing it. (Đuliman & Karlsen, 2003) Contrary to some expectations, the military intervention did not improve the situation of human rights in Kosovo and Metohija, even beyond the region; it has led to the emergence of a number of incurable diseases, enormous environmental pollution. The consequences of this kind of "humanitarian aid" and use of munitions with depleted are certainly not a contribution to human rights in this part of Europe.

1. **Picture 1: Documented civilian deaths from 2003 to 2014 in Iraq (Source: https://www.iraqbodycount.org/database/)**




2. The picture above can be used to illustrate the effects of some of the interventions for human rights, and how many people lost their fundamental right to live due to these interventions.

## 3. CONCLUSION

It can be concluded that with the considerable effort of intellectual and of other circuits to contribute to the advancement of human rights, in general, since the collapse of the bipolar system and the "end of ideology", a sufficient level of true and proper interpretation of human rights has not yet achieved. Numerous efforts of people of good will have failed to materialize good results over a wider area. Reliance on force, of any kind, in the protection of human rights, not infrequently, a replacement thesis in order to

marginalize the real, mainly economic interests by minor or major force in different parts of the world.

After these and other wars, genocide, and a number of other armed conflicts, optimism for the free world in which human rights are developed and respected has been replaced by a more cautious attitude. Unresolved territorial and minority issues and disagreements are open to new efforts to find peaceful solutions but also to the new opportunities for intervention. Such behavior creates space for putting science in the function of power which should be able to debunk the security dilemma in modern times, and helps to focus the social capital to improvement of tolerance between people and the sustainable development.

## 4. REFERENCE LIST


1. Bebler, A. (2012). The European Union, NATO, and the „Arab spring“ in Democracy and Security in Southeastern Europe, vol.2, 10/11, Atlantic Initiative, Sarajevo
2. Buzan,B. et all (1998). Security: A new Framework for Analysis
3. Collins, A. (2010). Contemporary Security Studies, Politička kultura, Zagreb
4. Đuliman, E., & Karsen, G. (2003). Introduction in Human Rights, Helsinki Committee for Human Rights of Bosnia and Herzegovina, Sarajevo
5. Hajek, F. (2002). Law, legislation, and freedom, CID, Official Gazette of SRY, Belgrade, Podgorica
6. Hofbauer, H. (2012). Naručena istina – kupljena pravda, Beograd
7. Jončić, V. (2010). International Humanitarian Law, Faculty of Law, Belgrade
8. Marković, S. (2012). Human rights between codification and manipulation, Harmonization of the legislation of the Republic of Serbia with the Law of the European Union. Institute for international policy and economy, Belgrade
9. Marković, S. (2013). Security – traditional and critical understandings, USEE, Novi Sad
10. FM-100-20 Low intensity conflict, Waschington, 1981
11. The Charter of the United Nations, (1945).
https://www.un.org/en/documents/charter/intro.shtml
12. The Universal Declaration of Human Rights, (1948).
www.un.org/en/documents/udhr/resources.shtml

UDK:355.43-021.388:327.54-021.68(100)

# DEFENCE STRATEGIES OF CHINA AND THE UNITED STATES WITH A SPECIAL REVIEW ON NORTH KOREA

***Jelena Dinic, M.Sc.***
*e-mail: jelena.dinic@fim.rs*
***Dusko Tomic, Dr.Sc***
*e-mail: dusko.tomic@fim.rs*
***Predrag Lecic, BA***
*e-mail: predrag.lecic@fim.rs*

**Abstract**

A large number of the security problems within the People's Republic of China are defined by the new Defense strategy with a shift towards a more offensive policy towards countries and other factors that threaten China's national interests. The current US defense strategy emphasizes the need for extended fight against terrorism and countries such as North Korea which obstruct international law, endangering world security. North Korea developed nuclear arsenals which became a medium of intimidation in the international relations, forcing the neighbors and the big powers to prepare an adequate response to military threats of the North Korean authorities.

***Keywords:*** *China, the United States, North Korea, defense strategy, power;*

## 1. INTRODUCTION

The collapse of the bipolar structure of power and the end of the Cold War marked the emergence of a new world order and a different allocation of the military power on the world political scene. States as the only referential object of security from the period of the Cold War have given way to a new space and a number of actors at sub-national and supranational level. Despite these tectonic changes in the international security system, by using aspects of hard power (military capacities) states still remain dominant factors that forge the global security agenda. The People's Republic of China has managed to establish a double-digit economic growth and is positioning itself as a military and economic power on the scale of the most successful economies of the world. Imposing economic growth in the recent decades has faced the People's Republic of China with a number of problems. The migration of population to the cities, the rapid population growth, environmental problems as a side effect of industrialization, the cash disparity between the urban population and the population in rural areas as well as internal problems of a political nature (Tibet, Taiwan, Xinjiang province) pose serious security threats. By the establishment of economic and political cooperation with a large number of countries and international organizations, the Republic of China tries to take some of their problems resolved, aware of the fact that regardless of the economic strength and the power of autarkic systems in a globalized world, have a minimal chance of survival and prosperity. The United States emerged as the winner of the Cold War, creating the conditions for the creation of a unipolar order. Division of the global structures and the emergence of a

number of factors on the world political scene have strengthened the position of other countries and international organizations. The US defense budget exceeds the total budgets of many countries in the world.[1] Investments in the defense industry and budget allocations for intelligence services are a clear indication of power and influence of the state on the dynamics of international relations in the twenty-first century.

North Korea has respectable aspects of hard power. The number of active soldiers is estimated at 1.2 million while in the reserves 6 million soldiers.[2] South Korean sources say that a third of national income in North Korea stands out for the army. The biggest concern of the world powers and the neighbors of North Korea create the Korea's nuclear program of the country, as well as the refusal of the ruling structures to stop nuclear tests and military intimidate opponents. The ratio of the United States and China has always represented a combination of strategic interests and rivalries in terms of the number of mutual interest. The posture of United States toward North Korea is defined by the current military strategy, economic and security interests.

## 2. Key aspects of the military strategy of the People's Republic of China and the USA in terms of cooperative security and the implementation of the national interests

China's defense strategy has, by nature, a defensive character and prioritizes the protection of sovereignty, territorial integrity, security and protection of the national interests and values that work towards the development of the Chinese nation. The new Chinese White paper leaves the traditional military attitude of the priority of the protection of the land above sea level and highlights the need to protect China's interests on the high seas.[3] The People's Republic of China is a country that has embraced market economy, proving that such a concept of economic existence is compatible with the one-party socialist system. The totalitarian political system in combination with market economies throughout history through several examples proved to be effective and the People's Republic of China has opted for the path of gradual development, coming to a second place of all ranked economies of the world.[4] The most populous country in the world has an impressive hard and soft power: working in a disciplined and hardworking population, vast mineral wealth, influence in international organizations and respectable military force. The policy of "peaceful growth" and non-interference in the internal affairs of other countries People's Republic of China is in parallel to the intensive strengthening military capabilities.

The defense Strategy of the People's Republic of China [5] has focused on strengthening the naval capacity due to the growing need for addressing security threats and disputes related to the area of the South China Sea.[6] The Strategy emphasizes the fact that the People's Republic of China is in a critical stage of reform and development in

[1]Military spending in United States https://www.nationalpriorities.org/campaigns/military-spending-united-states / 02/10/2015

[2] 20 things that you didn't know about North Koreahttp://www.telegraf.rs/vesti/1013969-ovih-20-stvari-o-severnoj-koreji-niste-znali-foto-video 02/10/2015

[3]Defense Policy http://eng.mod.gov.cn/Database/DefensePolicy/index.htm27/10/2015.

[4]http://www.politika.rs/rubrike/Svet/Azijska-banka-razvrstava-svet.lt.html 21/05/2015.

[5] White paper was published on 26th of May 2015.

[6]China's Military Strategy http://www.chinadaily.com.cn/china/2015-05/26/content_20820628.htm 27/10/2015

which the need for cooperation with other peace-loving states. The document also states that the People's Republic of China in the coming period is to oppose hegemony and power politics in any form and to refrain from their own hegemony or expansion. The Communist Party of the People's Republic of China remains the guiding star of China's defense and vigilant guardian of China's sovereignty, security and national interests.[7]

The global socio-economic changes in the era of globalization exerted their influence on the People's Republic of China and accelerate the process of modernization of Chinese society. The new Defense Strategy highlights the existence of a risk of hegemony of certain powers (referring to the United States), demonstrations of power politics and neo-interventionism. Policy makers have expressed concern about the strengthening power of terrorist organizations and problems due to ethnic, religious, territorial and border conflicts. Local wars and conflicts of low intensity are potential focal point and source of endangering the safety of the PRC. The Asian-Pacific region has become the seat of the world's economic and strategic ambitions, particularly the USA and Japan, which demonstrate the power through its military presence in the region. Separatism and Terrorism extremism have a negative impact on the security of the People's Republic of China and its neighbors due to the threat of "spillover" of the conflict and instability. Separatist tendencies in Taiwan still have a disruptive function in the attempt by the government in Beijing to resolve the decades-long dispute with the Taiwanese separatist-minded political options. The detriment of the PRC also applies separatist aspirations for the creation of an independent Tibet and East Turkistan.[8]

The big challenge of China's military security is a change in the nature of security challenges, risks and threats, as well as rapid technological advances competitive force on the world political scene. The Safety Strategy of the People's Republic of China is the primary national strategic goal of building a modern, powerful socialist state until 2049 when the People's Republic of China celebrates 100 years since its founding. The authors of the Strategy believe that without a strong military state they can be neither strong nor safe and that a holistic approach to the national security is a necessary element for harmonization of the external and internal security and assigning equal importance security of the state and its citizens. The armed forces of the People's Republic of China will participate, in accordance with the text defined in the Strategy, in various forms of regional and international cooperation to safeguard the interests of the Chinese nation. The strategic tasks of the Chinese army enumerated in the new Defense Strategy of the People's Republic of China are primarily focused on coping with a wide range of potential military threats, preserving the territorial integrity and sovereignty of the state, protecting the interests of the People's Republic of China and the strategic deterrence and counterattack in case of nuclear attack. The Chinese army is also responsible for participating in the rescue missions in the case of hydro-meteorological hazards and earthquakes, as well as support for national economic and social development. The Strategic concept of active defense is the dominant motif that runs through the strategy of defense of the Republic of China and involves the application of paragraph nonaggression pact except in the case of defense against attacks. Modernization and strengthening of the military capacities (People's Liberation Army) in the Strategy was presented as one of the priority tasks of the China's

[7]China to embrace new “active defence” strategy http://thediplomat.com/2015/05/china-to-embrace-new-active-defense-strategy/29/10/2015

[8]China’s military strategy http://www.chinadaily.com.cn/china/2015-05/26/content_20820628.htm 27/10/2015

national defense, with a special emphasis on strengthening the Marine Corps because of strained relations and the unresolved disputes in the South Chinese Sea. The construction of a second aircraft carrier PRC shows serious intentions aimed at strengthening military capabilities and the inclusion of an offensive approach in the defense system.[9] Aeronautical military forces of PR China (PLA Air Force) were trained for the implementation of early warning systems as well as air strikes. PLA Second Artillery Corps is trained for the implementation of strategic deterrence and nuclear counter-attacks and missile attacks medium and long range. The People's Republic of China has nuclear weapons but will continue, in accordance with the new and all previous defense strategy, representing the traditional view that the nuclear arsenal in the function of defense, or that it will never be the initiator of use of the same. The last segment of the Defense Strategy of PRC is dedicated to military and security cooperation. In accordance with the accepted concept of cooperative and sustainable security, the Chinese armed forces will continue to establish and maintain cooperation with countries, especially with Russia as part of the strategic partnership and the United States through the strengthening of dialogue in the field of defense and confidence-building programs.[10] Multilateral and bilateral military exercises and trainings are another important form of military cooperation between the PRC and countries with which it cooperates in the field of defense. The commitment to a peaceful resolution of the conflict remains the dominant approach to solving security problems. People's Republic of China as a permanent member of the UN Security Council will continue to participate in peacekeeping missions organizations and to help regions threatened by war or natural disasters. The strategy of national security and military strategy of the United States made during the tenure of President George W. Bush represents a turning point in terms of objectives and (potential) enemies, in relation to the strategy adopted during the administration preceded the president. Terrorist attacks on New York and Washington of 2011 were influenced by the realist discourse of security Strategy published immediately after the terrorist attacks. Preemptive operation and anticipatory self-defense were excuses for military intervention around the world (the invasion of Iraq and Afghanistan). The Military Strategy of the United States in 2015 was made so that it represents a softer form of the previous Strategy, with emphasis on the fight against the revisionist states and violent extremist organizations that somehow threaten trans-regional security.[11] The text of the Strategy stresses the fact that North Korea behaves autistic concerning appeal of international organizations and of simple country regarding the abolition of nuclear programs and ballistic missile production technology. When it comes to relations with the People's Republic of China as the greatest challenger in terms of hard and soft power, the US military strategy encourages this important opponent to become a partner of the US in addressing global security concerns. However, the People's Republic of China with their behavior contributes to tensions in the Asia-Pacific region, thus violating the norms of international law. Moreover, the Strategy claims that the PRC's military presence in strategically important international waters pose a security challenge, regardless of the fact that the US wants to cooperate with the forces of challengers (primarily refers to Russia and China). Military objectives listed in the Strategy refer to the

[9]http://balkans.aljazeera.net/vijesti/kina-tajno-gradi-drugi-nosac-aviona 29/06/2015
[10] Ibid.
[11]National military strategy
http://www.jcs.mil/Portals/36/Documents/Publications/2015_National_Military_Strategy.pdf
28/10/2015

survival of the nation, preventing terrorist attacks on US territory and its citizens, ensuring the safety of the global economic system. Mission of deterring actors that threaten US interests have been implemented in the foreign policy actions of the USA and represent focal point for the implementation of the hegemonic aspirations in the global environment.[12]

### 3. Military Strategy as an instrument for solving security problems in the People's Republic of China and the US

Islamism and separatism in the Chinese province of Xinjiang represent one of the major security problems of the PRC and neighboring countries because of the threat of possible "spillover" of conflicts and instability in this region. The reason why Chinese authorities pay so much attention to this region lies in the fact that Xinjiang has huge reserves of natural gas and minerals. The Province is an important route for transporting oil and gas and any deterioration of the security situation could be detrimental to the budget of the People's Republic of China. The cause of instability and poor security situation of the province lies in the fact that the majority of the population in the mentioned areas is Muslims - Turkish origin (Uighurs) who seek to re-establish East Turkestan, with the strong support of the Muslim population in the neighboring countries of Central Asia. The People's Republic of China has signed bilateral agreements with countries in Central Asia regarding fight against terrorism, as well as the multilateral instruments which the States Parties undertake to jointly oppose strengthening separatism, terrorism and extremism. Growing religious tensions, organized crime and terrorist activities of the Muslim population threaten to undermine investment and economic development of Xinjiang Province. The People's Republic of China for decades has been trying to solve the problem of the status of Tibet and Taiwan, as well as the issue of border controls with some neighbors. These problems pose a stumbling block in relations between the People's Republic of China and the United States that are trying to interfere in the internal affairs of a sovereign state.

There have been several decades in the dispute in the South China Sea (Spratly archipelago) between the People's Republic of China (Taiwan), the Philippines, Vietnam, Malaysia and Brunei. The islands have a very important geo-strategic role in the region because they contain oil and gas, but also an important waterway for merchant ships that carry a certain route annually goods worth several billion dollars. Several international organizations are involved in an attempt to solve the dispute (the Philippines sent an appeal to the United Nations, the attempt to influence in ASEAN to adopt a code of conduct concerning the contentious islands) but without success. The US military presence in strategically important regions of the world is explained in military strategy as a necessity because in this way enhances the possibility of realization of US interests. Military cooperation with the People's Republic of China and Russia was presented as an area of priority importance over the awareness of interdependence and the necessity of solving the military (and questions from other areas) through collaboration. The creators of the US military strategy will emphasize the potential danger that can result from the strengthening of the military offensive capabilities of Russia and China as well as its military presence in different regions of the world (Syria, North Korea). The greatest threat to US national

[12]Military spending in United States https://www.nationalpriorities.org/campaigns/military-spending-united-states / 02/10/2015

security representing the violent extremist organizations (Violent Extremist Organizations)[13] such as Al Qaeda and the self-styled Islamic State of Iraq and the Levant whose terrorist activities destructive effect on international security, radicalize populations mainly in Asia and Africa, using terror and violence as a method of imposing their vision the structure of the world. US military strategy envisages resolution of security problems by working with alleys, the implementation of a wide range of military options aimed at violent organizations and revisionist states. The proliferation of weapons of mass destruction, organized crime, cyber terrorism and democratization of violence[14], in addition to violent extremist organizations, represent threats that seriously undermine global security and because of their nature require coordinated action by major powers outside the territory of the countries that fight against these threats. The efforts of the great powers for solving burning issues such as threats to world security authorities of North Korea's nuclear weapons are determined by numerous interests and developments in international politics.

## 4. The position of North Korea in international relations

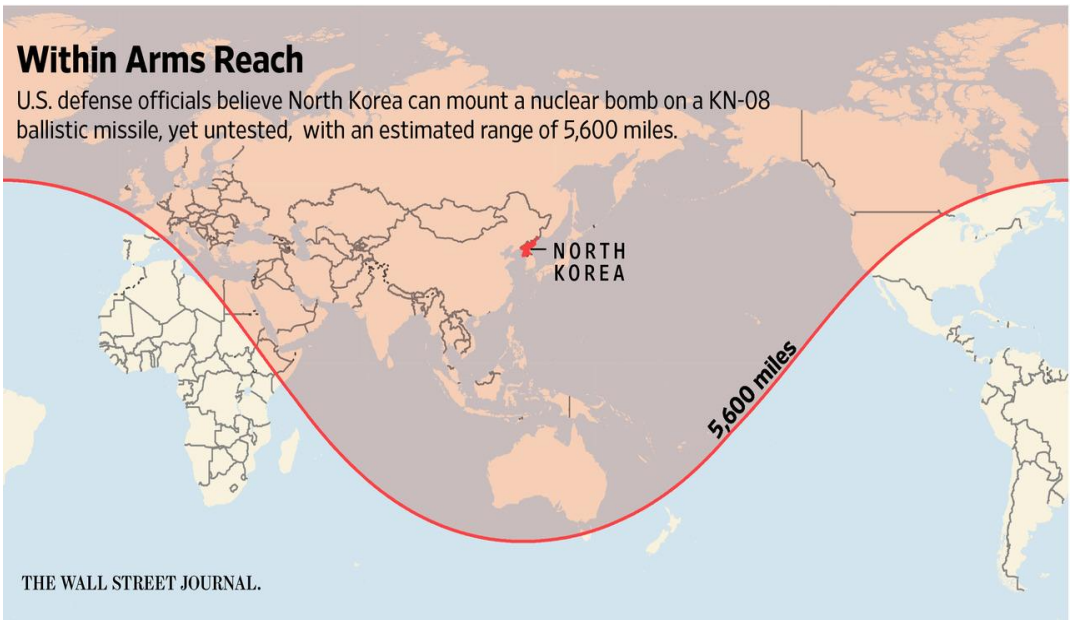
North Korea's political system is a specific military-political and economic model in the world of globalization, interdependence and technological progress, trying to keep autarchic form which successfully resists the influence of other countries and cultures. The Communist North Korea for decades creates an airtight system which punishes with death the opposition to the ruling ideology, accepting the values of Western culture, possession of foreign currency, etc. The communist country has a tradition of family inheritance of high political functions (including presidential), creating a personality cult and totalitarian regime which delves into every pore of social life. In a country governed by chronic hunger and lack of basic foodstuffs, governing structures direct available budgets toward developing nuclear weapons and military equipment. The impressive scope of hard power (nuclear arsenal and the number of active-duty soldiers) provides the North Korean leadership to take an aggressive attitude toward any country that attempts to undermine its security. The Korean peninsula is an extremely important geopolitical point on the map of international relations. The truce signed between North and South Korea in 1953 marked the end of the Korean War, but the same never officially ended by some peace agreement. The North Korean leadership, headed by the "father of the nation" Kim Il Sung for decades after the end of the Cold War created a cult of personality, resisting the influence of foreign powers. The succeeding father of the nation, Kim Jong Il continued fostering a personality cult, trying several times to accept negotiating offer by the United States. Permanent cessation of the negotiations with the United States occurred in 2006 at a time when North Korea conducted its first nuclear test. The arrival of the Kim Jong Un to power contributed to the strengthening of the position of nuclear powers, demonstrating defiance and being sensitive to the appeals of international organizations regarding denuclearization.

[13]National military strategy
http://www.jcs.mil/Portals/36/Documents/Publications/2015_National_Military_Strategy.pdf
28/10/2015

[14]Friedman ,T. (2000) The Lexus and Olive Tree-Understanding Globalization, Anchor books, New York, Updated and Extended Edition, pp. 248-275.

The geopolitical position of North Korea is very interesting, considering the fact that it borders with the largest population in the world (the PRC) and territorially largest country of the world that has plenty of export-oriented resource (Russia). During the Cold War, North Korea was under the strong influence of the People's Republic of China, while the contemporary international trends defend their position intimidating neighbor's nuclear arsenal and maintain good relations with Russia and China, as well as intensifying economic and military cooperation with northern neighbors. South Korea and Japan as countries that do not possess nuclear capabilities are particularly interested in the stability of North Korea because of the geographical proximity and the possibility of nuclear escalation of the conflict. The United States has a special interest in establishing control over the Korean Peninsula, because it would thus eliminate the impact of North Korea's neighbors to the north and the greatest military and economic drivers of the US - Russia and China.

**Figure 1: estimates of the US Ministry of Defense regarding the scope of the range of North Korean ballistic missiles[15]**




## 5. Military strategies of the United States and China towards North Korea

The Security Strategy and the National Defense made by President George W. Bush defined North Korea, in addition to Iran and Iraq as the "axis of evil" because of the development of nuclear weapons (in the case of Iraq, this allegation was not true) and providing support to terrorist groups.[16] Inaugural speech still incumbent President Barack Obama signaled the possibility of changing the policy of previous administrations to dictatorial regimes that are developing nuclear programs. North Korea's nuclear test in

[15] China warns: North Korean nuclear threat is rising http://www.wsj.com/articles/china-warns-north-korean-nuclear-threat-is-rising-1429745706 27/10/2015
[16]Snyder, S. US policy toward North Korea, SERI Quarterly, January 2013

2009 led to the adoption of the UN resolution and implementation of policies of "Strategic patience" by the US administration, providing the possibility of North Korea to make a decision on denuclearization.[17] Unlike his predecessor, who advocated the unilateral military action, Obama's administration applied, in accordance with the proclaimed European Security Strategy and National Defense, the so-called "Smart power", which involves a combination of diplomatic and military instruments for resolving crises in Asia.[18] The alliance with South Korea is an important item in the implementation of the US military strategy toward North Korea. The role of South Korea is a key factor in the stability of the Asian region because it can affect the renewal of dialogue with the northern neighbor. In respect of the presence of US troops in South Korea and the establishment of a trilateral dialogue between the United States, the People's Republic of China and South Korea, the administration in Washington was seen as the best solution to neutralize the threat of North Korea's existing nuclear arsenal.[19] Experts who deal with these topics[20] are considered to support the People's Republic of China the North Korean regime could pose a serious problem for the establishment of peaceful coexistence between North and South Korea. Last developments showed that North Korea does not want to deviate from its nuclear program but leaves space for peace talks with the United States concerning the conflict ended with the southern neighbor (in 1953 signed a truce but no agreement on ending the war).[21]Military Strategy of the Republic of China emphasizes the awareness of the necessity of military cooperation with other countries due to the complex nature of global security risks and threats. People's Republic of China has for decades represented an important ally, trade and military partner of North Korea. The Chinese delegation has for decades sought to mitigate negative attitudes toward North Korea, said efforts were stopped after North Korea's nuclear tests in 2006 and 2009 to 2013 after the murder of his uncle then ruler Kim Jong Un who nurtured close relations with senior Chinese officials and officially became colder.[22] The strategic priority of the People's Republic of China in relation to North Korea lies in preventing the outbreak of war between the two Koreas, as in the case of armed conflict the largest Chinese opponent (USA) can occupy the Korean Peninsula under the pretext of resolving conflicts and crisis management and thus jeopardize the vital Chinese interests in mind the geo-strategic position in the Asia-Pacific region. Analysts who cover the relationship between the People's Republic of China to the Korean Peninsula claim that the People's Republic of China "is approaching South Korea but remains in good relations with North Korea." The Chinese participation in the international sanctions imposed on North Korea did not greatly upset the relations of these countries, in accordance with their interests maintain close contacts of the party because of ideological closeness and military cooperation. The presence of Chinese high-ranking

[17]Security Council, Acting Unanimously, Condemns in Strongest Terms Democratic People's Republic of Korea Nuclear Test, Toughens Sanctions http://www.un.org/press/en/2009/sc9679.doc.htm 19/10/2015

[18]Snyder, S., US policy toward North Korea, SERI Quarterly, January 2013

[19] Ibid.

[20]Scott A. Snyder, Senior fellow for Korea studies and Director of the Program on U.S.-Korea Policy

[21]North Korea offers U.S. a "peace treaty" or something http://hotair.com/archives/2015/10/18/north-korea-offers-u-s-a-peace-treaty-or-something/ 27/10/2015

[22]China – North Korea relationship http://www.cfr.org/china/china-north-korea-relationship/p11097 19/10/2015

military officials in the North Korean parade in Pyongyang in 2015 confirms the closeness and cooperation that exists between the two countries. The Chinese presence in the parade was the subject of much criticism because of the reputation of a responsible world power by giving legitimacy to the North Korean leadership and the nuclear program that North Korea is developing.

## 7.CONCLUSION

The complex structural dynamics of international relations of the modern era has influenced the formation of the content of the military strategy of the United States and China. These military strategies anticipate military risks and threats, and through interaction with a number of actors on the world political scene test the validity of its content. North Korea's nuclear test and a very offensive attitude of North Korea's military leadership raises concerns among the great powers and neighbors of this country with autarchic military-political and economic system. After a series of unsuccessful attempts to establish a dialogue between North Korea and the denuclearization of the great powers, this Asian country remains a buffer state that retains spread of American influence in the Asia-Pacific region.PR China's new military strategy foresees taking more offensive attitude in international relations, especially with regard to the spread of Chinese influence on the high seas. Problem of militant neighbor who has so far conducted three nuclear tests PRC observes with caution. Traditionally good relations with North Korea suffered a cooling period due to nuclear testing and the needs of the People's Republic of China to maintain the status of a respectable military force which respects international law and international institutions activities designed to condemn and punish the behavior of North Korea. However, the presence of senior officials in Beijing last parade in Pyongyang suggests the existence of military cooperation and interests of the Chinese authorities to maintain close ties with North Korean officials, thus preventing the US to occupy a dominant position and in this part of the world. Military Strategy adopted during the current administration of President Barack Obama softened the attitudes of the previous National Defense Strategy regarding anticipatory self-defense and preemptive warfare as a means of achieving and preserving American security interests in the world. North Korean regime and boasting nuclear arsenal are indicated in the current US military strategy as a priority threat that requires special attention and action. US military exercises that are traditionally organized every year in cooperation with the army of South Korea (Ulchi-Freedom Guardian exercise) aimed at maintaining stability in the region and raising the readiness of the South Korean army in case if North Korea attacks with conventional or nuclear weapons.

Russian Federation, an influential world power with a respectable range of hard and soft power and northeastern neighbor of North Korea, has a special interest in solving security problems generated by the North Korean leadership. Officials in Moscow are concerned about possible installation of American anti-missile system in South Korea, which would expand the US military influence in the Asian region, as well as the possible use of nuclear weapons by the authorities in Pyongyang. Intensifying contacts of military officials of Russia and North Korea and the strengthening of economic cooperation is a response to military cooperation, South Korea and the United States, creating conditions for preventing the spread of US military influence in this part of the world. An active program of development of ballistic missiles by North Korea raises concerns of its neighbors and world powers. People's Republic of China and the United States, in accordance with their

interests and military doctrines are trying to deal the problem with North Korea.[23] The failure to solve the problem of North Korea through negotiations and mediation of international organizations give an impetus to militant activities of the great powers (especially the US) that may attempt to neutralize North Korean threat. The realization of the above scenarios will depend on the seriousness of the threat and the willingness of engaged parties to the respond in reciprocal manner to security threats.

## 8. LITERATURE:


Skittles, C. Witkoff, J. (2004) *World Politics, trend and transformation*, Belgrade, Centre for Southeast European Studies

Friedman, T. (2000) *The Lexus and Olive Tree Understanding Globalization*, Anchor Books, New York, Updated and Extended Edition Snyder, S., US policy toward North Korea, SERI Quarterly, January 2013

ELECTRONIC SOURCES:

Military spending in the United States
https://www.nationalpriorities.org/campaigns/military-spending-united-states 02/10/2015

20 Things about North Korea that you did not know http://www.telegraf.rs/vesti/1013969-ovih-20-stvari-o-severnoj-koreji-niste-znali-foto-video 02/10/2015

Defense Policy http://eng.mod.gov.cn/Database/DefensePolicy/index.htm 10/27/2015

China's military strategy
http://www.chinadaily.com.cn/china/201505/26/content_20820628.htm 27/10/2015

China to embrace new "active defense" strategy http://thediplomat.com/2015/05/china-to-embrace-new-active-defense-strategy/ 29/10/2015

China secretly building a second aircraft carrier http://balkans.aljazeera.net/vijesti/kina-tajno-gradi-drugi-nosac-aviona 06/29/2015

National military strategy
http://www.jcs.mil/Portals/36/Documents/Publications/2015_National_Military_Strategy.pdf 28/10/2015

China warns North Korean nuclear threat is rising http://www.wsj.com/articles/china-warns-north-korean-nuclear-threat-is-rising-1429745706 10/27/2015

Security Council, Acting unanimously, Condemns in Strongest Terms Democratic People's Republic of Korea Nuclear Test Toughens Sanctions
http://www.un.org/press/en/2009/sc9679.doc.htm 10/19/2015

North Korea offers US a "peace treaty" or something
http://hotair.com/archives/2015/10/18/north-korea-offers-usa-peace-treaty-or-something/27/10/2015

China - North Korea relationship
http://www.cfr.org/china/china-north-korea-relationship/p11097 19/10/2015

The secret ingredient in China - North Korea relationship
http://thediplomat.com/2015/10/the-secret-ingredient-in-china-north-korea-relations/27/10/2015


[23]The secret ingredient in China-North Korean relations http://thediplomat.com/2015/10/the-secret-ingredient-in-china-north-korea-relations/ 19/10/2015

UDK:323.13:28(5-091.2)

# ISLAMIC STATE - THE CAUSES OF GENESIS AND INFLUENCE OF REGIONAL POWERS

***Hatidža Beriša, Dr.Sc***
*University of Defense, Military Academy, Belgrade*
*e-mail: hatidza.berisa@mod.gov.rs*
***Katarina Jonev, MA***
*Faculty of Law at the University of Belgrade*
*e-mail: katarina.jonev@gmail.com*
***Igor Barišić***
*University of Defense, Military Academy Belgrade*
*e-mail: igor.barisic@va.mod.ov.rs*

**Abstract**

For centuries, the region of the Middle East has been a space of interweaving of the interests of power holders, both within the countries of the region, as well as the interests of the regional and major world powers. The favorable geographical position and the significant reserves of natural resources, mainly oil, make the Middle East, in terms of security, very sensitive. The clash of civilizations and religions in the region and the locations of the most important holy places for both Christianity and Islam were historically a stumbling rock and a great obstacle to peace and prosperity.
The aim of this paper is to point out and to attempt to answer the question ''What contributed to the occurrence and development of the Islamic state?''. Considering the complexity of the security reality in the Middle East, it can be said that the importance is reflected in the fact that it provides a contribution to its knowing the aspect that arises from the problem issues. We can say that this paper is important because it points to the groundlessness of identification of the ideology of Islamists as the narrow views of individuals or groups of people learning official Islam as one of the three major world religions.

**Key words***: Middle East, Islamic state, civilization, religion, natural resources*

## 1. INTRODUCTION

The world, contemporary at the beginning of the 21st century, faces a wide range of challenges, risks and threats to the security; the most significant one is perhaps terrorism. Terrorism, with the implementation of measures designed to provoke fear and psychological shock of the target population, became a very effective method of achieving broader political goals. Terrorist groups seek to popularize their ranks and global impact which affects the new setting of the security scene of the country, region and the world.

For centuries The Middle East has been a space of interweaving of interests of power holders, both within the countries of the region, and the interests of regional and major world powers. The favorable geographical position and significant reserves of natural resources, principally oil, make the Middle East, in terms of security, very

sensitive. The clash of civilizations and religions in the region and the location of the most important holy places of Christianity and Islam were during history a stumbling rock and a great obstacle to peace and prosperity.

The process of change that has swept as domino effect to the countries in the Arab world in North Africa, known as the ''Arab Spring'' has trickled the region of the Middle East, which is even more stratified with the already difficult security situation. In contrast to the ''Arab Spring'' in Africa where, after some changes of the autocratic regimes, gradual stabilization of the security situation has been experienced, there has been an escalation of the conflict in the Middle East in which important role play forces gathered around the Islamic state.

## 2. GENESIS AND DEVELOPMENT OF THE ISLAMIC OF STATE

The term Islamic State (hereinafter IS) has a double meaning, and it is necessary to determine the precise relation to the theme and contents covered in this paper. First, this concept implies the shape of the state regulation based on both religious basis and the Islam. Consequently, the particular states in their names have an Islamic frame such as the Islamic Republic of Iran. Secondly, the term Islamic state refers to a terrorist organization which, in terms of the topic, is addressed in this paper.

The Islamic state is a terrorist organization of Sunni extremists acting in the territory of Iraq and Syria. It is also known under the names of the Islamic State of Iraq and the Levant[1] (ISIL), the Islamic State of Iraq and Greater Syria (ISIS) and the Islamic State of Iraq and Sham (Islamic State in Iraq and al-Sham). As a basic method of operation, IS advocate and applies jihad which is their way to identify their actions and objectives with the goals of Islam. At the same time, the Islamic state seeks to point out to the whole Islamic world's need for an overall fight against the infidels. The methods and program of action taken by this organization must not be identified as any kind of study or belief of the official Islam.

The methods or the program of action of this organization cannot be whatsoever identified with any part, learning or belief of the official Islam. In this way is expressed the utmost respect for all the Muslims across the globe who practice their religion and propagate to achieve universal peace, what is in fact, the original subject of learning of the Islam. Identifying extremist ideologies or extremist groups and organizations with the official Islam carries risk and deepens the gap between the Muslims and the members of other religions around the world, especially Christians. Moreover, it may provoke a counter effect as a result of the identification of the terrorists with the Muslims and it can influence in such way that Muslims who do not support the extreme views start to act in this direction.

The Islamic state was initially created as a branch of Al Qaeda during the occupation of Iraq by the coalition led by the United States (hereinafter-USA), and its total expansion was seen in the conflict in Syria. The fact that IS controls significant territory of Syria and Iraq indicates the seriousness and potential for achieving the proclaimed goals, the most important of which is the creation of one single Islamic state and declaring the ''Caliphate''. Brutality and cruelty in actions as well as public executions of Western

[1] Levant – means East or East countries. Levant is common name for the countries which are located on east coast of Mediterranean Sea - Greece, Turkey, Syria, Jordan, Liban, Israel, Egypt

journalists and prisoners have influenced the popularity and increased the power of this organization and it is also becoming a growing concern of the international community.

The significance of IS has a transnational character. The ideology propagated by showing hostility towards the US and the Western powers and all the ‘’infidels’’ is very cleverly used to attract and recruit supporters, both from the Middle East region and from around the world. In addition, the target of IS is not limited to the formation of a separate state entity only in the territory of Syria and Iraq, but also in areas that are predominantly inhabited with Muslim population. In practice, this means that the projected territory IS includes large parts of Europe, Asia and Africa.

By the beginning of the conflict in Syria, under a new leader Abu Bakar al-Baghdadi[2], the terroristic organization has carried out more terrorist attacks on Iraqi territory directed against the ruling regime, the occupying forces and the opponents. In this period there was a gradual divergence between the two leading Sunni Islamist terrorist organizations in the region. Abu Bakar al-Baghdadi, 2013, declared the Islamic State of Iraq and the Levant, which was not favorably accepted by the leaders of Al Qaeda and the Syrian terrorist organization " Džabat al-Nusra’’(Khan,2014). The core of disagreement was the decision and commitment of Al-Baghdadi to put under one command all the Sunni Islamist forces in Iraq and Syria. The different views on the ways and methods of action against the United States and the enemies in the region influenced the separation of the Islamic State in Iraq from its root, Al-Qaeda. These developments pointed to the lack of unity of Sunni Islamists in the region.

After the complexity of the security situation and the beginning of the armed conflict, the seat of the Islamic State of Iraq and the Levant was transferred from the territory of Iraq to the city of Raqqa in Syria, after which the members of this organization were actively involved in the fights against the regular Syrian forces. Given the substantial strength, the strong discipline and the good leadership under Al Baghdadi, the Islamic State of Iraq and the Levant in the short period of time conquered r significant territory in the east and north of Syria and a part of Iraq where they declared Caliphate.

In 2014, the Islamic State of Iraq and the Levant changed its name into Islamic state. Changing the name of the organization which arose from the name of a geographical destination, may indicate a further, long-term aspirations of IS in terms of the spread of ideology and influence outside the Middle East region. The growing power of the Islamic state and their actions became a threat not only to countries in the region, but also to their historical, civilization and cultural heritage (Softić,2015). Unscrupulous actions provoke physical destroy of all the traces that indicate the historical existence and development of anything that does not belong to " original " Islamic civilization. The best examples of this are the destroyed ancient monuments in the city of Palmyra in Syria (Beta, 2015).

[2] Al-Baghdadi–doctor of Islamic science. He was born in 1974 in Samara (Iraq). Untill 2004 he was imam.

## 3. ISLAMIC STATE AND REGIONAL POWERS

The Islamic state is interwoven and dependent on a significant extent that has historically conditioned their changes which, almost as a rule, affect the setting of the game and the rules of safety in the region. In considering the possible impact of regional powers in the formation of IS it is necessary to consider the interests of each of the countries and the relationship with the other countries in the region.

The Islamic Republic of Iran is a country with growing influence in the region and aspires to become a leading regional power. Iran, the state that was the sworn enemy of the United States in the Middle East, nowadays stands together with USA in a fight against IS. According to Mr. Osman Softic, one of the major reasons of its origin, IS are conflict of interests between Iran and Saudi Arabia[3]. Pro-Iranian regime in Baghdad and the official Tehran believe that by financing the extremist Sunni organizations in Iraq and Syria, Saudi Arabia directly influenced the occurrence of IS, and later its expansion. The author sees the explanation for this viewpoint in the Saudi Arabia's fear of the growing influence of Iran. Merits of this fear are that Iran can exert influence on the Shiite population that inhabited the east of Saudi Arabia, which are contrary to its interests[4]. In this context, the IS and its action are subject of interest of Saudi Arabia, and the goal is to weaken the influence of Iran in the region.

After the overthrow of Saddam Hussein and his execution, the US faced a series of problems that simply could not be solved through military force. Faced with a kind of stalemate, the US withdrew its troops from Iraq, but the question is what they left behind. They left the new Shiite-led government, the unprepared and poorly organized army of Iraq and fairly wide space for the influence of Iran's interest, mostly because Iraq certainly fits Iran, with Shiite elite in the power.

The Iraqi government, led by the Prime Minister Maliki[5], instead of learning a lesson from the recent history, and opening the path of national reconciliation, made a mistake which caused an enormous damage to Iraq. They start firing Sunni officers from state institutions, as well as prominent people of the Sunni cultural and religious elite. The reactions were reflected in the increasing dissatisfaction and a sense of hostility of the Sunni population to the country and to the Shiite population. Such security situation was a fertile ground for awakening and organization of Sunni extremists because it is natural to respond to oppression with force. Given the above, one of the causes of action and IS can be found in the unwillingness of the newly formed Iraqi government to overcome the ghosts of the past and to lead the society to prosperity, to create equality for all regardless of their religion or background. Due to reinforcement of military unit, IS leadership accepted large number of officers of the former Iraqi army (during the reign of Saddam Hussein). This brought even greater support from the Sunni tribes and fighters (Radosavljević, 2014)

The moment that refers to the influence of Iranian interests in the area of Iraq after the withdrawal of the United States has another connotation which is significant from the

[3] Osman Softić, MSC, graduated at Faculty of Islamic studies in Sarajevo. Got master degree on International relations at South Wales University in Australia. He analyses modern Islamic moves, international relations, Middle East and Islam in Southeast Asia.

[4] The most important resources of oil are located in the east part of Saudi Arabia

[5] Iraqi Prime Minster who was settled on the function with the approval of USA and Iran after withdraw of American soldiers from Iraq.

point of origin of the Islamic state (Softić, 2015). Although USA and Iran have, on the first look, the same interest to support Maliki government, the United States do not welcome the Iranian aspiration to become a leading regional power. This opinion of the US is supported by its allies in the region, Israel and Saudi Arabia. The emergence of IS, therefore, could be the common interest of Israel and Saudi Arabia because it directly affects the weakening of Iran, which is hostile to Israel, and which Saudi Arabia see as a competitive force.

Israel, the only non-Arab country of the Levant, also affects the complexity of the interests of the regional powers in the Middle East. Another significant force that sided with the regular forces in Syria is the pro-Iranian Hezbollah organization which operates in Lebanon. It is a well-organized, political-military organization that is one of the main actors on the political scene and has an effect on the security of Lebanon and the region as a whole. Bearing in mind the traditional hostility toward Israel, Hezbollah holds for "extended hand" of Iran in achieving interests in the region. How powerful system is Hezbollah and how much it is a thorn in the eye of Israel, says the fact that in the last war of Israel and Lebanon in 2006, Hezbollah has shown that it is an equal player on the battlefield and that can stop one of the most organized and the most experienced armies in combat region. The outcome of this conflict was further strengthened by the Hezbollah's position on the political scene and the security of the region and indirectly influenced the increase of power in Iran. The territory held by the IS in Syria and Iraq is an obstacle for regional connectivity of Iran in Lebanon, and Hezbollah, which is not in favor for Israel. This would lead to a change in the current balance of power in the region and the change in the nature of security threats to Israel (Aljazeera, 2015). In addition, Israel has benefited from the IS and the fact that there is a reality that refers to the possible disintegration of Iraq and the creation of several smaller, weaker militarily sensitive and influential states. One of those states would probably be Kurdistan. The Israeli attitude toward the Kurds has the characteristics of " friendship " for several reasons. The fact that Israel and the Kurdish community have a common enemy - Turkey - and that over two hundred thousand Jews from Kurdistan live in Israel is in favor of the previous claims. Israel buys significant amount of oil from Kurdistan. In addition, Israel is in favor of weakening the pro-Iranian regime in Baghdad. This situation corresponds to the Israeli interests because they can easily affect the destabilization of Turkey and the secession of the Kurds.

Analyzing the possible causes from the perspective of the interests of the regional powers, it is impossible to bypass Turkey, a country that is a bridge between Europe and Asia and has a significant impact on the security situation in the region. When it comes to Turkey's interests in the region, it is necessary to start from a few facts. Important pipelines pass through Turkey and transport oil from Iraq and Syria to Turkey and further to European countries. Through these pipelines, according to available information, oil exploiting is transported by the IS and sold to Turkey at significantly lower prices than at the market (Kyriakou, 2015) Part of the pipeline was built during the conflicts in Iraq and Syria by members of the IS, and their route runs mostly through Kurdistan. According to John Kirijakua, a former member of the US Central Intelligence Agency (CIA), and now a member of the Senate for Foreign Relations, an autonomous area of Kurdistan allowed the construction of an oil pipeline across their territories, with an appropriate "tax". According to his data, IS annually earns more than five hundred million dollars from the trade of oil transported by secret pipelines. It is not difficult to conclude that there is a significant financial benefit for both Kurdistan and Turkey (Vesti, 2014). In this case, we can glimpse into the complexity of the security situation in the Middle East. Kurdistan and Turkey,

although not in a good relationship because of the problems of the Kurds in Turkey, put the economic benefit in the first place, in spite of all other interests. Bearing in mind the tensions with the Kurdish minority and the fact that it was the Kurds who are one of the most prominent opponents to IS on the field, IS existence and functioning is Turkey's direct interest. These facts indicate that IS "cooperates" with Kurdistan on the one hand, while on the other hand there is a war against Kurdish units in the field. The question is what the role of the regional government of Kurdistan is. According to Mr. Softic, IS has come to the government of Kurdistan as a salvation. During the conflict in Iraq, the Kurdish military formations, known as Peshmerga came into possession of significant territory around the city of Kirkuk, which Kurds do not intend to return to the regime in Baghdad[6]. In addition, this development is supported by undertaking the activities of Kurdish leaders, aimed at the idea of forming their own state on the territory of Iraq. One of the Turkish interest for the development and further action of IS on the ground can be a migrant crisis caused by the conflicts in Syria and Iraq. The main corridor through which migrants move to Europe goes over the territory of Turkey Since the beginning of the migrant crisis in parts of Turkey where they focused on reception centers, the prices of food, housing, transportation and clothing increased. It is estimated that Turkey, because of these microeconomic changes caused by a migration crisis, earns a significant amount of money on a daily basis.

In addition, Turkey received about four billion Euros for solving problems with immigrants from EU. According to estimates, only one quarter of the amount was spent for this purpose. Given the above, it can be concluded that Turkey, directly or indirectly could influence the onset, development and operation of the Islamic state.

The United States faced with big problems in engaging in Iraq. The main problem lies in the fact that they failed to solve the crisis only with the help of military force. Under pressure from the domestic public and the possible strategies to avoid falling into even greater problems, the US has withdrawn from Iraq, leaving the regime of the Prime Minister Maliki to independently lead the country. The newly formed Iraqi government, despite the fact that it came to power thanks to the US, refused to sign the agreement which provided for the retention of significant US military resources in Iraq. Some analysts see in this fact one of the reasons why the US administration rather quietly reacted to the emergence and development of the Islamic state. The US policy which favored Shiite population had a negative impact on the relations between Shiites and Sunni, so a significant percentage of the Sunni population greeted IS as liberators. One of the interests that the United States could have on the Middle East is the disintegration of Iraq and the establishment of several smaller countries. There is a possible strategy of a US for the partition of Iraq in the area of Baghdad, Mosul and Basra as it was during the Ottoman Empire (Softić, 2015) Assuming that this is true, the United States had a motive to facilitate the formation and development of the IS.

One of the significant factors that contributed to the strengthening of IS has been some kind of erroneous calculations of the US when it comes to the functioning of these organizations against the regime of Bashar al-Assad in Syria. In the initial period of conflict, IS was one of the greatest enemies of the Assad regime, and this attitude corresponded to the interests of the United States. Strengthening the IS and the incompatibility of interests with the Syrian opposition, caused the complexity of the situation. The Islamic state began conflict in Syria for their goals without taking into

[6] In this region is 1/3 of the Iraqi oil reserves

account the interests of the opposition. At the same time there was an unusual situation that the US and the official Syrian authorities have a common enemy who occupies an important role in the conflict that has become a concrete threat to those who have sought to take advantage of its geopolitical goals (Radosavljević, 2014).

When examining the possible interests of the United States for the creation and existence of IS it is important to note the fact that Russia and Syria have signed a contract worth more than four billion dollars in the defense industry, which aims to further modernize the Syrian army (Jagodić, 2014).

## 4. CONCLUSION

It can be concluded that the IS marks the beginning of 21st century in the Middle East with its organization and the territory it controls. Many experts in the field of security agree with the statement that the organization has exceeded, by the methods of operation and unscrupulousness, all known terrorist organizations in human history. They are classified as a terrorist, but at the moment are they really only that? Undoubtedly, they use terrorism as a method of action, but we must not neglect the fact that the IS "established" some kind of form of statehood on the territories they conquer. Those areas are not negligible, and what is more important from the security point of view, perhaps is not even the final. Islamic states became regional, and one might say, a global reality which significantly affects the creation of the security situation in the region and beyond. Features presented in the paper indicate the overall complexity of the security realities of the Middle East, which is reflected in the large number of actors, both at local, regional and global level. If we look upon the contents of this work, it can be concluded that the IS was created and developed thanks to the patchwork of interests of most of the countries in the region, but also the major powers. The Islamic state is formed at the intersection of those interests (Intermagazin, 2014).

How complex is the situation with regard to the causes of the emergence and development of the Islamic state testifies the statement of Igor Pankretanka, chief editor of 'Modern Iran' which provides the names of the founders of the Islamic state. Here are the appointed, namely, Jeffrey Feltman, a former US ambassador to Lebanon, Prince Bander bin Sultan, former head of the Saudi Arabia intelligence service, the Emir of Qatar, senior officials of the Turkish, British and French intelligence services. In this paper the names are not important, but what is important is to point out the possible directions that can provide answers to questions related to the causes of the Islamic state.

Analyzing the causes of the emergence and development of the ID, a number of situations that are seemingly paradoxical and contradictory can be found. The Islamic state now relies on a situation in which most of the regional powers and the United States correspond to its existence. What may be worrying is the fact that the IS itself created conditions that not only serve as tool for achieving one's goals, but becomes an entity that defines its own interests. This poses s the question of how the world and the region will react to this in the future and whether it will allow threats to their interests which, until yesterday, were supported activities of the Islamic state. Knowledge of the causes and development is the basis for creating serious approach to the fight against the Islamic state. The causes are many and each of them represents a cornerstone in the foundation of the existence of the Islamic state. For now, IS skillfully exploits the lack of 'critical mass' that would be able to start cutting down the roots of its existence. If this does not happen, IS

could turn the organization into a real national system with problematic ideology which may adversely affect the security situation in the region and globally as well.

**Literature:**


1. Berisha, H.: „*Political violence in Kosovo and Metohija*", Foundation, Belgrade, 2013
2. Kyriakou, J.: „*Wrestlers ID built a secret pipeline through Kurdistan to Turkey*", available at: www.pravda.net, 2015
3. Jagodić, D.:„*Military Strategic view of solving crises and armed conflicts in Syria"*, staff college NDS, Belgrade 2014
4. Radosavljevic, G.: „*Islamic state-causes of the security dynamics",* staff college NDS, Belgrade 2014
5. Khan, I.: „*Islamic state-storm will pass soon"*, available at: balkans.aljazeera.net
6. Softic,O.: „*Khilafat-spoofing Islamic world, available at"*, balkans.al jazeera. net, 2015
7. www.intermagazin.rs, 'For What militant Islamic state lay stopped in time", 2014
8. www.vesti net. rs ''ISIS gang in the name of Islam daily earning over $ 3 million"
9. www. balkans.aljazeera.net
10. www.beta.rs, text „Islamic state executed scientists in Palmyra"

**UDK:355.356(567:569.1)**

# THE ISIS AS A CHALLENGE TO INTERNATIONAL SECURITY AND THE INCENTIVES OF THE INTERNATIONAL COMMUNITY: LEGAL PROFILES

***Valentina Ranaldi***
*Ph.D. in International Legal Order and Human Rights*
*University of Rome "La Sapienza"*
*e-mail: valentina.ranaldi@uniroma1.it*

**Abstract**

Since the international community has perceived the *Islamic State of Iraq and Syria* (ISIS) as a threat to the international security, many incentives that are relevant for the legal analysis have been taken.

First of all, the paper deepens the aspects of international legality related to the use of force against the ISIS. In fact, the international military operation led by the United States has raised many doubts as to its compatibility to the international law. Military attacks of the US-led coalition against the ISIS have taken advantage from a growing number of participants. Four Gulf countries (Bahrain, Saudi Arabia, Qatar, United Arab Emirates), as well as Jordan, have in fact participated from the beginning to the raids of the American armed forces (raids began on the night between 22 and 23 September 2014 in order to hit the Islamist organization that, within three months, had conquered a significant and growing part of territory between Iraq and Syria).

A few days later, Denmark and the UKalso joined the coalition. British Prime Minister Cameron, who on September 26, 2014 won the vote of confidence of the Westminster Parliament for the mission in Iraq, responded to criticism from the opposition, both Labor and Conservative, to the mission, stating that the military operation against ISIS differed from previous British missions in Iraq because this time "there are legal basis for the intervention, as we have asked the Iraqi government".

Turkey also joined the coalition since it adopted a parliamentary resolution on October 2, 2014 that decided on operations in Iraq and Syria and authorized the transit through the Turkish territory of foreign military forces committed against ISIS jihadist militants.

Russia accused the US about these attacks from the beginning to point to geopolitical goals without worrying about violating the sovereignty of the States involved and destabilizing the already strained situation in the Middle East. The Russian position was to consider air strikes in Syria, without the consent of Damascus and in the absence of decisions of the UN Security Council, as "an aggression and a gross violation of international law". Consistently with this position, Russia decided to launch air strikes only under request of "military assistance" by Syrian President Assad.

In addition to the initiatives taken by States or coalitions of States, several Resolutions of the UN Security Council have been taken in order to prevent any activity of the IS. Finally, the Resolution n. 2253(2015), adopted unanimously by the Security Council on December 17, 2015, expanded and strengthened the Al-Qaida sanctions framework in order to include ISIS in a sweeping move to suppress the financing of terrorism.

Actually, other Resolutions had been previously taken, including the n. 2170 and 2178 - respectively of August and September 2014 - and many others which the paper deals with in order to understand to what extent the efforts of the international community are really effective and what tools the international law offers to face the outstanding challenge to international security represented by ISIS.
***Keywords**: ISIS, security, legality*

## 1. INTRODUCTION: REACTIONS OF THE INTERNATIONAL COMMUNITY TO THE ISLAMIC STATE OF IRAQ AND SYRIA

Since the international community has perceived the *Islamic State of Iraq and Syria* (ISIS, also known as *Islamic State in Iraq and the Levant* - ISIL or Da'esh) as a threat to international security, many incentives that are relevant for the legal analysis have been taken.

First of all, the paper deepens the aspects of international legality related to the use of force against the ISIS. In fact, the international military operation led by the United States has raised many doubts as to its compatibility to the international law.

In addition to the initiatives taken by the States or coalitions of States, several Resolutions of the Security Council of the United Nations have been taken in order to prevent any activity of the Islamic State. Finally, the Resolution n. 2253 (2015), adopted unanimously by the Security Council on December 17, 2015, has expanded and strengthened the Al-Qaida sanctions framework in order to include ISIS in a sweeping move to suppress the financing of terrorism.

Actually, other Resolutions had been previously taken, including the n. 2170 of 15 August 2014, the n. 2178 of 24 September 2014 and many others, which the paper deals with. This in order to understand to what extent the efforts of the international community are really effective and what tools the international law offers to face the outstanding challenge to international security represented by ISIS.

## 2. MILITARY INITIATIVES TAKEN BY STATES OR COALITIONS OF STATES: LEGAL ASPECTS RELATING TO THE USE OF FORCE AGAINST ISIS

Military attacks of the US-led coalition against the Islamic State have taken advantage from a growing number of participants. Four Gulf States (Bahrain, Saudi Arabia, Qatar, United Arab Emirates), as well as Jordan, have in fact participated from the beginning to the raids of the American armed forces (raids began on the night between 22 and 23 September 2014 in order to hit the Islamist organization that, within three months, had conquered a significant and growing part of territory between Iraq and Syria)[1].

A few days later Denmark and the United Kingdom also joined the coalition. British Prime Minister Cameron, who on September 26, 2014 won the vote of confidence

[1]As pointed out by some analysts, however, the military role of the Gulf countries appeared, at least in a first stage, as merely functional not to perceive the military operations against the ISIS as an attack exclusively American. See IACOVINO-RANELLETTI-TOSATO, *L'operazionemilitareinternazionalecontro lo StatoIslamico di Iraq e Siria*, disponibile*online*sulsito del*Centro StudiInternazionali*, *www.cesi-italia.org*.

of the Westminster Parliament for the mission in Iraq[2], responded to criticism from the opposition, both Labor and conservative, to the mission, stating that the military operation against ISIS differs from previous British missions in Iraq because this time «there are legal basis for the intervention, as we have asked the Iraqi government»[3].

Turkey too joined the coalition since it approved it on October 2, 2014, with a parliamentary resolution that decided operations in Iraq and Syria and authorized the transit through the Turkish territory of foreign military forces committed against ISIS jihadist militants.

Russia accused the United States from the beginning to point to geopolitical goals without worrying about violating the sovereignty of the States involved and destabilizing the already strained situation in the Middle East. The Russian position was to consider air strikes in Syria, without the consent of Damascus and in the absence of decisions of the UN Security Council, as «an aggression and a gross violation of international law»[4]. Consistently with this position, Russia decided to launch air strikes only under request of «military assistance» by Syrian President Assad.

From the different positions so far described, it was easy to understand the difficulty to find a unanimous position within the Security Council. The decision, taken by the countries of the coalition, to intervene against the ISIS also matured as a result of the substantial deadlock that occurred within the UN. No unity of purpose has been in fact found about the possibility of coordinated action against the ISIS in Syria and Iraq, but the UN activity has been limited, at least in a first phase, to take measures to stop the recruitment, organization, movement of foreign elements. Moving under Chapter VII of the UN Charter, the Security Council indeed initially adopted two Resolutions, the n. 2170 of 15 August 2014 and no. 2178 of 24 September 2014, which will be discussed below.

## 3. INCENTIVES TAKEN WITHIN THE UNITED NATIONS: THE SECURITY COUNCIL RESOLUTIONS ON IRAQ AND SYRIA RELATING TO ISIS

The Resolution n. 2170, unanimously adopted by theSecurity Council on August 15, 2014, after condemning «the terrorist acts of ISIS and its violent extremist ideology, and its continued gross, systematic and widespread abuses of human rights and violations of international humanitarian law»[5], calls upon all Member States to take national measures to suppress the flow of foreign terrorist fighters to, and bring to justice, in accordance with applicable international law, foreign terrorist fighters of ISIS of the *Al-Nusra* Front and all other individuals, groups, undertakings and entities associated with *Al-Qaida*[6].

The obligations imposed by the anti-terrorism Resolution n. 1373 (2001) are moreover reaffirmed in the Resolution, where the obligation for all States to prevent and suppress the financing of terrorist acts is reaffirmed, as well as the obligation to refrain from providing any form of support, active or passive, to entities or persons involved in

[2] In fact, the motion approved limit the operations only to Iraqi territory controlled by ISIS while, if the UK decides to extend the action even to the Syrian territory, a new parliamentary pronouncement is required.

[3] See *Corrieredella Sera* of 27 September 2014, p. 12, Ancheibritannicibombardanol'ISIS.

[4]As declared by Aleksandr Lukasehvich, spokesman of the Russian Ministry of Foreign Affairs, Sergei Lavrov after the Obama speech at the White House on September 11, 2014.

[5]UNSC Resolution n. 2178 (2014), S/RES/2170 (2014), point 1 of the dispositive.

[6] Point 8 of the dispositive

terrorist acts, including by suppressing recruitment of members of terrorist groups and eliminating the supply of weapons to terrorists[7].

In an annex to text of the Resolution, there is a list of individuals who will be subject to restrictions on their freedom of movement, freezing of assets and other measures provided for by the Resolution no. 2161 (2014)[8].

Of a similar tenor is the later Resolution of 24 September 2014, n. 2178, in which terrorism is qualified as one of the most serious threats to international peace and security[9]. In this Resolution, the Security Council, acting under Chapter VII of the Charter of the United Nations, condemns the violent extremism, which can be conducive to terrorism, sectarian violence, and the commission of terrorist acts by foreign terrorist fighters, and demands that «all foreign terrorist fighters disarm and cease all terrorist acts and participation in armed conflict»[10].

The dispositive of the Resolution n. 2178 states an obligation for the States to prevent the movement of terrorists or terrorist groups by effective border controls and controls on issuance of identity papers and travel documents. Moreover, it urges Member States, in accordance with domestic and international law, to intensify and accelerate the exchange of operational information regarding actions or movements of terrorists or terrorist networks[11].

Member States of the United Nation also commit themselves to prevent and suppress the recruiting, organizing, transporting or equipping of individuals who travel to a State other than their States of residence or nationality for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training, and the financing of their travel and of their activities[12].

To this end, all States are required to enact appropriate legislation, is to intensify border controls, to prosecute and convict terrorists (or assumed), enhancing international cooperation, including through bilateral agreements and exchange of information to identify suspects terrorists.

It should be noted that the Resolution of 24 September 2014, so far described, expresses a general «concern for the establishment of international terrorist networks», while leaving each country free to determine which the terrorist groups to fight are.

The Resolution points out «the particular and urgent need to prevent support for foreign terrorist fighters associated with the Islamic State of Iraq and the Levant», but it

[7] Point 11 of the dispositive

[8] Point 19 of the dispositive

[9] UNSC Resolution n. 2178 (2014), S/RES/2178 (2014), consider n. 1. The mentioned Resolution of the Security Council is based on a plan outlined by the US in a letter, dated September 3, 2014, the Permanent Representative of the United States to the United Nations addressed to the Secretary General (document S/2014/648). Attached to the letter, the US Representative proposed a framework for the action aimed at reinforcing the existing anti-terrorism normative dispositive (formed by the Resolution no. 1373 (2001) of the Security Council), in order to react more directly the threat posed by foreign terrorists. A new Resolution would have allowed, according to the US Representative, to broaden and clarify the obligations of the States in the fight against terrorism.

[10] Point 1 of the dispositive

[11] Point 2 and 3 of the dispositive

[12] Point 5 of the dispositive

also mentions the *Al-Nusra* Front, *Al-Qaida* e «its cells, affiliates, splinter groups, and derivative entities»[13].

It is exactly this vagueness in the identification of the subjects to be considered as «foreign terrorist fighters» that can explain the vote in favor of Russia and China.

While making reference to terrorism as a threat to peace and international security, under Article 39 of the Charter, the existence of a "threat to peace" or a "breach of the peace "with reference to the Islamic State of Iraq and Syria is not explicitly established by the Security Council. The Resolutions mentioned the drawing of a general as well as elastic framework, for the States, concerning the measures to be taken to combat terrorism, and without providing any authorization to act in the specific case of ISIS. The US attempt to base the legality of its military action on the Resolutions described did not seem, then, to find a valid basis.

After the Resolutions n. 2170 and 2178 of 2014, several other Resolutions had been adopted by the Security Council, with regard to the Islamic State. To mention them briefly, the following must be recalled, among the others, the Resolution n. 2195 (2014) of 19 December 2014; the Resolution n. 2199 (2015) of 12 February 2015, related to the threats to international peace and security caused by terrorist acts; Resolution 2214 (2015) of 27 March 2015. At a later date, on November 20, 2015, the Security Council approved the Resolution n. 2249, where it calls for member States to take all necessary measures on the territory under the control of ISIS to prevent terrorist acts committed by ISIS and other Al-Qaida affiliates[14].

In particular, the Security Council defines the terrorism in all forms and manifestations as «one of the most serious threats to international peace and security» and affirms that any acts of terrorism are «criminal and unjustifiable regardless of their motivations, whenever and by whomsoever committed».

With particular regard to ISIS, the Resolution defines it as a «global and unprecedented threat to international peace and security». To support this claim, the text of the Resolution mentions the Islamic State's violent extremist ideology, its terrorist acts, its continued gross systematic and widespread attacks directed against civilians, the abuses of human rights and violations of international humanitarian law, including those driven on religious or ethnic ground, as well as its eradication of cultural heritage and trafficking of cultural property. Another reason why Da'esh is considered, by the Security Council a threat to international peace and security is its control over significant parts and natural resources across Iraq and Syria and its recruitment and training of foreign terrorist fighters whose threat affects all regions and Member States, even those far from conflict zones.

Moreover, the Resolution clarifies the actual situation in the States involved. With regard to Iraq, the Security Council notes the letters dated 25 June 2014 and 20 September 2014 from the Iraqi authorities, which state that Da'esh established a safe haven outside Iraq's borders that is a direct threat to the security of the Iraqi people and territory. With regard to Syria, it is noted that the situation will continue to deteriorate further in the absence of a political solution to the Syria conflict. For this reason, it is reasserted the need to implement the Geneva *Communiqué* of 30 June 2012 (endorsed as Annex II of the Resolution 2118 of 2013), the *Joint Statement* on the outcome of the multilateral talks on Syria in Vienna of 30 October 2015 and the *Statement of the International Syria Support Group* (ISSG) of 14 November 2015.

[13] Preamble of the Resolution

[14] UNSC Resolution n. 2249 (2015), S/RES/2249 (2015), of 20 November 2015.

On this basis, the dispositive of the Resolution firstly condemns, in the strongest terms, what are defined as «the horrifying terrorist attacks perpetrated by ISIL», which took place on 26 June 2015 in Sousse, on 10 October 2015 in Ankara, on 31 October 2015 over Sinaï, on 12 November 2015 in Beirut and on 13 November 2015 in Paris.

Secondly, the Resolution also condemnsthe «continued gross, systematic and widespread abuses of human rights and violations of humanitarian law, as well as barbaric acts of destruction and looting of cultural heritage carried out by ISIL»[15].

Thirdly, the Security Council calls uponMember States that have the capacity to do so to take all necessary measures, «in compliance with international law, in particular with the United Nations Charter, as well as international human rights, refugee and humanitarian law», on the territory under the control of ISIL, in Syria and Iraq, to «redouble and coordinate their efforts» to prevent and suppress terrorist acts committed specifically by ISIL and all other individuals, groups, undertakings, and entities associated with Al Qaeda, and other terrorist groups, as designated by the United Nations Security Council[16].

Furthermore, the Resolution contains a strong invitation to the Member States to intensify their efforts to stem the flow of foreign terrorist fighters to Iraq and Syria and to prevent and suppress the financing of terrorism[17].

This Resolution, therefore, has a great importance for the clear definition that gives of the ISIS as a «global and unprecedented» threat to peace and international security, as well as for the call that it contains to the Member States to continue to fully implement the above-mentioned Resolutions concerning terrorism and to ensure that any measures taken to combat terrorism «comply with all their obligations under international law, in particular international human rights, refugee and humanitarian law»[18].

Finally, the Security Council adopted, on 17 December 2015 the Resolution n. 2253 (2015), deals with the threats to international peace and security caused by terrorist acts[19]. In particular, acting under Chapter VII of the Charter of the United Nations, adopts several measures in order to expand and strengthen the Al-Qaida sanctions framework in order to include ISIS, with the goal to suppress the financing of terrorism. In particular, the Resolution states that the 1267/1989 *Al-Qaida Sanctions Committee* shall henceforth be known as the "1267/1989/2253 ISIL (Da'esh) and Al-Qaida Sanctions Committee" and the *Al-Qaida Sanctions List* shall henceforth be known as the "ISIL (Da'esh) and Al-Qaida Sanctions List". Moreover, it decides that all States shall take measures of asset freeze, travel ban and arms embargo with respect to ISIL, Al-Qaida, and associated individuals, groups, undertakings and entities[20].

[15] Point 3 of the dispositive
[16] Point 5 of the dispositive
[17] Point 6 of the dispositive
[18] Preamble of the Resolution
[19] UNSC Resolution n. 2253 (2015), S/RES/2253 (2015), of 17 December 2015.
[20] Point 2 of the dispositive

## 4. CONCLUSION

From the evidence presented above, it emerges that the most recent Resolutions, in particular the mentioned Resolution n. 2249 of 2015, seem to open new possibilities for action for Member States, given the invitation that he latter contains to intensify and coordinate their efforts to fight the ISIS, while in compliance with international law. It is therefore conceivable a new coordinated anti-ISIS strategy, compared to what has been provided so far by the previous Resolutions. In fact, from the previous mentioned Resolution, and in particular from Resolution No. 2170 and 2178 of 2014, the difficulty of framing the initial military operation led by the US as part of the practice of authorizationsis clear, although implicit, of the Security Council to the Member States to use armed force to achieve the objectives identified by the Council itself.[21]

Looking at the problem of ISIS in a broader approach that takes into account factors of a historical, economic and geopolitical nature, it must be pointed out that the causes of the phenomenon lead directly to Western responsibility.

If in the past the Western States had not intervened in Iraq and Afghanistan (as happened in Libya and, although in different forms, in Ukraine) with the effect of overturning regimes that ensured the internal stability of those States, as well as the stability of the region, most likely the ISIS would never be born. If the United States and its allies had not acted in their international relations under the pretext of protecting human rights, humanitarian intervention and export of democracy in the name of those Western values that they claim to defend and to promote, today we would not be in the situation of having to deal with the global threat that ISIS represents. The Member mentioned would be politically stable and, therefore, capable of ensuring its own internal order.

Moreover, from the military point of view, an observation of the current situation shows that, given the absolute disproportion of forces between the Kurdish Peshmerga troops and ISIS, it is unthinkable that the operation would be limited only to the aerial operations without reacquiring the positions actually bombed by pushing back the ISIS on the ground through the use of ground troops. In fact, at that moment it was found that the air strikes so far unleashed by the US-led coalition were only partially effective[22]. The situation changed since the vigorous and determined Russian intervention in the fight against the ISIS but, despite the successes achieved by Russia, the ISIS is not a retreat, but rather pursues its offensive on several fronts.

In this regard, President Obama announced plans to train soldiers, but he also admitted that this operation would take a long time.

In this context, the action decided by land from Turkey can certainly open a new chapter of the ongoing military confrontation, but there are also political and strategic implications to consider. Turkish President Erdogan said that he believed possible a long-term solution to the Syrian crisis exclusively through the "immediate removal" of the regime of Bashar Assad, defined as the true origin of ISIS because of the horrendous massacres of civilians committed right from the beginning of the civil war.

However, Turkish participation alsohas another goal: to control the Kurdish aspirations for autonomy. A key issue raised by the current conflict is, in fact, the one

[21] About this practice, seePICONE, *Le autorizzaziониall'usodellaforzatrasistemadelleNazioni Unite e dirittointernazionalegenerale*, in *Riv. dir. int*., 2005, p. 5-75, and references cited therein.

[22] In *Corrieredella Sera* of 2 October 2014, p. 27, *I dubbidell'America: per batterel'ISISl'aviazione non basta*.

resulting from the Kurdish claiming. Currently, the only ones to combat on the ground against the ISIS (in addition to the regular troops of the Iraqi army) - the Kurds, will soonask for the bill to the international community for their essential contribution in the ongoing military operations[23]. The hypothetical creation of an independent state that covers the Kurds of neighbouring States, however, is likely to represent an additional factor of instability in the already chaotic and fragmented Middle East scenario.

[23]DESOLI, *I Curdi di Siriafabbricanol'indipendenza*, in *Limes*, n. 9, 2014, p. 73 – 78

UDK:325.254.4:355.45-027.511,,2015"

# MODERN TERRORISM AND GLOBAL SECURITY

***Zdravko Skakavac, Dr.Sc***
*Faculty for Legal and Business Studies Dr. Lazar Vrkatić, Novi Sad*
*e-mail: zskakavac@useens.net*

**Abstract**

From security aspects, we will remember 2015 by two major global problems. The first one is related to the expansion of migrant movement that began with the exodus of Albanians from Kosovo in early February this year, and during the year led to an unprecedented refugee wave from the North Africa and the Middle East to the European Union. Another, more serious problem is related to the escalation of terrorist acts around the world. In this regard, this work will point to the most important aspects of these two significant security problems.

***Key words:*** *Migrants, refugees, terrorism, European Union, Islamic state.*

## 1. INTRODUCTION

From a security aspect, two serious issues came to the forefront during 2015. The first relates to the wave of migrants, primarily from the Middle East and North Africa towards Western European countries.

Migratory movements and smuggling have always represented a grave problem and a challenge for security services of most countries in the world. In the last several years, especially during 2015, the situation has become significantly more complex as the number of migrants has experienced an unprecedented growth tendency. There are several reasons for this among which, the most significant, pertains to the difficult economic situation, particularly in Africa and Asia, and numerous hot spots around the world where wars and armed conflicts have taken place. On their way to their final destination (desired country) migrants face various problems and difficulties, which vary from country to country. In all this, organized criminal groups come to the forefront using the situation to acquire huge profits.

Migration is a global phenomenon whose impact and consequences transcend national boundaries. 2015 is the year of the great exodus of migrants from Asia and Africa into Europe. Their goal is wealthy Western European and North American countries. There are two key reasons for the unprecedented increase in the number of migrants:

- the great economic crisis (economic migrants);
- wars, armed conflicts, terrorism (war migrants).

Serbia is a typical country of transit for migrants coming through Greece and Macedonia with the intention of entering the European Union through Hungary. On their road to their final destination, migrants face numerous problems and difficulties and this paper will highlight the most significant ones.

The second, more serious security issue pertains to the escalation of terrorist activities around the world, mainly as interpreted by the newly formed, self-proclaimed

and unrecognized Islamic State, whose terrorist activities have already overshadowed the, thus far, unparalleled terrorist organization Al-Qaeda.

Modern terrorism has become the most significant challenge for the state and its security services, but also for the international community as a whole.

In the twentieth century, especially in the last decades of the twentieth century, a number of terrorist activities have posed a major problem for the international community, especially its security services. At the end of the twentieth century, the world was faced with the escalation of terrorism that ran parallel to the process of globalization of economic, financial and communication flows.[1] The world faced many new forms of terrorism, from airplane hijacking, various hostage situations, to the use of poisons and suicide attacks on important buildings and personalities of the highest level.

An escalation in terrorism occurred in 2015 when a series of terrorist acts took place. Most of them were the work of the notorious Islamic State, mostly concentrated in the Middle East, North Africa and France. Individual terrorist acts were registered in the Western Balkans (Macedonia, Bosnia and Herzegovina). In addition to the Islamic State, continued terrorist activity in 2015 was exhibited by Nigeria's Boko Haram and Somalia's Al Shabaab who recorded a series of attacks with serious consequences on the African continent.

Contemporary terrorism is characterized by: massiveness, distribution, globalism, suicidal acts, religious fanaticism, indiscriminative targets, brutal killings, abuse of modern technical achievements, political and religious motivation of terrorist organizations, numerous forms of organized criminal activity and other.

## 2. PHENOMENOLOGICAL ASPECTS OF THE MIGRATION TRENDS

In recent years, and especially during 2015, migrations in the world have reached dramatic proportions. Currently, two directions - branches of migratory movements are most pressing, namely:

1) Eastern - Asian route (Afghanistan, Iraq, Syria - Turkey - Greece - Macedonia - Serbia - Hungary - other European Union countries. At the end of 2015, this route was modified due to the raising of wire fences at the Hungarian border so that migrants changed their route in Serbia towards Croatia, Slovenia and onwards to other EU countries in Western Europe).
2) Southern - African route (Nigeria, Kenya, Sudan, Somalia, Libya, Tunisia - Mediterranean - Italy, France, Spain - other European Union countries).

In addition to the aforementioned, we should also mention another one which occurred earlier this year when a major wave of refugees started coming from the territory of Kosovo and Metohija, via the rest of Serbia, into Hungary, *i.e.*, the European Union. This route exploded in February but weakened during the year.

*The main source countries* for migratory movements in the world are: Syria, Iraq, Afghanistan, Pakistan, Yemen, Bangladesh, Libya, Tunisia, Somalia, Sudan, Kenya, Eritrea, Nigeria and some other Asian and African countries, but to a lesser extent than the former. Of course, one should not ignore the still very unstable area of Kosovo and Metohija and certainly, for a long time ongoing, Chinese migrations to the West.

[1] Bošković, M.; Skakavac, Z.: *Organized Crime - Characteristics and Forms*, Faculty for Legal and Business Studies, Prometej, Novi Sad. p. 268

The International Refugee Organization estimates that more than one million migrants reached Europe in 2015. This is just an estimate because there is no reliable data. Countries do not have precise data as in addition to legal immigrants there are illegal, then those with citizenship, and those who still have not received a citizenship. In some countries, migrants are of the same nationality as the majority population while in many others they aren't even the same race. These are all reasons behind why it is difficult to indicate, with any real certainty, their actual numbers. However, according to some estimates, Luxembourg has as many as 43%, Switzerland is at 24%, Cyprus at 18%, Sweden and Austria are at 15%, Norway and Spain have 14%, Germany, Great Britain, the Netherlands and France have 12%, etc. Countries from the former Soviet Union and Yugoslavia also have a high share of migrants. Russia has about eight per cent (11 million), Ukraine 11 percent (five million), Belarus 12 percent (one million), Croatia 13 percent, Serbia has 11 percent, etc. However, migrant contingents in these countries are largely confined to national immigration after the collapse of previous federations. Finally, there are European countries with a modest share of migrants compared to their total population (Romania, Bulgaria, Poland, Albania...).[2]

Based on this data it is clear that the most attractive EU countries for migrants are developed EU countries. When we add their descendants to the migrant corpus in this part of the continent, we get the information that, in the most developed countries of the West, every fifth resident is of migrant origin! This can be said for Germany, France, Great Britain, Sweden and some other countries.[3]

Since the beginning of the civil war in Syria in 2011, 3.9 million Syrians have fled from this country to Turkey, Lebanon, Jordan and Iraq of which two million have gone to Turkey alone, while, from the beginning of the civil war, ten million Syrians have been internally displaced.[4] The situation has significantly changed in the last five months of 2015. Libya is in a similar situation since the so called, "African Spring" when a general exodus of Libyans towards Europe took place. The terrorist acts by Al Shabaab and Boko Haram, as well as frequent ethnic and religious armed conflicts, have forced a large number of nationals from Nigeria, Kenya, Somalia, Sudan and some other African countries into exile. As for Kosovo and Metohija, due to the specific status of this region and the dire and unbearable economic situation there has been an unprecedented mass exodus of Albanians towards Hungary, *i.e.*, countries of the European Union.

The main *transitory countries* are: Turkey, Greece, Macedonia, Serbia, Hungary, Italy, Spain. Turkey is the first major collective reception centre for migrants from the Eastern Asian branch. Greece is the collective centre for both the Eastern and the Southern African branch, because a number of migrants uses the route through Greece and not across the Mediterranean Sea, which is, looking at it from a security point of view, probably more dangerous. For example, by the end of May of this year, 37,500 migrants disembarked on the Greek islands of Kos and Leros. During the same period, 30,000 refugees reached Italy from the African continent. By the end of June of 2015, 54,000 migrants entered Hungary. In this year alone, over 100 thousand migrants have entered Europe, most of them coming through Italy.[5]

[2]www.politika.rs/sr/danak/347836 (accessed on January 27, 2016)
[3]www.politika.rs/sr/danak/347836 (accessed on January 27, 2016)
[4]All statistical data pertains to the period up to the end of August of 2015
[5] All statistical data pertains to the period up to the end of August of 2015.

The most attractive *final destination countries* are certainly the wealthy, Western European and North American countries: Germany, France, Italy, United Kingdom, the Netherlands, Belgium, Switzerland, Austria, Sweden, Norway, Denmark, Finland, the US and Canada. In this year alone, over 100 thousand migrants have entered Europe, most of them coming through Italy.[6]

Migrant smuggling has become a lucrative business for many smuggling groups along the migrant movement routes. This is a problem all countries face. In Serbia in 2015 more than 1,000 criminal charges were filed against over 1,000 migrant smugglers.[7] Control over migrants is not complete because most of them do not have the necessary documentation required to move beyond the borders of their respective countries. Therefore, there is the very real danger that a large number of terrorists of the Islamic State, as well as other terrorist organizations, may slip in among the migrants and deliberately infiltrate them into Europe. After all, these cases have already been identified.

## 3. PHENOMENOLOGICAL ASPECTS OF TERRORIST ACTIVITY

Over 140 thousand terrorist acts have been carried out since 1970.[8] In particular, terrorism has gained momentum since 2001, after spectacular actions carried out by Al-Qaeda in the United States. Since that time and up until the end of 2014, 29,565 terrorist acts, which have claimed 135,391 lives, have been registered all over the globe.[9] The number of attacks and victims has been on the rise, in particular, since 2011.The main reason being that two powerful and ruthless terrorist organizations have come onto the scene: Boko Haram in Africa and the Islamic State (IS) in the Middle East. Since 2011, a quarter of all victims of terror have been killed in actions carried out by these two organizations. When looking at the statistics across regions and countries - from 2001 until 2014, the highest recorded number of terrorism victims have been in Iraq - as high as 42,759. A far second place belongs to Afghanistan (16,888 dead), followed by Pakistan (13,524), Nigeria (11,997), India (6,999), Syria (3,502). Without serious analysis, these figures clearly indicate that mostly Muslims die at the hands of terrorists. This black list of terror contains only one European country, Russia, which is in eighth place with 2,606 dead. Western Europe is at the very bottom. According to data from this American foundation, 420 people have been killed, in the aforementioned region, in terrorist attacks.[10]

The trend toward an escalation of terrorist acts, with a tendency of them spreading and the emergence of new forms of violence, has continued in this century. The Al-Qaeda attack on America on September 11, 2001 was only the most typical and most dangerous, as far as consequences are concerned, terrorist attack in the world. However, this event had a significant impact on the international community and, predominantly, on the rich Western European countries, to radically change their approach to countering this modern

[6] All statistical data pertains to the period up to August 15, 2015.
[7] Statement made by Aleksandar Vulin, Minister of Labour, Employment, Veteran and Social Affairs, January 21, 2016
[8] According to the American Foundation GTB, dealing with global terrorism investigation. See: Politika, November 29, 2015). See: www.politika.rs/sr/danak/344359 (accessed on January 21, 2016.)
[9] This American statistic records every attack with at least one victim.
[10] www.politika.rs/sr/danak/344359 (accessed on January 21, 2016.)

phenomenon. In this regard, it is significant to note that the year 2015 will be remembered for the re-escalation of terrorist activity around the world. A number of serious terrorist acts took place during the past year of which we wish to highlight some of the more significant:

- January 05, 2015, extremist group Boko Haram took over a military base in the town of Baga on the border between Nigeria and Chad (a large number of soldiers and civilians were killed and a large number of civilians drowned in Lake Chad);
- early 2015, jihadists of the Islamic State killed two Japanese hostages (Kenji Goto and Haruna Yukawa);
- early February of 2015, extremists of the Islamic State burned alive a Jordanian pilot whom they captured when they took down his plane;
- June 26, 2015, a terrorist attack was carried out on a beach and two hotels in Tunisia (27 killed, 35 injured);
- mid-2015, the Islamic State jihadists killed a Croatian hostage, Tomislav Salopek;
- November 24, 2015, in a bomb explosion in Tunisia, 14 were killed and 11 wounded - representatives of the presidential guard;
- November 24, 2015, a bomb attack was carried out in Al Asru (Egypt) killing three police officers and judges, and injuring 12;
- October 31, 2015, Russian airliner was downed over the Sinai (242 victims);
- November 13, 2015, a series of terrorist attacks was carried out in Paris (stadium, concert hall, restaurants, etc.), in which 130 civilians were killed and about 100 were wounded;
- July 20, 2015, a terrorist attack was carried out in the city of Suruc (Turkey), in which 33 people died;
- October 10, 2015, a terrorist attack was carried out in Ankara (Turkey), in which 102 people died and over 180 were injured;
- November 20, 2015, a terrorist attack was carried out on a hotel in Mali when terrorists took 170 guests as hostages, of whom 27 were killed;
- May 09-May 10, 2015, a terrorist group from Kosovo committed a terrorist attack in Kumanovo - Macedonia (eight police officers were killed and a number of them were wounded, more than 10 terrorists were killed);
- April 26, 2015, a member of the Wahhabis movement carried out a terrorist attack on a police station in Zvornik in which a police officer was killed and two others were wounded. A terrorist was killed;
- November 18, 2015, a member of the Wahhabis movement carried out a terrorist attack in Rajlovac (B&H) and killed two members of the B&H army after which he committed suicide;
- November 24, 2015, a member of the Wahhabis movement carried out a terrorist attack on a police station in Zavidovici (no casualties).

The trend of increased terrorist activity continues during 2016. The perpetrators of criminal terrorist activities remain the same. Most terrorist acts in January of 2016 were carried out by members of the Islamic State in Syria, Turkey and Indonesia, followed by terrorists from Boko Haram and Al Shabaab on the Africa continent.

- January 12, 2016, a suicide bomber carried out a terrorist attack in Istanbul (killed 10 German tourists, several persons were injured);
- January 14, 2016, terrorist attack in Jakarta (Indonesia) (killed seven people, including five terrorists - suicide bombers);

- January 17, 2016, terrorists of the Islamic State killed about 300 civilians and kidnapped some 400 in the Syrian city of Deir er-Zor;
- January 22, 2016, the terrorist group Al Shabaab carried out a terrorist attack in Mogadishu (Somalia) killing 20 people;
- January 25, 2016, a terrorist attack (car bomb) in Cameroon (29 people were killed);
- January 25, 2016, a terrorist attack (car bomb) in the city of Aleppo - Syria (over 20 people were killed);

## 4. CHARACTERISTICS OF CONTEMPORARY TERRORISM

There are a number of important characteristics of modern terrorism. Experts who follow this issue don't have too many dilemmas or discrepancies when it comes to understanding this phenomenon and identifying its essential characteristics. Regardless of the form of terrorist activity and the type and name of the terrorist organization, some global characteristics exist for all:

The *massive scale* is an important feature because terrorist organizations with a large membership have taken part in terrorist acts of recent years. And not only that as a rule, a large number of terrorists participates in individual terrorist activities. The number of individual terrorist activities has been decreasing constantly. The reason lies in the fact that terrorist targets are much more optimistic today, then they were in the past, targeting specific important institutions, facilities, personalities or mass public gatherings.

*Prevalence of the occurrence* is another important feature of this phenomenon. No continent, or single country, is immune, or completely protected from terrorist activities. The only question is which specific goal, on a continent or in a country, is most convenient for a terrorist at a given time, that is, which activity will achieve the greatest effect and have the greatest visible impact.

*Globalism* is a significant commitment of terrorist organizations. They want to keep the world in perpetual fear. Although their goals are not the same, their intent is to be ubiquitous and for their actions to threaten global security.

*Suicide terrorism* is a modern achievement of terrorist action and one of the most important characteristic of modern terrorist activity. Initially, suicide bombers were grown men. After security services in affected areas began controlling this population, women took over. More recently, the leaders of terrorist organizations have opted, increasingly, towards choosing minors even children for this purpose. To this end, in recent years training camps have been organized where boys and girls are prepared for deadly actions. In the latest terrorist activities in late 2015 and early 2016, men and women, and even children have been registered as suicide bombers. The vast majority of recent terrorist acts in the world has been carried out with the participation of a large number of suicide bombers. What is disturbing is the fact that the leaders of terrorist organizations have, for this purpose, access to a growing number of volunteers.

*Religious fanaticism* is a further important feature of contemporary terrorist activity, which has been particularly evident in recent years. This was apparent in Al-Qaeda activities which was, until recently, the most well-known terrorist organization in the world, and is now visible in the functioning of the Islamic State, Boko Haram, Al Shabaab, Al Nusra (a branch of Al-Qaeda) and other Islamic fundamentalist terrorist organizations and groups.

*Indiscriminate targets* have always been and remain today an inevitable feature of contemporary terrorism. Their objective is the greatest number of victims, no matter whether they are women, children, the elderly, the infirm, or the sick. That's why their targets are places of mass gathering such as city centres, pedestrian zones, nightclubs, famous establishments, beaches, stadiums, theatre, concert and other halls, where a large number of people are present. We have just named almost all locations targeted by the Islamic State in Paris in late 2015.

*The brutality of the killing* of innocent people is also a feature of almost all terrorist organizations in the world. The killing methods utilized by Al-Qaeda terrorists, especially the Islamic State, since its inception, and the public presentation of their monstrous acts, have outraged public opinion. In this manner terrorists want to frighten the entire world and make it clear to all what awaits those who, in any way, oppose or do not accept the ideology of the Islamic State.

*Misuse of modern technological achievements* is a constant characteristic of contemporary terrorist activity. After all, this has been exhibited by many terrorist acts. It is obvious that terrorists follow modern achievements in science and technology attempting to apply them in practice before security services do.

*A large number of victims* is an evident characteristic of contemporary terrorist activity. Ever more frequent are cases in which the death toll is measured in hundreds of innocent people. Particularly worrying is the fact that a large number of victims are women and children. Looking at religious affiliation, the majority of victims are Muslims, although the current and most active terrorist organizations are of Islamic origin.

*Great financial power gained through money laundering* is a regular companion in the functioning of terrorist organizations. Proceeds obtained from the smuggling of oil and oil derivatives, human trafficking, kidnapping and other criminal activities, is inserted into legal flows with the purchase of vehicles, weapons and the like.

## 5. CONCLUSION

Contemporary terrorism is the most violent form of criminal behavior and the most important challenge for the security of a state, as well as the international community as a whole. In the previous century, and especially in the last few decades, the world has witnessed an escalation of terrorist activity by a greater number of terrorist organizations. As a global security challenge, terrorism will continue to pose the greatest threat to international security.

Contemporary terrorism is constantly increasing, despite increasingly organized opposition by the international community and measures taken to counter it. 2015 will be remembered for two security grounds. Throughout the year there was an escalation of migrant movements, primarily from the Middle East and North Africa towards countries of the European Union. The second, and much more serious security problem and challenge for the international community was the expansion of terrorist operations. During this period, relatively new terrorist organizations came to the forefront, such as the self-proclaimed Islamic State (ISIS), and Boko Haram and Al-Shabaab in Africa.

World security is perhaps more vulnerable than ever. This is not only because of terrorist acts, but also due to the unprecedented exodus of migrant movements, as well as the inclusion of the world's greatest powers in combating this phenomenon. For the first time, the Russian Federation has joined in the fight against terrorism in Syria which, given

its opposition to the US and NATO, has caused a turbulence in the Middle East representing a potential threat to global security.

Much better international cooperation, especially from EU countries, is required in order to evenly split the responsibilities and obligations for the reception of migrants.

## 6. REFERENCES


1. Bošković, M.; Skakavac, Z. (2009), *Organized Crime – Characteristics and Forms*, Faculty for Legal and Business Studies, Prometej, Novi Sad.
2. Gaćinović, R. (2011), *Terrorism in Political and Legal Theory* - Second Edition, Media Center, "ODBRANA", Belgrade.
3. Simeunović, D. (2009), *Terrorism*, Second edition, Faculty of Law in Belgrade, "Crimen 9" Library
4. Skakavac, Z, (2010), *Terrorism - modern phenomenological forms of expression and characteristics*, Collection of Papers, IX thematic international scientific conference: "Terrorism and human freedom," Tara.
5. Report from the American Foundation GTB dealing with global investigation of terrorism. See: www.politika.rs/sr/danak/344359 (accessed on January 21, 2016.)
6. www.politika.rs/sr/danak/347836 (accessed on January 27, 2016)

UDK:355.01-022.326.5(567:569.1):355.45(497.7)

# CONTEMPORARY SECURITY THREATS AGAINST THE REPUBLIC OF MACEDONIA IN THE LIGHT OF SYRIA - IRAQ WAR CONFLICT

***Tome Batkovski, Dr.Sc***
*Faculty of Security - Skopje, the Republic of Macedonia*
*e-mail: tomebat52@gmail.com*

**Abstract**

This paper elaborates issues related to possible security threats against the Republic of Macedonia which come out of the Syrian-Iraqi war conflict. The starting point is the nature of this war conflict, i.e. the interests of the major military forces on the territory of Syria and Iraq which show clear sign of geopolitical reign on this territory in Asia and realisation of the vital economy interests. The author emphasises the opposing sides in the war conflict and their political and religious determination which is an essence to the polarisation of the forces. The author tries to point out the real and potential security consequences to Republic of Macedonia, especially those related to spreading of radical Islam and the ideas of Islamic state as a basis of development for terrorist activity on the one hand, and widening of the refugee crisis before and after closing the Balkan route on the other. The author discusses not only the outside threats but the inside confrontations as well, and their impact on politics (political crisis). This paper also sets the necessary obligations to the security system organs in Republic of Macedonia in order to cope with the new security challenges in a successful manner.

**Keywords**: *war conflict, crisis, terrorism, extremism, refugees, security*

## 1. INTRODUCTION

The second decade of the 21st century has brought globally a lot of waves in the security scene, which might seriously affect the declaratively democratic development of the countries and their comprehensive cooperation in order to realise higher levels of progress in economy and the standard of living. The violent changes with elements of civil war in some of the countries in the North Africa, the unsolved situation in Ukraine and the Crime annexing to Russia, the civil war in Syria and the establishment of ISIL and its presence in Syria and Iraq, the armed forces of Turkey and Saudi Arabia in Syrian-Iraqi war conflict, with active participation of military air forces of the USA and Russia contribute to possible more intensive military acts in the Middle and Near East with complex implications for the stability of the whole world. Namely, Europe faces with millions of refugees who come from the Syrian-Iraqi war zone, Turkey and Russia are on the edge of war after Turkish armed forces have shot down the Russian military plane, the USA and Russia have completely different attitudes towards the possible solution of the Syrian crisis, and it seems that there is no end of the civil war in Syria, the number of victims is constantly getting higher together with the demolition of towns, villages and overall infrastructure in the country. It seems that the European Union, for the time being, does not have a unique and clear attitude towards the solution of this complex and difficult

security situation, as well as to the solution of coping with millions of refugees who head to the EU counties. NATO waits for and depends on the decisions of the USA, and at the same time, it sours the relations with Russia. The ISIL forces continue with terrorist threats towards the USA and EU (however, not excluding Russia) with constant clearance (killing, expelling and terrorising) of the Christian population (Yazidis) from the territory which is now in the reign of Iraqi and Syria.[1]

Having in mind this complex security situation, the danger of new terrorist attacks from the Islam radicalism is getting more palpable and the warning has been issued at the annual International Munich Security Conference[2], where many opposing points between NATO and Russia came to surface. Republic of Macedonia is in a challenged position - to answer efficiently and timely to the threats to its own security. This paper will try to elaborate issues related to the security implications towards Republic of Macedonia caused by the civil war in Syria and Iraq, the inside conflicts which might cause extreme violent activities, possible connection between inner and outer factors to the security destabilization of the country and the readiness of the security organs in order to timely discover, follow, document and prevent possible terrorist attacks.

## 2. SYRIAN-IRAQI WAR CONFLICT - ESSENTIAL SECURITY ASPECTS

The modern approach to the potential threats to one country's security sets a great importance to constant and detailed following and assessment of war conflicts in the vicinity and distant surrounding in order to discover potential aspects of negative influence to its stability and international position.[3] The national interest calls for necessary maintaining the territorial integrity of one country and preserving its sovereignty on one hand, and strengthening its position in the international scope on the other hand (political, economic, military, cultural aspect...)[4]. That's why, the current affairs in Syrian-Iraqi war zone and its applications are of great importance for Republic of Macedonia.

The important points of the Syrian-Iraqi war conflict are as follows:

- The Civil war in Syria has been going on for five years now, without any visible aspects to end in the near future. The official government, led by Bashar Al Assad, backed by the armed forces of Russia is in war against the Opposition forces backed by the USA, and ISIL and Al-Nusra (the branch of Al-Queda). The Opposition comprises about 90 different groups and organizations. The Bashar Al

[1]According to the worldwide media reports from the Syrian-Iraqi war zone, the Christian population has decreased from 1 750 000 to 300 000in this territory due to the ISIL pressure. This physical clearance has a form of genocide.

[2]At the annual International Munich Security Conference, the French Prime Minister, Manuel Valls, said that Europe entered a new era, characterized with hyper-terrorism caused by the Islam fundamentalismat the Munich Security Conference (10-12.02, 2016). At the same time, the Russian Prime Minister, Dmitrij Medvedev, pointed out that the world entered a new phase in the cold war and that NATO leads an unprincipled and hostile politics towards Russia. On the other hand, NATO Secretary General, Jens Stoltenberg, stated that Russia is a threat to the European security, and that's why the Alliance would fortify its Eastern military wing. See: Dnevnik (15.12.2016), Skopje, p.14-15, "In spite of a truce, Syria is ready for a historic battle at Raqqa"

[3]See,Viotti P. and Kauppi M. (2009), *International Relations and the World Politics'*, Akademski Pechat, Skopje, on the aims, threats, possibilities and interests of the international security.

[4]See Hough P (2009), *Understanding Global Security*, on the phenomenon of national interest in the international security. Tabernakul, Skopje.

Assad forces belong to the Shiite group, while the Opposition forces, ISIL and Al Nusra belong to the Sunni group in the Muslim faith. It is more than evident that the country suffers from enormous demolition, a large number of civil victims (It is estimated that approximately 300 000 people have been killed so far), millions of displaced people, and millions of people who have migrated or are migrating from the country and have a refugee status.

- The Sunni ISIL has been formed and acts in some parts of Iraq and Syria, and its followers fight in the name of Islam fundamentalism, so that they can establish world caliphate. They perform genocide to the Christian population which is in minority in Syria and Iraq. They recruit followers all over the world, including the Balkan countries.
- The Bashar Al Assad forces are backed by Iran and the Hezbollah organization, while the Opposition forces are backed by the Gulf countries: Qatar, Saudi Arabia and United Arab Emirates.
- Turkey, as a NATO member, backs the Opposition forces in Syria, cooperates with the USA, but at the same time cooperates secretly with ISIL in the field of illegal arms and oil trade. Moreover, it continues its battle against the Kurds in Syria and Iraq, who fight against ISIL[5].
- The USA and Russia have opposing national interests in Syria. Both countries fight for their primacy in Central Asia and the corridors to Siberia, and that's why Syria is an exceptionally important country for them. For the time being, these two powerful countries are highly opposed to the solution of the Syrian war crisis. The USA thinks that the solution of the crisis is stepping down of Bashar Al Assad, while Russia thinks that without him, there is no solution to the crisis. The USA strategists think about the possible division of Syria, while Russia is strongly against that idea.
- The current situation of this war conflict, without any doubt, shows that the number of refugees would increase. The civil population is the most vulnerable category and in order to save themselves they see no other option but leave the country. Currently, over 2.5 million Syrian refugees are registered only in Turkey, and since 2014, over one million refugees from Syria and Iraq have come to Germany.[6]

[5]Kurd's People's Protection Units (YPG) have taken positions in the vicinity of Aleppo, a town which has a strategic importance. Turkey has been fighting against these Kurd's forces for more than 40 years. All these factors contribute to a complex situation on this territory, having in mind that the Kurd's forces are supported both by the USA and Russia, which is not good for the Turkish strategic interests. See: 'Sloboden Pechat'(5-6 Marc, 2016) p. 14 Skopje. 'Syrian Kurds silently create geopolitical map'.

[6] TheEU made a preliminary deal with Turkey in Brussels on 8 March, 2016 for a closure of the Balkan route, including Macedonia. This agreement is about returning illegal migrants to Turkey from EU countries; i.e. Turkey has a right to send one Syrian refugee with valid documents to EU countries for each returned illegal refugee. This deal enables Turkey to get extra three billion Euros from the EU. This deal should be adopted on 17 March at EU Summit. However, there was an immediate reaction by UNHCR, which thinks that the collective deportation of foreigners is forbidden according to the international law. Moreover, this deal was criticized sharply by 'Amnesty International'. See 'Dnevnik', (March 9, 2016), p. 4-5 Skopje, 'Turkey promised that would help EU with refugees for double money'.

- The current security situation in the war zone shows that Bashar Al Assad is supported by Russia, Iran and the terrorist organization Hezbollah, while the Syrian Opposition is supported by the USA, Turkey and the Arabian countries of the Persian Gulf, which belong to Sunni Islam. It means that there is a political and military conflict between Sunni and Shiite, which gives an extreme religious character to it at the same time.
- The USA interest in the Syrian territory concerns the pipeline plan which encompasses Qatar, Saudi Arabia, Jordan, Syria and Turkey. This pipeline would fortify the position of the Sunni monarchies in the gas world market, especially Qatar, as an ally to the most powerful country in the world. The USA has built two military bases and the Central Command for Near East in Qatar.[7]

Having in mind the big differences of the strategic targets of the two opposing blocks in the Syrian-Iraqi war conflict, which are basically economic interests related to oil and gas (Syria and Bashar Al Assad is loyal to Iran and its plan for building a pipeline that goes from this country, across Syria to Lebanon, and it directly confronts with the USA – Qatar plan), and it is expected that the war conflict would go on. That is one important segment in the big geopolitical game of the most powerful military forces for their domination in Asia in the 21st century, which has direct and indirect implications towards the security in Europe (too), and towards Macedonia as well.

## 3. SECURITY IMPLICATIONS TOWARDS THE REPUBLIC OF MACEDONIA

The acuteness of Syrian-Iraqi war, with its complexity of political, military, economic, religious, demographic, humanitarian, cultural and civilised aspects leads to a serious approach of the security implications towards Republic of Macedonia. Each war conflict is in fact a kind of epicentre from which dangerous concentric waves spread, which might destabilize the security of the countries nearby or the ones that are far away. The battle of the big military forces to get domination causes changes and needs adjustments in the strategy and tactics of security to other countries in order to define the aims and interests and balance between the threats and the power.[8] I would like to point out the following security implications of the Syrian- Iraqi war conflict concerning Republic of Macedonia:

- The closure of the refugee Balkan route, which was agreed between the EU and Turkey will open new illegal routes and develop human trafficking again. Security and criminal practice show that the administrative prohibition for the migrants' flow might be only a temporary solution to this problem. The activities in the war zone in Syria and Iraq will make the people flee from the county and will head to Europe, mostly via the Balkan route. In this situation, the criminal groups for human trafficking will be active along the line Turkey- Greece-Macedonia-Serbia-Croatia (EU). New illegal crossings for trafficking will be tried along the whole length of the borders of the cited countries. A new and bigger problem concerning

[7] These facts were presented by Robert Kennedy Jr, in 'Politico' who claims that the USA engagement for stepping down of Bashar Al Assad started in 2000, when Qatar recommended the building of the pipeline worth of 10 billion dollars.

[8] See: Williams P (2012), *Security Studies*, Ars Lamina, Skopje on the balance of power, threats and interests.

security will be created for the state security bodies, especially for the police. As for Macedonia, the police have to protect the whole Greek border, and to deploy forces inland. This situation might create both smaller and bigger incidents between the refugees and local population, physical incidents among refugees as well as mugging. Of course, accidents in which refugees can be victims might occur, as it has been registered in Macedonia in the past years.

- The incidents of illegal human trafficking might cause a situation in which refugees might stay on the Macedonian territory for a longer period. Namely, criminal groups might organize illegal bases for refugees near the main illegal route, in order to gain more profit. In that way, the security of one region might be affected and the public order and peace would be jeopardized.
- The continuation of ISIL activities in Syria and Iraq might contribute to spreading of the ideas of Islam radicalism in Europe, including Macedonia. Having in mind that there is a significant number of people with Muslim religion in the country, and reported cases of Macedonian citizens taking part in ISIL, this issue gets a security character. However, it should be emphasised that no cases of evident acceptance of radical Islam have been registered in Macedonia or any illegal groups based on Islam fundamentalism.
- The increase in influence of the radical Islamists on the Balkan, especially in Kosovo and Bosnia and Herzegovina as well as the young population in Macedonia. According to reported data, ISIL has a large number of supporters in Kosovo as well as Bosnia and Herzegovina. More than 30 people from Kosovo have been killed in the war conflict in Syria and Iraq, as members of ISIL and Al Nusra. Their influence might have four tasks: first, they ought to spread the circle of the radical Islam supporters; second, to recruit potential warriors for ISIL and Al Nusra; third, to decide by themselves to fight for ISIL and Al Nusra, and fourth, to create bases (cells) for possible actions on the Balkan in the future.[9]
- Formation of an illegal network of radical Islam groups on the Balkan. It is thought that the countries on the Balkan, including Macedonia are recruiting centres of ISIL in Europe. It is supposed that an illegal infrastructure of canals and bases exists and acts there. The future existence of ISIL will seriously influence on the establishment of this illegal network on the Balkan.[10]
- The increase of Turkish influence, related to radical Islam organizations is getting more evident with inclusion of this country in Syrian-Iraqi war conflict and with political problems that the governing political party of Taip Erdogan face with. Ideas for renewal of the Caliphate (Ottoman Imperia), which ended in 1924, are promoted again. The leader of these ideas is 'Hisb Ut Tahrir' which acts throughout the world. The strengthening of this party, spreading radical ideas for 'renewal of the Caliphate, the good relations between Macedonia and Turkey as

[9]In the beginning of 2016, three Macedonian citizens were arrested by the Special Forces in Italy, for alleged recruiting people for ISIL. They were connected with an Islam extremist from Bosnia and Herzegovina, an imam, who spread the doctrine and was responsible for recruiting people in Syria and Iraq via an illegal canal. This information was published in 'Dnevnik',(27.02.2016) p. 4,Skopje

[10]According to some sources, over 70 minors from Bosnia and Herzegovina have been registered in ISIL and Al Nusra. Their organized arrival in Syria and Iraq would have not been possible without any previous activities of an illegal logistic network of several canals and bases.

well as the number of population with Islam religion in the country, with the empowerment of the Sharia law, might have an influence in Macedonia.[11]

- Development of illegal arms trafficking, munitions, explosives and explosive devices through secret canals and bases. The intensifying of the war conflict and the continuation of ISIL actions with active military participation of Turkey leads to further radicalization of the Islam fundamentalist plan on the Balkan, including Republic of Macedonia. The constant political instability and appearance of political crises with high extremity lead to a wider security threat in Macedonia, Kosovo and Bosnia and Herzegovina. In fact, the terrorist insurgency of an armed group from Kosovo in Kumanovo, Macedonia (May, 2015) and the clash with the Macedonian police forces is a significant indicator for this matter.[12]
- Possibility for appearance of extreme organizations and groups in Macedonia, which would promote extreme right wing attitudes towards the migrants and Islam religion, in general, as some cases have been registered in some EU countries. There should be this kind of presumption in case the war conflict goes on and refugee crisis continues. These implications should not be taken and analysed separately, but their connection should be taken in consideration. Undoubtedly, the clash in geopolitical and economic interests of the most powerful countries should not be forgotten, which is, in fact, the core of this war conflict. All current affairs and changes should be followed on regular basis. Having in mind the territorial position, it is very important for Macedonia to follow the USA and NATO activities, because the Balkan is covered by the Euro Atlantic alliance in the most direct way.

## 4. WEAK POINTS IN SECURITY IN THE REPUBLIC OF MACEDONIA

It is very important for every country to keep its security stable, which is a warrant for efficient management with the threats from abroad. Currently, Macedonia copes with a political crisis, in which both the USA and EU are included. By means of their mediation, there has been an agreement among the leaders of the main political parties (Przino agreement), which encompasses, among other provisions, early parliamentary elections (at first, they were supposed to take part on 24 April, 2016, and later were delayed for 5 June), constitution of Special Public Prosecutor to lead investigations for eventual crimes highlighted by the wiretapping scandal, then, change of the Election Code, a reform in media and co-opting of two Ministries (Ministry of Interior and Ministry of Labour and Social Policy) and three additional deputies in Ministries for the main opposition party ( up to the parliamentary elections). At the same time, the Prime Minister resigned and a new technical Prime Minister was appointed, who should prepare the forthcoming early parliamentary elections. These provisions from the Agreement should enable proper preparation and holding of the elections. However, in everyday political life, there are

[11]This radical organization is forbidden in Russia and Kazakhstan as a terrorist one. In Turkey, it is registered as an Islam political organization. On March, 6th, 2016, a rally was organized in Istanbul where the idea for renewal of the Caliphate was promoted. This information was published in the Turkish newspaper 'Jumhuriyat'.

[12]In Skopje, the trial against the members of the terrorist group is ongoing. Eight policemen were killed and 36 were wounded in this clash. There are also preparations for the trial against the members of an illegal cell, who recruited people for ISIL.

constant oppositions and contradictions, which affect the stability of the country. There are discrepancies in formally set tasks from the agreement which assume a basic mutual consensus of the parties, and their political implementation in practice in the current political situation.[13]I will point out these discrepancies:

- The relations between the governing party VMRO DPMNE and the opposition party SDSM are characterized with not only a political rivalry, but animosity which is getting more intense on everyday basis. This fact worsens the overall political atmosphere in the country and makes their dialogue almost impossible. Extreme rhetoric is used by the basic parties' organization as well as the highest bodies of these parties, which is then transferred to the state bodies. Thus, instead of development of a political process and nearing their aspects as the elections are getting closer, the conflict leads towards additional tense relations. This fact gives more severe impact to the politics and security of the country, since most of their members belong to Macedonian nationality. It seems that the political conflict is Macedonian versus Macedonian on a higher level. In case of not finding the way out from this win-win situation, the early parliamentary elections would be at stake. It is worth mentioning, that this would lead to severe consequences to Macedonia both to its security, as well the security from outside.
- The tense relations between the two governing parties from the coalition, VMRO DMNE and DUI get ethnical character. Although, this conflict presents a political folklore with repetitive occurrence before every parliamentary election, it has a deeper (historical) political dimension which has impact on the national security. Having in mind that these two parties encompass the majority of both so called Macedonian and Albanian block, the responsibilities of their leaders have to be of the highest level.
- The misuse of the national and religious symbols in the name of political aims from the parties. This (unacceptable) method in the practice might be used only to create extreme nationalistic religious feelings with the citizens, which are in fact the first step towards a violent behavior and cause for physical conflicts and might lead to extreme consequences onto the security.[14]
- The civil concept in political life has not been realized yet in Macedonia, which is one of the conditions for integration in the EU. There is a big difference between formal efforts of the political parties and their actions in practice. There is a big and clear gap among the parties based on national aspect, which, for the time being, makes the civil concept unsustainable, and it weakens the inside political cohesion of the country, necessary for long-term stable security.

All these inside contradictions on political ground, together with constant pressure from Greece about the name issue, as well as the neurological issues with Bulgaria and Serbia additionally burden the security in the country, which has a negative

[13]See; Buzan B. (2010), '*People, countries and fear'* Akademski Pechat, Skopje (the problem of national security in the international relations) on the discrepancies on the inside political aspect and their influence on the security of one country

[14]An example for this is the incident in Butel municipality, Skopje, which occurred while attempting to raise a Cross, initiated by the World Macedonian Congress. People from the Albanian nationality, who live in the municipality Chair and Butel organized by DUI, confronted this act, and, they are still confronting it. However, they previously tried to raise a monument containing the two-headed eagle in the municipality of Chair. A major incident was avoided by help of the police forces.

influence on preparation for an immediate and efficient response to challenges derived by the Syrian-Iraqi war conflict.

## 5. OBLIGATIONS OF THE SECURITY BODIES IN THE REPUBLIC OF MACEDONIA

According to the document 'The national concept of the security and defence of Republic of Macedonia'[15] the organs of security system within their legal scope and responsibilities should update security assessments with the new facts related to the current and potential threats on the country's security. In this way, the Government of Republic of Macedonia would be in a position to create a unique assessment of the security, including all current and possible impacts of the Syrian- Iraqi war conflict on the vital interests of the country. This should be done after the Crisis Centre Management and Management Committee have given a recommendation. The cooperation with NATO and the EU bodies on security and defence should be intensified, as well as the efforts to gain a full membership in the EU and Euro Atlantic Alliance.

It is very important to develop Intelligence in order to get a timely and quality access to security facts. The right access to relevant facts for updated affairs and consequences of the war conflict in Syria and Iraq is necessary for decision makers in politics in order to give right directives and requirements to the organs of the national security system.[16] In this case, the Intelligence should gain access to data related to:

- Discovering ISIL and Al Nusra members who come from Macedonia; i.e. citizens of Republic of Macedonia;
- Discovering citizens of Republic of Macedonia included in military forces of other arms forces who participate in this conflict;
- Discovering illegal canals on the Balkans in order to transfer future warriors in Syria and Iraqi war zone;
- Discovering illegal canals which originate from Syria and Iraq and go to the Balkan and Republic of Macedonia and uses the returnees from this war zone.
- Discovering illegal canals and bases in the neighbouring countries, Kosovo, Bosnia and Herzegovina and Albania used or might be used by radical Islamists who come from Republic of Macedonia;
- Discovering illegal canals for weapons, munitions, explosives and explosive devices that come from Syria and Iraq and lead to the Balkan and Republic of Macedonia and their immediate organizers, performers and helpers;
- Discovering related illegal network of extremists who come from Macedonia with members of terrorist and criminal groups from the Balkan and other countries;
- Discovering persons who recruit people from Macedonia to participate in the military forces in Syria and Iraq;
- Discovering persons, groups and organizations with extremist orientation (Islamic or any other) from the neighbouring countries and other region(s), who intend to transfer their extremism to the territory of Macedonia;
- Discovering persons who develop extremist ideas or former members of extremist organizations, as ISIL and Al Nusra among the refugees on the Balkan route;

[15]'The National Concept of the Security and Defence of Republic of Macedonia' is a document issued by the Parliament of Macedonia in June 11, 2013

[16]See Herman M. (2009) *'The power of Intelligence in war and peace'*, Akademski Pechat, Skopje, on intelligence and its role in realization of strategic political projects and security

- Collecting data for further development of the situation in Syria and Iraq, especially from the position of Russia and the USA, as well as Turkey (Turkish influence on the Balkan, and Macedonia is very big and cannot be neglected);
- Collecting data for the activities of the neghbouring armies, because they have already positioned their forces along the border with Macedonia.

It is obvious that these are only some of the responsibilities that Macedonian Intelligence should perform. It is worth mentioning, that in order to get important data, Macedonia should cooperate with the neighbouring services, and, especially, with the Intelligence services from the USA and NATO and other partner services.

Ministry of Interior should have a very important role in this period via the Security Directorate and Counterintelligence and the National Security Bureau. The new situation imposes new methods in their work, adjustment of the training and improvement of the tactic to discover, follow, archive and prevent all the risks to public order and peace, committing crimes against the state and incidents within organized crime.

Ministry of Defence and ARM have successfully coped with the challenges of the refugee crisis so far. Having a fruitful cooperation with NATO for many years and participation in the peace missions abroad makes a quality basis for further efficient performance of defence obligations.

Having in mind that the political crisis does not settle down, the need for improvement in coordination and synchronization in the work of all organs would be more than necessary, in the future. Because of that, the security system must remain stable and resistant to serious threats.

## 6. CONCLUSION

The root and development of the war conflict in Syria and Iraq have its implications on Central Asia, worldwide Europe and the Balkan, and of course, Republic of Macedonia. This is the biggest war conflict in the 21$^{st}$ century, where for the first time, the arms forces (air forces) of Russia and the USA might collide. It is hard to believe that this conflict might settle down, because of the completely opposing vital state interests of these two countries in Syria and Iraq. That's why; the consequences would last for a longer period.

As for Macedonia, intensifying of the war conflict in Syria and Iraq means that it will increase the danger of spreading the ideas of radical Islam and ISIL on the Balkan and among its citizens, as well. Bearing in mind that the significant number of members of ISIL and Al Nusra come from the Balkan, especially from Bosnia and Herzegovina and Kosovo and the fact that the Islam radicals are connected tightly, the threat of forming and acting of illegal Islam cells on Macedonian territory is something that cannot be denied. The second aspect of Syria and Iraq war conflict is the refugee crisis which directly endangers Macedonia. The formal closure of the Balkan route is not a solution to this problem, because it creates a new problem of illegal crossings of the state's borders and development of criminal groups for human trafficking.

The security system organs in Macedonia face with new challenges in the scope of intelligence, security, counterintelligence, police and army. In order to successfully perform the responsibilities, it is necessary to improve tactics, technicalities and finances and support the activities in security and defence, as well as to perform more efficiently mutual coordination and synchronization, and continue international cooperation with the EU and NATO security organs and the security bodies from the neighbouring countries.

## 7. REFERENCES


1. Batkovski, T. (2014), *Republic of Macedonia in the second decade of 21 century - security acts*, Journal of International Conference in Ohrid - Faculty of Security
2. Buzan B (2010)., *People, countries and fear*, Skopje, Akademski Pechat
3. Herman M. (2009) *The power of Intelligence in war and peace*, Skopje, Akademski Pechat
4. Hough P (2009), *Understanding Global Security*, Skopje,Tabernakul
5. *National Concept of the Security and Defence of Republic of Macedonia*, Parliament of Macedonia (June 11, 2003)
6. Richelson, J (2009), *The US Intelligence community*, Skopje, Magor
7. Williams P (2012), *Security Studies*,Skopje, Ars Lamina
8. Viotti P.and Kauppi M. (2009) *International Relations and the World Politics*, Skopje, Akademski Pechat

**UDK:325.254.4-022.326.5:[911.3:32(4)**

# GLOBAL MIGRATION CRISIS AND TERRORIST THREATS TO EUROPEAN COUNTRIES (GEOPOLITICAL AND GEOSTRATEGIC ASPECTS)

***Tihomir Lichev, Dr.Sc***
*Academy of Economic "D.A. Tsenov "- Bulgaria, Svishtov*
*e-mail: tlichev@uni-svishtov.bg*
***Katia Licheva***
*Academy of Economic "D.A. Tsenov "- Bulgaria, Svishtov*
*e-mail: klicheva@uni-svishtov.bg*

**Abstract**

In recent years, the most rapidly developing field of political geography is closely related to geopolitics and geostrategy. The present study makes a theoretical and chronological analysis of these concepts and their contemporary manifestations.
The object of this study is the theory of the development of different civilizations and fundamental Islam and its projection of radicalization in various organizations, countries and continents. In recent years, there have been breakthroughs in the fight between civilizations and societies, as well as in the interpretation of various religions. The events in North Africa, the Middle East and Afghanistan led to the radicalization of the situation in the Islamic world. This study makes a coherent analysis of the Arab revolutions, which have opened the "Pandora's box" and sharply increased terrorist attacks in Europe, the USA and elsewhere, organized by various Islamic terrorist organizations. Special attention is paid to the emergence and development of the "Islamic State" and its differences with "Al Qaeda".
Logically the military actions in Libya, Syria, Iraq and Afghanistan intensified the wave of migration to the EU. The study indicates the path of migrants by sea and land, and their main goal - their settlement in the rich countries of the EU-Germany and the Scandinavian countries. The Balkan Peninsula, due to its geopolitical position, is exactly the "pathway" of the bulk of migration flows. Moreover, the political wave of migration is economic in nature, which also must be distinguished. In addition the wave of migrants from the region "Sahel" in Africa to Europe is constantly increasing. This study also analyses the insufficient and short-sighted policy of the EU which can not cope with the wave of migration. On the other hand the neo-liberal policies of Europe show a complete collapse - the majority of terrorist attacks involve Muslims who have been settled in Europe for a long time. The experience of the Republic of Bulgaria has also been stated and how it has been coping with the wave of migration and terrorist threats. The conclusion outlines recommendations for solving the Middle East crisis, which are likely to decrease the migration wave and terrorist threats.

***Keywords:*** *geopolitics, migration, terrorism, "the Islamic state", Middle East crisis*

## 1. INTRODUCTION

More than a decade after the most brutal terrorist act of 11/09/01in the USA the civilised world still has an unclear vision about its future. The dilemma is whether to keep the western civilisation in its current constructor to reconstruct it thoroughly due to the growing strength of the violence of the extremists. At least three aspects of the terrorists' behaviour have been explained by the analysts; first: they are no longer in the form of big armies and NATO is no longer fighting large formations; second: they are not anonymous groups, but rather on the contrary – they are clearly defined as a cultural and religious group with a certain ethnic origin; third: the reasons for their growing violence do not have any logical explanation for the many terrorist acts nowadays and the killings of hundreds of thousands of innocent people. The significant part of the extremist behaviour of the radicalised representatives of the Islam is to a great extent explained with the religious education and the cultural and historical environment of their formation. Unfortunately recent years have seen a rise in the number of the followers of these trends in Western Europe and America.

These trends in the individual communities are largely determined by the cultural and historical traditions of the inhabited area and have been the object of attention of a number of geo-politicians, cultural anthropologists and political scientists. Normal logic cannot accept as a consideration the desire of paranoid fanatics to destroy all non-Muslims only because they live in their own way or 'tread on the sacred land of Islam' (Bakalov, G. 2004 p. 40 - 50).

This study discusses the main aspects of the development of the individual communities and their radicalisaion. The various theoretical and practical aspects of the contemporary global processes are examined – terrorism and migration within the context of geopolitics, geo-strategy and within the framework of political geography. Finally, there is an attempt for the formation of a unified pan-European politics and a more comprehensive forecast for the future of the study area.

## 2. POLITICAL GEOGRAPHY, GEOPOLITICS AND GEO-STRATEGY IN THE MODERN WORLD

Over the last decades political geography has been one of the fastest growing modern sciences. It has a clear and precise place in the area of the socio-geographic sciences. Most authors agree that it is a 'scientific discipline dealing with the interaction between geography and political processes' (Kolosov, V. A**.** and N.S. Mironenko, 2001). The spatial relations, geographic location, as well as the study of political phenomena and systems in their spatial context are examined as basic elements of the political geography.

Political geography is closely linked to Geopolitics and Geo-strategy. Geopolitics is an applied scientific field between geography and politology. The term geopolitics was introduced for the first time at the end of 20th century by the Swiss politologist and journalist Rudolf Chelen, who continues the ideas of the German geographer Friedrich Ratzel about the organic state (Karastojanov, S., 2008).Rarely is any other concept related to such a diversified content and conflicting evaluations. In the current 21st century in the post-socialistic countries there is an increased interest in geopolitics which is connected with a need for evaluation of the new international status of the individual groups of countries and secondly – legalisation in these countries of this scientific trend of the public and scientific thought. In the former socialistic countries most literature sources read that

geopolitics is a direction of the bourgeois political thought based on an extreme exaggeration of the role of the geographical factors in social life. Very often geopolitics is defined as an American-fascist doctrine, which determines the striving of the imperialist monopolies to establish world domination (Lichev, T., 2013, p. 5 - 14), (Lichev, T., 2014).

As it is known, the object of the study of geopolitics and of many other social studies is in constant dynamics, combining all changes in the real world. At the same time this term is also used in popular context in particular, as well as in mass media.

The destruction of the bipolar model, the collapse of the socialistic block and the Soviet Union, the anti-socialistic revolutions in Central and Eastern Europe, the collapse of Yugoslavia, Czechoslovakia, the unification of Germany, and all these events led to revolutionary changes in the structure of international relations. In science these processes are often referred to as 'Yalta-2' as an analogy to the same event from 1945, which determines the principles and the division of Europe into Eastern and Western.

Only after 1989 in Eastern Europe various geopolitical processes started to be examined together with the equally important geo-strategies within the context of political geography.

Etymologically the term 'geopolitics' consists of two Greek words (Geo, πολιτική – everything which is connected with the cities, countries, citizens, etc.).in scientific sense this term has two aspects to be considered: cultural-psychological and conceptual.

In the cultural-psychological aspect the geopolitical idea reflects the historical experience of the subjects of international relations, i.e. empires, nation states, peoples and relies on a particular ideology as a system of views in the existing world and the principles of its change. The downs of the various ideologies lead to a collapse in the geopolitical doctrines for which people were ready to sacrifice their lives (some classic examples are the Crusades, the Bolshevik revolution, the 'cultural revolutions', etc.) (Kolosov, V. A**.** and N.S. Mironenko, 2001)

Various geo-politicians divide the different types of geo-strategies into: land, sea, air and even space. While in the beginning of the XX centuries the land and sea geo-strategies were leading, in theXXI century special attention will be given to the air and space ones, the main reason for which being the desire of the bigger military and political powers to cover more and greater areas.

With no less importance for the contemporary geopolitics are the geopolitical and geostrategic regions; spheres of influence; geopolitical code, etc.

The conceptual aspect of geopolitics is based on the concept of paradigms, introduced as early as 1962 by Thomas Kuhn. The development of the science is a process of continuous construction, validation and replacement of the different hypothesis, concepts and theories. Taken together they form the content of the individual scientific paradigms (Kolosov, V. A**.** and N.S. Mironenko, 2001). Geopolitics is no exception – the most popular paradigms here are the institutional and legal, the national and state, as well as the geo-ideological one. The latter represents the interrelation between geopolitics and ideology and shows two models of global geopolitical interaction between the countries – confrontational and integration.

After the collapse of the communist system the geopolitical picture of the world changed radically. At the end of XX century a number of authors impose a new **civilization paradigm**. This approach is used for the first time in cultural studies.

- Civilization is the 'highest form of cultural communities of people and mega-culture with a wide spectrum of signs defining the cultural identity of nations. The American geo-politician and director of the Institute for strategic studies at

Harvard UniversitySamuel Huntington, conceives and justifies the hypothesis for the world conflicts between different civilizations. The classic phrase that 'human history is the history of civilizations' belongs to him (Hungtington, S, 1999). This subject has been studied extensively by many authorslike N. Danelevski, M. Veber, O. Spengler, A. Toynbee, K. Dawson, F. Braudel, M. Melko and many others (Brodel, F. 2014), (Makinder, H, 2003 ) (Toynbee, A, 1993), (Shplengler, O, 1993).

However, undoubtedly the civilization paradigm is best developed in the works of A. Toynbee, O. Spengler and S. Huntington. Most authors agree that humankind is a set of civilizations. The role of religion and culture for their formation is almost always emphasized. In turn civilizations may include in their range sub-civilizations. For example, western civilization has two main options – European and North-American, and the Islamic is divided into Arab, Iranian, Turkic and Malay sub-civilizations.

Scientists do not agree on the number of the major civilizations. For example, Toynbee defines 21, and later on 23. O. Spengler differentiates 8, and F. Braudeln - 9 major civilizations. The American sociologist M. Melko offers the existence of 12 civilizations, 7 of which (Mesopotamian, Egyptian, Cretan, Classical, Byzantine, Central-American and Indian) do not exists any more. According to the same author there are 5 – Chinese, Japanese, Indian, Islamic and Western. Some scientists, including S. Huntington add also the Russian-Orthodox civilization.

Most researchers at the beginning ofXXI century determine the existence of 5 major civilizations.

- Western society, uniting western Christianity;
- Orthodox Christian and Byzantine society located in Southeast Europe and Russia;
- Islamic society from North Africa and Middle East to the Great Chinese wall;
- Hindu society in tropical sub-continental India;
- Confucian-Buddhist society of the countries in the Asiatic-Pacific region (Vasilenko, I. A. 2013), (Muhaev, R. T, 2007).

In his fundamental work 'The Clash of Civilizations' S. Huntington substantiates the hypothesis about the major conflicts between the different civilizations. His main thesis is the appeal for protection of the Western world against all other civilizations. The author is far away from the idea of a dialogue between the civilizations as grounds for geopolitical tolerance and forbearance.

According to the same author the main gap between civilizations is between the Western world and the other civilizations. The most serious line of confrontation is that of the Western world with the Islamic civilization, and to a lesser degree that between western and Orthodox Christianity. Unfortunately Huntington's prediction was accurate to a great extent.

## 3. GEOPOLITICAL CENTRES OF THE ISLAMIC WORLD

The Muslim world on the contemporary geopolitical map is one of the most restless and dynamic regions of the world. Islam is the second largest world religion by number of its followers (over 1.3 billion people). They are a majority in 48 countries in the world and globally there are several centres. The Muslim East comprises of countries from the Middle East and the Persian Gulf – the ancient centres of Muslim culture but also Afghanistan, Iran, Pakistan and Turkey. In South and South-eastern Asia a smaller number

of the Muslims are Arabs. Another major area of distribution of Islam is the Muslim north, which includes countries from the former Soviet Union of the Caucasus and Central Asia and also regions of Russia (Vasilenko, I. A 2013).

In the Arab world North Africa is known as Maghreb and Southwest Asia – as Mashreq. It spreads to the south of Sahara the semi-arid regions of Sahel and the African savannah. Outside of the borders of these largest areas of the Islamic world the number of Muslims in the west is rapidly increasing. For example, in the USA they are 5.7 million people, in France – 3, Germany - 2.5, Great Britain - 1.5. Their number amounts to several million in the countries of the Balkan Peninsula. However, these statistics are too reduced taking into consideration the increased migration in recent years.

In Mesopotamia and the Nile valley some of the most ancient civilizations in the world were born. The space between the Caspian, Mediterranean, Red and Arabian Seas is known as the Near and Middle East. The Near East is the cradle of Judaism, Christianity and Islam. The Jewish state of Israel established in 1948 occupies a key geopolitical position. The contradictions between the separate representatives of the regions have instigated military and political clashes since ancient times. Today they underpin the Arab-Israeli conflicts. A typical example is the status of the city of Jerusalem where the major religious centres and the three religions cohabit. The conflicts between Islam and Christianity are a prerequisite for conflicts in Lebanon, Sudan, Egypt, Nigeria, etc. In Iraq, Turkey, Syria and Iran the unresolved Kurdish issue causes a high conflict potential, as well as the antagonism between the two main directions in Islam – Sunni and Shia (Rusev, M. 2008).

The development of the Arab-Islamic region relies on its proximity to important sea routes, which connect the north part of the Atlantic Ocean through the Mediterranean and the Suez Canal for the Red Sea and the Indian Ocean. There is heavy traffic of significant world capital. This is the path of the main air and land communications connecting Europe and Asia. All of this defines the Muslim world as a key geopolitical centre. The subsurface of the region is extremely rich. About 70% of the world oil and about 45% of the world natural gas resources are found there. In spite of the enormous importance of the region for the world, due to its heterogeneity and diversity, it does not become a united power centre. Some of the main reasons for this are its strong fragmentation into numerous tribes and countries, and also that in the foreign policy a lot of Muslim states conduct a policy where they put into effect religious motives on the international arena.

The significant quantities of oil and natural gas lead to the flourishing of a number of countries (Kuwait, UAE, Qatar, Saudi Arabia and many other– 22 in total). At the same time in other countries the Muslims live in the state of utter poverty where the GDP is under $2 per capita. Over 40% of the population in these countries is illiterate and only 1.6% have Internet access.

## 4. DEVELOPMENT OF THE ISLAMIC WORLD AND RADICALIZATION OF THE ISLAM

One of the first Arab preachers of consolidation of society and the formation of a common state is undoubtedly Muhammad ibn'Abdullah (p. 570 - 632), also known as the Prophet. He had laid the foundations of the establishment of the new religion – Islam. In a geopolitical aspect his acknowledgment by the Arabic world led to the foundation of a united state – the Caliphate (Zheltov, V. V. and M. V. Zheltov, 2014). It is accepted that

the radicalization of the early Islam was assisted by the combination of religion and political power. Mohammad the Prophet is probably the only founder of a religious doctrine which combines spiritual leadership with political power. The Caliphate spread its influence over the territory of the whole Arabian Peninsula but also over large areas of Asia, Africa and Europe. After the sudden death of the Prophet the crusades continue and one century later they end up with the imposition of the Islam. In the beginning the Muslim world directs its conquests towards territories with similar climatic conditions and culture. It is on the rise until as late asXVII century. ‚Dar al-Islam' (the house of Islam) controls key strategic and commercial routes, has functioning economy, possesses military power and culture. Their conquests in Europe are also extensive. AfterXVII century, however, the Ottoman Empire gradually starts to lose its positions to the developing Christian world. The development of culture and technologies in Europe leads to an abrupt change in the balance of power. Gradually over the next centuries the Islam becomes a waning power in a peripheral region. Christians impose colonial dependence on considerable Islamic territories. All this leads to a fight of the radical Islamic leaders against the unbelievers. The fighting of the Islamists is referred to as Jihad which can be three types– Jihad of the heart (fight against your own shortcomings); Jihad of the tongue (ban on the reprimand and permission for the aproved by the Islam language); gazavat Nabeg or fath (conquest, victory). The killing of women, children, elderly people and priests is forbidden in the holy war even if they belong to a non-Muslim religion but the population of the conquered country becomes military loot.

The more sagacious among the spiritual leaders realise the necessity for reforms in the development of the Islamic states. There are a lot of reform movements in most of them with a number of radical Islamic ones amongst them. This all leads to a lot of warring camps. It is a known fact that since as early as the second half of XIX century the reform movement in the Islamic world has not ceased but it is too diversified in the achievement of its final goals. A number of doctrines were conceived whose representatives are leaders of reform movements like K. Ataturk (Turkey), H. Burgiva (Tunisia), etc., i.e. the so called 'modernists'? Other leaders made attempts to establish 'Islamic socialism' – M. Gaddafi (Libyan Jamahiriya), A. Sadat (Egypt), H. Assad (Syria), etc. All of them tried to maintain friendly relationships with the socialistic countries and to oppose Imperialism. At the same time in Iraq the religious leader Ayatollah Khomeini came into power with his slogan 'Neither East, nor West but Islam'. In practice this is a return to the patriarchate dating back from the time of Abraham, some 39 centuries ago.

The aforementioned riches of oil and gas are in the basis of most of the conflicts and wars on the territory of the Near and Middle East (the Iran-Iraq war; Kuwait-Iraq crisis, the Persian Gulf wars, etc.). The region of the Persian Gulf is nowadays in the centre of attention of the Western geopolitics which pursues its oil resources, including through military actions as well. The 'Desert storm operation' in 2003 became notoriously popular when the USA accused Iraq in possessing chemical weapons and occupation ensued (Бродел, Ф. 2013). Military actions in Afghanistan continue even today. Until very recently there has been an embargo of the Western world over Iran because of the created nuclear program.

The other side of the West becomes the pronounced **anti-Americanism** of the majority of the countries in this region. It is a widespread belief that there is an **'inter-civilization war'** between the Islam and the West. American officials often refer to the Muslim countries as ‚rogues states'. The notorious 'axis of evil' includes five Muslim countries: Iran, Iraq, Syria, Libya, and Sudan.

In the minds of the ordinary Western people firm stereotypes persist regarding the Islamic world, which creates only fear and mistrust, a world full of fanatics and terrorists. Consequently movements against the Western world are founded in the Arab world, and in some cases even against the more modern Islamic states (Turkey, Egypt, Tunisia, etc.).

The fight of a number of religious-political organisations, professing extremism and terroristic models are characterised with aggressive attitude towards the Christian spiritual values, using as a revolutionary ideology, sermons of extreme Shiaism, strict rules of public life, compulsory for the genuine Muslims.In 1953 the International organisation ‚Islamic party for liberation' was founded whose aim is the revival of 'umma' (the whole Islamic world), its liberation from foreign ideas, systems and laws, restoration of the Caliphate, eradicating of poverty and corruption with the help of strict Sharia. This organisation, for example, glorifies the Palestinian performers of suicide and is still active today. A great number of **extremist organisations** emerge**.** For example the 'World Islamic front for Jihad', founded by Osama bin Laden who signs an agreement for cooperation with the leaders of the Egyptian organisation 'Jihad' M. Hamza and A. al-Zawahiri. It is believed that the terrorist attacks in the USA in 2001 were carried out namely by this organisation. According to most sources most of its leaders are dead. Another big organisation is the 'Popular Islamic Conference' established in 1991 in Khartoum (Sudan). Its main aim is the complete liberation of Jerusalem and the territories occupied by Israel. They support liberation movements in Chechnya, Kashmir. In 1989 M. Gaddafi established in Libya 'World Islamic People's Leadership' which offers military and political support to separate extremist organisations. A great number of them are active in Pakistan, Afghanistan, etc.

A lot of professionals believe that there are different main sources of financing of all these organisations: charity and religious organisations; rich Arab countries, International Islamic University in Islamabad, Al-Azhar Religious University (Cairo), Al Kifah Refugee Centre – Brooklyn and also CIA. The American tactics to control these movements is not justified. The 'released demon' in Afghanistan (the Taliban and Al Qaeda movements) are already out of the control of the Western offices. Instead of exerting pressure onto Russia and other eastern countries, they have turned against their founders. If the USA knew the Islam better they should have expected it. Recently the Islamic state known as ISIS has been of most importance. This is a Sunni, Salafi Islamic organisation. They are characterised with extreme cruelty, atrocities, violence over all others – Shiites, Kurds, Yazidis, Christians. The Islamic state is planning to conquer the Balkan Peninsula together with Austria, Czechoslovakia, Hungary and Slovakia (it would be called Oropba), including also Spain, Portugal and France (Andalusia), China, North Africa and others until 2020. Unlike other terrorist organisations ISIS has a state structure. Its authorities are planning to build 16 ministries. A handbook for management of a state was created consisting of 24 pages, written in 2014. The Islamic state is financed by wealthy sponsors from the countries in the Persian Gulf, sale of petrol mainly to Turkey and other 40 countries, sale of cultural monuments, slave-trade (women and children).The whole organisation is characterised with sadism, executions, destruction of whole cities (Palmyra, etc.). All this leads to an increase in the migration to neighbouring countries and Europe.

## 5. MIGRATION CRISIS AND TERRORIST ATTACKS

After 1990 ofXX century in a number of countries in Eastern Europe there were revolutionary events which are often referred to as 'colour revolutions'. The same practice has been imposed in the Arabic world through mass protests and national unrest in the Near East and North Africa. In 2011 in different countries the national riots were called ‚Arab spring'- Tunisia, Egypt, Yemen, Bahrain, Libya, Syria, etc. All of them are evaluated differently by the politologists. Western analysts present this as a development of democracy in the Muslim world. Very often these revolutions are referred to as Facebook revolutions. A lot of scientists from the former socialistic countries and the Arab world evaluate the events differently. Until recently the leaders of these states maintained balance using any means and not always through democratic measures. Now that Pandora's Box has opened in many of them public order is not obeyed. This is especially true for such important countries like Libya (it is built on a tribal principle), Egypt, and Iraq. In Syria the civil war involving troops of the central government of B. Assad, Kurdish forces and troops of ISIS continues. Russian, French and other forces wage war by air and sea.

In recent years the EU faces the greatest threats since its establishment. The migration wave and terrorist attacks are increasing. The main migrants to Europe are predominantly from Syria, Afghanistan, Iraq and Libya. So far the refugees in Europe are over 1,2million people. They are the most numerous in Germany, Austria, the Scandinavian countries, etc. In the neighbouring countries to Syria the most refugees are in Turkey - 2.5 million people, Lebanon- 1.1 million people, Jordan– 635 thousand people. The main migration routes to the EU are two altogether: 1. Via the Mediterranean and Italy; 2. From Turkey via Aegean Sea, the islands of Lesbos, Chios, and Samos – Greece through Macedonia, Serbia, and Hungary to Germany. Over the last few months this flow has decreased significantly. The migrants that pass through Bulgaria are considerably feweraccording to official data for 2015 they were about 30 thousand people. In the refugee camps in Harmanli, Sofia and near Radomir they are under 2000 people and most of them do not seek refuge in Bulgaria, they tend to concentrate in Sofia and seek a pathway to Germany. It is interesting that more migrants get caught not on their way to the country but rather out of it to the borders with the neighbouring countries. This is due to the part the organised crime takes in the transfer of refugees. This is done through the southern border of the Republic of Bulgaria with Turkey via six routes: 1) near the village of Rezovo by the Black Sea; 2) near the village of Slivarovo; 3) the village of Brashlyan near Malko Tarnovo; 4) the village of Bliznak; 5) the village of Golyamo Bukovo and 6) the village of Belevren – near Sredets.

The migration wave brought considerable crime in Europe. It is especially high in France, accompanied by several attacks, also Germany, Belgium, etc. So far the EU lacks a unified policy regarding the refugees. The Dublin regulation is not observed. A decision to strengthen the control at the EU borders was taken at the London conference over the last few days.

## 6. CONCLUSION

1. EU faces considerable problems for the first time since its creation;
2. There are global threats – migration wave and terrorist attacks;
3. The decisions of the London conference have to be observed;
4. The outcome of the war in Syria is not secure regarding the future of Europe;
5. An increase in migration is envisaged from Libya and other countries in Africa;

## References


1. **Бакалов, Г.** Геополитически и културологични взаимоотношения между исляма и Запада в миналото и днес, В: Географията- вчера, днес, утре-юбилеен сборник в чест на 60 годишнината на проф. д-р Стефан Карастоянов, С., УИ „Св. Климент Охридски“, 2004,с.40-50
2. **Бжежински, З.** Голямата шахматна дъска, С., 1997г.
3. **Бродел, Ф.** Граматика на цивилизациите, С., „Изток-Запад“ 2014г.
4. **Василенко, И. А.** Геополитика в с современого мира, М., „Юрайт“2013г.
5. **Геополитика-** терминологичен справочник (съставител проф. д-р М. Бъчваров),С., 1999г.
6. **Желтов, В.В.** и М. В. Желтов – Геополитика история и теория, М., „Инфра-М“, 2014г.
7. **Карастоянов, С.** Политическа география, геополитика, геостратегия, С., УИ „Св. Климент Охридски“, 2008г.
8. **Колосов, В. А.** и Н.С. Мироненко Геополитика и политическая география, М., „Аспект прес“, 2001г.
9. **Кун, Т.** Структура на научните революции, С., „д-р Петър Берон“, 1996
10. **Личев, Т.**Геополитика, геостратегия и национална сигурност на Република България,
    В: Доклади от научна конференция „Актуални проблеми на сигурността“, В. Търново, НВУ 2013, Том4, с 5-14.
11. **Макиндер, Х.** Географската ос на историята, В: „Политическа география и геополитика в оригинал“ С., 2003г.
12. **Михайловска, Е.** Цивилизация и цивилизации- теории и идеи на XX, С., “Наука и изкуство“, 1991г.
13. **Мухаев, Р. Т.** Геополитика, М, 2007г.
14. **Русев, М.** Обществена география, С., 2008г.
15. **Тойнби, А.** Изследване на историята, С., 1993г.
16. **Хънтингтън, С.** Сблъсък на цивилизациите и преобразуването на световният ред, С., 1999г.
17. **Шпленглер, О.** Залезът на Европа, С., 1993г.
18. **Lichev, T.** “Political geography, geopolitical strategies in the context of contemporary development of the Republic of Bulgaria” In: “Social Change in the global World”, Stip, 2014

**UDK:327.5:[620.91:553.982**

# THE INFLUENCE OF THE OIL RESOURSE ON THE GLOBAL SECURITY CHALLENGES

***Lazar Gjurov, Dr.Sc***
*e-mail: lazar.gurov@ugd.edu.mk*
***Drage Petrovski, Dr.Sc***
*e-mail: drage.petreski@ugd.edu.mk*
***Nikola Siligunis***
*e-mail: n_siligunis@hotmail.com*
*Military Academy "Mihailo Apostolski" Skopje - UGD Stip*

**Abstract**

Crude oil is the most important natural resource of the industrialized countries. The oil components have been used for production of almost all chemical products. The world spends almost 14 milliard liters per day and because of this the contemporary life is unimaginable without the crude oil. Being a strategic energy resource, it enables the development of the industry and the economy of each country. Therefore there is an enormous interest by all the crucial global actors (countries and organizations) to control this crucial resource.

The parties interested in controlling this resource undertake various activities in order to achieve that purpose such as: conducting political propagandas; supporting (financing) illegal structures; taking actions to conquer the territories rich with oil, hidden under alleged efforts to democratize the societies; and interfering with the particular stategovernance and changing the certain regimes. All of the mentioned activities create huge global security challenges.

Within this paper, we will analyze the current distribution of oil. We willpresentthe global production and consumption of this key resource, as well as the fluctuation of changing prices in accordance with the dynamics of supply and demand. As follows will be carried out historical overview of the security challenges resulting from oil. Also we will include the oil crises which were intentionally created.

Furthermore, in the framework of this paper we will analyze the power of the oil of the Islamic state as a dominant global security problem. It will be elaborated the connection between ISIS and the oil and to what extent it gives power to the Islamic state in order to sustain the primacy of a serious “player”in implementingit’s "mission" through the Islamic fundamentalism and radicalism as a working platform.

Finally, it will be put an accent on the alternative solutions to the oil dependence, as an addition to the analysis of the challenges that the humanity is facing with due to the connection between oil and security.This section will suggest solutions for overcoming the long strategic game played around oil and itsdominant role as a resource that caused major security disturbances.

***Keywords:*** *Resources, Oil, Conflicts, Economy, Security*

## 1. INTRODUCTION

Crude oil is the most important natural resource of the industrialized countries. The oil components have been used for production of almost all chemical products. The world spends almost 14 milliard liters per day and because of this the contemporary life is unimaginable without the crude oil. Being a strategic energy resource, it enables the development of the industry and the economy of each country. Therefore there is an enormous interest by all the crucial global actors (countries and organizations) to control this crucial resource.

## 2. OIL AS A CAUSE OF CONFLICTS

Even though the threat of "wars for resources" for possession of oil reserves is exaggerated, the total amount of the political consequences generated by the oil industry makes oil - leading cause of war. Between ¼ and ½ of interstate wars since 1973 were associated with one or more oil-reason mechanisms. There is no other resource that has such an influence over the international security. The influence of oil during the conflicts is very often disregarded. During the arm interventions in 1991 and 2003 in Iraq, the republicans and democrats in the public debates in USA were very often focused on the question whether USA was fighting for possession of oil reserves, among the others declared goals.

The international conflicts about oil fuels distinguish six different mechanisms:

1. War for resources – war in which the countries try to acquire the oil reserves of another country.
2. Petro-aggression, in which the leaders such as Saddam Hussein confront the domestic opposition as an excuse to engage in risky foreign policy.
3. Externalization of the civil wars in countries that produce oil.
4. Funding of various local wars and uprisings, for example the Iranian aid to Hezbollah.
5. Conflicts caused by the prospects of oil market dominance, as it was the war of the United States with Iraq were in Kuwait in 1991.
6. Clashes over the control of the oil transit routes (oil pipelines).

Separately or combined, these mechanisms can contribute to conflicts. The connection between oil and international conflicts grew increasingly; the importance of oil has changed in terms of the three transitions of the global energy markets.

The first change of the models in the global oil production is alienating from the traditional suppliers in the Middle East and approaching towards the supplying from unconventional sources in North America and new suppliers of conventional oil, especially in Africa.Even sixteen developing countries will become exporters of oil in the near future, creating new international security problems.

Secondly, the low prices of the oil during the 1990s gave the opportunity for increasing the prices and destabilization of the prices.The increase of the oil prices is proportional with the magnitude of the consequences that can be expected from the oil conflicts.

Third, the relative decline of US influence can reduce the provision of public goods such as security of the shipping and the oil pipelines.

Although these transitions change how the oil industry contributesto the international conflicts, they neither eliminate the connection between the oil and conflicts, nor allow the US to set free from the global markets.

The understanding of the abovementioned six mechanisms that link the oil with the international security can help the politicians to think further then the goal set for achieving energetic security, defined as a secure approach to reasonable oil prices.Achieving understanding is important in the future.The import is predicted to decrease because of finding new oil shale. North of America could even achieve energy independence in terms of low or no import of energy in the next decade. However, USA would still continue to import large quantities of oil, thus would continue to affect the price of the oil in the world.Moreover, the rest of the world remains dependent from the global oil markets, the fractional revolution will do a little for decreasing the threats in a relation to the oil in the international security. The appearance of the aggressive leader in oil producing countries is likely to continue to represent threat to security worldwide. Oil producing countries will continue to be poorly institutionalized and therefore the same will be subject to civil wars, creating a certain type of security issues which will demand an answer (intervention) by the international community. This happened in Libya in 2011.

Rebel groups will continue to exist and to pose threat to the oil roads and transit oil routes supplied mostly by US allies such as Japan. So as long as the oil market remains globally integrated, the import would be far less important than the total consumption. Instead of seeing the energy independence as a medicine, the USA should contribute to the international security by making long-term investments in research and development in order to reduce the oil consumption and to provide alternative sources of fuel in the transportation sector. In favor of economic and environmental benefits of reducing the consumption of oil, there are substantial evidences that from such investments, the military and security benefits will increase. The policy makers have to also systematicallythinkabout the connections between oil and safety in monitoring the new threats to international security as a result of the global oil industry.

If we take into the consideration that new countries would be able to export oil in near future, then many new international changes will be materialized, especially in Africa. In addition, if the oil prices remain high, the stimulation for possession of new oil resources will be increased as well. Wars for resources will probably happen on unpopulated or maritime zones, so that oil can be mined from these areas without the need to control the population.

In this manner the creators of the politics should be worried at most, regarding the disputed territories in Eastern China and the South Chinese Sea as well as the many maritime boundaries in the Caspian Sea. Despite the considerable uncertainty about the amount of the energy resources located there, there are already demands for sovereignty of the territory in these regions.

Policy makers need to be particularly concerned about unexpected security threats, such as the energy needs of allies or seemingly harmless actions undertaken by the various separatist and rebel groups. Looking at the six ways in which the oil causes wars, politicians can help by adopting a grand strategy, allocating the military potentials and shaping the domestic energy policy.

Political analysts tend to focus mainly on the "Energy Security" defined as secure access to fuel supplies. As a result, what lacks is broader relationship between energy and security. They will be able to implement intelligent foreign policy only by systematic

reasoning in terms of the relation between the two main issues, oil and conflicts (Colgan, 2013).

## 3. POLITICAL REASONS FOR OIL WARS

The oil has enormous economic and political influence all over the world. The impact of the oil over the national security is larger than any other recourse. The contemporary wars are practically dependent on oil, because almost every military system relies on fuel oil - tanks, trucks, armored vehicles, self-propelled artillery, aircraft and warships.This is the reason why governments and the headquarters of powerful states seek to provide a stable supply of oil during the war. These governments see their oil companies as synonymous with the national interest and provide great support to control new sources of production, to win over the foreign rivals and to gain the best routes of Oil Pipelines and other transportation and distribution channels(James, 2003).

### 3.1 The War in Iraq (2003 - 2011)

The war in Iraq was longterm armed conflict that began with the invasion of Iraq in 2003 led by the US. The invasion was designed to bring down the government of Saddam Hussein. The conflict, however, continued in the major part of the following decade.It is estimated that 151,000 to 600,000 Iraqis were killed in the first 3-4 years of the conflict.US officially withdrew from the country in 2011, but the rebellions and the different types of armed conflict continued.

The invasion started on 29th of March 2003. United States, along with the United Kingdom and several coalition partners, began with a sudden attack without declaring war. The Iraqi forces were quickly overpowered and US forces have spread throughout the country.The invasion was successful and the regime in Iraq was destroyed.Saddam Hussein was arrested in December 2003 and executed by a military court three years later. However, after the fall of Saddam Hussein things have not changed much, the occupation led to widespread violence between Shiites and Sunnis, and uprisings against US and coalition forces.US began withdrawing its troops inthe 2008, andin December 2011, they officially withdrew all combat troops from Iraq.

The George Bush administration justified the war by insisting that Iraq possessed weapons of mass destruction and that Saddam Hussein's government represented a direct threat to the US and its coalition allies (Nelson, 2004). US accused Saddam Hussein for supporting Al-Qaeda (Hayes,2003). After the invasion, there was no evidence to confirm the initial claims about the weapons of mass destruction.

Meanwhile public protests were organized all around the world, by anti-military groups. According to the french academic Dominique Raynaud, between January 3 and 12 April 2003, 36 million people worldwide were involved in almost 3,000 protests against war in Iraq. Nelson Mandela expressed his opposition to the war stating "Everything that (Bush) wants is the Iraqi oil" (Murphy, 2003).

According to the general Tommy Franks, the goals of the invasion were: "First, to put a stop to Saddam Hussein’s regime”. Second, to identify, isolate and eliminate the weapons of mass destruction in Iraq. Third, to locate and arrest the terrorists from that country. Fourth, to collect information on terrorist networks.Fifth, to break the global network of illegal arms trade. Sixth, to provide humanitarian assistance for the displaced and very poor Iraqi citizens. And seventh, to secure the oil fields and resources in Iraq that

belong to the Iraqi people (Sale and Khan, 2003).The coalition forces launched air and amphibious attacks on the Al-Faw peninsula in order to secure the oil fields based there, and the important ports, supported by the warships of the Royal Navy of Great Britain, the Polish Navy and the Royal Australian Navy.

After Sadam Huseim was arrested, the number of rebellion has decreased as well. The temporary government started to train the new Iraqi security forces, destined to control the country. US promised over 20 milliard dollars for reconstruction in the form of a credit from the future incomes from the Iraqi oil. The oil incomes also have been used for rebuilding schools and reconstruction of electrical and refinery infrastructure. On June 30th and again on December 11th, the Iraqi minister of oil awarded concession contracts to international oil companies for many oil fields in Iraq.The oil companies should invest in the country and to pay a fixed fee to Iraq by $ 1.40 per barrel (Oil firms awarded Iraq contracts, 2009). Iraq has the fifth-largest oil reserves in the world about 141 billion barrels, 2,24 × 1010 m3, (International - U.S. EIA), while with the increasing of the exploitation, expects to raise more than 200 billion barrels, 3.2 × 1010 m3, (Oil in Iraq, news article). As a comparison, Venezuela, which has the largest proven oil reserves in the world has 298 billion barrels (4,74 × 1010 m3).

### 3.2 Oil power of the Islamic State of Iraq and Syria (ISIS) (2014 - ongoing)

The Islamic State of Iraq and Levant (ISIL), also known as the Islamic State of Iraq and Syria (ISIS) or simply Islamic State,is jihadist, an extremist militant group and self-proclaimed Islamic state i.e. caliphate led by Sunnis of Iraq and Syria. By March 2015, they had control over the territory occupied by 10 million people in Iraq and Syria and limited control in Libya and Nigeria (Nebehay, 2015). The group also operates i.e. has cells in other parts of the world such as in South Asia (Mehsud S. and Bukhari M., 2014).

On July 29, 2014 the terrorist group self- declared as a caliphate and self-appointed as Islamic State. The Caliphate claims to have religious, political and military power over all Muslims around the world (Withnall, 2014).

United Nations consider ISIL responsible for violations of human rights, war crimes and ethnic cleansing of historic proportions.The group is listed as a terrorist organization by the UN, European Union, United Kingdom, United States, India, Indonesia, Turkey, Saudi Arabia, Syria and the governments of some other countries. Over 60 countries are involved directly or indirectly in waging war against ISIL.

The group originates from 1999that pledged allegiance to the Al Qaeda in 2004. In January 2006, the terrorist organization joined other Sunni rebellious groups after which it was proclaimed the establishment of the Islamic State of Iraq (ISI),in October 2006 and after the civil war in Syria in March 2011 (The Editors of Encyclopædia Britannica, 2015).

In April 2013, Al-Baghdadi announced merger of ISIS and Al Nusra and the name ofthe united group is now The Islamic State of Iraq and Levant (ISIL).However, Abu Mohammad Al-Julani and Ayman Al-Zawahiri, leader of Al-Nusra and Al Qaeda rejected the merger. After eight months of struggle for power, Al Qaeda lost all connections with ISIL on February 3, 2014 because of the inability to consult and agree with ISIL (Sly, 2014). During the civil war the group conducted ground attacks in Syria.The terrorist group gained greater significance after the expulsion of Iraqi government forces outside the key cities in western Iraq; after the territorial losses it almost led to the collapse of the government and the restarting of the US military action in Iraq (The Editors of Encyclopædia Britannica, 2015).

ISIL (ISIS) is known for its well-funded internet propaganda and presence on social media. It includes online videos of the beheadings of soldiers, civilians, journalists and humanitarian workers and the destruction of cultural heritage.Muslim leaders worldwide have condemned ISIL and their actions claiming that the group departed from the path of true Islam and that its activities do not reflect the true teachings and virtues of the religion(Hasan, 2015). The adoption of the name "Islamic state," and the idea of the Caliphate group are widely criticized by the United Nations, other governments, and mainstream muslim groups.

The Islamic State has consolidated its control over the oil supplies in Iraq and now it exports oil to Turkey, Jordan and Iran, with sophisticated smuggling empire of illegal export. Six months after the enormous parts of the territory have been occupied the radical military groupearned million dollars per week from pumping the Iraqi oil.The airstrikes by the coalition forces over tanks and refineries only distrupt the export instead of stopping it.

The militant group controls few oil fields. They put them very fast in function and then established trade networks across northern Iraq where the smuggling has been present for years. Since the beginning of July until the end of October 2014, larger part of the oil has been transported to Iraqi Kurdistan. The self-claimed Islamic caliphate has been selling the oil to the Kurdistan traders with big discount.The oil has been sellingfrom Kurdistanto the Turkish and Iranian traders. These profits helped Isis to give salary to his soldiers: $ 500 per month for a soldiers, and about $ 1,200 for the commanders.

The United States put pressure on the leaders of Iraqi Kurdistan to prevent the smuggling but with limited success. The smugglers say that the oil still finds path to Turkey through Syria with skillfull transfer from one market to another.The United Nations urges Syria and Iraq to capture all the oil trucks that continue to drive outside the jihadist occupied territory.

"We buy oil tankers (about 26 to 28 tons of oil) for 4200 dollars, and then sell them in Jordan for 15,000 dollars. Every smuggler carries about eight tankers per week", Sami Khalaf, an oil smuggler and former Iraqi intelligence officer under Saddam Hussein (Hawramy F., Mohammed S., and Harding L., 2014). Every smuggler bribes corrupt border officials with around 650 dollars to pass through each checkpoint.

Iraqi intelligence agency confirmed that ISIS uses Anbar province, which borders with Jordan, as a major smuggling center. ISIS controls three major oil fields in Iraq - Ajeel, north of Tikrit, Qayara and Himrin.

One official, located in Kurdish-controlled city of Kirkuk, announced that 435 tons of crude oil from the oil field Ajeel in the Salahuddin province recently was transported in Anba and afterward in Amman. The spokesman for the Ministry of Oil in Iraq, Asim Jihad, declared that he was not aware of the oil smuggling in neighboring Jordan, but acknowledged that ISIS manages to export oil to Turkey through Syria.

In June2014 an american reconnaissance drones that was flying over northern Iraq noticed a number of oil tankers that were smoothly moving into areas of Kurdistan region in Turkey. The United States estimated that militants earn several million dollars a week from oil sales (Hawramy F., Mohammed S., and Harding L., 2014).

The oil fields were able to produce 400 000 to 500 000 barrels of oil per day before ISIS occupied the oil fields – it has been reported in an official statement of the state North Oil Company of Iraq who had beenmonitoringall the fields in this area before the militants took over the control. One trader said that at its zenith, 3,000 tons of crude oil (25,350 barrels) were exported in Kurdistanper day. From there the oil has been disappearing in Turkey and Iran.

Saud Zarqawi was responsible for great part of the trade. Saud Zarqawi reached a contract for oil smuggling with Sunni tribal leaders and other prominent individuals in Mosul. Leaders reactivated the existing networks with the Kurdish traders who transported the oil to the autonomous region. "Kurdish traders agreed to buy oil for half of its international price and pay $ 1,500 for each tank in order to pass through the checkpoints inKirkuk, Makhmour, Daquq and TuzKhormato. Afterwards oil has been sold to the Turkish and Iranian traders.

While the majority of Kurdish population is supporting the fight against ISIS in northern Iraq, some corrupt warlords benefit from the smuggling of the oil (Hawramy F., Mohammed S., and Harding L., 2014).

The Ministry of Finance of Iraq announced that ISIS is selling the oil at a price of $ 20 per barrel. Although the global market price is continiouly declining, ISIS sells its oil 75% cheaper compared to the global market. The price of the oil at the globalmarket is around $ 40 per barrel, August 2015.The oil market in Iraq which is controlled by ISIS is estimated to be worth 1 million dollars per day. Now, with the expansion and the enlargement of the territory, more oil fields and smuggling routes are controlled and the market currently worths at least 2 million dollars per day.

The investigations conducted indicate that ISIS with selling the oil for 20 dollars per barrel provides about 2.5 million per day (Mosendz, 2014).

ISIS is not yet present in the south of Iraq, a place where is actually happening the real oil exploration. Entering into this part will be very difficult for the group. This territory is controlled by Shiites which makes this region additionaly difficult for the Sunni militant group.ISIS smuggles the crude oil and exchanges it for money at a discounted price. Also, they have their own small oil refineries in Syria. The refined oil is their benefit for its own use and for local sales in Iraq and Syria.ISIS controls the smuggling routes and the transport of raw materials tanks to Jordan through Anbar province, to Iran through Kurdistan, to Turkey through Mosul, to the local market in Syria and to the Kurdish region of Iraq, where the majority is obtained through local refining.

Turkey does not pay attention to this and that is how it is going to be until it finds itself under pressure from the west to close the black market in the southern part of the country.The ISIS's oil will remain limited to these regions and the group will have no chance to establish a sophisticated oil pipelinenetwork. The fixed networks are complex, they require investment and can become target for the Iraqi army and the Kurds.

## 4. THE ULTIMATE GOAL OF ISIS AND THE ROLE OVER PRICES OF THE OIL IN THE WORLD

At the moment ISIS is trying to establish an independent state with its capital city in what is known as,,Sunni triangle"(western and northern Iraq) in the framework of which the production of oilwill take part.They want to be independent, to expand territorial control over a larger part, to recruit more jihadists focusing on the extremists who have foreign passports and to expand their operations, attacking the western countries.

ISIS declared a caliphate by creating center for attracting extremists from Iraq and Syria. They aim to take over the arabian peninsula as their epicenar forlaunching attacks around the globe. If this happens they will control the region who has 60% of the conventional energy reserves in the world and produces 40% of world production of gas and oil.This can only be achieved by attracting mass of jihadists and extremists from

around the world in order to surpass the local population, where as a result it will be achieved endangering of the global security and economy.

### 4.1 ISIS's control over part of the Iraqi oil fields and its impact over the global economy

On a short term, the impact would be minimal as long as southern Iraq is the dominant oil producer. However, there are sufficient rich findings of oil in the Mediterranean and the northern part of Iraq that ISIS can reach which have potential capacity of million barrels per day in contrast to current figure of 30,000 barrels per day.

If they manage to establish control over those assets, the cash flow will enable them to run their empire over the limit of possibilities. But so far, ISIS is selling oil locally to Jordan, Turkey, Syria and Iran through a network of intermediaries.

However, the instability created by Iraq will result with a domino effect in the region in the sense of hindered investment in the country.

In return, it will prevent Iraq to achieve its goal to produce 9 million barrels per day, which is 3 times more than current production of Iraqi oil and 10% of worldwide demand (al-Khatteeb, 2014).

## 5. CONCLUSION

The crude oil is one of the most important strategic energy which guarantees the development of modern industry and the economy, but also it represents a major income source controlled by a specific group in the world. The fluctuation in oil prices is a barometer of the global economy, and every change is a burning issue for discussing, generally, in the political and the economic circles in each country.

The oil is closely related to the national economic development and the public's everyday life. The annual oil consumption is about 40% of the total energy consumption worldwide. But, since the oil supply is uncertain and there is a large fluctuation in price, the oil is a strategic fossile resource for all the countries in the world. The oil crises of the seventies of the twentith century caused huge destruction in the world economy. According to the available information, the price of oil from the beginning of the twenty-first century,on the international market, varies high with large changes in price.The great fluctuations in oil prices caused dramatic changes in both, the oil and economic security in the world, as well as uncertainty in terms ofthe work in the refineries and oil companies, the economy. The fluctuations of the crude oil prices have an impact on the financial results of the refineries and industrial companies as well.

The oil organizations, to large extent, perform analysis, statistics and suggestions without concrete measures about how to reduce the dependence of the oil, and thus to increase the global security.

The biggest and most powerful organization OPEC (Organization of the Petroleum Exporting Countries) begins to revoke and to give importance to the environment and its pollution. But all of that is insufficientbecause the financial benefits of the oil are too tempting for a country to take measuresindependently in order to improve the global security, to help the less developed economies, and to find a solution with which the planet will not be poluted or contaminated as currently.

The oil has enormous economic and political influence in the world. The impact of the oil over the national security is greater than any other resource. The modern wars practically depend on oil because almost every military system rely on fuel oil. The

governments see the oil deposits as synonymous with the national interest and provide great support to control new sources of production, to win over the foreign rivals and to gain the best routes of oil pipelines as well as other transportation and distribution channels.

As it has been elaborated previously, the wars or conflicts over the oil in the pastand the present can appear in any place where a certain state has an interest or believe that it can benefit from the given territory.

The conflicts or better said the oil dependence in future will only become larger. Up to the point when the world organizations, primarily the UN would invest in finding a solution with which not the countries but the planet will be the one with the biggest benefit. The solutions are "present", only is needed to presssure the most powerful economies to deviate from its own financial benefits because eventually, the "petro-dollars" i.e. the money do not provide a photosynthesis.Currently this seems to be just as beautiful imagination and at the same time distant for light years.

## 6. BIBLIOGRAPHY


1. Childs, J.Corvisier, A. (1994), *A Dictionary of Military History and the Art of War*, Oxford: Wiley-Blackwell.
2. Colgan, J. D. (October, 2013). Policy brief: Oil, Conflict and U.S. National Interests. (Journal: International Security). Retrieved from http://belfercenter.ksg.harvard.edu/files/colgan-final-policy-brief-2013.pdf
3. Douglas A. B. (2003), *Inverse Engagement: Lessons from U.S.-Iraq Relations, 1982–1990*, U.S. Army Professional Writing Collection. U.S. Army.
4. The Editors of Encyclopædia Britannica.(2015). Islamic State in Iraq and the Levant (ISIL). (E-encyclopedia). Retrieved from http://global.britannica.com/topic/Islamic-State-in-Iraq-and-the-Levant
5. Freedman, L., Efraim, K. (1993), *The Gulf Conflict 1990–1991: Diplomacy and War in the New World Order*. Princeton, New Jersey: Princeton University Press.
6. Hasan M. (March, 2015) How Islamic is Islamic State (news article) Retrieved from http://www.newstatesman.com/world-affairs/2015/03/mehdi-hasan-how-islamic-islamic-state
7. Hawramy F., Mohammed S., and Harding L. (November, 2014) Inside Islamic State's oil empire: how captured oilfields fuel Isis insurgency (column). Retrieved from http://www.theguardian.com/world/2014/nov/19/-sp-islamic-state-oil-empire-iraq-isis
8. Hayes F. S. (September, 2003). Saddam's al Qaeda Connection.(E-magazine: The weekly standard). Retrieved from http://www.weeklystandard.com/Content/Public/Articles/000/000/003/033jgqyi.asp
9. International - U.S. Energy Information Administration. (Report). Retrieved from http://www.eia.gov/beta/international/?fips=iz
10.James. A. P. (November, 2003). Oil companies in Iraq (web article). Retrieved from https://www.globalpolicy.org/component/content/article/185/40586.html
11.al-Khatteeb L. (August, 2014). How Iraq's black market in oil funds ISIS. (news article) http://edition.cnn.com/2014/08/18/business/al-khatteeb-isis-oil-iraq/
12.Mehsud S. and Bukhari M. (November 18, 2014). Pakistan Taliban splinter group vows allegiance to Islamic State. (News article). Retrieved from http://www.reuters.com/article/2014/11/18/us-pakistan-militants-is-idUSKCN0J20YQ20141118

13.Mosendz P. (November, 2014). HOW MUCH DOES ISIS MAKE ON SELLING OIL? (news article). Retrieved from http://www.newsweek.com/isis-islamic-state-baiji-iraq-syria-oil-283524
14.Murphy J. (January 30, 2003). Mandela slams bush on Iraq. (CBS news, article). Retrieved from http://www.cbsnews.com/news/mandela-slams-bush-on-iraq/
15.Nebehay S. (March 13, 2015). Islamic State-controlled parts of Syria, Iraq largely out of reach: Red Cross. (News article). Retrieved from http://www.reuters.com/article/2015/03/13/us-mideast-crisis-syria-icrc-idUSKBN0M921N20150313
16.Nelson B. (January 28, 2004). New information on Iraq's possession of weapons of mass destruction. (Congressional record, Senate, page S311-S312). Retrieved from https://fas.org/irp/congress/2004_cr/s012804b.html
17.Oil firms awarded Iraq contracts. (news article).(December, 2009). Retrieved from http://www.aljazeera.com/news/middleeast/2009/12/200912117243440687.html
18.Oil in Iraq. (web article). Retrieved from https://www.globalpolicy.org/political-issues-in-iraq/oil-in-iraq.html
19.SALE M. and KHAN J. (April 11, 2003). Missions accomplished. (The learning network, The New York Times). Retrieved from http://learning.blogs.nytimes.com/2003/04/11/missions-accomplished/
20.Sly L. (February, 2014) Al-Qaeda disavows any ties with radical Islamist ISIS group in Syria, Iraq. (news article). Retrieved from https://www.washingtonpost.com/world/middle_east/al-qaeda-disavows-any-ties-with-radical-islamist-isis-group-in-syria-iraq/2014/02/03/2c9afc3a-8cef-11e3-98ab-fe5228217bd1_story.html
21.Withnall A.(June 30, 2014). Iraq crisis: Isis declares its territories a new Islamic state with 'restoration of caliphate' in Middle East. (News article). Retrieved from http://www.independent.co.uk/news/world/middle-east/isis-declares-new-islamic-state-in-middle-east-with-abu-bakr-albaghdadi-as-emir-removing-iraq-and-syria-from-its-name-9571374.html

**UDK:325.254.4-027.583:343.3/.7]:341.222**

# "DEVIANT" STATES OR DEVIANT MIGRANTS: BETWEEN THE DISCOURSE OF "CRIMMIGRANTS" AND CLOSED BORDERS IN TIMES OF REFUGEES' CRISIS

***Stanojoska Angelina, Dr.Sc***
*Faculty of Law,*
*St. Kliment Ohridski University - Bitola, Republic of Macedonia*
*E-mail: angiest22@gmail.com*
*angelina.stanojoska@jur.lu.se*

**Abstract**

Syria was and still is one of many examples where human destinies are just pawns in chess games played by mayor forces. Being pushed under the rain of barrel bombs, Syrian citizens, using already established paths by organized crime groups, started their movement to the European Union. Every day we are witnessing rivers of people walking the Balkan route with only one thought on their mind…get to their destination and save their life.

On the other hand, EU and its partners on the Balkans did not show anything, but immatureness. It looks like no one is ready to find a possible solution or even worse does not want to find any. EU once again has shown how weak are its structures, how member states don't care for common interests, how all 28 are working for themselves.

Methods: Using comparative method and document analysis, an analysis of the EU's and Macedonia's legal solutions in the area of Asylum Law regarding existing problems, will be undertaken. Also, using data from the Ministry of Internal Affairs and State Statistical Office a parallel between legal and illegal immigration will be made.

*Key words: asylum, crimmigrant, globalization, illegal migration, smuggling of migrants.*

## 1. INTRODUCTION

The globalizing world is a world of motion. Interconnectedness, movement of goods, services, capital and cultural symbols, free movement of people, without need of crossing borders, being asked of purposes of travel, pages of paper, boarding passes. And it is or better said was everyday life of European Union's citizens, before the outbreak of the, happening now, mayor migration movement towards its territories.

The definitions of globalization point to the interconnectedness of distant locations in shaping events and consequences, namely, the space-time compression due to technological innovations and cultural flows. Globalization is sometimes seen as a universalization and homogenization of culture in the American style consumer society or instead, taking form through fragmentation and localization as well as through marginalization of peripheries by the affluent centers. Along with the word "globalization," which has become part of everyday usage, there are also terms which attempt to describe the complexity and contradictions of globalization by saying the world

is going through "fragmegration" or "glocalization". (Penttinen 2008). Contemporary practices of migration control disrupt traditional frames of understanding within criminal law and criminology. First, they demand a de-privileging of the national as the self-evident scale of enquiry. National and local no longer appear as fixed categories but are shot through with transnational elements and marked by hybridism and movement. (Franko Aas, 2013)

The last few years for Europe were maybe the toughest in terms of people's movement. It is a period when the two maybe most common reasons for migration collided and contributed for the biggest movement towards EU since the middle of XX Century. From one side we have the refugees running away from war conflicts in Syria, Iraq and Afghanistan, and on the other side the economic migrants coming from countries where there are no war conflicts, but lack of economic possibilities. Being a same phenomenon in its core (migration movement), it has completely opposite push factors in the countries of origin, same pull factors and of course, different measures which are undertaken by countries of destination. Refugees are protected by internal humanitarian law and destination countries are obliged to protect them in times of war conflicts. On the other hand, economic migrants are left before the mercy of immigration politics of their countries of destination.

Inside EU, before border controls were reinstated, when you were travelling, for example, from Sweden to Denmark, using the Oresund Bridge, it would be a normal trip, but today with border controls reinstated by Sweden, travelling from Copenhagen to Malmo would mean changing trains. It will not be an ordinary trip, because you will have to get off the train at the Kastrup Airport where your ID or Passport is checked and photographed by Danish authorities and then you'll take another train to Malmo, before which, Swedish police enters the train and asks for an ID or Passport. The problem is not the waste of time or the moment you'll have to show your document of identification (if we forget the movement without documents inside the Nordic Passport Union). The problem is the destruction of an idea, even on the soil it was "born" long time ago.

"May I see your ID?" was a question unknown for EU's open borders, especially among Nordic countries.[1] Also, Denmark reinstated its control on the border with Germany, which will stay until EU external borders are properly and adequately controlled in Greece and Western Balkans region. On the other hand, in other EU member states which are part of the Schengen area, the situation is even worse. Building fences in the XXI Century is, of course, not helping at all the idea of open borders and supports the transition toward deviant states, states which criminalize every movement towards its borders, no matter the reason.

But, as every phenomenon, globalization meant open border society for just segments of Planet Earth, for the others it transformed itself into its dark twin sister, localization and closing borders. Not being far from it, events such as the Charlie Hebdo attack in January 2015, then those in Ankara on 10th of October 2015, the Russian plane crash on 31st of October, Paris attacks on the evening of 13th of November 2015, and the

[1] The free movement among those countries was established in three steps, starting in 1952 when with agreements Nordic countries have abolished passports for travel between them and they could readmit aliens having entered illegally into one Nordic country from another. Then in 1954 citizens could stay and work in any of the Nordic countries without any residence or working permit and in 1957 when The Nordic Passport Convention was signed (Iceland acceded in 1965) passport checks were removed, even for aliens, inside of the Internal Nordic borders area.

one in Istanbul on 12th of January 2016[2], filled newspapers with headlines in newspapers, media and social networks, such as "Je suis Charlie", "Pray for Paris" or "Pray for Istanbul", reflecting solidarity between European citizen, but also reflecting fears and vulnerability among European urban centers. Once again global threats started the fire of local fears, moving EU towards a more restrictive immigration politics and reinstating borders. Continent "Fortresses" emerged from the ashes of unknown immigrants, global threats mutated into local fears.

## 2. LOOK OUT! A MIGRANT!: "DEVIANT" STATES OR DEVIANT IMMIGRANTS?

The term *deviant* is used as an indicator for state's overnight changing decisions regarding their free movement politics. Sociologically defined *deviance* includes every action which is not compatible to the level of tolerance of a community, but defined in order to help us and in context to this paper it accumulates all the actions undertaken or non - taken by countries to stop migration flows, every other step which entered the free zone of movement, which destroyed the ideals of Europe without borders.

In other words, it would be something as the British ex-prime minister Mrs. Thatcher once bluntly put it, "we joined Europe to have free movement of goods…I did not join Europe to have free movement of terrorists, criminals, drugs, plant and animal diseases and rabies and illegal immigrants". (Eriksen, 2007)

Global mobility is: an intensely stratified phenomenon. Global corporate travelers can move 'in a world of safety that extends across national boundaries'. A large segment of the world population, on the other hand, has to rely on dangerous clandestine forms of travel. Global mobility is thus often marked with suspicion. In fact, an essential part of our globalizing condition is precisely the creation of mechanisms for distinguishing between "good" and "bad" mobilities, between what Bauman terms tourists and vagabonds. The tourists move because they find the world within their (global) reach irresistibly *attractive* – the vagabonds move because they find the world within their (local) reach unbearably *inhospitable*. Freedom of movement is available to a relatively small number of highly privileged individuals, while others are doomed to various forms of clandestine and imaginary travel. (Franko Aas 2007).

Starting with Lombroso's *homo criminalis* where immigrants were part of the analyzed possible criminals, through the Chicago School, whose conclusions were that foreigners have powerful criminal tendencies, immigration has always been connected to crime, trying to divide societies into "us' and "them", leave newcomers at the margins, exclude them and if possible, try to push them away.

And today, the word *immigrant*, although being a bit wide (all foreigners with no importance of their ethnic, social, economic or professional background), is always narrowed into a direction in which it points out to those non - citizens who are not white, are poor, have no working skills, come from non - developed or developing countries, they will just steal our jobs or will be begging on the streets, and in worst cases will bring diseases etc. It is a picture of threatening asylum seekers, Muslim terrorists, Balkan "barbarians", criminal immigrants who will only destroy what we have worked for centuries.

[2] With due respect for the victims of other terrorist attacks carried by ISIS during 2015, the author only mentions those on European soil, using them in direction to explain the new emergence of bordered society in times of a refugees and migrant crisis in EU.

It is a modern fear wrapped in classical paper, that fear from strangers explained through sociological perspectives or as Garland (2001) says that all those others are endangering what we have and that our society should protect itself from their "vicious" attacks, rather than to think what to do afterwards in the need to rehabilitate everything they'll destroy. It starts with Durkheim's theory of anomie and his opinion of strengthening bonds and solidarity among individuals in the society and ends with Merton's strain theory. Namely, in his works, Emilie Durkheim speaks about punishment seen as an element or mechanism which helps into building and maintaining social solidarity and structure, so using it the community will try to push aside and suffocate all those foreign elements trying to threat local ones. Using such measures excludes immigrants who cannot "put their hands" onto cultural goals with their "*instrumentum operandi*", so being at the edge of survivor, their changing their "*modus operandi*" using different, in most cases unaccepted cultural means.

Robin Cohen (1994:189) called this groups "third world immigrant" or "helots"; that is those immigrants who, in addition to being deprived of many rights enjoyed by citizens - principally, the right to vote and be elected - are in much worse situation than other foreigners in a given receiving country because they belong to an ethnic minority, are unskilled, and are poor. The difference between foreigners coming from poor and rich countries is also manifested in the enforcement of controls over borders: states do not distribute burden evenly. Foreigners coming from different parts of the globe are treated differently concerning formal and informal practices - visa requirements, restrictions on the right to entry and stay, enjoyment of civil rights, and judicial and extrajudicial treatment. (Aliverti, 2013)

And at the end there is always a difference between "crimmigrants" or those seen as a danger, undocumented, maybe terrorists, people with criminal background) and "travelers (bona fide) or people who are privileged and can move without problems. (Franko Aas, 2011) The word "crimmigrant" is coinage and as a term originates from the words criminal and immigrant, and is used in purpose to describe the perception of immigrants and today, refugees coming from Arab countries, as potential criminals.

Foucault's influential *Discipline and Punish* (1977) envisages prison as a paramount institution for disciplining and adjusting migrant populations to the needs of modernity. The issues of migration, crime, anomie and cultural conflict therefore reappear at regular intervals as a result of global and national migratory movements, such as migration across the Atlantic at the turn of the 19$^{th}$ century or the south – north migrations within Europe at the end of the 1960s. (Melossi, 2003) Today, the "deviant immigrant" again features prominently in the political and media discourse in most Western countries. From violent asylum seekers, cynical smuggling and trafficking networks and Muslim terrorists to Nigerian and East European prostitutes, and ethnic youth gangs, the images of foreign criminals abound. (Franko Aas, 2007)

The territorially bounded nation states are still a natural category of practice, even in a world in motion. The national order of things always passes the normal and natural order of things, reflecting a homogenous, and nation - state which is bounded to a territory. In such an atmosphere, borders and the control of movement and mobility, have double roles. Why double? Because they reflect the two sides of the term sovereignty of a state: its internal control (criminal law, punishment) and "shaping" and its external control (bordering, defending from the outside, maintaining the homogenous society).

Its meaning denotes both supremacy and autonomy; understood as the state's capability of being 'a decisive power of rule and as freedom from occupation by another'

(Brown 2010: 52). These two meanings and functions have traditionally belonged to the separate spheres of internal and external security. The role of criminal law and policing has been to preserve the internal security, to establish the sovereign's supremacy and the moral order of the society, in short to create a well *ordered and disciplined society* (Foucault 1977; Simon 2007). The sphere of external security, on the other hand, has traditionally been governed by military security and international relations, as well as border security and immigration law, whose task has been to preserve the state's territorial integrity and autonomy. Traditionally, border control seeks to maintain clear boundaries between the inside and the outside of the state - the maintenance of a *bordered society*. (Franko Aas, 2013)

And that is the so called "normal" reaction of every society, but the usage of the word *deviant state* in this context is because of their rising to "modern" fortresses, whose walls can only be passed with certain characteristics. We know that every migration flow, especially the one happening at the moment, has its challenges, but unfortunately it has shown the individualism among destination states, their egoism and rising level of xenophobia among their citizen, mutating their values into deviant ones, closing borders, locking immigrants, feeding them as animals, building fences, leave thousands of migrants move to the other side so they stop being your problem. Is this the Europe we all dreamed off? Or is it just a dream, as it is for immigrants?

## 3. EDEN'S APPLE: MACEDONIA'S ASYLUM AND IMMIGRATION POLITICS IN TIME OF REFUGEES CRISIS (ARE WE A "DEVIANT" STATE?)

Today's Macedonian territory has had and still has an adjective of migratory one. Emigration is a phenomenon which is happening for more than 100 of years. It's volume and character and connected to the phases of country's social and economic development and changes. Analyzing it in that way the emigrational processes can be divided into three phases or periods of time: 1945 - 1960 when emigration of Turkish people was intensified; than from 1960 - 1975 which is the period of economic migration, mostly for temporary work and for permanent emigration to the USA and Australia; and the third from 1975 - 1990 when the number of job opportunities abroad is decreased, some of the workers migrants are coming back to Macedonia, but there are also cases of family reunification and transforming the temporary to permanent stay. The period after Macedonia's independence is a story of itself, because of its "painful" reality. It is a period when Macedonia notes the biggest emigrational movement since its existence. The reasons are somewhere between family reunification started in the third period between 1975 and 1990; temporary working positions and of course, and the emigration of highly educated young people (mostly because of unemployment and continuing of education), popularly called "brain drain".

On the other hand, immigrants mostly come from countries where Macedonian diaspora is settled. Those are mostly countries where Macedonians live for decades now. Also, some of them are countries where Albanian migration lives (because of the fact that many Albanians live in Macedonia and have a Macedonian citizenship), which makes them immigrant's countries of origin.

**Table 1: Number of immigrated citizens of the Republic of Macedonia, foreigners with temporary and extended stay in the period 2007 - 2014 (Source: State Statistical Office of the Republic of Macedonia (Migrations 2007 - 2014))**

| Year | Total | Citizens | Foreigners with temporary stay | Foreigners with extended stay |
|---|---|---|---|---|
| 2007 | 2181 | 366 | 861 | 954 |
| 2008 | 1609 | 219 | 557 | 833 |
| 2009 | 1857 | 259 | 1000 | 598 |
| 2010 | 2715 | 303 | 1356 | 1056 |
| 2011 | 3211 | 349 | 1747 | 1115 |
| 2012 | 3787 | 396 | 2072 | 1319 |
| 2013 | 3991 | 490 | 1941 | 1560 |
| 2014 | 4208 | 265 | 2273 | 1607 |

As we already mentioned in the above written section, globalization and internationalization of working areas, technological development, free movement of capital, goods and people, did not result with any consequences. Tightening of visa politics and requirements which should be fulfilled by travelers, intensified border controls by European Union's member states, left Macedonia as a crucial "domino disk" on the Balkan route, giving it a role as a transit country.

**Table 2: Number of discovered illegal immigrants in the Republic of Macedonia in the period 2007 - 2013 (Source: Ministry of Internal Affairs of the Republic of Macedonia)**

| Year | Total | Illegal immigrants discovered on the border line | Illegal immigrants discovered on the territory of Republic of Macedonia |
|---|---|---|---|
| 2007 | 2402 | 1919 | 483 |
| 2008 | 1448 | 1080 | 368 |
| 2009 | 1415 | 1111 | 304 |
| 2010 | 1103 | 766 | 337 |
| 2011 | 469 | 209 | 260 |
| 2012 | 682 | 251 | 431 |
| 2013 | 1132 | 586 | 546 |

Unfortunately, Macedonian authorities do not still have an exact numbers of how many illegal crossings happened during 2014 and 2015, or haven't made them available public. They are extremely important, especially for 2015, because it is the year when Syrian Civil War had its peak (maybe) and a year when "rivers" of people started flowing towards some of the EU member states.

As a result of such situation, in that period, Macedonia at one moment was struggling with an influx of refugees, finding itself in a status quo position, even looking like as it does not know how to solve the situation. Migrants were victims on railways every day not being able to use any kind of public transportation; their smuggling became a normal business for organized crime groups; Macedonian citizens started earning money on refugees' misfortune (in one case, a migrant from Iraq paid 30 euro for a kilo of tomatoes, two bananas, 5 liters of water, two boxes of biscuits and two chocolates, which he bought in a shop in Demir Kapija,; because bicycles were mostly used by migrants, they could have been bought for prices between 100 to 300 euro). (Stanojoska, Shusak, 2015)

The ongoing problem with migrant's movement which every day ended up either with death on the railway tracks or with shootings between police and smugglers, asked for a fast action and solution. The temporary solution was found in a legal response and action, changing the Macedonian Asylum Law (Law for Asylum and Temporary Protection).

The second part of the Macedonian Asylum Law (which is structured in 19 parts) regulates the procedure in granting asylum status to an applicant. In Macedonia, a person can claim its asylum application at the border or the nearest police station. With the changes from 18th June 2015, an applicant can claim his/her right to asylum besides the already mentioned places, also in the premises of the Asylum Department of the Center for reception of asylum applicants.

Also, the 2015 changes provided an opportunity for stating an intention for submitting an asylum claim. These provisions gave migrants an opportunity to state his/her intention (to claim asylum) to a police officer, even at the border or on the territory of Macedonia. After such statement is given (verbally or in writing) the police officer issues a sample of the confirmation for the statement and directs the migrant to the Asylum Department to claim asylum. He/she has 72 hours to make such an application.

In case of family reunification the claim can be submitted to any Embassy of the Republic of Macedonia. The asylum claim is given verbally or in writing, the applicant is photographed and his/her fingerprints are taken in. In 3 days from that moment, a confirmation for his/her claim is sent to the applicant. Then the applicant has an obligation to submit every documentation he/she has regarding his/her claim.

The asylum procedure in Macedonia must end in six months counting from the day when the applicant gave his/her asylum claim.

Since changes of the Asylum Law were used in practice, from 19th of June 2015 until January 26th 2015, 412 904 migrants passed the southern border and claimed their intention to apply for asylum in Macedonia, although just a small number actually did. With such a document, migrants can use public transport and they can buy tickets and transit to Kumanovo or Tabanovce (Macedonia / Serbia border).

This trend of movement will eventually go on further, with its peak in summer 2016 when even more migrants are expected to move towards EU. And it is a trend that happened and is happening as a result of the everyday EU's motto (One for all, all (28) for each other) and dancing of its candidates to the music the Union plays. And yes it makes us close borders, be inhuman, have a public perception of immigrants as those terrorists

with suicide wests and guns fighting their "Holy War", think of every single migrant as a pack of diseases which only waits to enter the right room so it can be opened.

## 4. CONCLUSION

Movement has been part of human history; it is and has been integrated inside every human, becoming active as a result of various factors which at a moment are more or less dominant in one's life. It is like a code written down in everyone's DNA, making humans unable or better said "hungry" to be free and always look for better. Europe has been a destination for as many migration movements as they have been until today. Because of its history, geographical position, migration flows, voluntary or enforced, have always passed through its territory. Today, in a time of Syrian crisis and movement of people that have never been seen since the Transatlantic movement of slaves and the First and Second World War migrations, Europe is at the threshold of, maybe, the biggest challenge in its modern history, after terrorism.

"Deviant" states or deviant migrants? Can we actually answer it? Are we so sure who is who, and which one is the most deviant one?

Migrants are and always will be associated with changes and fear of those changes, terrorism and crime, but they will also be associated with prosperity, new cultures, scientists. Deviance is understood as a process of what Europe did not do to stop the migrant's influx and what Europe did do to stop it, and of course measuring those both sides. Of course, the result would be on favor of the part of the steps Europe did not undertake at right time and the right place.

The process just opened a Pandora's Box; once again showing to the world how high is the level of coordination between European countries, especially those from the European Union which at the end is the destination for the vast majority of migration groups. We witnessed a German politic of free movement and acceptance of refugees and migrants; Great Britain's "dark side" during quarrels with France regarding Calais situations and all those unsuccessful attempts of migrants to move through Le Mans tunnel; Hungary's Balkan mentality and fences experiments; Greece's irresponsibility and other members government's passive actions.

On the other hand, the Balkan states are still acting like those little children always listening to "mommy" EU. And they should, because through the years they have shown its inability to solve problems without EU's help. Maybe in this process of global movement they were caught unprepared "to understand" the growing numbers of moving people, and that overnight changing of EU politics. If we move along the Balkan route we must not forget to mention the consequences these countries' weak economies have in such situations, especially now at times of a status quo position (with a "solution" of the migrant crisis, but *de facto* one). Are Balkan countries victims of EU politics regarding this question? They most definitely are, found in between EU's plans for closing the Balkan route and around 2000 people waiting between Greece and Macedonia, living in fear that (before using Turkey as destination for migrants and refugees) they will be chosen as moving people's final destination.

Will the ticking device explode at the moment the Union close its borders? Once it did. Inevitable clashes between police and economic migrants were an everyday situation on the border between Macedonia and Greece. And it will once again, because of those weak economies, political instability, permanent insecurity, bilateral unsolved questions, lack of leadership, EU's action left on words in honor of the "European spirit".

## 5. REFERENCES

1. Aas, Franko K. (2007). Globalization and Crime. London, England: SAGE;
2. Aas, Franko K. (2013). The Ordered and the Bordered Society: Migration Control, Citizenship and the Northern Penal State. In K.Franko Aas & M.Bosworth (Eds.) *The Borders of Punishment: Migration, Citizenship and Social Exclusion (pp.21 - 39).* Oxford, England: Oxford University Press;
3. Aliverti, A. (2013). Crimes of Mobility: Criminal Law and the Regulation of Immigration. London, England: Routledge;
4. Bowling, B. (2013). Epilogue: The Borders of Punishment: Towards a Criminology of Mobility. In K.Franko Aas & M.Bosworth (Eds.) *The Borders of Punishment: Migration, Citizenship and Social Exclusion (pp.291 - 306).* Oxford, England: Oxford University Press;
5. Eriksen, Hylland T. (2007). Globalization: Key Concepts. New York, USA: Berg;
6. Jones, S. (2013). Criminology. Oxford, England: Oxford University Press;
7. Melossi, D. (2013) People on the Move: From the Countryside to the Factory/Prison. In K.Franko Aas & M.Bosworth (Eds.) *The Borders of Punishment: Migration, Citizenship and Social Exclusion (pp.273 - 290).* Oxford, England: Oxford University Press;
8. Melossi, D. (2015) Crime, Punishment and Migration. London, England: SAGE;
9. Melossi, D. (2013) The Borders of the European Union and the processes of Criminalization of Migrants. *The Routledge Handbook of European Criminology. (pp.499 - 513).* London, England: Routledge.

UDK:325.254.4:355.45-022.326.5(4-672ЕУ)

# MIGRANTS: NEW CHALLENGES FOR THE EU

***Sinisa Domazet***
*Faculty of Applied Security, EDUCONS University*
*e-mail: sdomazetns@gmail.com*
***Vesela Radovic***
*Institute for Multidisciplinary Research, Belgrade University*
*e-mail: vesela.radovic@imsi.rs*

**Abstract**

Bearing in mind the negative aspects of climatic changes, the increase of the number of natural and technological catastrophes worldwide as well as the wars in Africa and in the Near East, a large number of migrants have appeared; they struggle to get to wealthy West European countries searching for safety and better life. In addition to the economic migrants, as well as the refugees from war-devastated territories, there appears to be a new form of refugees: environmental refugees. Considering the studies of many international organizations as well as scientific circles related to climatic changes, which suggest that the negative effects of climatic changes will be even more pronounced in the future, the problem of environmental refugees becomes even more significant. Current migrant crisis shows all weaknesses of the Dublin system, as well as the weaknesses of the entire system of migration management in the European Union in general. Moreover, European solidarity that has been emphasized on countless occasions before has almost completely failed in case of the current migrant crisis, showing all its shortcomings. The lack of desire to face the problems of migrants "storming" the Union borders more seriously has deeply disturbed long built neighbourliness among the member-countries. As the consequence of that the fences are being raised on both external borders and on the borders between the Union Member States, which has seriously brought the Schengen system into question. In this paper the authors have attempted to suggest in which way the migrant crisis might be solved. The paper, therefore, suggests to the serious problem related to the precise defining of the concept of environmental refugees at the international level, the growth of their number, as well as the negative consequences that will lead to the increase of their number in the EU. It has also been suggested to the weaknesses of the existing regulations on migration management in the Union and the need to change the existing legal framework. Statistic and normative methods have been used in the paper, as well as legal-logic methods of induction and deduction.

***Keywords:*** environmental refugees, law, security, catastrophes, migrations

## 1. INTRODUCTION

Bearing in mind the more and more frequent consequences of climate changes, the wars in Syria and Iraq, the conflicts in North Africa, as well as poverty caused by these events, there has appeared a new problem for the EU Member States (hereafter called "the EU"): migrants. The proportions of migrations have reached so large a scale that has been inconceivable in modern times, and therefore it is right for both scientific and expert

public, as well as the media in Europe, to talk about new "Migration Period". Europe in 2015 faced its most severe migration crisis in centuries as an estimated one million people – mostly Muslims – fled war in Syria and poverty in other countries of the Middle East and Africa and made the complicated trek across Turkey and Eastern Europe to reach Western Europe(Europe's Migrant Challenge Expected to Continue Into 2016, 2015). With another three million migrants and refugees expected in 2016, the mass migration has raised questions about the future of Europe and the ability of its countries to absorb the migrants both culturally and economically (Europe's Migrant Challenge Expected to Continue Into 2016, 2015). Ever growing number of migrants are striving, under the pretext that they fled the war conflicts, to get to the wealthy West European countries, primarily Germany, in order to provide better standard of living. Consequently, they are economic migrants and not the migrants from war-affected territories.In addition to economic migrants, as well as the refugees from war-devastated territories, there appears to be a new form of refugees: environmental refugees. Considering the studies of both many international organizations and scientific circles related to climatic changes, which suggest that the negative effects of climatic changes will be even more pronounced in the future, the problem of environmental refugees becomes even more significant.

Unfortunately, it has turned out that European solidarity which was pointed out many times before completely failed in the case of migrant crisis. For the purpose of this paper the authors have set out a few examples from the EU.

Thus in July 2015, Hungary started building wire fences towards Serbia which was completed on August 29, 2015. After that the migrants took another routetowards Hungary from Serbia via Croatia, which resulted in wire fence being built in September towards Croatia as well. Such a move caused a salvo of criticisms throughout Europe, but that did not compel Hungary to change its attitude and remove the fence. Hungarian Prime Minister Orban told the reporters that the inflow of migrants into the EU in 2016 would have to be completely stopped and not only reduced and advocated for the creation of the European defense line along the north Greek borders with Macedonia and Bulgaria (Orban traži "odbrambenu liniju" Evrope za migrante, 2016). Hungarian closing of the border crossings led to the exacerbation of relations between Serbia and Croatia, which resulted in closing down the border crossings and mini trade war between these two countries. After such a move of Hungary, there followed the building of new walls and fences within the EU, and so Slovenia decided to build a similar fence towards neighbouring Croatia, which caused the fierce response by the Croatian government. Slovenian government said that they intended to build the fence at only one part of the border towards Croatia and that this measure was only temporary (Slovenija neće podizati žičanu ogradu duž cijele granice sa Hrvatskom, 2016).

The additional blow for the European unity was quick to follow, after the Austrian Chancellor Werner Faymann announced to the European Commission that Austria would continue surveillance along the internal Union borders, emphasizing that "if the EU does not manage to secure external borders, Schengen as a whole is put into question. Then each country must control its national borders. We will incrementally control everyone who wants to come here. Those without a right of asylum, or who do not apply for asylum in Austria, will be rejected. From this time forward only those may enter Austria to whom we have granted the right of asylum and who are not ordered out of the country by Germany." He also concluded that "it's poignant that the EU's complicated structure prevented it from solving the refugee question quickly" (Produbljuje se kriza u EU: Austrija ukida Šengen!, 2016). Besides Austria a few other EU Member States have temporarily restored border

control measures at their national borders: Germany, Sweden, Denmark, France and Malta. This was followed by the announcements of the Slovenian and Italian governments that they would also suspend Schengen agreement, if the migrant crisis continues (Italija zbog migranata uvodi graničnu kontrolu prema Sloveniji?, 2016), as well as the announcements of other countries that there would be strict measures against migrants if other countries do so (Spremni smo da zaštitimo svoje granice , 2016), including closing down the borders for migrants, such as certain Balkan countries did (Makedonija zatvorila granicu sa Grčkom, 2016).

So, the migration phenomenon is rather complex and it has turned out that the entire European policy related to migrations has failed to a large extent. Therefore, there have appeared dilemmas if the EU migration policy adequatelyresponds to the immigrant pressure, if the migration policy contributes to adequate integration of migrants into the EU Member States, as well as the question if the EU migration policy meets the requirements of the Member States' economies, particularly considering negative demographic trends(Skakavac & Domazet, 2015), but also in which way the Union will in the future tackle the wave of so called environmental refugees whose number is increasing.

In this paper the authors try to point out to the problems in functioning of the European migrant policy, especially taking into account the environmental refugees and the manners in which the migrant crisis could be solved.

## 2. ENVIRONMENTAL REFUGEES AS A NEW PROBLEM FOR THE EUROPEAN MIGRATION MANAGEMENT POLICY

In recent years and decades ever increasing pressures of industry, agriculture, urban areas, pollution and environmental degradation as well as ecologic catastrophes influenced the number of environmental refugees to be on the rise. It is estimated that in the course of 1995 there were about 25 million environmental refugees worldwide, out of whom the largest number originated from the Sahel and the Horn of Africa, including Sudan. According to the data of 2006 it is estimated that by 2020 about 60 million people from the territory of Africa would migrate towards Europe and North Africa. However, one of the growing foci for environmental refugees is China, where there are already millions of environmental refugees, as well as in India. It is difficult to assume the number of environmental refugees in the following decades, due to the influence of increasing number of factors that have various impact on the increase or decrease of their number. The consequences of accelerated climate changes, the growth of human population and the increase of the number of the poor are the most significant factors that would affect the number of environmental refugees in the world (Ostojić, 2014).

Historically, the issue areas of asylum and immigration have been low on the European agenda, as the Community started as a purely economic enterprise. In the 1990s, however, the Dublin Convention regulating asylum application set precedence for a Union-wide asylum policy (Fellendorf & Immer, 2015). Subsequently, the EU has increasingly "communitarised" the various aspects of asylum (Luedtke, Migrants and Minorities: The European Response, 2010). However, to date the issue of climate-induced migration has been largely overlooked by the EU. The Commission genuinely first mentioned environmental migration in a 2007 Green Paper and published consequently the Global Approach on Migration and Mobility (Fellendorf & Immer, 2015).

More recently, the EU seems to have paid greater attention to climate-induced migration and it funded several research projects on the issue. In addition, the Commission published internal working document titled "An EU Strategy on adaptation to climate change". It indicates a European awareness of environmentally displaced people, for instance stating "where displacement [following slow-onset disaster] occurs, it is essential to provide assistance to the displaced, safeguard their rights, [and] promote efforts to find durable solution"(European Commission, 2013). An initial critique of the European Asylum Law regime focuses on the actual decrease of rights of asylum seekers because the outcomes of the negotiations of the member states tend to be the lowest common denominator of the state parties. Hence, EU policy-making concerning asylum can be described as a "race to the bottom", where the final policy will match the lowest protection (Luedtke, Migrants and Minorities: The European Response, 2010). The **Common European Asylum System** comprises several different treaty provisions, regulations and directives. Luedtke has suggested viewing the European Asylum Law Regime as "sharing policy", "sharing people", and "sharing money" (Luedtke, Migrants and Minorities: The European Response, 2010). The most frequent legal basis for the **Common European Asylum System** states that "the Union shall develop a common policy on asylum, subsidiary protection and temporary protection with a view to offering appropriate status to any third-country national requiring international protection and ensuring compliance with the principle of *non-refoulement*" (Consolidated Version of the Treaty on the Functioning of the European Union, 2008). Furthermore, it is relevant to scrutinize the Temporary Protection Directive (Council Directive 2001/55/EC of 20 July 2001, 2001), which grants limited subsidiary protection in cases of "mass influx" of displaced people (Fellendorf & Immer, 2015). People qualifying "in particular" are "persons at serious risk of generalized violations of their human rights" (Kolmannskog & Myrstad). Again, there is no explicit mentioning of climate-induced displacement, however the phrasing of "in particular" suggests that the list is not exhaustive and could be expanded by a qualified majority decision of the Council (Edwards, 2012). Additionally, human rights are often violated following a natural disaster, making the application of this directive possible. Interestingly, an UK official interpreted the directive as "providing humanitarian assistance to people forced from their homes by war *and natural disasters*"(Kolmanskog & Finn, 2009). The Council's so-called Stockholm Programme calls for sustainable migration, which "in a spirit of solidarity can manage fluctuations in migration flows"(European Council, 2010). On the other hand, the directive lacks any protection for an individual displaced by climate-induced effects as it only refers to "mass influxes". Moreover, the directive does not apply to any person who is displaced by slow-onset disaster, or who cannot return after three years due to environmental and humanitarian reasons (Kohlmannskog & Finn, 2009). The Return Directive, provides in Article 9 (2) a list of grounds for the postponement of removal (the third national's health, *non-refoulement* and technical reasons)(European Parliament and Council, 2008). While it does not mention environmental disaster as a cause for postponement it leaves room for national discretion to grant environmentally displaced people more favorable conditions. Yet, the issue remains that a displaced person must already reside within the Union (Fellendorf & Immer, 2015). More detailed, the regulation concludes that merely one member state is designated the responsibility to process an asylum application for a third country national (Fellendorf & Immer, 2015). Regulation no. 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast), (so-

called Dublin Regulation) is of particular significance for environmental refugees (Commission, 2015). The Dublin Regulation is worth noting for our investigation, as it is considered the "flagship of the EU's asylum acquis". The purpose is to prevent so-called "asylum shopping", which describes submitting several asylum applications in different member states (Batjes, 2006).

## 3. CHALLENGES FOR THE EU POLICY ON MIGRATION MANAGEMENT

The first EU measures in the field of legal migrations were in the form of "soft law", in the form of resolutions, primarily by the Member States and then by the Council (Peers, 2012). In addition to this, one of the main instruments for solving the migration problems were also the agreements on readmission with the countries of origin or transit (Dedja, 2012).

Common EU policy regarding asylum, migrations, visas and control of external borders is based on Title V of the Treaty on the Functioning of the EU, as well as on the Protocols to this document (Skakavac & Domazet, 2015). The European Commission (hereafter called "the Commission") comprised also the European Agenda on Migration (hereafter called "the Agenda") (Commission, 2015), the goal of which is to create new migration policy of the EU, which in addition to more efficient migration management would ensure the respect for the guaranteed right to seek asylum, to respond to humanitarian challenges, to offer clear European framework of common migration policy, but which would also be long-term (Commission, 2015).

At this point it should also note the Directive 2008/115/EU on Common Standards and Procedures in Member States for returning illegally staying third-country nationals. Pursuant to this Directive, the Commission will give precedence to the monitoring of Directive implementation, whereas the faster system of return will be accompanied by the respect of procedure and standards which enable Europe to ensure humane and dignified action with returnees with proportionate use of force, all in accordance with the fundamental rights and the rule of non-refoulement, guaranteed by the Charter of Fundamental Rights which says that no one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment (Commission, 2015). It is rightfully underlined that the efficient operative cooperation within the EU is flawed, although the EU has common rules on return. Therefore, the European Commission directed its efforts towards changing legal bases of the Frontex agency in order to strengthen its role in migrant return (Commission, 2015).

The second pillar of better migration management in the EU refers to border management, in other words on saving lives and securing the external borders. In that respect, the need is particularly underlined to improve the risk trends in order to ensure the efficient operative readiness. This has largely been achieved with the help of *Eurosur* system, i.e. European Border Surveillance System, all in accordance with the provisions of Regulation 1052/2013 (Skakavac & Domazet, 2015).

The third pillar of better EU migration management means that the EU must provide for strong asylum policy. It turns out that there are certain shortcomings in the current asylum policy, the most significant of which is certainly the lack of mutual trust among the Member States, which is the result of fragmented asylum system. Also, the most important for the Commission will be to transfer and practically implement the

legislation related to asylum seekers when considering the implementation procedures (Commission, 2015). Especially important are the EU regulations referring to the mechanism of establishing responsibility to examine the asylum applications, particularly Regulation No. 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast) (the so-called Dublin Regulation) (Commission, 2015). It turns out that this system does not function properly, particularly because there are still differences in the level of protection among different jurisdictions (Moreno-Max, 2012). Besides, the dysfunctional application of the Dublin Regulation represented a specific indicator that the respective systems of the Member States are far from being harmonized with the principle of non-refoulement or the prohibition of torture or other forms of ill-treatment of asylum seekers (Mink, 2012).

Finally, the fourth pillar of better Union migration management refers to the creation of a new policy on legal migrations. Namely, unlike previous three pillars, this pillar means attracting of the skilled labour that is needed by the Union economy (Skakavac & Domazet, 2015). The programs such as Horizon 2020, Erasmus+, but also the Directive on students and researchers which is being prepared play a special role in attracting the skilled labour. Also, the Directive 2009/50/EU on the conditions of entry and residence of third-country citizens for the purposes of highly qualified employment stands out.

According to the Agenda, the Union has created a special system for resettlement and relocation of migrants. Relocation means the distribution among the Member States of the persons who undoubtedly need the international protection (Skakavac Zdravko, Siniša Domazet, 2015).

The key for distribution will be based on objective, quantifiable and verifiable criteria, as follows (Commission, 2015): 1) the size of population (40%) as it reflects the capacity to absorb a certain number of refugees; 2) total GDP (40%) as it reflects the absolute wealth of a country and is thus indicative for the capacity of an economy to absorb and integrate refugees; 3) average number of spontaneous asylum applications and the number of resettled refugees per 1 million inhabitants over the period from 2010-2014 (10%) as it reflects the efforts made by Member States in the recent past; 4) unemployment rate (10%) as an indicator reflecting the capacity to integrate refugees.

As for the European relocation scheme, it can be noticed that most of the burden is carried by the three countries: Germany, France and Italy, which is understandable, taking into account their economic strength and other indicators (18.42% Germany, 14.17% France and 11.84% Italy). Neighbouring countries are much less burdened (Croatia 1.73%, Hungary 1.79%, Bulgaria 1.25%, Romania 3.75) (Skakavac Zdravko, Siniša Domazet, 2015). In practice such a system of distribution quotas for the acceptance of migrants was met with criticisms, even open opposition by certain Union Member States.

## 4. CONCLUSION

Based on the above said, it can be concluded that the European system for migration management has completely failed, including far and well known European solidarity. This has primarily manifested in slow and expensive procedures when deciding upon asylum applications. Secondly, the European schemes for relocation and resettlement is a special problem, taking into account that the increasing number of countries object to the established key for distribution of migrants characterizing it as unfair. Thirdly, the

Dublin Regulation has completely failed considering the differences among Member States jurisdictions regarding this issue, the systems of Member States which are not in harmony with the principle of non-refoulement or the prohibition of torture or other forms of ill-treatment of migrants, the lack of finances to increase the number of migrant transfers and to reduce falling behind the schedule, retroactive application of clauses referring to the reconnection of families, as well as the application of wider and more regular discretionary clauses which enable to examine the asylum applications in order to relieve the most exposed Member States of burden. Fourthly, it should not neglect more and more open requests of political elites and prominent individuals in Europe to find a uniform European solution for migrant problem as soon as possible. Such an attitude has been additionally "heated up" by the fact that there is fear that if the migrant crisis is not resolved soon the Schengen will be put in question and some put in question even the survival of the Union. Finally, special challenge for the Union will be the so called environmental refugees who might deepen the already huge problem with migrants in Europe.

Therefore, the crisis with migrants from war and poverty affected territories has shown that radical changes in the European migration policy are required. They would undoubtedly imply stricter approach to the implementation of the existing migration-related regulations, in other words the adoption of new legislations, primarily when deciding upon the asylum applications, the Blue Card regulations, the provisions on secure country, the regulations for faster and more secure transfer of money, the regulations on the fight against migrant smugglers and similar.

**Note:**

**This paper is the part of research projects no. 47009 (European integrations and social-economic changes of the economy of Serbia on the road towards the EU), financed by the Ministry of Education, Science and Technology of the Republic of Serbia and "Emergencies as the factor endangering competitiveness of Vojvodina economy", which is financed by the Provincial Secretariat for Science and Technological Development, no. 114-451-582/2015.**

## 5. REFERENCES

- (2001). *Council Directive 2001/55/EC of 20 July 2001* . European Council.
- (2016). Retrieved 01. 17, 2016., from Voice of America:
- http://www.voanews.com/content/europe-migrants-crisis-2016/3123325.html
- Adam, L. (2010). *Migrants and Minorities: The European Response.* Newcastle upon Tyne: Cambridge Scholars Publishing.
- Batjes, H. (2006). *European Asylum LAd and International Law.* Leiden.
- Commission, E. (2015, 05 13). Communication form the Commission to the European Parliament, the Council, the European economic and social committee and the committee of the regions: A European Agenda on Migration COM&2015 (240 final. 13. Brussels).
- Consolidated Version of the Treaty on the Functioning of the European Union. (2008).

- Council, E. P. (2008). Directive 2008/115/EC of the European Parliament and of the Council on common standards and procedures in Member States for returning illegaly staying third-country nationals.
- Dedja, S. (2012). Human Rights in the EU Return Policy: The Case of EU-Albania Relations. *European Journal of Migration and Law, 14*, 95.
- Directive 2008/115/EC of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals. (2008). 98-107.
- Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment. (n.d.). 17-29.
- Edwards, A. (2012). Climate Change and International Refugee Law. In R. R. Scott (Ed.), *International Law in the Era of Climate Change* (p. 73).
- *Europe's Migrant Challenge Expected to Continue Into 2016* . (n.d.). Retrieved 01 17, 2016, from Voice of America: http://www.voanews.com/content/europe-migrants-crisis-2016/3123325.html
- *Europe's Migrant Challenge Expected to Continue Into 2016* . (2015, 12 30). Retrieved 17 01, 2016, from Voice of America:
- http://www.voanews.com/content/europe-migrants-crisis-2016/3123325.html
- *Europe's Migrant Challenge Expected to Continue Into 2016* . (2015, December 30). Retrieved January 17, 2016, from Voice of America:
- http://www.voanews.com/content/europe-migrants-crisis-2016/3123325.html
- European Commission. (2013). *Climate Change, Environmental Degradation, and Migration.* Brussels.
- Fellendorf, A., & Immer, D. (2015, August 22). *The EU's Responsibility to Protect Environmentally Displaced People.* Retrieved January 21, 2016, from E-International Relation Students: http://www.e-ir.info/2015/08/22/the-eus-responsibility-to-protect-environmentally-displaced-people/#_ftn95
- *Italija zbog migranata uvodi graničnu kontrolu prema Sloveniji?* (2016, January 05). Retrieved January 19, 2016, from Vecernji list: http://www.vecernji.hr/svijet/italija-zbog-migranata-uvodi-granicnu-kontrolu-prema-sloveniji-1049793
- Kohlmannskog, V., & Finn, M. (2009). Environmental Displacement in European Asylum Law. *European Journal of Migration and Law, 11*, 317, 318.
- Luedtke, A. (2010). *Migrants and Minorities: The European Response.* Newcastle upon Tyne. Cambridge Scholars Publishing.
- *Makedonija zatvorila granicu sa Grčkom*. (2016, January 20). Retrieved January 21, 2016, from B92:
- http://www.b92.net/info/vesti/index.php?yyyy=2016&mm=01&dd=20&nav_category=167&nav_id=1087448
- Mink, J. (2012). EU Asylum Law and Human Rights Protection: Revisiting the Principle of Non-refoulment and the Prohibition of Torture and Other Forms of Ill-Treatment. *European Journal of Migration and Law, 14*, 121.
- Moreno-Max, V. (2012). Dismantling the Dublin System: M.S.S. v. Belgium and Greece. *European Journal of Migration and Law, 14*, 31.
- *Orban traži "odbrambenu liniju" Evrope za migrante*. (2016, January 08). Retrieved January 19, 2016, from B92:

- http://www.b92.net/info/vesti/index.php?yyyy=2016&mm=01&dd=08&nav_category=1262&nav_id=1083102
- Ostojić, G. (2014). Ekološke izbeglice: direktan ili indirektan put do konflikta. *Vojno delo* (1), 56-57.
- Peers, S. (2012). An EU Immigration Code: Towards a Common Immigration Policy. *European Journal of Migration and Law, 14*, 95.
- *Produbljuje se kriza u EU: Austrija ukida Šengen!* (2016, January 16). Retrieved January 19, 2016, from Kurir: http://www.kurir.rs/planeta/produbljuje-se-kriza-u-eu-austrija-ukida-sengen-clanak-2097511
- Skakavac, Z., & Domazet, S. (2015). Nove tendencije u upravljanju migracijama u pravu EU. *V međunarodni naulni skup "Vrednosti i identitet"* (pp. 412-413). Novi Sad: Fakultet za pravne i poslovne studije dr Lazar Vrkatić.
- *Slovenija neće podizati žičanu ogradu duž cijele granice sa Hrvatskom*. (2016, January 16). Retrieved January 19, 2016, from CDM:
- http://www.cdm.me/svijet/region/slovenija-nece-podizati-zicanu-ogradu-duz-cijele-granice-sa-hrvatskom
- *Spremni smo da zaštitimo svoje granice* . (2016, January 19). Retrieved January 19, 2016, from Večernje novosti:
- http://www.novosti.rs/vesti/naslovna/drustvo/aktuelno.290.html:586866-Dacic-Srbija-ce-uvesti-stroze-mere-za-migrante-ako-to-urade-i-ostali
- (2010). *Stockholm Programme-An Open and Secure Europe Serving and Protecting Citizens.* European Council.

UDK:325.254.4:355.45-022.326.5(497.7)

# MIGRANTCRISIS, A SECURITYCHALLENGE FOR THE REPUBLIC OFMACEDONIA

*Muhamet Racaj, Dr.Sc*

**Abstract**

The migrant crisis is an imposed problem that requires a thorough solution. The complete understanding of the reasons for migration, as well as the situation in the Mediterranean basin and in the Middle East is a precondition for finding appropriate solutions. Eradication of poverty and disparity, the fight against terrorism and the ISIS extremism as well as the fight against other similar groups are just a fraction of the necessary preconditions for a successful dealing with the current challenges. The solution to the drama with the infinite wave of migrants from Syria and the Middle East, to which we are sad observers, seems is not to be seen soon[1]. First of all, if we look at the European political elite and the general lack of a reliable and clear strategy for solving this problem, all we will see is helplessness and mutual accusations. The migrant or the refugee crisis is followed by a large number of incidents or series of events. The massive arrival of refugees in the European Union, usually illegal migrants from Asia, Africa and parts of Southeastern Europe, started in the mid of 2010 and escalated in 2015. The reasons for the mass arrival are traditionally associated with the chronic unemployment and poverty in these countries, but lately, are also result of the war, especially in Syria, where the civil war caused massive exodus of the population. The situation is similar in Libya, where the fall of Moamer Gaddafi's regime led to anarchy, used by the well-organized networks of human traffickers.

By mid-2015, the refugee crisis mainly took place on the Mediterranean coast of Italy, where refugees were arriving by ships and boats. In many cases, such attempts were futile and led to mass deaths. Lately, there has been a massive influx of refugees and migrants in the Balkans, using Greece and Croatia, EU member countries on the periphery of the Union, as entry point. But also, The Republic of Macedonia and the Republic of Serbia, candidate countries for the EU, are not bypassed. Although the European political establishment met the refugees with sympathy and as victims of the horrors of war that EU needs to provide shelter for, in time, the attitude toward the refugees became subject to fierce criticism by part of the European public. Concerns about the additional burdening of the social services, worsening of the security situation or the possible disappearance of the Christian identity of Europe due to the massive influx of Muslims from war areas in the Middle East arose. Recently, the attitude toward the migrants became the subject of a heated debate - dispute between some European countries, especially between Germany, which insists on "open door" policy and Hungary, Slovakia and Poland, which claim that their countries will suffer consequences due to such policy.

The refugee-migrant crisis is a threat in several aspects and already has influence on the economic and social stability as well as internal security in the countries through which the migrants transit or remain, including the Republic of Macedonia. The busiest western – Balkan route used for arrival in the Schengen zone, especially in Germany, Sweden and

[1]https://vecernji.org/

other western and Nordic countries, brings negative influence visible in the social aspect, genuine threat to the national identity (culture, language, religion) and such endangerment inevitably will lead to an increased incidence of xenophobia, nationalism and racism. At the end, conditions for emergence of social disintegration will be created in the countries through which the migrants transit or remain, including the Republic of Macedonia. The economic stability , being crucial for a social stability, but also, for internal security, will be affected due to the use of additional resources and capacities (accommodation, health, communal services, transport and education) that the affected countries, including the Republic of Macedonia, should provide and set in function due to the newly arisen situation.

***Key words**: migrants, refugees, challenge, security, stability.*

## 1. INTRODUCTION

The European migrant or refugee crisis is manifestation of a large number of incidents, or a serial of events connected to the mass arrival of the refugees. Europe is facing big problems in dealing with the hundreds of thousands of refugees who are running from war areas in the Middle East and North Africa, looking for asylum in the European countries. In 2015, the European Union Agency for protection of its borders – FRONTEX registered 1,55 million illegal crossings of the European Union borders.[2]

The migrant crisis is a challenge for whole Europe, especially for the smaller countries on the continent, whose economies are in bad and disastrous condition. There is a genuine risk that such pressure can lead to violent clashes with the migrants, and also, it would represent a sort of a test of the relations between the local Muslim and Christian population in the region.[3]

The massive influx of refugees and migrants in the Balkans, using Greece and Croatia, as EU member countries on the periphery of the Union, did not bypass the Republic of Macedonia and the Republic of Serbia, candidate countries for the EU. The failure of Greece to fulfill its obligations for securing the borders of the passport free Schengen zone is in a complete disparity with the role of Macedonia in dealing with the influx of hundreds of thousand migrants fleeing the war areas.

According to US Security Experts which recently visited the region, the security on the Greek-Macedonian border is the key for management of the migrant crisis. If not established, the Schengen regime, the great achievement of the EU, faces a suspension. That will have serious consequences for the future of the EU.

More than 750.000 migrants passed through the country in the past year. Macedonia, with modest support from Albania, Slovenia and other neighboring countries, took care of the migrants and organized reception, provided food and medical help. Brussels, Berlin and Washington have to do everything in their power to help countries like Macedonia in facing this challenge.[4]

[2]https://hr.wikipeia.org/
[3]Ariel Cohen, Dinu Patriciu Euroasia Center – Atlantic Council, 27 January 2016
[4]Ariel Cohen, Dinu Patriciu Euroasia Center – Atlantic Council, 27 January 2016

## 2. MIGRANT CRISIS, INFLUENCES AND POSSIBLE DEVELOPMENT OF CONDITIONS IN THE BALKANS

The refugee-migrant crisis is a threat from few aspects and already has influence on the economical and social stability as well as on the internal security of the countries through which the migrants transit or remain, including the Republic of Macedonia. The busiest western – Balkans route used for arrival in the Schengen zone, especially Germany, Sweden and other western and Nordic countries, brings negative influence visible in the social aspect, genuine threat to the national identity (culture, language, religion) and such endangerment inevitably will lead to an increased incidence of xenophobia, nationalism and racism. At the end, conditions for emergence of social disintegration in the countries, through which the migrants transit or remain, will be created. The economic stability, being crucial for the social stability but also, for the internal security, will be affected due to the use of additional resources and capacities (accommodation, health, communal services, transport and education) that the affected countries, should allocate and set in function due to the newly arisen situation.

The main reason for the current migration to the EU is the pursuit of prosperity, while the main causes are the following:

- disruption of the security and stability in regions in the Middle East and North Africa,
- the existence of double standards in the international world regime,
- disappearance of prospective for a better tomorrow among the young population in the domicile countries,
- the strong soft power of EU (especially Germany, France, Sweden and Great Britain).

According to the statistics, since the beginning of the wars and instability, around 60 million persons were forced to leave their homes. The refugees and migrants that flee to the EU member countries mainly come from Syria, but also from Afghanistan, Iraq, Somalia, Nigeria, Sudan and Eritrea. In reference to Syria, as a country that has produced the highest number of migrants and refugees in the period from 2011 till present, 4 million people have left the country which amounts to one fifth of its population. The reasons for this are the rule of Bashar Al-Assad as well as the brutality of the terrorist organization ISIS and Jabhat al-Nusra.

The most interesting countries for the refugees are Germany, France and Sweden, mainly due to the developed social care systems. In the first four months of 2015, 242.000 asylum requests were submitted in the EU countries, 80% more than in the same period the year before. The majority of asylum seekers are men between 18 and 34 years of age, but notable is the increase of minors requesting asylum. Syrians and Kosovars represent 40 percent of the total number of asylum seekers in this period.

In terms of how the refugees arrive in the EU countries, the statistics show that around 219.000 persons arrived in Spain and Italy, by crossing the Mediterranean Sea from Turkey. The refugees also move via the western-Balkan countries (Greece, Macedonia and Serbia). According to the data from the International Office of Migration, during 2014, around 3.200 persons lost their lives in the Mediterranean waters, while in the first half of 2015 that number was 2.500 persons. The winter period will bring increased number of deaths due to the deteriorating conditions for sailing in the Aegean Sea.

Although, seemingly, the migration started spontaneously, it can be concluded that we are talking about a planned and organized transport via the western – Balkan route, including the Republic of Macedonia. The following facts confirm the above:

- telephone guidance (leading) during border crossing,
- multiple appearance of the same persons in charge of the migrants in the trains transporting the migrants on the route Gevgelija – Tabanovce and vice versa,
- marking of crossing paths (plastic bottles and textile),
- the existence of locations in Greece where the migrants pay for false IDs and locations for sale of fake travel documents,
- offering bribery to the members of ARM and the MOI for faster and easier transit through Macedonia,
- there are unconfirmed information that the transport is funded and the funds are obtained at several locations in Turkey and Serbia.

Greece, being the first EU country, directs the refugees and migrants exclusively towards Macedonia, with precise instructions on how to precede to one of the EU countries. At the beginning of the crisis, 2 to 3 thousand refugees per day were arriving i.e. were brought to the south border of Macedonia. That number is higher now. The average of foreign citizens who are taken and are allowed to pass at border stone 59 is around 4000 persons daily, which totals to 120 thousand per month. Beside the transport of the migrants to Macedonia, Greece is additionally cleaning its territory from the illegal migrants who reside there for a longer period.

In addition to having a wire fence on the border with Turkey, Bulgaria has introduced additional measures by sending Army Forces to help the Border Police, all with aim to establish a better control of the border line. According to the information, from one hand, the authorities in Sofia were optimist that the refugee crisis will not be directed toward Bulgaria due to the lack of free transit corridor and the well secured borders, as well as the constant checkups in the country. On the other hand, in advance, they rhetorically prepare the ground and warn about the difficulties they face in order for the EU to help them. They also make efforts to dissuade the refugees through different propaganda programs.

Serbia is trying to present itself as the most humane country in the region and in a large measure has succeeded. The success can be seen from the support among the migrants, but also from the western countries media, who criticize the authorities in Serbia the least in the way they are handling the crisis. In support to the Serbian success is also the "failures of the neighbors" presented in the Serbian media and in part of the western media. Peace and order is primarily maintained in Preshevo and Kaljizha camps, as well as the rhythm in transporting of the migrants, while their registration and finding out the identity is a secondary task. The Serbian authorities have unofficially calculated that in the last six month, around 400 thousand persons have transited through their country.

The situation in Croatia escalated after 15$^{th}$ of September, after Hungary closed the border with Serbia. The Croatian police clashed with big groups of migrants that were prevented from entering the newly opened shelter for registration of refuges asking for asylum in Europe. The refugees and migrants arrive in Croatia from Serbia with organized bus transport and as a protection measure from the big wave of migrants, Croatia closed the Batrovci border crossing thus creating additional tensions and countermeasures between Serbia and Croatia. Also, besides on interstate level, in Croatia, visible were the attempts to use the migrant crisis on internal plan, for gaining political points, making the

disagreements on how to overcome the crisis between the Supreme Commander and the Prime Minister of Croatia more visible.

Hungary has shown the least understanding for the migrant crisis, demonstrated by building the protection wire wall on the border with Serbia and adopting the law stating that every individual who would damage the fence or try to illegally enter the country would be punished with 3 years imprisonment. Hungary tried to close all rail connections with Germany. First more serious control of the refugees is done in Hungary, where the refugees are obliged to get documents stating their identity and have their fingerprints taken in order to be able to continue on their way. The Hungarian authorities announced that since the beginning of the migrant crisis, over half of a million refugees have entered Hungary and continued to Austria and Germany.

Austria's attitude toward the refugees got tensed by introducing checkups on the borders, which is against the European idea for open borders. Still, the Austrian authorities call this act "act of humanitarian organization", i.e. a measure for prevention of undesirable accidents. There is confirmed information that impatience toward the migrants is growing in Austria which will lead to strengthening of the right sector.

Germany, as a desired destination, is a country that has suspended the Dublin declaration and approved submitting of asylum requests. Germany is facing demographic deficit which leads to fall of the productivity and weakening of the economy. At the moment, the category of migrants with high education is useful to Germany. Germany is accomplishing strategic goals through the migrant crisis:

- enlargement of the economic capacity of the country and total economical domination over the continent in the long run,
- demonstration of the political power to the rest of the European countries by not undertaking appropriate measures.

Still, not long ago, Germany, Austria, Holland and Slovakia introduced border checkups, mainly because of the big wave of migrants, which is contrary to the Schengen Agreement.[5]When it comes to the Republic of Macedonia and the first wave of migrants, currently, these are persons in a better financial situation, mostly young people with finished high school or university. Indicative is the ratio between men and women, 3:1, or 4:1 in favor of men.

## 3. MIGRANT CRISIS, INFLUENCES ON THE SITUATION IN THE REPUBLIC OF MACEDONIA

Macedonia is a member state of the Convention from 1951 and its Protocol from 1967. The Law on asylum and temporary protection adopted in 2003 incorporates the provisions of the 1951 Convention and the 1967 Protocol in a national law, including the definition of a refugee, termination provisions, exclusion provisions and the principles of non-*refoulement*.[6]The 1951 Convention and the 1967 Protocol remain the basis of the international regime for protection and are to be followed completely when "subsidiary" and "complementary" forms of protection are applied. Beside the general principals of the

[5]www.telegraf.mk

[6]Article*33* from the Refugee Convention from *1951:* No Contracting State shall expel or return*('refouler')* a refugee in any manner whatsoever to the frontiersof territories where his life or freedom would be threatened on account of his race, religion, nationality,membership of a particular social group or political opinion.

international law on refugees, in light of the current status of the Republic of Macedonia as aspirant country for membership in the European Union and its efforts for incorporation of the European legislative instruments in the national legislation, appropriate is the reference to the legislative framework and general principles that embody EU acquis for asylum. The numbers show that over 6 500 000 persons are registered as displaced i.e. refugees, with final destination the countries of Western Europe. The interviewed Syrian refugees in Lebanon and Jordan indicated the sexual violence as one of the main reasons for leaving Syria.

The Republic of Macedonia is on the refugees' route from Syria via Turkey, Bulgaria and Greece to the western European countries. Some of the migrant use Macedonia only as a transit route on their way to the European countries. But the number of those that decide to stay and ask for asylum in Macedonia is getting bigger. Besides the undoubted destituteness, abandonment and misfortune of the Syrian refugees, if we go back to the moment when the Huns arrived in Europe, the question about the consequences of the refugee wave from Syria arises. To start with, the problem with the refugees would represent additional burden to the economy of our country. Next, it would cause general unpleasantness in the society, thus creating a moment of a growing xenophobia. The growing tensions would also include the fear from crime. The thefts of food, clothing and other necessary living products could not be avoided. In such times one cannot exclude the organized crime such as human trafficking. If we follow the example of the Syrian refugees in Lebanon who manufacture hashish in order to survive, one would not exclude drug trafficking as well. In Syria, thefts of antiquities in 6 museums have been reported, meaning, there is possibility that these persons possess the same and in a case of need, may start with illegal trade of cultural property.[7]

Looking further into the consequences, we can also add the Syrian epidemic of child paralysis. Child paralysis, also known as Polio, is transmitted with contaminated food or water, and in October, an epidemic amongst the children in Syria was confirmed, after 14 years of eradication. According to the World Health Organization (WHO), the disease probably spread from Pakistan, one of the three countries in the world where it is endemic. They also warn that the Syrian epidemics can become a threat for millions of children in the Middle East. The children paralysis is easily transmitted from person to person and is spreading fast among children, especially in unhygienic conditions in which millions live in Syria, a country engaged in war for the past 4 years, as well as in the packed refugee camps in the neighboring countries.

The last 10 years, the former Prime Minister Nikola Gruevski has undertaken impressive economic reforms and social advance. The "Doing Business" index of the World Bank ranked Macedonia on the 6$^{th}$ place in Europe and 12$^{th}$ in the world. The education and the social care show significant improvement. Still, the refugee crisis is a threat for the progress and burdens the Macedonian road to EU and NATO[8].

The Government of the Republic of Macedonia believes that it should fulfill the provisions of the Brussels politics, although EU is refusing to give the necessary tools for dealing with the migrant crisis. If this continues, the public opinion on the European integration may change.

[7] http://www.utrinski.mk/default.asp?ItemID=0944212C2DD1CA47BFF298BEC6C8E414
[8]Ariel Cohen, Dinu Patriciu Euroasia Center – Atlantic Council, 27 January 2016

## 4. CONTRIBUTION OF THE REPUBLIC OF MACEDONIAIN SOLVING THE CHALLENGES OF THE MIGRANT-REFUGEE CRISIS

At the moment, the situation in the Republic of Macedonia is secure and stable. The border crossings with Greece and the Republic of Serbia are open and waiting to cross the border is not longer than the usual. The parts of the border line where transit of illegal migrants has been noticed are under reinforced control of the security forces, enabling optimal and uninterrupted passage, in accordance with the national and international legislative and declarations for protection of the human rights. In coordination with the national Bodies, the Red Cross of the Republic of Macedonia, UNHCR and other numerous organizations, the Republic of Macedonia, in the frame of its capacities, secures humane treatment of the illegal migrants. The reinforced control of the border line with Greece and the Republic of Serbia is result of the decision by the Government of the Republic of Macedonia to declare a crisis situation among these border lines, due to the increased influx of illegal migrants and the need for maintaining the peace and stability on a national basis. The Ministry of Foreign Affairs officially informed Greece and the Republic of Serbia, as well as the rest of the countries in the world, through its diplomatic-consular offices.

Thus far, the Republic of Macedonia has undertaken a series of steps and measures in solving this global problem. It implemented amendments to the Law on asylum and temporary protection, allowing the migrants to decide if they will apply for asylum or leave the territory of the Republic of Macedonia in a period of 72 hours. It created two temporary protection points in Gevgelija and Tabanovce for helping the migrants. Meanwhile, the vulnerable categories of migrants are temporary accommodated in the Shelter for asylum seekers in Vizbegovo, near Skopje. The possibility for opening a Center for migrants is also being considered. In June, inter-ministerial Body was created, consisting of the Ministers for Foreign Affairs, Defense, Internal Affairs, Local Self-government, Health and Labor and Social Politics. This Body meets regularly, monitors the development of the situation with the migrants and takes appropriate measures. In July, an Action Plan with measures for dealing with the increased influx of refugees was formed. The Macedonian Security Forces are regularly out in the field for providing control and suppression of the groups that carry out illegal activities related to transfer of migrants.

According to the Ministry of Interior data, since the implementation of the amendments to the Law on asylum, 41.414 certificates were issued to foreign citizens. According to their citizenship, the largest number are from Syria – 33.461, then Afghanistan – 2.073, Irak – 1.947, Pakistan – 1.198, Somalia – 561, Palestine – 560, Congo – 301, Bangladesh – 230, Nigeria – 142, Cameroon – 140, Eritrea – 140, Ethiopia – 109, and others, in smaller number. In the past two months, it is estimated that the daily influx of illegal migrants is over 4.000, unlike at the beginning of the migrant crisis, when the daily influx was around 600. Since the beginning of 2016, this number is relatively decreasing, due to the period of the year which is not convenient for the refugees. The Republic of Macedonia communicates on a regular basis with the international community about the continuous increase in the number of illegal migrants on its territory, stressing the need for help in improvement of the limited capacities for dealing with the migrant influx and improving the collaboration with the other countries in the area of border politics and border control. We are also in communication with our neighbors and the EU

and UN, since this is a problem where Macedonia is just one of the destinations and part of the migrant route. We are searching for a solution to deal with the highly increased influx.

## 5. CONCLUSION

The migrant crisis represents a trigger which just initiates the debate on how should Europe or the European Union look tomorrow or after 10 years. Will it be a Union in which politicians like Viktor Orban will dominate, politicians that use the migrants to impose their own visions on how Europe or EU should look, or, the same spirit that formed the EU will be the predominant one, the spirit of unity, collaboration between nations and tradition?

Europe, and with that the European Union, has to have a common policy, to find a solution on how to protect its external borders. It is necessary to strengthen FRONTEX, and above all, to undertake appropriate measures for solving the crisis in the source itself, which is in the countries like Syria, Iraq and Afghanistan.

NATO and EU negligence towards the Balkans costs these countries a lot and that cost is increasing constantly. The European safety requires functional institutions, patrolling and monitoring of the border, migration services with biometrical and better capacities against the terrorism. The Balkan countries do not have the necessary capacities and resources. Europe should provide a joint answer to the migrant problem, because no country can solve it only with its own resources. The Republic of Macedonia expects from EU a treatment like a member country. We stress the solidarity and the joint responsibility as essential. Not less important is the need for adopting unified position in solving the challenges with the refugees and urgently addressing the long-standing conflicts as prime cause for the appearance of the migrant-refugee crisis.

In the short term, the USA should work with the EU and the UN to provide technical help for the Balkans. In the long term, Washington and Brussels have to work together to bring Macedonia and the other aspiring countries for EU and NATO membership closer.

The Republic of Macedonia is ready to work closely with the institutions and member states of the European Union in support of further development of the measures for dealing with this global problem. In this situation, the Republic of Macedonia has to be responsible, has to control its own borders, has to perform registration of the migrants due to the national and European regulations and the international law, and has to maintain good foreign policy and diplomatic relations with its neighbors.

## 6. BIBLIOGRAPHY


- Dinu Patriciu Euroasia Center – Atlantic Council, 27 January 2016.
- Camila Ruz, The battle over the words used to describe migrants, BBC News Magazine, 16 October 2015.
- Crisis management, United Kingdom, Department of Business Enterprise and Regulators Reform, October 2007.
- Europe's Migration Crisis, ft.com, 16 October 2015.
- Europe migrant crisis, BBC News, 16 October 2015.
- Gideon Rachman, Refugees or migrants – what's in a word?, blogs.ft.com, 16 October 2015.

- http://dictionars.reference.com/browse/crisis
- http://www.managementhelp.org/crisis/crisis.htm
- http://www.utrinski.mk/default.asp?ItemID=0944212C2DD1CA47BFF298BEC6C8E
- https://hr.wikipeia.org/
- http://www.vecernji.hr/
- www.telegraf.mk
- www.vesti-online
- m.tportal.hr

**UDK:325.254.4-027.583.3/.7(497.7)**

# TREND OF CRIMES RELATED TO ILLEGAL MIGRATION IN THE REPUBLIC OF MACEDONIA

***Toni Mileski, Dr.Sc***
Full professor at Faculty of Philosophy
Institute of Security, defence and peace – Skopje
***Zoran Joveski, Dr.Sc***
*Assistant professor at BAS - Institute of managament – Bitola*

**Abstract**

In the contemporary context, illegal migration becomes a challenge for both national and regional security and the first order priority. Illegal migration is only part of a wider range of non-conventional threats to peace and stability in Republic of Macedonia which does not recognize restrictions, it is transnational and without any respect for state borders. In the same context, crimes related to illegal migration, represent only side effect of this kind of social deviation. Also, assessing the relevance, illegal migration represents the logical consequence of the enormously large number of illegal migrants located on the southern border of the Republic of Macedonia.

This paper primary attempt to display and analyze the trend of crimes related to illegal migration and secondary attepmpts to display and analyze the way of dealing with illegal migration through legislative changes in the area of dealing with illegal immigration.

***Key words:*** *illegal immigration, crimes related to illegal migration, trend, deal*

## 1. INTRODUCTION

The Republic of Macedonia in the last decade pays particular attention to the fight against organized crime, which of course includes fight against crimes related to illegal migration, human smuggling and trafficking people. In the area of organized crime, this period of time is characterized with significant number of detected crimes, so that incrimination of smuggling migrants with thechanges to the Criminal Code made in recent years and also with significantly improved modern ways to detect this type of crime, has led to a situation of their greater presence in total number of registered crimes.

Over the last decade, the Republic of Macedonia is in constant combat with illegal migration, smuggling of persons and trafficking. Adopted strategic documents in the Republic of Macedonia to prevent these crimes seems sufficient when it comes to the number of registered crimes in this area. Although it seems that apparently Macedonia wins the battle against this type of crime, however, to improve the overall situation of this type of crime has to be done much more.

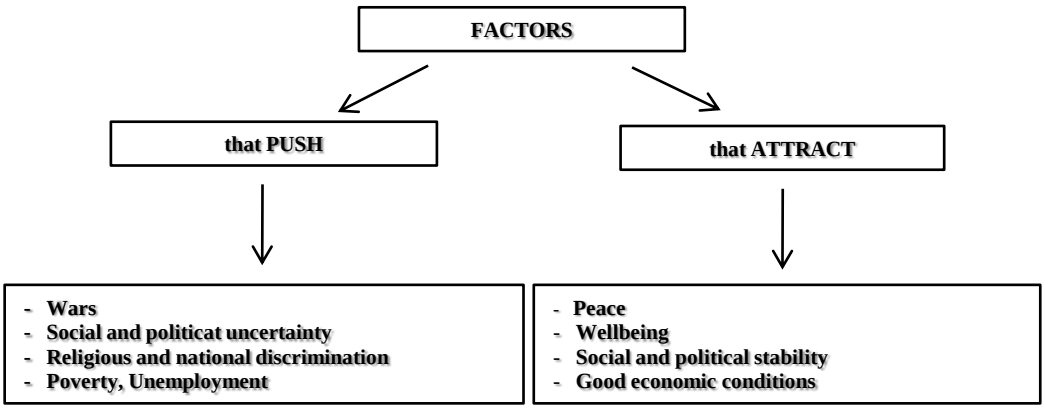
This paper is an attempt to better understanding of the trend of offenses related to smuggling of persons (migrant) in the Republic of Macedonia in the period of 2015 and 2016.

## 2. MIGRATION

Statistics show that today more than 220 million people, which means more than three percent of the world's population lives outside the country in which they are born. Their volume is greater than ever. And more importantly, the growth of migration is expected to continue in the coming decades. This statement applies when it comes only to illegal migrations.

The word migration comes from the Latin - migratio, it meens moving or relocation and represents a change of residence of individuals, small or larger group of people. (Talevski, 2004:9). Essentially, migrations represent complex demographic variables and may be manifested as permanent process when people constantly, in the longer term are moving into one place, or from one country to another, or as mass exodus such as when for a short period of time a large populations move in within one region or outside of the region. (Talevski, 2004:11). If it takes into account the normative aspect of this phenomenon (especially important for this paper), it is quite certain that the migration of people would be defined also as the movement of people in one country or from one country to another, and while this movement (migration) may be voluntary or involuntary, that can be legal or illegal. They are continuously influenced by many various kinds of factors, which defines them as more complex and multifactorial social processes. In the literature there are a number of attempts to separate the most important factors of influence on the process of migration of people. So called "model of gravity "indicates that the emigration process is affecting two types of factors - factors that push and factors that attract,(Government of Macedonia, 2009:48) which are paired and in correlative connection with the place or country of migration or country in which is migrating (Figure no. 1).

***Figure No.1.*** Schematic reviw of the factors of influence - the gravity model




***Source:*** Joveski Z., (2012), Illegal and forced migration in the Western Balkans: A Case Study – the Republic of Macedonia

Besides the factor relations, its corresponding impact on migration have the cause-andeffect relationshipsof the process, making it significantly stimulating. They boil downtothree large groups:

- ***Natural:***weather conditions, natural disasters, epidemics, uncontrolled population growth in some areas and opposite - healthy and stable natural environment, controlled and healthy population, etc.
- ***Social:*** wars, political instability, religious and national intolerance and opposite - peace, political, religious and national stability, etc.
- ***Economic:*** hunger, poverty, poor economic conditions and opposite - desire and need for better quality life, economic stability and prosperity and so on.

Therefore, given the complexity foreground of migration, cause-and and causal and factor relation to the migration process, almost certainly we can conclude that migration by its pure form do not exist. Usually they are complex migrations that combine different types of migrations.

The Universal Declaration of Fundamental Rights clearly states that every citizen has the right to leave any country, including his own country, but also to return to the state where he lived previously[1]. Despite its declarative support, many countries of the world, especially the economically more developed, using different mechanisms, this basic human right is successfully limiting or suspending. On the other hand, having the foreground socio-political, and especially economic and social situation in which are found specific countries now, it is almost certain that the search for security, a better life and well-being, is the main reason for migration (legal and illegal) of their citizens.

That essentially means that legal migration process becomes limited and conditioned, which in turn indirectly compels citizens to use illegal way for migration.

## 3. CRIMES IN CONNECTION WITH ILLEGAL EMIGRATION IN REPUBLIC OF MACEDONIA

Illegal migration with all its kinds and forms represent one of the most important issues of modern Macedonian state because they basically are eroding confidence in the institutions and encourage the corruption and crime, and dangerously even threaten the overall process of stabilization of the country. (Ministry of Defence, 2008:18-19). Today, after more than twenty years of the independent Republic of Macedonia ilegal migration occupy one of the priority areas when it comes to maintaining peace and stability in the country. The reasons that led to it, represent logical consequences of the conflict in the breakup of the former Yugoslavia since 1991, post-conflict situation and the refugee crisis in Kosovo in 1999, the transitional period which resulted in a conflict in Macedonia in 2001, and a huge wave of economic refugees in the recent years, mainly from Afghanistan, Pakistan, Iraq, Syria and the countries of North Africa.

Criminal Code of the Republic of Macedonia[2] differs:

---

[1] Universal Declaration of Human Rights, adopted by the General Assembly of the United Nations in 1948 - itself is not binding, but is legally applicable in international custom and practice. Taking the initiative of the Universal Declaration, the Council of Europe in 1950 adopted the European Convention for the Protection of Human Rights and Freedom that regulates the basics of human rights - respect for each individual human life and dignity, rights and freedoms of every individual by an international agreement for human rights and a specific mechanism for its protection. Human rights should not be bought, earnor to inherit and therefore they are inalienable, meaning that they are inherent in every human being, regardless of race, color, sex, language, religion, political or other opinion, national or social origin, property status and his etc.

[2] In order to align the curvature legislation in 2002 to the Criminal Code introduced in Article 418-a (human trafficking) (Official Gazette of RM no. 04/2 from 25.01.2002), and the 2004 Criminal

- Criminal offenses related to migration of asylum seekers;
- Criminal offenses related to smuggling of persons (Article 418-B);
- Criminal offenses related to human trafficking (Article 418-A);
- Criminal offenses related to trafficking in minors (Article 418-D); and
- Criminal offenses related to migration for committing a crime.

Participants in all the above types of offenses, depending on whether they appear as direct participants (migrants) or as members of an organized criminal group linked to them, violating the legal provisions and make appropriate crimes. From this view, it is quite clear that criminal offenses of any of the above types have negative implications on the separate state institutions responsible for regulating and monitoring the migratory movements of citizens and the state system as a whole.

## 4. SMUGGLING OF MIGRANTS

In accordance with the title of the paper, the analysis of the trend of crimes related to smuggling of migrants in the country, it is important to mention that Republic of Macedonia in the field of illegal migration remains a country of transit of economic migrants as part of an international route for smuggling of migrants whose ultimate purpose are countries the European Union. Countries of origin of migrants are mainly: Afghanistan, Pakistan, Iraq, Syria and the countries of North Africa. Illegal migrants in the country to mid June 2015 are mainly entering from Greece on unpaved road, using illegal crossings, as well as by rail by hiding in freight trains. They cross Republic of Macedonia by foot or by car, with organized crime groups and using regular buses and trains. Commonly used locations are areas of Gevgelija, Dojran and smaller part of Bitola. As a starting point from Macedonia to Serbia was used the territory of Lipkovo, specifically the settlements Vaksince and Lojane. In these settlements illegal migrants in an organized manner were placed in the homes of the localpopulation, as well as in stables near the villages. These migrants by the organized criminal groups are illegally transferred to the Republic of Serbia.

From June 20 to November 18, 2015 the Republic of Macedonia has made numerous legal amendments to allow foreign nationals that are on the border line or inland to express intention to submit a request for recognition of the right for asylum. This measure had two main objectives:

- The police, to get a better insight into the situation and have a better record; as well as
- The migrants, to be able to legalize their stay in the country, that is, to make available using public transport, which practically would reduce the risk to the life or health of the migrants and also to improve the conditions for providing humanitarian and medical assistance to the surge of migrants.

Legal changes led to additional engagement of the institutions in the Macedonia. Further are engaged additional human and material-technical resources of all competent institutions in the country in order to properly register the migrants, as well as providing the necessary assistance in their legal entry and transit.

---

Code introduced two new cases 418-b (smuggling of migrants) and 418-c (organizing a group and incitement to commit a crime - human trafficking and smuggling of migrants) (Official Gazette of RM no.19/04 from 30.03.2014). In 2008 in the Criminal Code was introduced another criminal case 418-d (trafficking in minors)(Official Gazette of RM no. 7/08 from 15.01.2008).

After the November 18, 2015, Slovenia, Croatia and Serbia have decided to ntroduce selective approach in allowing the entry of migrants to their territory only to refugees from crisis points, the Republic of Macedonia in response to the notices received from neighboring states, after November 19, 2015 from 19.00 activated the same selective approach to migrants coming from Greece. According to this measure, transit to EU countries is allowed to only refugees from countries where there are armed conflicts or refugees from countries: Syria, Afghanistan and Iraq, but not economic migrants coming from Iran, Pakistan, Morocco, Bangladesh, Liberia, Sudan, Algeria, Congo and other countries.

In the area of criminal groups smuggling depending by the way of performing these activities, they can be divided into three periods:

- The period from 2009 to 2011, in which the organizers of the smuggling are organized criminal groups of Macedonian citizens in cooperation with criminal groups from Greece and Serbia the crimes has been done by the smuggling of illegal migrants through Macedonia. In the specified period by the Ministry of internal affairs were found and sentenced to long imprisonment a number of criminal groups who committed crimes - smuggling of migrants.
- Since the beginning of 2012 there was a change in the manner of the smuggling, and it has been done by the organized criminal groups from Afghanistan and Pakistan with headquartered in Turkey and Greece, from where they completely covered the smuggling from the country of origin to countries of destination. In each country, part of the international route for smuggling of migrants, they set up their members responsible for that country. They had come earlier in the Republic of Macedonia as illegal migrants and asylum seekers, to study the situation in the country, establishing contacts with Macedonian nationals. These persons are placed in Skopje and Kumanovo region (Vaksince and Lojane). They recruited people on the area of Gevgelija for acceptance of illegal migrants from Greece and their covering and transporting to Vaksince and Lojane, and also for their accommodation in these places and their transfer to Serbia. Smuggling is carried out in groups of 10-50 migrants, whereby each group has a guide member of the criminal group who leads the group from Greece to Macedonia. The costs for transportation of illegal migrants through Macedonia is between 1000-1500 euro for one migrant. Payment by the migrants is carried out in each country separately through fast money transfer.
- The period from 19 June 2015 to date, during which organized criminal groups because of the legislative changes and permission for transit of migrants with legal vehicles have not been active, or had a minor operation, which is not the case for the period from November 19, 2015 until today. From this date, criminal groups hostages and carry out the smuggling of illegal migrants through the Republic of Macedonia only for economic migrants coming from Iran, Pakistan, Morocco, Bangladesh, Liberia, Sudan, Algeria, Congo and other countries, that are the migrants that the measure for selective approach did not apply (Syria, Afghanistan and Iraq). Exactly this period is analyzed in the paper.

Table no. 1. shows the number of registered crimes on migrant smuggling in the period February 2015 to January 2016.

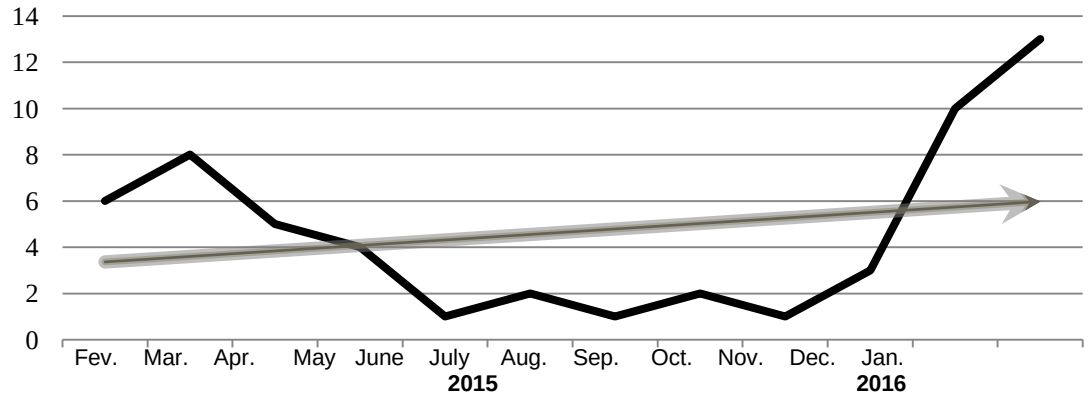
***Table. No. 1.*** Registered crimes related to smuggling of migrants2015 - 2016

| Feb. | Mar. | Apr. | May | June | July | Aug. | Sep. | Oct. | Nov. | Dec. | Jan. |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | **2015** | | | | **2016** | | | | | |
| 6 | 8 | 5 | 4 | 1 | 2 | 1 | 2 | 1 | 3 | 10 | 13 |

***Source:*** Ministry of Internal affairs of Macedonia

Lower graph shows the trend of criminal acts in connection with the smuggling of migrants in the same period. From the display is evident that the trend of registered crimes on migrant smuggling in period from February 2015 to January 2016 has a mild upward trend.

***Chart No.1.*** Trend of crimes related to smuggling of migrants 2015 - 2016




***Source:*** Ministry of Internal affairs of Macedonia

## 5. CONCLUSION

As it can be seen, the period from February 2015 to June 2015 there were registered 4 to 8 criminal cases on smuggling of migrants by month. In the period from July 2015 to November 2015 were registered 1 to 3 felonies related to smuggling of migrants by month, but after this date, in the months of December 2015 and January 2016 we have again a significant increase in crimes related to smuggling of migrants by month (10 crimes in December 2015 and 13 crimes in January 2016). This indicates that prior to legislative amendments that allow foreign nationals at the border or inside the country to express intention for submitting a request for recognition of the right of asylum, until June 20 2015, there was a increasing number of crimes related to smuggling of migrants by month, compared to the period following the adoption of legislative changes (from 19 June 2015 to 19 November 2015). In this period there were recorded only individual crimes related to smuggling of migrants, which is not the case after activation of the measure for selective access of migrants (November 20 to date) when we have again a significant increase in crimes related to smuggling of migrants but only the migrants from the countries that don't have selective approach: Iran, Pakistan, Morocco, Bangladesh, Liberia, Sudan, Algeria, Congo and other countries.

Seen from a professional point of view, analysis of the trend fully confirms the positive approach of the institutions of the Republic of Macedonia in the context of dealing with the refugee crisis that escalated in the last year, in which according to the data, from 19 June 2015 until 31 December 2015 were recorded and passed through Macedonia 384,481 migrants, of which 214,266 migrants from Syria, 94,912 from Afghanistan, 53,386 from Iraq, 6,231 from Iran, 5,416 from Pakistan, 2,158 from Palestine, 1,276 from Somalia, 1,253 from Bangladesh, 1.317 from Morocco, 514 from Congo, 453 from Algeria, from Lebanon 434, 279 from Nigeria and so on. On the other hand, as regards crimes related to smuggling of migrants in 2014 there were 92 recorded crimes with 166 perpetrators, which is almost two times more than in 2013 when there were 48 recorded crimes related to smuggling of migrants with 43 perpetrators.

In this direction, it is vital to be made activities for improvements and strengthening of agency and inter-agency cooperation at the national level as well as cross-border police cooperation through:

- Regular maintenance of meetings at local, regional and national level with the competent border guard services of neighboring countries;
- Regular participation in joint operational activities organized by Frontex[3],in the Republic of Macedonia and abroad;
- Develop and maintain bilateral police cooperation with the competent authorities of the Member States of the European Union and countries in the region;
- Cooperation with IOM (International Organization for Migration), UNHCR (United Nations High Commissioner for Refugees), MARRI (Migration, Asylum, Refugees Regional Incentive), DCAF (Geneva Centre for the Democratic Control of Armed Forces), ICMPD (International Centre for Migration Policy Development) and other international organizations and forums and NGOs that deal with illegal migration; and many other measures related to illegal migration of all kinds.

[3]FRONTEX is agency for coordination and operational cooperation between the Member States of the European Union in the field of management of external borders. Its headquarters is in Warsaw - Poland, and it is established as a specialized and independent body mainly responsible for coordination and operational cooperation between Member States of the European Union in the field of border security. The activities of Frontex started to be fully operational on October 3, 2005.

## 6. REFERENCES


- Aleinikoff T.A. and Chetail V., (2003), Migration and International Legal Norms, Cambridge University Press
- Government of the Republic of Macedonia (2009), Resolution on the Migration Policy of the Republic of Macedonia for the period 2009 - 2014, IOM – Skopje
- Government of the Republic of Macedonia (2009), Migration profile of the Republic of Macedonia for 2008, IOM – Skopje
- Joveski Z., (2012), Illegal and forced migration in the Western Balkans: A Case Study - Republic of Macedonia,Society for Science and Art – Prilep
- IOM, (2007), The Former Yugoslav Republic of Macedonia - Migration Profile, Ljubljana, Ministry of the Interior of the Republic Slovenia, Mond Grafika doo
- Mirchev D., (2011), Macedonia in the transition tunnel, Skopje, Graphic Center – Skopje
- Ministry of Defence (2008), Contemporary Macedonian Defence, Ohrid, Kosta Abras Inc.

Talevski J. D., (2004), Demogeografija, St. Kliment Ohridski University – Bitola

UDK:343.341:28(497.7)

# RADICALIZATION AND DERADICALIZATION – THE CASE OF REPUBLIC OF MACEDONIA

*Dragan Lazarevski, Mr.Sc*

**Abstract**

Globalization and modern relationships in the world lead to a situation where certain communities and groups have been favored at the expense of others that remain on the margins and not sufficiently integrated into society. Due to this unsuccessful integration or alienation from society, certain individuals and groups from these communities express their dissatisfaction through a radicalization, that is, accepting extreme political, social, or religious ideals, that in large extent, lead to violence and terrorism.Exactly in the region of the Balkans, that is, the countries that emerged after the disintegration of former Yugoslavia, this problem of radicalization is strongly expressed.In these areas exists radicalization on religious and ethnic grounds, which could be seen from the Balkan wars in the 90s.Over time the process of radicalization has evolved, that is, if once for one person to be radicalized, it was necessary to be in direct contact with radicalized individuals or members of terrorist organizations, nowradicalization is commonly done online, through easily available materials on the Internet.This paper will attempt to provide answers to several key questions such as:how one person is radicalized, that is, can we set up model of radicalization, what are the stages of radicalization of individual, toward what the radicalization might lead. That the radicalization is a global problem, which is largely present in the Republic of Macedonia, speaks the research made on students from two faculties in Macedonia, through a survey.From this research can be seen, how Islamic State global campaign for radicalization and recruitment of individuals to perpetrate terrorist attacks or to participate in the battles in the Middle East, affects the citizens in Macedonia.By analyzing the international experience and guidance on deradicalization, arise the conclusions of this paper, on which way the deradicalization process of radicalized individualsshould go, that is, which methods thelaw enforcementagencies may apply for easier detection of such persons as well as prevention of possible violent acts through deradicalization.

***Keywords:*** *radicalization, terrorism,deradicalization, Islamic State.*

## 1. INTRODUCTION

The recent terrorist attacks in Europe, and the large number of "foreign fighters" that are waging war in the region of the Middle East, many of whom have already returned to their home countries, highlight the need to strengthen measures to fight against radicalization, but also for understanding the process of this phenomenon and in particular the phenomenon of religious radicalization. In this paper we will focus on religious radicalization which usually leads to violence and terrorism.

Radicalization, according toEuropean Commission, is a complex phenomenon of peopleembracing opinions, views and ideas which could lead to terrorism (Alonso et al., 2008). A 2008 report bythe Commission's Expert Group on Violent Radicalisation

suggests that radicalisationcan be considered as socialisation to extremism, which may lead to terrorism. Peter Neumann defines radicalisation as “the process (orprocesses) whereby individuals or groups come to approve of and (ultimately)participate in the use of violence for political aims” (Neumann, 2010).

The causes of radicalization are complex, drawing from the continuingconflicts in theMiddle East, the disconnectedness of large Muslim communities living in Westernsocieties and their search for identity.

Radicalization is a gradual process and one that requires a progression through distinct stages and happens neither quickly nor easily (Horgan, 2005). That means that person does not become radical overnight, although the influence of an incident which may act as a ‘catalyst event’ (such as an experienced act of discrimination, perceived attack on Islam such as the 2003 war on Iraq, or a ‘moral crisis’ with the death of a loved one) may accelerate the process (Christmann, 2012).

It followsthat preventing radicalisation is an important element in counter-terrorist measures, toreduce the threat of radicalised individuals engaging in terrorist activity.

## 2. RADICALIZATION IN EUROPE AND BALKAN COUNTRIES

In the West European society, there are major differences in position between the Muslim (immigrants) and non-Muslims.The perceived failure to adequately integrate second and third generation Muslims into wider society, especially new Muslim immigrants to Europe, was another common explanation for radicalization. A strict policy of these countries towards Muslim immigrants from first generation and Muslims from second and third generation, makes them not feel completely integrated into the societies in which they live, and are more likely to identify themselves more as Arabs, Iranians, Syrians, Afghans and etc. or from where they originate, rather than Europeans. In this way they become good “material” for processing by the activists of terrorist organizations. The activists, such dissatisfaction are use to instill in them radical views, which later will make them easier to become members of terrorist organizations, or for performing terrorist act without becoming part of any terrorist organization.

Such situation is similar in countries in the Balkans, too. At these areas in 90', raging war of interethnic and interreligious character, with the presence of many holy warriors "Mujahideen" from the Middle East, Afghanistan, etc. Upon completion of the war, the holy warriors settled in the Balkans and the most in Bosnia and Kosovo. Balkans since ancient times was known as "powder keg", as the region where is easy to initiate inter-ethnic conflicts, primarily because of the different ethnic and religious structure of the population.On this region as well as the regions of Western Europe, for radicalization of individuals, activists of terrorist organizations use personal grievances combined with Islamist rhetoric. However one of the biggest differences in radicalization is that many people in the Balkans in the whirlwind of war lost a loved one, who was killed by military and paramilitary units of the nations of different ethnic and religious backgrounds. Due to their personal grievances they are quite susceptible to manipulation by the activists of terrorist organizations or radical imams, and when it comes to running a religious war for the protection of Muslim holy territories or the protection of Muslim "brothers" from the infidels, radicalized people from the Balkans are always present. The radicalization in this area is manifesting mostly through abstract goals as, striving to create ethnically homogeneous area and big states, and of course the revocation of a fatwa, or “calls” from Muslim authorities for holy war.

In addition to, that radicalization represents one of the biggest current problems facing European society and the world in general, is confirmed by the five-year strategy of the British government for tackling extremist ideology, that the British Prime Minister David Cameron had announced, describing it as "struggle of our generation" (Perraudin, 2015). In his speech Cameron highlighted the fact that we mentioned above, that the Muslims of the second and third generation in Europe do not identify with the country they live, and in the present case, that they do not identify themselves as Britons. According to this strategy, people become radicalised because of historical injustices, recentwars, poverty or hardship that serve as arguments as "grievance justification". However, according to the British prime minister, poverty can't be taken as a reason for the radicalization, because many of the terrorists have had the full advantages of prosperous families and a western university education. The prime minister will set out what he sees as the four main reasons that people become radicalised:

- Extremism can seem exciting, especially to young people.
- People can be drawn from non-violent extremism to violent extremism.
- Extremists are overpowering other voices within Muslim debate.
- Failures of integration allow extremist ideas to gain traction.

### 2.1 Radicalization incubators

The radicalization of individuals is carried in places where people usually gather, or in places where individuals are "vulnerable" and therefore susceptible to forming radical views. For the purposes of this paper, we will focus on prisons and internet, as the places where individuals are "vulnerable".

*Prisons* - However the places where individuals are emotionally most vulnerable and thus receptive to acceptance of radical views, are the prisons. Prisons are – by definition – confinedspaces in which access and movement are tightly restricted. However, prisons are high, that is uniquely suitable environment for radicalization (Beckford et al., 2005). Prisons are disruptive environments in which individuals are faced with existential issues of particularly intense way. This explains why the rate of religious conversation in prisons is higher than the general population: faith provides a feeling of safety and security and also offers a chance to break with the past.

*The internet* - Self radicalization through the internet: The Internet can create an environment in which individuals dedicated to the cause and their concept of what it means justification of defense of the Ummah (nation, community) are exaggerated.However much of this is a theater in which the majority of participants in web forums become "armchair jihadists" at best (Rogan, 2006).The effect of this can be hyper radicalization whereextreme ideas and solutions receive the greatest encouragement and support.

As a turning point or as a revolutionary change in the way of radicalization can serve emphasis by leaders of al Qaeda earlier this millennium, that the Internet is a principled method through which can create a jihadist community and perform radicalization. In this jihadist community, there is a mass radicalization. Mass radicalization is so reliable that it can be used as a strategy.This advocated bin Laden's deputy, Ayman al-Zawahiri, who in 2001 wrote: "We must get our message across to the masses of the nation and break the media siege imposed on the jihad movement. This is an independent battle that we must launch side by side with the military battle"(Al Zawahiri, 2001). Some terrorists have explicitly sought to elicit a state response that will carry farbeyond the terrorists to strike terrorist sympathizers who have not yet been mobilizedto action (Marighella, 1970). Because of state repression, that is the State response to terrorist

attacks, an individual radicalizationcan arise or radicalization of the individual becausehis religion is"attacked" or lost a close family member, but also group radicalization can arise in cases when a certain religious group (fundamentalist religious group) is "attacked".

The predictable result is to mobilize terrorist sympathizers farbeyond what the terrorists can accomplish alone. This strategy is called jujitsu politics: using the enemy's strength against him (McCauley, 2006).

Ayman Al Zawahiri enunciated this strategy in his political memoir Knights Under the Prophet's Banner.If the shrapnel of war reach American homes, heopined, Americans will either give up their aims in Muslim countries or will come outfrom behind their Muslim stooges to seek revenge. If Americans move into Muslimcountries, he predicted, the result will be jihad. Although the U.S. war against theTaliban was faster and cleaner of collateral damage to civilians than Al Qaedahad expected, the U.S. move into Iraq has indeed been associated with increasingsupport for radical Islam in Muslim countries and by Muslim in Western countries. For this increased support of radical Islam, Internet and various propaganda materials (videos of "holy warriors"who call for action, videos of executions etc.) that are placed online by terrorist organizations, has a great merit.

### 2.2 Radicalization model

It may be possible to establish a model of radicalization, the concept of radicalization that is not merely a label applied to a cluster of violence tactics we have observed in recent years.There are several models of radicalization created by certain experts, but as one of most comprehensive models, will present the model of religious radicalization in four stages created by New York Police Department - NYPD.

***NYPD's Radicalization Model***

The NYPD model identifies four stages (pre-radicalisation, self-identification, indoctrination, and jihadisation) (Silber and Bhatt, 2007)that individuals pass through if they are to be actuated in jihad-basedterrorism. The stages are a narrowing process: not all individuals in each stage will move on tothe next one. Each of the four phases has "signatures" associated with it – observable markers that,from the point of view of law enforcement, allow an observer to identify movement in the process.

***Stage 1,*** **Pre-radicalization:** This phase lays the ground work for becoming radicalized, although the keyfinding is that not much allows one to identify the sorts of people who are suitable to hold radical beliefsand eventually engage in terrorist action. The analysts found that the radicalized participants had beengenerally well integrated into their social structure. There were few signs of being uprooted, displaced,or a failure: "The majority of individuals involved in these plots began as 'unremarkable' – they had'ordinary' jobs, they had lived 'ordinary' lives and had little, if any criminal activity" (Silber and Bhatt, 2007).

***Stage 2,*** **Self-identification:** The second phase has two components. One is to lose one's certitude aboutthe common sense understanding about the world, and begin to explore radical ideas, such as SalafiIslam. The catalyst for this "religiousseeking" is often a cognitive event, or crisis, which challenges one's certitude inpreviously held beliefs, opening the individual's mind to a new perception or view of theworld (Wiktorowicz, 2005). Individuals most vulnerable to experiencing this phase are often those who are at acrossroad in life—those who are trying to establish an identity, or a direction, while seeking approval and validation for the path taken. Some of the crises that can jumpstartthis phase include:

- Economic (losing a job, blocked mobility)
- Social (alienation, discrimination, racism – real or perceived)
- Political (international conflicts involving Muslims)
- Personal (death in the close family)

***Stages 3 and 4,*** **Indoctrination and Jihadization:** The third and fourth phases deepen the process thatbegins with self-identification. Indoctrination is the immersion of the individual into the radical ideology, and its acceptance hook, line, and sinker. This is often facilitated by a "spiritual advisor," whocan guide acceptance. Jihadization entails mobilizing now-radicals into a plan of action. It entails planning (what is to be done) and preparation (readiness to act). After Jihadization, execution is likely tofollow.

### 2.3 Measuring features of radicalization

In the context of the study of radicalization certain psychometric tools that are used to measure the features of radicalization, have been created. One of the tools that offered some relevance to measuring features of radicalisation as a psychological construct is the Violent Extremism Risk Assessment (VERA) (Pressman, 2009).

VERA is a specialized risk assessment tool that is designed to be used with people with either a history of extremist violence or convictions for terrorist-related offences.The instrument is designed to determine whether or not the individual under test has anidentified target; whether the violence has an ideological, religious or political motivation; and finally, if the person is acting as part of a group or alone. VERA is focused specifically on assessing the degree of risk of "violent political extremism" (Pressman, 2009)and implies a far broader population deemed at risk of radicalisationand of religious extremism.

VERA is composed of 28 items covering five risk factors (attitude; context; historical; protective; and demographic) each scored high, medium or low, with each risk factor producing a subtotal and the scale producing a final VERA 'judgement score', although rather confusingly, this is *not* a numerical score.

Although, the creator of this assessment tool, advise that the tool is in its early stages of development and should be considered a "conceptual tool" for research purposes, a point which would further limit its applicability, it can be a good starting point for the development of such similar tools that will find broad professional application.

### 2.4 Research on radicalization in Macedonia

On August 6, 2015 in the action of Macedonian police under the code-name "Cell", 9 people, who were part of paramilitary organizations or recruited some of Macedonian citizens to participate in paramilitary organizations on battlefields in Syria and the Middle East, were arrested. Most of them are Muslims, and only one is with Christian religion background, who later converted to Islam. This proves the fact that radicalization and the manner of its implementation, and indoctrination of religious extremism, is so strong that even non-Muslim individuals often converted to Islam religion to join of IS (Islamic State) and other terrorist organizations. The best example for this ascertainment, are the results of research done for the master thesis entitled "Islamic fundamentalist religious groups and movements and their involvement in organization and perpetrating terrorist acts" (Lazarevski, 2015). This research was done on 60 students of state universities in Macedonia, mostly Orthodox, on theme "awareness of the citizens of the Republic of Macedonia on Islamic fundamentalist religious movements". In a survey

created for this purpose, there were questions about radicalizationand thereby obtained striking results. The results conclude that the Macedonian population perceives fundamentalist movements as one of the generators of the radicalization. So, on the question "whether radical fundamentalist movements recruit people for jihad?", 60% of respondents answered positively.This research shows that the internet and the media can be a strong tool in the hands of terrorist groups. The overall presence in the media and internet of one of the most notorious terrorist groups of today - Islamic State, brings about this group is well known in this region, hence 90% of the respondents answered that they know the group. In addition to that this terrorist organization has developed effective manner, through the Internet and through its activists to carry out the radicalization of individuals, speaks the fact that although the survey was made of participants of the Christian religion, however on question "whether under certain circumstances would have become a member of the terrorist group IS or any other terrorist organization?", as many as 11 respondents or 18.4% answered that they would become members of a terrorist organization if they like its ideology or if it is followed by a good financial benefit.

Asked in which way a person is commonly radicalized, respondents answered that the most common way of radicalization is through "acquaintances who already have radical views or they aremembers of some terrorist organization" and via the Internet.

Asked what are the most common places where a person is been radicalized, respondents pointed out the mosques and prisons.

Responses in the survey, about radicalization of individuals that commonly take place on the internet and in prisons, are in favor of the aforementioned "radicalizationincubators," that is, that even in world frames Internet and prisons are high-risk locations where people are susceptible of radicalization.

### 2.5 Deradicalization

The deradicalization is defined as the practice of encouraging those with extreme and violent religious or political ideologies to adopt more moderate views (Collins, 2016). The term "deradicalization"should be used to refer to the methods and techniques usedto undermine and reverse the completed radicalization process, thereby reducing the potential risk to society from terrorism (Clutterbuck, 2016).

The authorities across the world have implemented schemesto try and reduce the risk of radicalized individuals to pose threat to national and international security, because of their involvement in violent extremism and terrorism.

Commonly described as “deradicalization” programmes, they attempt to facilitate long-term disengagement from political violence. A range of modelsexist, incorporating, to varying degrees, psychological and counselling services, help with employment, education or housing, religious education, and support for prisoners’ families. Similarly, a variety of actors are involved in providing such services, from statutory agents working in prisons, rehabilitation centres and in the community, to religious scholars and community leaders, psychologists, psychiatrists, and in some cases, former militants (Marsden, 2015).

The experience of western European countries in the deradicalization process is of particular importance.Austrian government is working with the Muslim community to fend off growing radicalism. Among the most important activities are: organizing 300 workshops in schools, as is working in prisons and teaching religion in school. The NGO Women without Borders was starting "Mothers Schools," where parents of children who have gone off to fight in Iraq or Syria teach other women the early warning signs to help protect against radical influence (Langley, 2016).

UK parliamentary committee has urged the need to engage more with local communities to prevent youths from joining jihadis.A report by the British parliament's Home Affairs Committee (British parliament's Home Affairs Committee, 2016) said that the government needed to undertake more preventive work with communities to ensure that young people were not radicalized by jihadi groups and motivated to fight for them.The emphasis is on prevention work with communities and on the Internet. The preventivework with communities includes new methods to tighten border controls following the incident when three teenage girls traveled to Syria and were thought to have joined "Islamic State" (IS) militants. According to the report, there was an urgent need to engage with the community and develop partnerships with mosques, which would play "a key role in Prevent counter-terrorism programs" and also, schools and police would inform parents immediately, were they to see signs of any radicalization.Preventive work on the Internet, according to the report, means that young people needed to "be equipped with the skills to become critical consumers of online content, in order to build a more natural resistance against radicalization," because it was practically impossible to police social media sites such as Twitter.

Given the increasing number of returnees from conflict zones, and more and more people being released into the community after convictions for terrorism offences, the need for intervention programmes is only going to grow.

## 3. CONCLUSION

By analyzing the international experience on deradicalization, arise the conclusions of this paper,that is to say on which way the deradicalization process should go.

As a method of deterring people from radicalization, in other words to perform deradicalization, can be used negative experiences of persons who have been on the battlefields of the Middle East, and were members of IS. It is likely that many people who were in the Middle East and fought as members of IS, and now returned to countries where they live, had a negative experience of their "adventure". Probably their experience is not the same with what they viewed on the recruiting videos released by the terrorist group, or from what they been told and promise by activists or radical imams, who radicalized them with their sermons.With other words they became disillusioned when witnessing the mismatch between the words and deeds of IS. Exactly these negative experiences may become the most powerful weapon in the hands of security agencies to combat radicalization.

Forderadicalization to be successful, much more than just engaging of security services is needed. In solving this issue should include the whole social community, including families, schools, universities and other institutions directly or indirectly related. Primarily, to combat radicalization the most important is the family. It is in direct contact with the person who intends or had radicalized already, and the first signs of change may be noticed exactly by the family. That is why in the UK with a new strategy to combat terrorism, parents will be given new powers to have their child’s passport cancelled if they think they may travel to the Middle East to join a terrorist group. The same applies to schools and universities, in which changes in behavior or appearance of the individual are the best to be noticed. Radicalized persons, because of their alienation or exclusion from society, fastest and most efficiently can be revealed by their families. Early detection of radicalized persons who intend to become terrorists by their families or responsible in

schools or universities, can greatly facilitate the work of the security services in preventing their intentions.

More attention should be paid to the "radicalization incubators" that is prisons and the internet. As one of the ways how the deradicalization in prisons is done, can serve the example of prisons in France. In those prisons there are certified imams who perform the rites of prisoners and thereby affecting their deradicalization.As regards the Internet and considering that most of theradicalized individuals are young people, it is necessary for these people to be informed about the dangers that lurk on the global network and thusbe equipped with the skills to recognize the attempts of online radicalization, in order to build a more natural resistance against radicalization.

## 4. REFERENCES


Alonso, R., et al. (2008). *Radicalisation Processes Leading to Acts of Terrorism.* A concise Report prepared by the European Commission's Expert Group on Violent Radicalisation, 20.

Al Zawahiri, A. (2001).*Knights Under the Prophet's Banner: Contemplations on the Jihad Movement.* London Al Sharq Al Awsat.

Beckford, A. J., Joly, D., & Khosrokhavar, F. (2005).*Muslims in Prison: Challenges and Change in Britain and France*.Palgrave Macmillan UK, doi: 10.1057/9780230501300

British parliament's Home Affairs Committee. (2015).*Counter-terrorism: foreign fighters*. Home Affairs - Nineteenth Report, Retrieved from http://www.publications.parliament.uk/pa/cm201415/cmselect/cmhaff/933/93302.htm

Christmann,K. (2012).*Preventing Religious Radicalisation and Violent Extremism, A Systematic Review of the Research Evidence*, Youth Justice Board

Clutterbuck,L. (2016).*DeradicalizationProgramsand Counterterrorism:A Perspective on theChallenges and Benefits*. Retrieved from http://www.mei.edu/sites/default/files/Clutterbuck.pdf

Collins English Dictionary. (2016).*Definition of"deradicalization"*, Retrieved from http://www.collinsdictionary.com/dictionary/english/deradicalization

Horgan, J. (2005).*'The Social and Psychological Characteristics of Terrorism and Terrorists'* in*Root Causes ofTerrorism: Myths, Reality and Ways Forward*, Bjørgo, T., Routledge

Langley, A. (2016). *Austria tries to open up to youth to preventradicalization.* Deutsche Welle. Retrieved from http://www.dw.com/en/austria-tries-to-open-up-to-youth-to-prevent-radicalization/a-18291265

Lazarevski, D. (2015).*„ Islamic fundamentalist religious groups and movements and their involvement in organization and perpetrating terrorist acts ".* Master Thesis, Faculty of security-Skopje. Retrieved from http://fb.uklo.edu.mk/fs?file=announcements/2533/files/08f0e9bc-a88e-48c9-9357-e0aa53581025.pdf&name=08f0e9bc-a88e-48c9-9357-e0aa53581025.pdf, p. 183

Marighella,C. (1970).*Minimanual of the Urban Guerrilla.* Havana: Tricontinental.

Marsden, V. S. (2016). *Terrorist recidivism: 'deradicalisation' and reintegration.* Radicalisation Research. Retrieved from http://www.radicalisationresearch.org/debate/marsden-deradicalisation/

McCauley, C. (2006).*''Jujitsu Politics: Terrorism and Response to Terrorism''* in Paul, R.K.,& Chris E. S. eds. *Collateral Damage: The Psychological Consequences ofAmerica's War on Terrorism.* Westport. CT:Praeger,45–65.

Neumann, R. P. (2010). *'Prisons and Terrorism: Radicalisation and De-radicalisation in 15 Countries'*, InternationalCentre for the Study of Radicalisation and Political Violence
Perraudin, F. (2015). *''David Cameron: extremist ideology is 'struggle of our generation'''.* The Guardian. Retrieved from http://www.theguardian.com/politics/2015/jul/20/extremist-ideology-struggle-generation-david-cameron.
Pressman D. E. (2009).*Risk Assessment Decisions for Violent Political Extremism.*Public Safety Canada. Retrieved from https://www.publicsafety.gc.ca/cnt/rsrcs/pblctns/2009-02-rdv/index-en.aspx
Rogan, H. (2006).*'Jihadism Online: A study of al-Qaida and radical Islamist groups use the Internet for terrorist purposes'.* Norwegian Defence Research Establishment. FFI Report, 2006/0915, p. 20
Silber, D. M., & Bhatt, A. (2007). *Radicalization in the West: The Homegrown Threat*. NYPD Intelligence Division.
Wiktorowicz, Q. (2005).*Radical Islam Rising:Muslim Extremism in the West.*Rowman & Littlefield, p. 5

IP - Каталогизација во публикација
Национална и универзитетска библиотека "Св. Климент Охридски", Скопје

343.9(062)

МЕЃУНАРОДНА научна конференција (Охрид ; 2016)
Современите трендови на општествената контрола на криминалот / Меѓународна научна конференција, 30-31 мај, 2016 Охрид = Contemporary trends in social control of crime / International scientific conference, 30-31, May Ohrid. - Скопје : Факултет за безбедност = Skopje : Faculty of security, 2017. - 4 св.(222, 267 ; 240 ; 240 стр.) ; 24 см

Фусноти кон текстот. - Текст на мак. и англ. јазик

ISBN 978-608-4532-94-1 (Т. 1)
ISBN 978-608-4532-95-8 (Т. 2)
ISBN 978-608-4532-96-5 (Т. 3)
ISBN 978-608-4532-97-2 (Т. 4)
1. Насп. ств. насл. - I. International scientific conference (Ohrid ; 2016) види Меѓународна научна конференција (Охрид ; 2016)
а) Криминалистика - Собири
COBISS.MK-ID 103005450

CIP - Каталогизација во публикација
Национална и универзитетска библиотека "Св. Климент Охридски", Скопје

343.9(062)

МЕЃУНАРОДНА научна конференција (Охрид ; 2016)
Современите трендови на општествената контрола на криминалот [Електронски извор] / Меѓународна научна конференција, 30-31 мај, 2016 Охрид = Contemporary trends in social control of crime [Електронски извор] / International scientific conference, 30-31, May Ohrid. - Текст во PDF формат, 4 св.(222, 267 ; 240 ; 240 стр.). - Скопје : Факултет за безбедност = Skopje : Faculty of security, 2017

Начин на пристап (URL): www.fb.uklo.edu.mk. - Фусноти кон текстот. - Текст на мак. и англ. јазик

ISBN 978-608-4532-98-9 (Т. 1)
ISBN 978-608-4532-99-6 (Т. 2)
ISBN 978-608-4828-00-6 (Т. 3)
ISBN 978-608-4828-01-3 (Т. 4)
1. Насп. ств. насл. - I. International scientific conference (Ohrid ; 2016) види Меѓународна научна конференција (Охрид ; 2016)
а) Криминалистика - Собири
COBISS.MK-ID 102913546