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Letter from the Editor

Recently, this journal stepped into the second decade of its existence. From the twentieth anniversary of the end of the Cold War to the world highly dominated by social media, in particular tweet. Hopefully, Descartes is not turning around in the place where he rests.

A rather charming perspective of a partially mysterious year 2020 (numbers like 22022020 or 02022020 appear on the calendar and in real life only few times in a millennium – we witnessed both of them and some others as well) was exceedingly brutal swept away with the outburst of the C-19 pandemics. It has been a global shock for the human race. Also Brexit is still political mantra, and diplomats remain to be part of the information gathering machinery.

Hence, these are also topics we contemplate on the following pages.

The first article focuses on a relation between diplomacy and intelligence services. An everlasting dilemma that is still far from being solved, what goes even more for small states. The respected author, being himself a career diplomat, dwells on organizational, policy and substantial questions of dealing with the researched topic. It is up to each country to choose the approach, though basic principles are known and should be taken into account. *Sensitive*.

Our second contribution discusses the UN peace keeping operations with a reference to dual attribution. The ambitious author looks at the aspects of the UN's responsibility in the current practice and the way how it is being shared. Some cases have already been filed at national courts of troop-contributing States to further outline this issue. There is a question if current circumstances would make it possible for each side to accept its own part. *Focal*.

The third contemplation brings our attention to Brexit having in mind immigration as one of key determinants of the voters' decision to withdraw from the EU. The knowledgeable author uncovers that the question of controlling immigration paves the way for the social structure of citizenship and its management. Obviously Eurosceptic

views prevailed. This journal continues to pay attention to this challenging act of the United Kingdom. *Analitical*.

The fourth discussion deals with the strategic orientation of the Slovene gambling industry that faces, although not being an exact part of its strategy, the need for going more strongly international. The expert author brings to the point that gambling industry, in particular in the time of C - 19 pandemics, has definitely become an on line area. In a certain way more outspoken internationalization has been a part of gambling tradition in Slovenia. *Insightful*.

The fifth paper dwells on the philosophy of the Preambles of the Vienna Conventions on Diplomatic Relations and on Consular Relations. It's their uniqueness, ethics, formality and flexibility that have been determining their main messages for the past sixty years. *Encrypted*.

The sixth piece of examination contemplates the Dayton Peace Accords 25 years after its adoption. The Agreement brought peace to the country, but also affected significantly its functionality. An overture to our October issue that brings a section on Dayton. *Remember*.

Our first book review elaborates on conclusions of the “Stop Genocide and Holocaust Denial” Conference that took place in Sarajevo in June 2019, and the second one speaks about a collection of papers with a unique, innovative style. Plus, the current Guest View contemplates the major crisis that happened in the recorded human history – the pandemics of the C - 19 virus, an unprecedented standstill, unimaginable only a while ago.

Not only a careful reader will notice our bellow *intonation*: Slovenia is preparing for its second Presidency of the EU Council, having in mind the Congress of Ljubljana that took place two centuries ago. Diplomacy is null without tradition. See you in autumn.

Ljubljana, April 2020

M. J.

From the Congress of Ljubljana 1821 to the Presidency of the EU Council 2021

guest view

Pandemics on the Rise

Milan Jazbec

Pandemics on the Rise

Milan Jazbec¹

The beginning of the third decade of the still new millennium that the year 2020 brought around looked optimistic, enthusiastic and full of expectations. Relatively speaking, issues seemed to be well in order, if this is a phrase that one could ever afford to use it while commenting and discussing international affairs. We did take this comfort, though.

As it became obvious not less than two months later, things went horribly wrong. That horribly that it was, at least from the beginning, not possible to believe. Not only to believe, but also to comprehend and to accept them in their plain truth. As days passed by, the dimensions of the new corona virus (C – 19) that spread around the globe from China, where it was noticed for the first time, were accelerated with an immense speed. The initial surprise, the scale of speed as well as the scale of intensifying spread of the virus, resulted in rather slow reactions of governments and even slower accommodation of populations being neither prepared nor willing to believe.

First information about the virus came out into public in late December of 2019, while in mid-February of 2020 first measures pointing towards semi lock down started to take place. Already in the first week of March state borders across Europe were closing down. In the beginning of April lock down became phrase of the day and it still is now. Within less than a quarter of the year the whole world was brought to a slow down. One could guess that from the Moon it would have looked like a complete stop of the Earth. For the first time in recorded human history, life on the globe practically stopped, with immense consequences on each field of human activity.

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So, what would be our main observations after having a more careful, structural view upon the pandemics following the first few months of the year?

Firstly and most important for the high spread of the virus around the globe would be that it is due to the globalization that the pandemics hit with such strong avalanche of consequences in such short time. Commonly available air travel to each and every part of the world and production of mass gatherings like football matches have enabled the pandemics to become global shortly. But at the same time, the complete lock down of societies hit back also. At first glance it seemed that the pandemics has endangered globalization and will break its network, when for example a huge demise of international air, sea and continental transport of goods took place – while it practically stopped commuting of people, apart bringing them home from various locations, what looked like almost a war evacuation operations.

Secondly, Europe, the continent with the most developed international structures that makes it unique in global relations throughout recent political history, was hit first and hard. With closing of borders and almost all of international commuting it affected the very heart of its purpose: freedom of travel and the Schengen system with it practically collapsed. An unprecedented, unforeseeable and unbelievable turnaround that we still continue to face. With it solidarity as one of the main values of the European integration system was put to a severe test. A mantra that the European Union, as practically the most complicated structure in human history that is functioning for more than six decades already, was constructed to operate in normal times and not in those of crisis, was confirmed once again.

Thirdly, pandemics did accelerate heavily some of the current trends. Digitalization became notion of a day. World affairs moved from on line to off line and with them the whole spectrum of our lives. This fact intensified physical isolation that was condition sine qua non for slowing down the spread of the virus. We all moved to live digital, practically virtual as a matter of fact. This is tremendously influencing the way we live and we will live when the current pandemics is over. We are getting to know what does it mean to live digital, in unreal space and how to do it. Having in mind the revolutionary advancement of communication technology during the previous few decades, and media technology in particular, this is changing one of the basis

premises of human beings. In addition to this, going on line has many social, psychological, emotional and other consequences. We are discovering them on a daily basis.

One of them is a need that internet access has to be a common good with universal admittance as well as for free. Governments should take care that no citizen would be left without an on line connection. According to the technological advancement and general welfare this should be done fast, efficient and global. When it happens, it will have huge effect on further advancement of our lives. When we return to schools, offices, museums, galleries physically, it will still be important to access all the benefits of Homo sapiens from remote locations. To enjoy summer holidays somewhere in the Pacific or in Hindukush, while admiring and walking digital through Louvre or Tate Gallery.

Human beings are social animals, but we also love to go individual from time to time. Individualism enables us to be social. However, being forced overnight to individualism, although for our own health benefit, causes a variety of negative side effects. Already in these early times of pandemics there is a lot of evidence of increase in family violence, since families are not used anymore to live together day by day 24/7 for longer time. It's not only being capable of continuous living together: there's the case of parents working from home and children learning from home at the same time; in major cases in small apartments with only one or at best two laptops, when each person needs his/her own one and a room to be able to devote to his/her occupation. Individual trauma, stress and phobia increased as well due to the lock down. Although being deeply connected via social media for the last decade, people still need basically daily physical contact, socializing, and outdoor activities. Last but not least, love has already undergone significant changes during the last few decades of intensified globalization (on line dating, remote living from each other etc.). But it is for the first time that young people can not exercise sympathies, dating, love affairs and living together occasionally, but frequently, all this for the case of pandemics. This is further affecting the ability of living together, raising children, having families, and articulating sense of family notion, of tender, intimate closeness. Going individual on a long term basis is a direct consequence of lock down. This correlates with the increase of egoism, selfishness and similar changes of behaviour.

Fourthly, the case of international affairs has been the main frame of visible changes. Hence, let us have a look at geopolitics, logistics and at the relation global – local.

The virus C – 19 appeared for the first time in public in China. The fact by itself immediately contributed to the intensification of already heavily tense relations between the USA and China during last years. Mistrust, skepticism, along with conspicuous theories heated the global rivalry. Along with the spread of the pandemics also the Russian Federation, Brazil, India and some other big powers found themselves in this global theatre, not making the relations cluster a bit simpler. With their different attitude towards the World Health Organization (from a severe criticism to a more advocating views), the UN Security Council reacting slowly as if the pandemics would not have been the biggest immediate threat to global peace and security, and Europeans discussing the necessity of establishing their own Health Body, the policy cacophony is at climax. In addition, in the USA and in Brazil both Presidents exercise strong disbelief in pandemics and similar management of the crisis. The case of European countries, in particular the EU, was already tackled. We can follow a huge variety of approaches to the most dangerous global disease ever on the rise that threatens humanity, which is not reacting unanimously and primarily focused oriented.

Along with this goes not only the claim, but also the evidence that countries with public health systems, like Germany, Finland, Iceland, New Zealand, Denmark and some others, have been quite successful in facing pandemics at this stage (it is noticeable as well that primarily women are prime ministers the case of these countries). This finding is of utmost importance, since elderly and vulnerable parts of populations are mainly exposed to the virus. Another set of evidence shows that cutting down some of basic liberties, like freedom of gathering, for the sake of better responding to the pandemics, influences temptations for concentrating power in the executive branch.

Temporary standstill in global traffic uncovered some logistical aspects that were previously neglected, overlooked or perhaps simply treated as not worth taking them into consideration. This has been mostly visible with the EU's dependence on production of variety of goods in China.

During the first decade of this millennium a trend appeared in Europe of transferring production of goods to China for significantly lower cost of labour force. No policy advice against such practice was listened to and logistics consequently blossomed from this point of view. However, with the course of time, as evidenced in major cases, low quality of that production brought companies to think over such practice. Additionally, when the EU started to strengthen environmental aspects of production with higher taxes it was uncovered that China, being among the biggest polluters in the globe, does not take into account that part of production, and its miscare for the environment. Finally, findings on massive child labour practice started to lower the trend, though not stopping it. When the pandemics broke out it became definitely clear that moving production was above all a kind of free willing step towards higher dependence on China. Europe found itself in a position in which it simply did not have certain production on its territory, being thus forced to import a variety of goods from China (and some other countries, though on a much lower scale). It became clear that production has to be arranged in closer vicinity, within a few days of road transportation. It was only the severe global crisis that pushed for this policy change, not the acceptance of advice. The whole issue could have developed serious political, security and economic consequences.

The think global – act local phrase has been a mantra since mid of the previous century. It was a reflection of enthusiasm while discovering the growing connectivity of global affairs, society and relations. Media and transport technology with its constant and huge advancement was only confirming the fact. The current lock down forced societies to go literary local. Closing of national borders that was soon followed by the closure of regional and municipality borders as well raised the importance of local, in particular since global ceased to be reachable physically, yet only digital. However, due to an unexpected rise of going digital, this dimension brought global again to the forefront, this time only virtually. Closure of borders and huge decrease of travel pointed out that local exists primarily physically and global virtually. It has been for the first time in our history that such high level of complementarity between local and global appeared. The world as a global village received another notion. The level of interdependency as well as of mutual influence between global and local gained on momentum, but with different aspects. Digitalization is becoming one of the winners of pandemics. One could speculate that the global search for a vaccine

will use digitalization as a means of connecting expert teams around the globe to work together without being physically close till the vaccine is discovered and produces mass scale results.

To conclude, one could claim, that pandemics did not endanger globalization, as it might have seemed so at first glance, but has accelerated some of its trends. Among them, digitalization of daily life and public services stands out. But it has also pointed out the psychological aspects of lock downs, like stress, trauma and also intrapersonal violence that have all been on the rise.

We have as well learned once again that globalization is a context and a tool for human and social activities. It does not have substance, content by itself, but it is a useful frame, which forwards, transfers and progressively transmits topics of choice. This is the way globalization influences and changes. And it is up to those who use it for described purposes to choose what kind of substance and messages would be in place.

Finally, one could not avoid an impression that the European Union might be viewed upon as a kind of structural result of globalization. This very fact additionally confirms it as a unique historical project that rests on production of values as its major achievement from the past sixty decades. A broad and huge web of structures that support the EU's activities should keep this in mind for the benefit of us all.

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Diplomacy and Intelligence Services: Reflection on small states

Dancho Markovski¹

ABSTRACT

In a successful realization of foreign policy strategies, diplomatic and intelligence services play a pivotal role. These two services are the most responsible for preparing the information on which the strategy for a particular country or region is based on. Much unlike those of the powerful countries, the activities of small states are mainly focused on protecting their sovereignty and territorial integrity and cooperation with friendly countries and international organizations.

The necessity of coordination the activities of diplomacy and intelligence services in obtaining information concerning national interests of the country is something that every small state should practice. Therefore, properly trained diplomatic personnel qualified to recognize information and events of interest to the national counterintelligence is one of the most important elements of the security system of the country. This paper attempts to highlight basic connections between diplomatic and intelligence services in terms of their ability in accumulating and processing valuable and necessary information.

KEY WORDS: diplomacy, intelligence services, diplomats, small states, embassies, ministry of foreign affairs

POVZETEK

V uspešnem izvajanju zunanjepolitičnih strategij imajo diplomatske in obveščevalne službe ključno vlogo. Te službe so najbolj odgovorne za zbiranje informacij, na katerih so osnovane strategije njihovih držav. Za razliko od velikih držav so male predvsem usmerjene na zaščito svoje suverenosti in ozemeljske celovitosti ter sodelovanje s prijateljskimi državami in mednarodnimi organizacijami.

Nujno sodelovanje diplomatskih in obveščevalnih služb pri zagotavljanju informacij nacionalnega interesa je praksa, ki bi jo morala izvajati vsaka mala država. Zato je med najbolj pomembni elementi varnostnega sistema vsake države, da ima pravilno usposobljene diplomate, da lahko prepozna kontraobveščevalne informacije in dogodke, pomembne za varnost njihovih držav. Članek poskuša osvetliti temeljne povezave med diplomatskimi in obveščevalnimi službami v zbiranju in obdelavi potrebnih informacij.

KLJUČNE BESEDE: diplomacija, obveščevalne službe, diplomati, male države, veleposlaništva, ministrstvo za zunanje zadeve

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INTRODUCTION

Diplomatic and intelligence services are two of the main tools of every modern state, regardless of its size, military power and economic development, for achieving its foreign policy goals as well as protecting its national interests and security. Although these are two different institutions, the spheres of interest in their activities create a link that connects and leads them to the same goal, which is collecting and analyzing information for strategic planning of states' foreign affairs and activities regarding other countries or groups of countries and international organizations.

From a historical point of view, the beginnings of these two institutions date back to ancient times. The need for mutual communication between the rulers created the need for appointing representatives such as messengers, orators, legates, proxies, consuls and ambassadors who, on behalf of their rulers, had been sent to foreign kingdoms. With technological advancements and better means of transportation, states had expanded their interests in mutual collaboration which, in turn, has resulted in the establishment of many consular and diplomatic missions. The main functions of these newly formed diplomatic offices were: representation of their state, negotiation with official representatives of the receiving state, protection of the interests of their state, and ascertaining the conditions and developments of the receiving state. In addition, diplomatic and consular representatives were also instructed to cover the economic situation, the capabilities of armed forces and the military industry, technological development, science and other spheres of social life.

In the Middle Ages, the development of diplomatic missions continued. According to Encyclopaedia Britanica 2020 "In the 15th century, the Italian city-states began to establish permanent embassies in foreign capitals. They used such outposts as intelligence sources and even developed codes and ciphers by which information could be secretly communicated. By the 16th century, other European governments had followed suit".²

Mattingly (1955, p 12) pointed out in his work Renaissance Diplomacy

² Encyclopaedia Britanica Inc. 2020. Encyclopedia Britannica Online Encyclopaedia Britannica, Intelligence International Relations, available at <https://www.britannica.com/topic/intelligence-international-relations/Sources-of-intelligence>

that “The institution of a resident ambassador had been fully developed on the territory of the Apennine Peninsula in 1450, and a few decades later, around the year 1500, it has been spread to other parts of Europe. Their development continued throughout the period until 1914, when it finally came to an end.”³ Hence, this period can be called the beginning of modern diplomacy.

Unlike diplomacy and its diplomatic services, there were much less historical records and literature about intelligence services before the Great War. Andrew (2018, pp 1-12) states “The historian S. Kent, the founding father of the US intelligence analysis, complained that intelligence was the only profession without a serious literature. From my point of view this is a matter of greatest importance. But it doesn’t mean that intelligence is from the new era. On the contrary, the role of a spy is as old as civilization itself. Knowledge has always been power – right back to the earliest settlements and the need of every ruler to find out what his enemies are doing, thinking and planning. Whilst the role of a spy has remained constant throughout the centuries, the means by which agents can steal, learn and acquire secrets has been transformed beyond all recognition.”⁴

From the historical point of view, formation of the first intelligence centers began during the 16th and 17th centuries. Encyclopedia Britannica 2020 - Pre Modern intelligence - Intelligence and rise of nationalism, gives the following chronological order:

“The rise of nationalism was accompanied by the growth of standing armies and professional diplomats as well as by the establishment of organizations and procedures for procuring foreign intelligence. Queen Elizabeth I (reigned 1558–1603) of England maintained a notable intelligence organization. Her principal state secretary, Sir Francis Walsingham (c. 1532–90), developed a network of intelligence agents in foreign countries. He recruited graduates of Oxford and Cambridge, developed the craft of espionage, including tools and techniques for making and breaking codes, and engaged in much foreign political intrigue. Later, Armand-Jean du Plessis, cardinal et duc de Richelieu (1585–1642), and Oliver Cromwell (1599–1658)—whose intelligence chief, John Thurloe (1616–68), is often cited as an early master spy—developed notable intelligence systems. The

³ Mattingly, G., Renaissance Diplomacy, Houghton Mifflin Company, Boston, The Riverside Press, Cambridge, 1955, p 12

⁴ Andrew, Christopher, “The Lost History of Global Intelligence,” Secret World: A History of Intelligence, Yale University Press, New Haven; London, 2018, pp. 1–12. JSTOR, available at www.jstor.org/stable/j.ctv5cg9n4.4, accessed 22 May 2020.

intelligence operations of the Great Powers also included secret channels of communication, the penetration of émigré circles, and the assassination of enemies of the state.”⁵

The latest stage in the development of the intelligence services continued with the division of the world by formation of military alliances such as the NATO Pact (1949) and the Warsaw Pact (1955), led by the United States and former USSR respectively. Guided by the idea of creating a greater sphere of influence in the world, these two superpowers created a bipolar world, followed by the Cold War.

The Cold War⁶ (1947-1989) was conducted, to a greater extent than ever before, as a war of espionage; the intelligence services were used to both, gauge the strength of enemy forces and shore up various political systems. The collapse of the Warsaw Pact in the 1990s heralded a further paradigm change for the world’s intelligence agencies, which are now forced to deal with industrial espionage and since 2001, the threat posed by international terrorism.

DEFINITION AND FUNCTIONS OF DIPLOMACY AND INTELLIGENCE SERVICES

In contemporary literature, we can find various types of diplomacy interpreted in several different ways. This means that there are different ways of conducting diplomatic activities such as: military diplomacy, economic diplomacy, cultural diplomacy, public diplomacy, summit diplomacy, to name a few, that all serve different aspects of interest and cooperation between states, but fall under the same general meaning. Due to this fact, it is tough to nail down a single unified definition for the term diplomacy.

Diplomacy does not have a single definition because the term itself has multiple meanings and interpretations. It can be treated as a state activity, a function or a body, as a skill for conducting negotiations and protecting the interests of the state as well as a profession or art, a science or practice. In this direction (Boichev 1998) offered the following descriptions: “1) diplomacy is a means of conducting state affairs in the field of foreign policy through official relations with other countries and international organizations; 2) it is the form and

⁵ Encyclopaedia Britannica, 2020. Encyclopaedia Britannica Online. [online] London: Encyclopaedia Britannica (UK). Available at: <https://www.britannica.com/topic/intelligence-international-relations/Sources-of-intelligence#ref16269>, Accessed 22 May 2020.

⁶ <https://www.deutsches-spyagemuseum.de/en/espionage>.

content of the relations between the states, through official contacts, in order to regulate the mutual problems and interests and to conclude mutually acceptable agreements; 3) diplomacy is a practiced activity of the bodies for external representation of the state (head of state, prime minister, foreign minister, diplomatic missions, etc.) during official visits, international conferences, etc.; 4) ability, knowledge and skills to conduct negotiations with other countries, but also to conduct negotiations and mediation in the regulation of international conflicts, finding compromise and acceptable solutions, as well as to expand and deepen international cooperation; 5) diplomacy is a frequently used synonym for operational government department - the Ministry of Foreign Affairs; 6) it is a profession and a career, that belongs to the circle of people who are engaged in foreign policy and represent their own country in relations with other international entities.”⁷

Furthermore, in modern science, diplomatic law is defined as a set of all norms of international law relating to the rights and duties of states regarding diplomatic relations, functions, immunities, privileges, and other statutory and functional aspects of diplomatic representation. That right is codified in the 1961 Vienna Convention on Diplomatic Relations (VCDR), which in Article 3 determines:

- “1. The functions of a diplomatic mission consist, *inter alia*, in:
 - (a) Representing the sending State in the receiving State;
 - (b) Protecting in the receiving State the interests of the sending State and of its nationals, within the limits permitted by international law;
 - (c) Negotiating with the Government of the receiving State;
 - (d) Ascertaining by all lawful means conditions and developments in the receiving State, and reporting thereon to the Government of the sending State;
 - (e) Promoting friendly relations between the sending State and the receiving State, and developing their economic, cultural and scientific relations.
2. Nothing in the present Convention shall be construed as preventing the performance of consular functions by a diplomatic mission.”⁸

The process of change in international relations, which started in the last decades of the XX century and especially at the beginning

7 Bojčev, Dušan, *Дипломатски Речник*, ТИВ-ТОП. ДОО, Скопје 1998.

8 United Nations, Treaty Series, vol. 500, p. 95., Vienna Convention on Diplomatic Relations, Articles 22-27, available at https://legal.un.org/ilc/texts/instruments/english/conventions/9_1_1961.pdf.

of the XXI century, in terms of democratization, modernization, and dependence among states led to the creation of modern diplomacy. The reasons that have led to this transformation are: a) the democratic changes in southeastern Europe that took place with the fall of communism; b) the creation of several new international entities (newly formed states and international regional organizations; c) the emergence of new participants in international relations, represented in non-governmental organizations (NGOs); interested business groups, individuals and civic associations; d) the creation of public diplomacy; and e) the development of information technology, the Internet and the creation of global (real-time) media houses. (Markovski 2017, p. 9).

Regarding the changes in modern diplomacy, Melissen (2009, p 18) states that “Multiple changes in the official diplomatic environment of the profession have added new tasks. In addition to the list of diplomatic functions in the VCDR, additional tasks have emerged or gained more emphasis, and other skills are needed, such as management, coordination, and mediation between different players within a complex government bureaucracy, lobbying and dealing with the media.”⁹

Much like for diplomacy, there is no universal definition for intelligence services. In continuation, there are several different examples of what the intelligence services entail.

Stajić (2003, p 183) states that “today, the intelligence service is defined as a specialized and relatively independent institution of the state apparatus. It is authorized by legal, but also secret means and methods to collect significant intelligence and information about other states or its institutions and possible internal opponents of its state. This also includes undertaking actions in peace and war and implementing a part of the state and political goals of the country by its activity, independently or in cooperation with other government bodies.”¹⁰

On the other hand, according to Milosevic (2001, p 23) “intelligence services represent a specialized organization of the governmental structure which, by specific methods and means, conducts intelligence, security, subversive and other activities intended to protect internal

⁹ Melissen, Jan., Inovation in Diplomatic Practice, Просветно дело АД. Скопје, p.18.

¹⁰ Stajić Ljubomir, Osnovi bezbednosti, Policijska akademija, Beograd, 2003, p 183.

and external securities and the realization of strategic goals of its state, as well as protection of interests.”¹¹

Furthermore, Bimfort (1958, p. 76) alleges “the US Central Intelligence Agency CIA in one of its definitions describe Intelligence as the collecting and processing of that information about foreign countries and their agents which is needed by a government for its foreign policy and for national security, the conduct of non-attributable activities abroad to facilitate the implementation of foreign policy, and the protection of both process and product, as well as persons and organizations concerned with these, against unauthorized disclosure.”¹²

As for the functions of intelligence services, it is safe to say that they are an integral part of the definitions themselves. “The intelligence cycle consists of five interconnected aspects: (1) establishing collection requirements; (2) the collection itself; (3) processing and exploitation of the collected materials; (4) analysis and production of the result, and (5) dissemination of the product to the decisionmaker”. Bruneau (2008)¹³

Furthermore It should be noted that intelligence service has a time factor. Important information must be quickly collected, analyzed, and delivered in time for the user to act upon it.

It is important to note that unlike diplomacy, which conducts its functions transparently, the intelligence services have a much more covert approach to its activities. That is why today there exist: intelligence services, counterintelligence services, military intelligence, economic and industrial intelligence, cyber intelligence, police intelligence, etc. who create a security community.

It is self-evident that an intelligence service without a valuable intelligence for a country’s national security cannot justify its existence. Although 90% of the intelligence of the external Services comes from open sources, such as media, the internet, public statements etc., it is the 10% of the collected secret intelligence which creates the added value of the Services. Without secret intelligence, external intelligence

11 Milošević Milan, Sistem državne bezbednosti, Policijska akademija, Beograd, 2001, p 23.

12 Bimfort, T. Martin, A DEFINITION OF INTELLIGENCE, https://www.cia.gov/library/center-for-the-study-of-intelligence/kent-csi/vol2no4/html/v02i4a08p_0001.htm.

13 Bruneau, Thomas C. (2008) ‘Democracy and Effectiveness: Adapting Intelligence for the Fight Against Terrorism’, International Journal of Intelligence and CounterIntelligence, 21:3, 448 – 460 <http://dx.doi.org/10.1080/08850600701854094>

services would not differ from institutes of foreign policy analysis. The equivalent for a diplomatic service would be to rely solely on the media for its country reporting. External services seek intelligence about the national security of the target country. It is precisely the intelligence that the target country wants to protect (Apostolidis 2007).¹⁴

In today's world we are witnessing organized security system has been build from various agencies and government institutions responsible for different area of interest like international terrorism, proliferation of weapon of mass destruction, fight against narcotics, Islamic fundamentalism, as well as industrial espionage, money laundering etc. A system of mutual cooperation between countries has been developed, especially in international organizations such as the European Union or NATO.

Vitkauskas, (1999), argues that : “ one type of espionage that has not declined but rather expanded after the end of the Cold War is economic espionage. In the competitive global economy on the verge of the next century, acquiring scientific and technological information for the purpose of gaining an economic advantage has become increasingly important for many countries. Economic espionage can be defined as the use of, or facilitation of, illegal, clandestine, coercive or deceptive means by a foreign government or its surrogates to acquire economic intelligence. Economic espionage exposes the targeted state’s companies to unfair disadvantages, jeopardizing the jobs, competitiveness of the state, and hampering its research and development investment.”¹⁵

INSTITUTIONAL CORRESPONDENCE BETWEEN DIPLOMACY AND INTELLIGENCE SERVICES

Keeping in mind that this is a complex system that serves the strategies and goals of states, diplomatic missions are only one segment of a much larger apparatus, therefore, special attention will be given to particular points of connection that sheds light on the formation of the relationship between diplomacy and intelligence. It is important to note that the intelligence services in some countries have been known to be utilized by several different institutions. In addition to this, each of the institutions has a different approach to intelligence services due to the fact that each has a different field of interest. Having said that,

14 Apostolidis, Pavlos, INTELLIGENCE SERVICES IN THE NATIONAL SECURITY SYSTEM : THE CASE OF EYP, p 13, available at https://www.files.ethz.ch/isn/39782/OP07_03_eng.pdf, accessed on 4 June 2020.

15 Vitkauskas, Dovydas, THE ROLE OF A SECURITY INTELLIGENCE SERVICE IN A DEMOCRACY, NORTH ATLANTIC TREATY ORGANISATION, Democratic Institutions Fellowships Programme 1997-1999, p 4.

it becomes clear that it is impossible to give intelligence services one uniform shape. This is also supported by the fact that each country creates and tailors their intelligence services to its political, economic and military status, as well as its interests in international affairs.

As a norm, every modern state has developed and established some form of intelligence service. The level of development is directly dependent on several factors. The most important are policy (peaceful, expansionist, nationalistic etc.), resources and other advantages or disadvantages which dictate the conditions of its work. The Super Powers have intelligence systems that are composed of separate services which specialize in different areas. However, this does not mean that the overall activity of these services is decentralized. In fact, it is quite the contrary; the necessity for coordination of the intelligence services from one center is of upmost importance and is the basic precondition for their effectiveness and efficiency.

Furthermore, intelligence services can be self-contained and installed in individual governmental institutions and departments such as the Ministries of Interior, the Ministries (or departments) of Defense, and the Ministries of Foreign Affairs (MFA). Usually, these departments include separate intelligence units and individuals. However, sometimes they can be found operating within independent legal institutions.¹⁶

This type of organizational structure can sometimes result in parallelism of the performance of tasks and lead to irrational use of available potentials and material resources. Therefore, the handling of these services is usually entrusted to senior management officials with diplomatic statuses within the ministries. These tasks are also related to other governmental institutions, especially in the collection of data, assessments, and certain analyzes on important issues or situations of wider interest. But it is important to mention that their primary task is to act accordingly to the needs of their departments. However, if needed, they can expand their activities at the request of the central intelligence service.

¹⁶ The Service for investigation and Documentation (SID) of the Federal Secretariat for Foreign Affairs of the SFRY was legally defined as part of the state security system; it was intelligence, but also counterintelligence. It has operated through Yugoslav diplomatic and consular missions. They were not classic secret agents but persons involved in diplomatic missions abroad. In some cases, Secret services of the host country knew about them. They were mostly cultural, economic attachés, embassy political secretaries, etc. See more in Croatian weekly magazine National, NOVA SAZNANJA O DJELOVANJU BEOGRADSKIH TAJNIH SLUŽBI UZ KOS i Udbu, i SID je uhodio u Hrvatskoj, published in magazine Nacional, nr. 538, 2006-03-06.

Given that this is a complex system which serves the foreign policy strategies of states, which diplomatic missions are a part of, it is important to focus on certain points of connection from which the institutional relationship between the diplomacy and the intelligence arises. Diplomatic and consular offices do not have uniformity in their structures because they differ from state to state. Unlike small or developing countries, the great powers have much more advanced diplomatic missions, both organizationally and functionally. The size of expanded deployment of diplomatic missions is in direct correlation with the type of the receiving State, especially on its geostrategic position, the role it plays, or could play in international relations, military power, natural resources, economic potential, or internal policy.

Markovski (2002)¹⁷ claims that, in principle, the structure of a well-developed diplomatic mission consists of several main organizational units:

“The political department usually headed by the deputy chief of mission deals with matters relating to the overall socio-political life of the receiving State. This department is responsible for following the political events and media in order to be able to establish and maintain contacts with important political figures, representatives of government institutions, representatives of the political parties in power or opposition as well as with prominent individuals from social, political, and cultural life in the country. At the same time, it is responsible for creating biographical profiles of influential and powerful individuals from the receiving state. The activity of the department, due to its scope and content, is directly dependent on intelligence purposes.”

An economic department consists of several diplomats responsible for: commercial, scientific, technical, agricultural, or civil aviation to name a few, and is responsible to follow the overall economic life of the receiving State.

A consular department is responsible for the protection of the interests of the sending state. Under its domain fall the visa regime, official (identification) documents and issues of an administrative-legal nature, citizenship, and legal protection. Therefore, it has a regular contact with the state and local authorities, police, and immigration

¹⁷ Марковски, Данчо, Дипломатија, организација и практика, Кинематика, Скопје, 2002, p. 28.

representatives, as well as with the services that are responsible for protection from international terrorism and organized crime. This department also monitors the movement of foreign persons of special security interests, who are registered on the list with special police measures.

An administrative department includes security officers, operators and other personnel responsible for maintaining the communication as well as coded communication systems with their own country.

Diplomatic missions include also military attachés and military intelligence units. In recent years, many states started the process of signing mutual agreements for exchanging intelligence officials. Sending this personnel to the embassies is most common in the format of contact officers, police attachés, etc.¹⁸

Besides the proclaimed principle of equal importance of diplomatic missions, in practice, their political influence is conditioned by the power of the state they represent. This is broadly influenced by establishing an institutional relationship between diplomatic and intelligence services. Some countries with developed intelligence positions abroad, attempt to regulate these institutional relations and to coordinate their activities.

The need to incorporate the intelligence component into diplomatic missions, among other things, stems from the convenience that diplomacy provides. Hence, the privileges and immunities of diplomatic representatives, the inviolability of the premises of the representative offices, documentation, archives, and property stipulated by the VCDR,¹⁹ provide ample opportunities for uninterrupted performance of official functions, and also to cover certain intelligence tasks entrusted to state institutions. Taking into consideration that diplomatic representatives use legitimate opportunities to gather information, it is very difficult to recognize the elements of intelligence in their work. Monitoring and analysis of daily newspapers and publications, use of information from the media, directly observing events, and institutions of interest, contacts with scientific, cultural and other institutions, with celebrities from the public and political life of the country, are

18 North Macedonia signed this type of agreement with 40 countries, primarily in Europe, the Middle East, and Eurasia. Богдановски, Андреја, Управување со безбедносно – разузнавачките служби во Македонија, Analitica 2012 p.12 https://www.analyticamk.org/images/stories/files/report/r01_mak.pdf.

19 United Nations, Treaty Series, vol. 500, p. 95., Vienna Convention on Diplomatic Relations, Articles 22-27, available at https://legal.un.org/ilc/texts/instruments/english/conventions/9_1_1961.pdf.

part of wider opportunities for diplomats to get the required data. The channels published through WikiLeaks²⁰ have made it clear that the subjects of interest of diplomats extend to all spheres of the social and political life of the receiving State, and public figures.

Media is a very important source of information for diplomats. The obtained information is always analyzed thoroughly. Diplomats usually do this through direct contact with individuals/persons who are familiar with the relevant issues. Thus, operational information is prepared by comparing and analyzing data obtained from multiple sources. The durability of the content of the operative materials is directly dependent on the skills of diplomatic representatives.

Diplomatic missions also make use of clever propaganda activities, as means to gain extra influence in the receiving state. For that purpose, cultural and information centers are established in all major cities of the receiving states. The aim of these centers is to attract as many local people as possible through organizing various activities and cultural events. These centers can be established and organized by diplomatic missions with varying degrees of independence in their work. The main goal is to provide the highest possible level of presentation of the country they represent. This is why public diplomacy has become such an important tool in more recent decades.

However, it is important to note that intelligence centers are not established in all diplomatic missions. On the contrary, most diplomatic missions have no direct connection with intelligence activities. Also, the duties and limits of the activities of diplomats and consuls are defined by international law. This means that diplomats, in the fulfillment of their functions, have to remain within the framework determined by international law.

THE ROLE OF DIPLOMACY AND INTELLIGENCE SERVICES OF SMALL STATES

Small states cannot work miracles in the globalized world still dominated by great powers, but they can study what has worked in the current world order for fellow Lilliputians. Yet, major successes for small states in the face of globalization are relatively few. What has given small states their occasional successes against the agendas of larger states, however, are concentration of limited resources in the

20 See more on https://wikileaks.org/plusd/cables/09SKOPJE601_a.html.

most critical arenas, the ability to focus on key goals, better knowledge on the issues than that of larger powers, and an exquisite sense of when to act (Corgan 2008).²¹

Consequently, small states are at a great disadvantage. Ignorant of the trends in other countries, they are unable to predict; they are thus unable to prepare for international events bearing on their security. Conversely, larger nations, with adequate information about the developments in the small states, can work to manipulate these developments to their own advantage. In this sense, Teirila (2015) reminds that Edward Snowden's leaks and revelations concerning the United States' National Security Agency (NSA) might not have revealed anything new or astonishing about the ancient techniques of diplomacy, but they have awakened Europeans to the reality of life with first-class superpower(s).²²

Cohesion often accompanies smallness. This assists in creating common purpose and consistency in the foreign policies and diplomacies of small states. It can reduce complications in governance arising from the competing or conflicting interests and perspectives of a complex and diverse society. Yet resource constraints mean that small states often have fewer resources necessary for effective interaction with other states. Resources required for gathering and analyzing relevant information, for elaborating and projecting positions and points of view, and for marshalling and deploying alignments and circumstances in support of their positions may be in short supply.²³

Talking about the security of small states, Maniruzzaman (1982) highlights the importance of diplomacy. "Since the small states by definition lack an adequate traditional war capability, they must make up for their deficiency by excellence in diplomacy. They cannot, therefore, afford to have ebbs and flows in their diplomatic excellence. For a small state, high quality diplomacy must be a constant phenomenon in its external relations. Constant quality is best assured by developing institutions such as a foreign office, and a professional diplomatic service manned by skilled and competent diplomats who,

21 Corgan, Michael, Small State Diplomacy, AUG 12 2008, available at <https://www.e-ir.info/2008/08/12/small-state-diplomacy/>, accessed on 03 June 2020.

22 Olli J. Teirila, Small States Intelligence Dilemmas: Struggling between Common Treat Perceptions and National Priorities, International Journal of Intelligence and Counterintelligence, Volume 28, 2015, Issues 2, available at <https://www.tandfonline.com/toc/uji20/current>.

23 Diplomacy of small states, available at <https://www.diplomacy.edu/small-states-diplomacy#ff1-38> , accessed on 6 June 2020.

together, can bring expertise, experience and a long view to bear the efficient and effective formulation and implementation of foreign policy.”²⁴

Unlike powerful and developed countries, small states are faced with limited opportunities in terms of military might, economic power and human resources. Regardless, almost as a norm, every modern state has developed and organized an intelligence service to some extent. The level of development of a security system very much depends on the countries’ national policies (peaceful, expansionist, nationalist, etc.), material and other possibilities of the countries which in turn condition the work done in intelligence spheres. Often, the position of intelligence systems in small states is defensive. Their activities are mainly focused on protecting their sovereignty and territorial integrity, cooperation with friendly countries and international organizations as well as security systems.

The disappearance of the era of colonialism and the establishment of the United Nations, the European Union, the OSCE, as well as many other organizations at the global and regional levels, has a positive impact on small states in terms of their international position. Gashi (2016) sees this as an opportunity. The only way to avoid the insecurity, which is for small states in international relations much greater than for large states, is their association with international organizations, because in this way they perform two functions: first, they “control” the rigid stand of large states through joint rules and valuable principles for all. Second, these institutions provide a chance for small states to express their opinions in the last instance, and to use the veto against important decisions which are of a national interest.²⁵

In this context, Gacinovic (2018, p 169-183) states the following: “The security of each state is based on the elements of its national potential which are primarily: the size of the territory; economic strength; geographical position; raw materials; dependence on foreign markets; technical and technological capacity; national character; the efficiency of government to implement decisions; production power; reserves; the educational level of the population and national morality and internal solidarity. Given that small states are very vulnerable in terms

²⁴ See more at The Security of Small States in the Third World TALUKDER, MANIRUZZAMAN, The Security of Small States in the Third World, Canberra Papers on Strategy and Defence No.25, Australian National University 1982, p 28.

²⁵ Gashi, Bejtush, The role and impact of the small states’ diplomacy on regional and international security, ILIRIA International Review – Vol 6, No 1 (2016) p 156.

of security, greater efforts are made to build elements of national power.” He also argued that “assumptions based on which “small state” would be safe depend on its powerful allies; significant natural resources that it wisely exploits, /.../, and continuously build a national identity, it invests in science and culture and the democratization of society.”²⁶

The constitutional provisions of many small states provide the following important functions: security and the protection of national sovereignty; securing and protecting the independence and territorial integrity; conducting international policy and exercising and protecting the fundamental freedoms and rights of citizens. For example, the Macedonian secret service (The Intelligence Agency (AR)) is defined as a special body of state administration and is, in compliance with the law on AR, authorized for collection, analysis and processing of the intelligence information relevant for security, defense, political, economic and other interests of the Republic of North Macedonia.²⁷

Mellon (2007, p. 8) states that “the decision to establish intelligence services depends on many factors, including the specific needs of the government, the potential threats facing the state and its population, the human and financial resources available to the intelligence services, and the political will to engage in intelligence activities. Further, he explained that most countries around the world have established at least one of four types of intelligence services: domestic, foreign, criminal, or military. In some countries, one organization may play the role of two or more intelligence services, however, either for legal reasons or to protect the different specifics and mandates of each service, most democracies avoid establishing intelligence services that play more than one role.”²⁸

Here, it is noteworthy to look into the creation and establishment of intelligence services in the states that were part of former Yugoslavia. After its dissolution, these newly created small states had to overhaul their internal mechanisms that were up to that point a Yugoslav central service. In doing so, these states were forced to abandon the

26 Габиновић, Радослав, ПОЛИТИКА БЕЗБЕДНОСТИ МАЛИХ ДРЖАВА, ОГЛЕДИ И СТУДИЈЕ, Српска политичка мисао пг 1/2018. year. 25. vol. 59 p 169-183 СПМ пг. 1/2018, year XXV, Issue 59.

27 The Intelligence Agency of the Republic of North Macedonia, available at https://www.ia.gov.mk/eng/index_en.html.

28 Mellon, Jérôme, SHVATANJE OBAVEŠTAJNIH SLUŽBI, Forum of civil initiative, 2006, p.8.

communist systems, as well as political processes against “domestic enemies” in which diplomatic and consular staff was involved. A number of diplomats, given their ideological affiliation, were subjects of lost confidence by the new governments.

Akrap and Tuđman (2014), in their research paper,²⁹ analyzed Service for investigations and documentations (SID) as a part of former Yugoslav intelligence system. SID acted as a foreign intelligence service of the SFRY. As a “priority, SID was gathering intelligence about “unwanted emigration” abroad (especially about the Croats, Serbs and Kosovar Albanians). That was the reason for creating several agent networks abroad. Members of SID were, quite often, members of the SFRY’s diplomatic and consular missions. According to the information that authors obtained during interviews with former employees of Yugoslavian Intelligence Community (IC), about 60% of all intelligence about persons that were, by communist authorities, treated as “dangerous emigrants”, was collected through the SID agent networks.”

Another example of a major change in diplomatic staff for these reasons was Bulgaria, which fired a significant number of diplomats.³⁰ In the Western Balkan countries, the security and intelligence systems are mainly composed of one civilian and one military service. Usually, civilian services have the status of autonomous institutions established by a special law, while military services are placed within the ministries of defense and are regulated, in most cases, by defense laws (Stevanović 2016, p 6).³¹

The foundation of intelligence services and diplomacy took place in a complex process, in which democratic and professional conditions and joint collaboration in their activities had to be incorporated.

The intelligence systems of three countries—the United States, the Soviet Union, and the United Kingdom—have been used as general models for the organization of most other intelligence services. The American

²⁹ Akrap, Gordana, & Tudman, Miroslav, From totalitarian to democratic intelligence community – case of Croatia (1990-2014), pp.80-90.

³⁰ *P. Blagojević Izvor Južne vesti | NIŠ 23.02.2011.* Bulgarian consul worked for the secret service? Due to the disputed past, apart from Yurukov and Dimitrov, the Government has initiated the procedure of dismissal of as many as 40 high diplomatic representatives from all over the world. Among the names proposed to Bulgarian President Georgi Parvanov for dismissal include ambassadors to Germany, Italy, Spain, Japan, Britain, the Vatican, Russia, Switzerland, Greece, Bosnia, Kosovo, the Vatican, and even Bulgaria’s ambassadors to UNESCO and the United Nations.

³¹ Stevanović, Andrej, *LEGAL ORGANIZATION OF SECURITY SERVICES IN THE WESTERN BALKANS: BOSNIA AND HERZEGOVINA, MONTENEGRO, ALBANIA, MACEDONIA AND KOSOVO*, Unagraf, BEOGRAD, June 2016, p 6.

system was adopted by many of the countries that came under the U.S. influence after World War II; that of the Soviet Union was instituted in most communist countries, and that of the United Kingdom was used by most countries with parliamentary governments.³²

In small states, Ministries of Foreign Affairs, with their diplomatic networks, have an important role in matters of national security. By collecting security information, creating operational analysis, monitoring the political, economic, and other issues in a particular state, which has a reflection of the national interest and provides appropriate steps or attitudes of the government to intercept and respond accordingly.

Limited human and financial opportunities do not a priori mean that small states have quite limited security potential, especially if we take into account their defensive policies, unlike the big players in the international community. The necessity of creating professional, well trained diplomats emerged as an important condition for Ministries in fulfilling their tasks.

This is a relevant factor in a country's security system. Most South East European (SEE) countries have managed to make significant changes and meet the required standards in their diplomatic services.

Practically, education has to be focused on: mastering diplomatic techniques and tactics in fulfilling tasks at work; Going through security courses and raising the capability level of personal security culture; the ability for personal counterintelligence protection and protection of the diplomatic mission; training for conversations, analyzing and transferring and requesting information; way to create a business, social and friendly relationships, observation of important political events, etc.

One of the most important elements in the work of diplomats is the creation of operational documents, such as telegrams, information, analysis, reports, and reminders. It is a complex process involving the diplomats' operational activities. These documents provide all the information gathered by diplomats. The collection of quality information and their transformation into usable operational documents is one of

³² Encyclopedia Britannica, Intelligence, International Relations, available at <https://www.britannica.com/topic/intelligence-international-relations/National-intelligence-systems>, accessed on 25 May 2020.

the most important indicators of the success of an embassy, as a relevant and useful segment in the security system of the country.

By its very nature, diplomacy is the first line of defense for any country, especially for small states. However, this conclusion needs to be taken conditionally because it depends on several factors such as organized central service (MFA), developed diplomatic network, highly trained diplomatic staff, and above all, built analytics. Analytics is the most important segment in the work of any MFA. It is a service that ensures the dynamics and interoperability of the work of embassies and senior diplomats within the ministry. During their public appearances or conversations with foreign officials, it analyzes relevant information concerning the area of national security and the interest of the state. Under the authority of the ministry, it cooperates with state bodies, scientific institutions, and competent individuals, and prepares analysis, information, and operational materials on certain issues of high-security interest. Department for Analytics is in charge of planning the activities of the embassies/diplomats, the preparation of the work-action plans, the reports, and the analysis that are submitted to the highest representatives of the state. This directorate also prepares proposals for the country's foreign policy strategy in international relations. It is a mirror that reflects the organization's structure and success in implementing its foreign policy strategy and goals.

Analytics department is a place where thousands of telegrams flow, containing a variety of information from a variety of sources. This information needs to be professionally classified based on its significance and appropriately processed to the extent of useful informative-operational material that has multiple purposes according to its intelligence character (political, military, economic, etc.). As a rule, the prepared analytical materials are submitted to the competent bodies. Most often, small countries have a so-called National Security Council, where the competent ministers hold meetings, review information and take a stand. Usually, these bodies are under the authority of the Prime Minister or the President of the country. The reached operational conclusions are within the competence of the secretariat in which deputies had been usually nominated.

On the other hand, by its nature and importance, analytics is the contact point for the intelligence services of small states. Unlike the intelligence services, the opportunities available to diplomacy to gather

information on various areas, events, institutions, and individuals are much greater. The information and knowledge processed by the analysis of its quality and quantity is a useful platform for intelligence work. Well-established cooperation in the exchange of information, as well as compliance with certain security activities, should be the formula for success in the country's security protection.

However, in practice, a different situation can be encountered. It is usually caused by two factors: First, the absence of an established mechanism for the manner of delivery and processing of telegrams and operational materials; and second, the lack of a two-way communication, like joint coordination and cooperation. In both cases, there is a negative impact on the foreign policy of small states and their security. In the first case, we have a mechanical distribution of telegrams without knowing where and how they ended up and whether they aroused interest or so called "shot in the dark". Second, the absence of response means that the MFA and embassies have spent unnecessary resources. Such uncoordinated activities of diplomats could lead to their passivation/passiveness and disinterest.

The reasons for such situations are of various natures, ranging from poor institutional set-ups, the perception of the security component by the responsible representatives of the state, to the mutual distrust and rivalry of the institutions. A situation that negatively affects the already limited security systems of small countries, whether they are in the NATO or EU system or not.

Therefore, the creation of a professional and efficient diplomatic service should be imperative for small states as V. Patterson states "diplomacy is a machine for gathering information."³³ Nevertheless, it should be added that its success depends on the established institutional cooperation and coordination.

33 Paterson, William, E. 1969. Small States in International Politics. In: Cooperation and Conflict 4 (1969), pp. 119 - 125.

CONCLUSION

Diplomatic services are facing increasing demands for implementation of new sophisticated tools that require a change in the current way of bilateral representation. These new changes stem from the need to protect the interests of citizens and to achieve nations' goals through collecting and analyzing data, conduct of negotiations and, in particular, to promote its interests in all areas both bilaterally and internationally.

In this direction, the role of the embassies of the small states should be considered from various angles. Their activities are beyond the basic function given by VCDR. The modern embassy is a center for creating public opinion/image of the sending state through public diplomacy. The Embassy sets tone and dictates the dynamic of the bilateral relations.

Diplomats, especially ambassadors, are requested to be engaged in cultural and scientific cooperation, organizing various events across the country and establishing connections of prominent persons from both sides. Embassies provide necessary tourist information about its state. They also provide assistance for domestic and foreign companies for establishing economic and trade cooperation.

In a word, an Embassy is a hotspot for all relevant information that is collected all year round. The possibility of regular communication with the highest officials of the receiving state implies that diplomats are closest to the source of information. Through their daily activities, diplomats collect around 80 percent of intelligence information using legal means. The question is how and in what way this information has been used by the intelligence community of their country. What is the readiness of the intelligence service to cooperate with the Embassy? Is there willingness for mutual exchanging information and coordination of certain activities of national interest activities? This and other similar issues are of great importance to small states. Failure to comply with the established rules means a serious breach of the country's security system. Unfortunately, in some small states, these problems can be encountered. The reasons for this should be sought in the absence of a developed state apparatus, lack of trained staff, the rivalry between the Ministry of Foreign Affairs and the intelligence services, disrupted democratic processes and abuses of the security services, etc.

Most Ministries of Foreign Affairs have instructed their Embassies to abandon the classical model of diplomacy, over a decade ago. Instead, they have begun to utilize a new approach in the methods of their work. Efforts of nations to secure the most favorable position on the international stage and the supremacy of their relations to gather as much information as possible in all areas of interests have without a doubt expanded the boundaries of modern diplomacy. From there, it becomes clear that in order for diplomacy to achieve all the given tasks it must have an increasingly close relationship with the intelligence services.

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Responsibility of the United Nations for peacekeeping operations: recent developments in dual attribution

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ABSTRACT

This article critically examines the existing practice on the topic of responsibility for the United Nations (UN) peacekeeping operations. Peacekeeping is a tool that has encountered many changes during the past few decades. It has developed into an instrument that can be authorized to use force beyond self-defense in a high-risk environment with limited consent by the Host State. This increased authorization to use force has also brought about an increased risk for potential wrongdoings by peacekeepers and has highlighted the issue of UN responsibility. It has long been the practice of the Organization to assume exclusive responsibility for peacekeeping operations. Yet, due to its broad immunities and other jurisdictional issues, this largely remains a theoretical concept. As a way around this stand-still, cases have been filed at national courts of troop-contributing States. In the recent judgment of *Mothers of Srebrenica*, the Supreme Court of The Netherlands had issued a ruling in which The Netherlands was found partially responsible for their actions. This brings to question the fairness of the current situation in which only one actor out of the two involved on a peacekeeping mission accepts its share of responsibility.

KEYWORDS: Responsibility, peacekeeping, United Nations, state responsibility, dual attribution, international organizations, international law, *Mothers of Srebrenica*.

POVZETEK

Članek analizira trenutno prakso na temo odgovornosti za mirovne operacije Združenih Narodov (ZN). Mirovne operacije so orodje, ki je v preteklih desetletjih doživelvo veliko sprememb. Postale so instrument, ki je lahko avtoriziran za uporabo sile tudi v drugih slučajih kot le v samoobrambi, ki deluje v visoko riskantnem okolju, z omejenim soglasjem države gostiteljice. Povečana avtorizacija za uporabo sile s sabo prinese tudi večje tveganje za potencialna protipravna ravnanja s strani mirovnikov ter osvetli problem odgovornosti Združenih Narodov. Ustaljena praksa ZN na tem področju je, da sami prevzamejo vso odgovornost. Vendar zaradi širokih imunitet ter drugih težav povezanih z jurisdikcijo to ostaja predvsem teoretični pojem. Da bi zaobšli to pomanjkanje odgovornosti, so oškodovanci začeli vlagati tožbe tudi na sodišča držav članic, ki prispevajo svoje kontingente. V nedavni sodbi *Matere Srebrenice* je Vrhovno sodišče Nizozemske izdalо sodbo v kateri je spoznalo Nizozemsko delno odgovorno za njena dejanja na relevantni mirovni operaciji. Posledično se lahko vprašamo o pravičnosti trenutne situacije v kateri le en udeleženec od dveh, ki sodelujeta na mirovniški operaciji, prevzema svoj del odgovornosti.

KLJUČNE BESEDE: Odgovornost, mirovne operacije, Združeni Narodi, odgovornost držav, dvojna atribucija, mednarodne organizacije, mednarodno pravo, *Matere Srebrenice*.

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* This research is based on her unpublished master's thesis titled Responsibility of the United Nations for peacekeeping operations; discussed through dual attribution (2020).

INTRODUCTION

“Our first duty is to uncover, and confront, the full truth about what happened. For us who serve the United Nations, that truth is a hard one to face. We can say – and it is true – that great nations failed to respond adequately. We can say – and it is also true – that there should have been stronger military forces in place, and a stronger will to use them. We can say – and it is undeniable – that blame lies, first and foremost, with those who planned and carried out the massacre, or who assisted them, or who harboured and are harbouring them still. But we cannot evade our own share of responsibility”.

The speech was delivered at the tenth anniversary of the Srebrenica massacre by the former United Nations (UN) Secretary-General Mr. Kofi Anan (2005). The tragic events which occurred in Bosnia and Herzegovina around the year 1995, have shed light not only on the primary responsibility of the perpetrators but also on the less obvious one of the UN and The Netherlands whose troop contingents were deployed in Srebrenica during these crucial times.

The UN has been criticized for its failure to respond appropriately on the mission, and afterward for its failure to accept its share of legal responsibility (McGreal, 2015).² It has long been the practice of the UN to only accept political responsibility for peacekeeping operations (Klein, 2016, p.1034). Most claims arising out of such missions are settled by diplomatic means via *ex-gratia* lump-sum payments (Higgins, Webb, Akande, Sivakumaran & Sloan, 2017, p.572), whereas, for individual claimants, a standing claims commission is foreseen.³ Some other possibilities do exist, but none satisfy the need for an impartial judicial mechanism that could issue a binding decision and give potential claimants the possibility of an enforceable right to reparations.

As a way around, recently claimants have started filing suits at national courts. The latter option was relatively recently made possible due to a

² See also Staff and agencies, ‘Netherlands and UN blamed over Srebrenica massacre’ (2002) <<https://www.theguardian.com/world/2002/apr/10/warcrimes>> accessed 2 January 2020; C. McGreal, ‘What’s the point of peacekeepers when they don’t keep the peace?’ (2015) <<https://www.theguardian.com/world/2015/sep/17/un-united-nations-peacekeepers-rwanda-bosnia>> accessed 20 February 2020.

³ In practice local claims review boards have been established which have been criticized for their lack of impartiality. See Dannenbaum, 2010.

progressive interpretation of the law, introduced in 2011 by the International Law Commission (ILC) in the Draft articles on the responsibility of international organizations (ARIO). Especially relevant in this context is Article 7 ARIO, which in simple words, states that specific conduct should be attributed to the actor that holds effective control over it. This allowed not only for attribution to the State but also for attribution to both the contributing State and the UN at the same time – also called dual attribution (ILC, Second Report of the Special Rapporteur, Giorgio Gaja, 2004, p.4). An admittedly rare occurrence made practically non-existent due to the UN immunity and other obstacles in implementation. Consequently, in practice, dual attribution has started to mean singular attribution to the State.

It is the purpose of this article to discuss the responsibility of the UN for peacekeeping operations through the lens of dual attribution. The research will be focused on the most recent developments brought about by The Netherlands Supreme Court judgment in *Mothers of Srebrenica* (2019). What are the practical implications of this newest judgment in the context of dual attribution? To answer this, section two will begin by discussing the basic concepts governing responsibility of the UN for peacekeeping operations. Section three will analyze the current law and practice on the topic. Section four will take the viewpoint of dual attribution and present some of its possible future consequences. Section five will conclude.

BASIC CONCEPTS

INTERNATIONAL LEGAL PERSONALITY OF THE UN

The United Nations is an international organization entrusted with the important task of maintaining international peace and security. In the international realm, organizations are established to fulfill a purpose that the creators of the organization cannot fulfill as successfully by themselves (Higgins, Webb, Akande, Sivakumaran & Sloan, 2017, p.386). This is done through a separate legal personality of the international organization, which allows it to be an autonomous bearer of rights and duties (*ibid.*).

The UN legal personality is said to be implied from the UN Charter as a whole (United Nations Conference on International Organization, 1945, Vol. XIII p.710), which was confirmed by the International Court of Justice (ICJ) in its *Reparations for Injuries* Advisory Opinion (ICJ

Rep, 1949, pp.178, 179, 182). There it is stated that the UN has not been created merely to coordinate the activities of its members. Rather, it is entrusted with special tasks, that require the position of the members to be established as separate from the UN (ibid.). Moreover, relevant for this article is the question, whether the UN can file an international claim to obtain reparations for damages caused to the organization and its agents (ibid. pp.179, 180). The ICJ found that indeed it can (ibid. p.180). However, these rights exist with corresponding obligations and a possibility for the UN to have a claim filed against it (*Differences relating to immunity from legal process of a Special Rapporteur of the Commission on Human Rights*, Advisory Opinion, ICJ Rep 1999 p.89). Under certain conditions, this can lead to the international responsibility of the UN.

Furthermore, the UN can create subsidiary organs to fulfill any of its special tasks (UNSC Repertoire of Security Council Practice). These organs are an integral part of the UN and do not have a separate legal personality (ibid.). They only act in the name of or on behalf of the UN (ibid.). One such subsidiary organ is also a peacekeeping mission (ibid.). Responsibility for peacekeeping can be a tricky matter because of the structure of such operations. The UN does not have large enough permanent personnel or a UN army, which it could employ for a mission (Crawford, 2013, p.189). Rather, it must rely on its member States to contribute their national troop contingents, which serve under the authority of the UN for the time of the peacekeeping operation (UN Department of Peacekeeping Operations, 2008, p.68).

DEFINING PEACEKEEPING

Peacekeeping is a tool of the United Nations which can be difficult to define. It has no explicit basis in the UN Charter and has mostly been developed through practice (Bothe, 2012, p.1182; Higgins, Webb, Akande, Sivakumaran & Sloan, 2017, pp. 1028, 1029). It has first been established in the 1950s as an antidote to the Security Council's inability to reach the threshold of unanimity required for the authorization of enforcement action (Bothe, 2012, p.1175; Higgins, Webb, Akande, Sivakumaran & Sloan, 2017, pp. 1028, 1029.).

To obtain the necessary political will for intervention, it was crucial that peacekeeping missions would not employ force beyond self-defense (Bothe, 2012, p.1175). Furthermore, unlike enforcement action,

which is furthering a goal against a party, peacekeeping was to be impartial, working with the consent of the Host State (Higgins, Webb, Akande, Sivakumaran & Sloan, 2017, pp. 1030). This has led to the development of three basic principles of early peacekeeping: consent by the Host State, use of force only in self-defense and impartiality of peacekeepers (UN Department of Peacekeeping Operations (DPKO), 2008). Together they were meant to ensure the required cooperation by the host State and the necessary political support from the Security Council (SC) to establish a successful mission (Higgins, Webb, Akande, Sivakumaran & Sloan, 2017, p.1030).

In the 1950s, a fully functional mission was mostly composed of tasks, such as observing the political situation, maintaining the peace by helping to implement peace agreements or overseeing the withdrawal of belligerents (Bothe, 2012, p.1177). These types of peacekeeping missions have come to be known as first-generation peacekeeping or traditional peacekeeping (Higgins, Webb, Akande, Sivakumaran & Sloan, 2017, pp.1035-1036). Since then, the nature of conflict situations has changed significantly (Bothe, 2012, pp.1181-1182; DPKO, 2008). As the conflicts became more complex, and have shifted from international to internal, or a combination of both, it became more difficult for a peacekeeping mission to obtain the consent of the Host State to deploy its troops (Higgins, Webb, Akande, Sivakumaran & Sloan, 2017, pp.1056-1061). Furthermore, the troops have often found themselves amid a rapidly worsening situation which called for a broader interpretation of the use of force, where self-defense would include defense of the mandate or defending a population against an imminent threat to their survival (*ibid.*). At times, the way peacekeepers positioned themselves in a conflict also brought to question their impartiality (*ibid.* pp.1067-1068). The broader authorization to use force potentially mandated to a peacekeeping operation today creates a greater possibility for peacekeepers to restore peace and security. Unfortunately, as a necessary parallel, that same authorization creates the possibility to cause greater harm (Blokker, 2015, p.329).

In the past few decades, UN peacekeeping has undergone significant changes in the structure of their missions and the duties they undertake. Most peacekeeping today is far from the impartial missions, not deploying force, based on the consent of the Host State. After 1990, the authorization of ‘all necessary means’ has become relatively common (Bothe, 2012, pp.1178-1179). Several names are referring to different

types of missions that use force beyond self-defense: including robust peacekeeping, peace enforcement, multidimensional peacekeeping, and second-generation peacekeeping (*ibid.*). In practice, the differences between the names are often blurred (UN Department of Peacekeeping Operations, 2008).

Though, important differences do exist with regional coalition forces. While all of the above peace operations are UN-led, the coalition of States is UN-authorized, with a leadership structure independent from the UN (ILC, Comments and observations received from international organizations, 2011, p.147). This contribution will deal specifically with peacekeeping operations, based on Chapter VII of the UN Charter authorized to use force beyond self-defense.

ESTABLISHMENT OF A PEACEKEEPING MISSION

The first step towards the creation of a peacekeeping mission is an authorization by the Security Council, which provides a mandate for a potential mission (Bothe, 2012, pp.1183-1185). As the UN does not have an army of its own, it is dependent on the voluntary contributions of troops by its member States (Crawford, 2013). Typically, the Council authorizes a peacekeeping operation with a resolution (Bothe, 2012, pp.1183-1185).⁴ This provides a mandate, though, it does not create the operation in itself; it merely authorizes the Secretary-General to solicit troops and take other necessary steps to establish an operation (Bothe, 2012, pp.1183-1185; Siekmann, 1991, pp.28-29; DPKO, 2008).

A peacekeeping mission consists of two main components; the UN – exercising the overall political guidance and administrative support over a mission and contributed national contingents – serving as arms and legs of the organization. The relationship between the two parts; the UN and the troop-contributing State (TCS) is of a contractual nature (Bothe, 2012, pp.1183-1185). Usually, it is regulated by an agreement concluded between them, however, it can also be implied in their behavior (*ibid.*). In this regard, a Model Agreement has been issued by the UN, containing established practice of relations between the UN and the TCS (Model agreement between the United Nations and Member States contributing personnel and equipment to the United

⁴ The General Assembly (GA) is not excluded from this task. It has, though, not established a peacekeeping operation since 1963, therefore, it is likely that a custom has developed precluding it from starting new peacekeeping operations. Taking this into account, this article will only refer to the SC as the authorizer of peacekeeping operations.

Nations peace-keeping operations, 1991). The Model Agreement aims to be flexible enough to apply as long as the parties do not conclude an agreement of their own to be applied on a specific mission (Bothe, 2012, pp.1183-1185).

The Model Agreement contains the division of responsibilities between the troop-contributing State and the UN. It includes the transfer of national troop contingents under UN command and control, while the TCS retains control over disciplinary measures, personnel administration and criminal jurisdiction (organic control) (Model Agreement, 1991, p.3). The last is especially important, so the UN can fulfill its obligations towards the host State and make sure the peacekeeping troops are held responsible for their possible criminal actions (Bothe, 2012, pp.1183-1185). This duty is also one of customary international law (*ibid.*).

COMMAND AND CONTROL STRUCTURE OF A MISSION

According to the Model Agreement (1991, p.3), the Secretary-General stands on top of the command structure as a representative of the UN and the chief administrative officer. He or she (hereafter she) reports and is responsible to the Security Council (*ibid.*). Additionally, she is to establish a line of control stemming from her authority as the UN representative, and appoint the first person after her - a Head of Mission, who can also serve as her Special Representative (Bothe, 2012, pp.1183-1185). The Secretary-General and Head of Mission together with other staff are part of the special division of the UN Secretariat; the Department of Peacekeeping Operations (*ibid.*). They direct the overall operation and management of the mission, also called operational control (DPKO, 2008, pp.66-69). The line of command runs from the Security Council to the Secretary-General to the Head of Mission (*ibid.*).

The next in command after the Head of Mission is the Force Commander (*ibid.*). She is a juncture between the UN and the troop-contributing State (Dannenbaum, 2010, p.144). Individually hired by the UN and confirmed by the SC, she is the most senior military commander reporting to the Head of Mission (*ibid.*). A rung under the Force Commander, national troop contingents are supplied as indivisible units by the States with their own leadership – National Contingent Commanders (DPKO, 2008, pp.66-69). It is the role of the

National Contingent Commander to convey the orders she receives from the Force Commander to the national troops, which gives her full command and control on the field (*ibid.*).

The troop contingents form a somewhat independent part of the structure. Even after their deployment, they remain in the service of their national army and have some obligations towards their sending government (International Peace Academy, 1984, p.365). They are expected to respect the same basic principles of conduct, as in their army, and work within the mandate their government has accepted, based on the SC Resolution, before deploying troops (*ibid.*). In case they are given instructions that would conflict with these obligations, they should refer to their minister for defense (*ibid.*).

Moreover, a peacekeeping operation holds an exclusively international status (Model Agreement, 1991, p.3). This means, that it should receive guidance and orders from the UN only, and should be completely independent of influence by their sending State (DPKO, 2008, pp.66-69; International Peace Academy, 1984, p.365). National contingents must not accept or seek to receive instructions from their home government (DPKO, 2008, pp.66-69; International Peace Academy, 1984, p.365). Correspondingly, the contributing State must respect the international status of a mission and refrain from influencing their troops in any way (DPKO, 2008, pp.66-69; International Peace Academy, 1984, p.365). However, the TCS does retain the right to withdraw its troops from the mission (DPKO, 2008, pp.66-69).

It is clear from the described structure that there are at least two parts to a peacekeeping operation holding distinct control over it. One is the UN, exercising operational control over a mission through its Force Commander. The second is the TCS, holding control over its contributed troops through the National Contingent Commander. This divide in the overall structure has important consequences for determining responsibility on a peacekeeping mission. It is important to note that the command and control structure is more difficult to define in practice and does not always follow this line of orders.

RESPONSIBILITY DEVELOPED THROUGH PRACTICE

As we have seen with the tool of peacekeeping so far, also the responsibility for it has largely been developed through practice. This segment

will start with the International Law Commission's Articles on the Responsibility of International Organizations as the authoritative source of law on the topic and conclude with discussing the more recent case law which helps shed some light on the current interpretation of the law.

DRAFT ARTICLES ON THE RESPONSIBILITY OF INTERNATIONAL ORGANIZATIONS LEGITIMACY AND LIMITATIONS

More recently, in 2011, the International Law Commission has undertaken to codify the rules governing the responsibility of international organizations in the Draft articles on the responsibility of international organizations (ARIO). In the ARIO, effective control is used as the key criterion for determining which actor can be held responsible for particular conduct on a peacekeeping operation (Second Report, 2004, p12).

“What matters is not exclusiveness of control, which for instance the United Nations never has over national contingents, but the extent of effective control. This would also leave the way open for dual attribution of certain conduct” (*ibid.* p.14).

The ARIO was created in light of the ILC's preceding work – Articles on the Responsibility of States for Internationally Wrongful Acts (ARS) (2001). Harmony between the two was sought where appropriate while leaving enough space to take into account the specific characteristics of international organizations (ILC, First Report of the Special Rapporteur, Giorgio Gaja, 2003, para.11; Second Report, 2004, p.5; ILC, Fifth Report of the Special Rapporteur (Fifth Report), Giorgio Gaja, 2007, p.6). Moreover, during the period leading up to the creation of ARIO, international organizations have shown some reluctance in responding to the calls by the ILC for contributing materials concerning their responsibility (Fifth Report, 2007, p.7). This had caused some difficulties in ensuring the Articles are firmly rooted in practice (Schermers & Blokker, 2011, para 1590C; Second Report, 2004, p.2; Fifth Report, 2007, p.7). Special Rapporteur Gaja was aware of the issue and had acknowledged that “[a] wider knowledge of practice would clearly allow a better apprehension of questions relating to the international responsibility of international organizations” (Fifth Report, 2007, p.7). Some criticism of the ARIO had been pointed in the

same direction.⁵ Most recently, in 2017, Comments and information received from Governments and international organizations show a similar situation, with most observations agreeing that the continued lack of relevant practice among States and organizations remains a barrier towards accrediting greater legal value to the ARIO by negotiating it in a treaty (Report of the Secretary-General 72/80, 2017).

Nevertheless, the ARIO remains an authoritative source of law on the topic of responsibility of international organizations. Several Articles are strongly rooted in customary international law, while some present its progressive development. The latter includes Article 7 ARIO, which is essential for peacekeeping operations, as it defines attribution of conduct per its progressive understanding. Furthermore, the ARIO has been taken note of by the General Assembly and was cited in many international courts and bodies, including the European Court of Human Rights (ECtHR), the General Court of the EU, the African Commission on Human and People's Rights, the Caribbean Court of Justice, as well as on all levels of Dutch national courts, national courts in Germany and the UK (Report of the Secretary-General 72/81, 2017, para.4). The ARIO is meant to serve as a compilation of general rules for international organizations, except in a case of a *lex specialis*.⁶ It deals specifically with international organizations' responsibility, which arises after a breach of an obligation of conduct (ILC, Draft articles on the responsibility of international organizations, with commentaries (Commentary to the ARIO), 2011, p.46). The latter is also called a primary obligation (*ibid.*).

Though primary obligations are excluded from the ARIO, the application of Draft Articles is essentially dependent on them. Based on Article 4 ARIO, an international organization will be held responsible for a certain action if (a) the act is attributed to the organization and (b) is a breach of an organization's obligation. The (b) condition refers to primary norms defined outside the ARIO.⁷ This theoretical division between primary norms and rules of responsibility, also named secondary norms has been criticized for not having a clear conceptual basis

⁵ Additionally, ARIO had been criticized for not being broad enough to encompass the special characteristics of international organizations and for reflecting the ARS too much. See also Schermers & Blokker, 2011, paras.1590A-1590C; Akande, 2014, pp.265-266.

⁶ Special rules can be found in the rules of the organization, as long as they are not used to circumvent the obligations which are related to the legal consequences of an internationally wrongful act (Article 17 ARIO).

⁷ The difficulties in defining primary norms was stated as one of the factors limiting a greater implementation of the ARIO (Klein, 2016, p.1035).

(Nollkaemper, Jacobs, 2011, p.84). Instead, it appears to be rooted in pragmatic reasons (*ibid* pp.84-85). Crawford confirms:

“the distinction between primary obligations and secondary rules of responsibility is to some extent a functional one, related to the development of international law, and not to any logical necessity” (Crawford, 2002, pp.874, 879).

Furthermore, the separation is not an exact science. There are areas where the ARIOD still deals in part with primary norms as they are interconnected with the secondary ones (Nollkaemper, Jacobs, 2011, pp.81-88). At this point, it is merely relevant to note, that primary norms are one of the conditions for establishing the responsibility of the UN. Rather than attempting to define primary norms, which is beyond the scope of this research, this contribution will focus on the secondary norms, which govern the responsibility and its implementation.

CONTENT - ATTRIBUTION

Based on Article 3 ARIOD, “[e]very internationally wrongful act of an international organization entails the international responsibility of that organization”. The following Article 4 ARIOD lists a crucial condition for such responsibility to occur – the attribution of a certain act to the organization.⁸ The manner in which a certain act is determined attributable will prove to be vital in opening the possibility of dual attribution.

The ARIOD separates two situations in which certain conduct is attributed in two different ways. The first is enshrined under Article 6; it concerns attribution when an organ is fully seconded to an international organization (Commentary to the ARIOD, 2011, p.56). The Article states that all activities conducted by an organ of an international organization will be attributed to that organization.⁹ It is designed to be applied to organs of international organizations and to organs that are fully seconded to international organizations by their states or by other international organizations (Commentary to the ARIOD, 2011, p.56). Theoretically, this Article could also apply to state seconded troops

⁸ Act always includes both the possibility of a positive act and an omission.

⁹ Under the condition that the organ is acting “in the performance of functions of that organ or agent” (Article 6 ARIOD).

to the UN for a peacekeeping operation. However, the application of Article 6 is limited by the following Article 7.

The second option, under Article 7, describes the attribution of conduct in a situation where an organ is not fully seconded to an international organization (*ibid.* p.56). Based on the Commentary to the ARIES, this Article was tailored to circumstances when an organ of a State is placed under the command and control of an international organization, while the State retains a certain influence over their contributed organ (*ibid.* p.57). Furthermore, it was explicitly stated that this also occurs “in the case of military contingents that a State places at the disposal of the United Nations for a peacekeeping operation” (*ibid.* p.56).

At first glance, there is very little difference between the situation applicable under Article 6, and that applicable under Article 7. Article 6 requires that an organ that is placed at the disposal of an international organization is ‘fully seconded’ to that organization, while Article 7 necessitates the organ is ‘not fully seconded’. Under Article 6, the fully seconded organ is fully incorporated into the system of the international organization and becomes an organ thereof. It can be assumed that under Article 7, the contributed organ does not become an organ of the international organization, as otherwise, the applicable situation would be practically the same as that under Article 6. Instead, the contributed organ under Article 7 appears to be stuck somewhere in between as ‘not fully seconded’. Article 7 ARIES states:

“[t]he conduct of an organ of a State [...] that is placed at the disposal of another international organization shall be considered under international law an act of the latter organization if the organization exercises effective control over the conduct.”

The determining factor for attribution of conduct on a peacekeeping operation is therefore effective control. Based on the International Law Commission, an in-depth factual examination of the conduct in question is necessary to determine which actor holds effective control (Commentary to the ARIES, 2011, p.57). This reasoning leaves open the possibility that in the uncommon case when the contributing state exercises effective control over their troops, it can be responsible for it. Furthermore, in the Second Report on the responsibility of inter-

national organizations, the Special Rapporteur added, that it can be foreseen, under this Article, that certain conduct would be attributed to the contributing State and the organization simultaneously – an admittedly rare occurrence of dual attribution (2004, pp.10, 4).

What is more, it is argued by Dannenbaum, that to fully enact the intent of the ARIO under Article 7, when interpreting effective control, it is essential to consider “the entity that is best positioned to act effectively and within the law to prevent the abuse in question” (2010, p.157). Although mentioned in the Commentary to the ARIO, it is unclear whether the latter addition presents a legitimate expansion of the criterion of effective control (Commentary to the ARIO, 2011, p.59; Crawford, 2013, pp.209-210). Through case law, several different theories have been developed on what constitutes effective control.

DIVERGENT CASE LAW

Many important cases have already dealt with the topic of responsibility of the UN. Yet the so-called test of effective control appears an elusive term. In 2007, the ECtHR determined in the notorious case of *Behrami v. France and Saramati v. France, Germany and Norway* (2007) that merely retention of ‘ultimate authority and control’ is sufficient to attribute all conduct to the UN. This decision was largely criticized because it did not apply the criterion in the ARIO. Moreover, because it determined that not even operational control needs to be retained by the UN for the Organization to still remain responsible.¹⁰ Consequently, all conduct was attributed to the UN and the case was rejected because of a lack of jurisdiction of the ECtHR.

For the claimants, this meant no access to reparations. Moreover, a continued application of this reasoning could lead to the troubling conclusion that the contributing State and other actors authorized by the UN on a peacekeeping operation can almost never be held responsible for their actions as long as they work under the shield of the UN (Milanovic & Papic, 2009). Fortunately, in 2011, in *Al-Jedda v The United Kingdom* (2011) the ECtHR had somewhat distanced itself from this reasoning by separating the two cases on facts and stating that the UN “had neither effective control nor ultimate authority or control over the acts or omissions of [contributed] troops and that the

¹⁰ See also ECtHR decisions in *Beric and others v Bosnia and Herzegovina* (2007); *Kasumaj v Greece* (2007); *Gajic v Germany* (2007).

[conduct] was not, therefore, attributable to the United Nations" (*Al-Jedda*, 2011, para.84). This allowed the ECtHR to avoid the reasoning in *Behrami*, without rejecting it explicitly (Milanovic, 2011).

In the region of the Former Yugoslavia, the tragic situation in Srebrenica had resulted in many cases both at the ECtHR and the Dutch national courts. In 2008, the case of *H. N. v The Netherlands (Nuhanovic)*(2008) was decided at the District Court of The Hague.¹¹ The claim concerns the conduct by Dutchbat as part of a UN-led mission UNPROFOR deployed in Bosnia and Herzegovina in 1995 (*Nuhanovic*, District Court, 2008, paras.2.3-2.7). It was brought by Mr. Nuhanovic who worked as an interpreter and was employed as local staff for the UNPROFOR (*Nuhanovic*, Appellate Court, 2011, para.2.28). On 11 July 1995, after consultations between two of the highest-ranking Dutch military officials and a UNPROFOR general, it was understood that the mission in Srebrenica had failed, and no further violence was sensible (ibid. para.5.11). A mutual decision was made that the refugees who have settled in and outside the UN compound in Potocari will be evacuated (ibid. paras.5.11-5.12). It was implied that following the evacuation, Dutchbat will leave too (ibid. para.5.17). With this, a transitional period began (ibid.). At this time the Netherlands Government had also exercised a certain type of control over their contingent as it pertained to the preparations for the withdrawal of Dutch troops (ibid. paras.5.18-5.19.).

Supposedly in an attempt to avoid the reasoning in *Behrami and Saramati* the claimant first argued that Bosnian national law should be applicable (*Nuhanovic*, District Court, 2008). But because this is a matter between two international actors, the District Court in the Hague determined the law of State responsibility (ARS) to be applicable. It applied the Articles by analogy to the situation at hand and found that "acts and omissions [conducted on a peacekeeping mission] should be attributed strictly, as a matter of principle, to the United Nations" (*Nuhanovic*, District Court, 2008, para.4.11). In 2011, this was overturned by the Appellate and later confirmed by the Supreme Court which rightfully aligned their reasoning with the ILC test of effective control.

The Appellate Court found that what is decisive is not which actor exercised command and control in the abstract structural sense,

¹¹ See also *M. M.-M., D. M. and A. M. v The Netherlands*, District Court in The Hague (2008).

but rather, who exercised effective control in certain concrete circumstances (*Nuhanovic*, Appellate Court, 2011, para 5.7). Furthermore, it stated:

“This does not only imply that significance should be given to the question whether that conduct constituted the execution of a specific instruction, issued by the UN or the State, but also to the question, if there was no such specific instruction, the UN or the State had the power to prevent the conduct concerned” (*Nuhanovic*, Appellate Court, 2011, para.5.9).

Such argumentation assigns importance to the analysis of facts to determine attribution based on effective control. What is more, the Court expands the test by accepting the relevance of the ‘power to prevent’ as suggested by Dannenbaum. Caution is advised regarding this expansion. Other cases determining effective control in different circumstances, like the two ICJ cases of *Nicaragua v. United States of America* (1986) and *Bosnia-Herzegovina v. Yugoslavia* (1996), are rooted in positive acts (Crawford, 2013, p.210). Additionally, the ILC has abstained in explicitly acknowledging this concept in its Commentary as a legitimate expansion of effective control (*ibid.*). Indeed, if one was to consider the mere possibility of the ‘power to prevent’ to be enough, then this possibility would always exist as the contributing State always retains organic control (*ibid.*). This would make the presumption of effective control by the UN effectively meaningless. Instead, attribution to both the State and the Organization, called dual attribution, could become the new presumption. The Appellate Court continues:

“The Court adopt[ed] as a starting point that the possibility that more than one party has ‘effective control’ is generally accepted, which means that it cannot be ruled out that the application of this criterion results in the possibility of attribution to more than one party” (*Nuhanovic*, Appellate Court, 2011, para.5.7).

The aforementioned was confirmed by the Supreme Court.¹² In this

¹² The Supreme Court added that Article 48(1) ARIO in combination with Article 7 ARIO allows for dual attribution of conduct (*Nuhanovic*, Supreme Court, 2013, paras.3.9.4, 3.9.2). It is worth noting that in the Commentary to the ARIO, Article 48 is explicitly said to be applicable in situations foreseen under Articles 14-18 ARIO. Considering this, applying Article 48 may not be appropriate in the context of peacekeeping. Besides, there are no explicit reasons as to why Article 7 ARIO alone would impede dual attribution. See also Direk, 2014.

case, dual attribution served as an opening to allow for attribution of conduct to The Netherlands within Article 7 ARIO.¹³

The newest ruling on the topic is from 2019 by the Supreme Court of The Netherlands in the case of *Mothers of Srebrenica et al v The Netherlands* (2019). The case concerns the same conflict as in *Nuhanovic* but from a slightly different and broader perspective. Here, 10 respondents and the foundation Mothers of Srebrenica¹⁴ claim that Dutchbat did not do enough in protecting the refugees from the advances of the Bosnian-Serb army. Additionally, they claim that the State acted wrongfully by assisting with the separation of the male refugees from the others and facilitating their deportation. The claims refer to both the periods before and after 11 July 1995 at 23:00, which vaguely marks the fall of Srebrenica and the start of the so-called transition period.

Briefly, The District Court decided that indeed The Netherlands is liable for assisting with the deportation of male refugees (*Mothers of Srebrenica*, Supreme Court, 2019, para.2.2.3). It denied all other claims (ibid.). The Court of Appeal overturned this judgment and ruled instead that additionally, The Netherlands was liable for assisting with the separation of the male refugees and not giving them the option to remain in the compound (ibid. para.2.2.4). This, in the Court's opinion, diminished their 30% chance of survival (ibid.).

In determining effective control, The Court of Appeal has to a large degree adopted similar reasoning to the one in *Nuhanovic*. It started with asserting that ARIO together with the ARS are the relevant rules to establish effective control (*Mothers of Srebrenica et al v The Netherlands*, Appellate Court, 2017, para.11.2). As in *Nuhanovic*, it added that effective control is dependent on "all factual circumstances and the specific context of the case" (ibid. para.12.1). Furthermore:

"[a]s the *command and control* over Dutchbat had been transferred to the UN, the UN exercised *effective control* over Dutchbat, in principle (ibid.). Whether in one or more specific instances the exceptional situation occurred that the State also exercised effective control over certain aspects of acts performed by Dutchbat is

¹³ See more under section 'DUAL ATTRIBUTION'.

¹⁴ The foundation represents 6000 surviving relatives of the victims of the Srebrenica massacre.

something that the [foundation Mothers of Srebrenica] must argue stating sufficient grounds and must prove when contested" (*Mothers of Srebrenica*, Appellate Court, 2011, para.12.1).

This was not challenged and was reaffirmed by the Supreme court (2019, para.3.3.5). In addition, the Supreme Court stated that dual attribution is a non-disputed possibility (*ibid.*).

After this, the Supreme Court chose to focus on the Articles governing the responsibility of States as the correct source of law to determine possible attribution of conduct to The Netherlands (*ibid.* paras.3.3.5-3.6.1). The ARS demands much more active involvement of the State to establish attribution of conduct in this context. They offer two modes of attribution. To simplify, Article 4 ARS applies when attributing conduct by an organ of a State, whereas, Article 8 ARS applies when attributing conduct by a group of persons if it is actually acting under the effective control of the State. As it is undisputed between the parties that Dutchbat is an "organ" of the UN, the relevant Article for this case is Article 8 ARS (*Mothers of Srebrenica*, Supreme Court, para.3.3.3).

Effective control in the context of ARS is further elaborated in the Commentary to the ARS, stating that such control by the State must concern a specific operation and that the relevant conduct must present an essential part of that operation (2001, p.47). Further, it refers to the cases of *Nicaragua* and *Bosnian Genocide*, which support a very active participation of the State (ARS, 2001, p.47). General support regarding the whole operation is not attributable to the State. This is why all Dutchbat conduct which occurred before the transition period and some during, when the State only held 'organic control' by retaining disciplinary control and criminal jurisdiction, cannot be attributed to The Netherlands (*Mothers of Srebrenica*, Supreme Court, 2019, para.3.6.1). This raises the bar for attribution under ARS very high.

Moreover, the 'power to prevent' as applied in *Nuhanovic*, is said to be based on an incorrect interpretation of the law (*ibid.* para.3.5.3). Article 8 ARS only acknowledges active control, which is evident by the Commentary, stating "actual participation of and direction given by the State" is needed for recognizing effective control by the State

(ibid.). True, ‘the power to prevent’ is not even widely accepted regarding attribution under Article 7 ARIES (Crawford, 2013, p.210). Therefore, it makes sense, that it is even less so when attributing conduct under Article 8 ARS, which is otherwise explicitly based on positive attribution and rooted in corresponding case law.

Yet, one could argue whether the aforementioned interpretation of the ARS is the most appropriate to apply in this context. Before this case, attribution of conduct of peacekeeping operations was rooted in Article 7 ARIES, which with the test of effective control, opened the door to the possibility of attribution also to the troop-contributing State. Attribution to the latter was done by interpreting the ARIES in the light of the ARS (*Nuhanovic*, Supreme Court, 2013, para.3.13; *Mothers of Srebrenica*, Appellate Court, 2011, paras.11.2, 15.2). This made sense because due to the position of Article 7 within the overall framework of international organizations, it was still apparent that normally the responsibility for peacekeeping operations falls with the UN. By placing priority on the ARS, the State takes on a more separate position. It is no longer discussed in the shadow of the UN but as an independent entity with a more obvious possibility of holding equal responsibility to the UN. Certainly, a State could be held equally responsible as the UN even before, but in the framework of the ARIES, it seemed like more of an exceptional occurrence.

It could be argued at this stage, that perhaps, the Supreme Court takes the responsibility of its state rather far and views it too independently from the responsibility of the UN for a peacekeeping operation as a whole. Although explicitly affirmed in the judgment, this reasoning impliedly questions the validity of the ‘in principle’ attribution to the UN. Regarding dual attribution, this is no longer a disputed topic. The court undoubtedly confirms its possibility but limits its role to opening the door for State responsibility. Certainly, dual attribution becomes a clearer possibility due to the somewhat more equal position of the contributing State and the UN.

However, it is important to keep in mind the particular context of the case. The only part where the State was found to hold effective control over their troops was during the transition period. The situation concerned a failed mission during which Dutchbat was in charge of assisting with the evacuation of about 5000 refugees, after which the contingents would repatriate. The Netherlands was involved

as this was part of the concluding arrangements within the State's right to evacuate their troops. This is a highly fact-specific case and an unlikely situation that occurred in a short time-span. Hopefully, a case with similarly unfortunate circumstances will not occur again. This limits the applicability of the slightly different interpretation of the test of effective control which was applied here. Additionally, all cases of Dutch national courts have limited applicability within their national systems, which is unfortunate from the perspective of international law.

To conclude, the test of effective control has to a large degree been developed through practice. The ILC has foreseen Article 7 ARIO as the one to be applicable to conduct on peacekeeping operations. Effective control is to be determined by an analysis of all the relevant law, facts, and circumstances. In principle, this responsibility lies with the UN, unless certain specific situations arise to shift attribution in the direction of the State. The 'power to prevent' as argued by Dannenbaum is an extension of effective control with uncertain applicability and future. Additionally, the very high threshold of ARS under Article 8 as developed in *Nicaragua* and *Bosnian Genocide case*, perhaps raises the bar too high. Considering the position of the state troops which in normal circumstances ought to be completely incorporated within the chain of command of the UN, it makes more sense to apply ARIO in light of ARS than ARS in the light of ARIO, as was impliedly done by the Supreme Court judgment in *Mothers of Srebrenica*.

Moreover, such an interpretation of the test of effective control allows for dual attribution. This is essential as it opens the possibility for certain conduct, which was previously exclusively attributed to the UN, to possibly be attributed to the troop-contributing State also. At this stage, this is extremely important, as many obstacles are preventing the UN from being adjudicated and held responsible. The possibility of State responsibility opens a side door for claimants to attempt to obtain at least some reparations.

DUAL ATTRIBUTION

Dual attribution is a concept that means a certain conduct can be attributed to two actors simultaneously. On a peacekeeping operation, this would mean a certain conduct can be attributed to both the UN and the TCS at the same time. From the perspective of fairness, this

might seem like the ultimate ideal. A shift from the early case law in which all conduct was attributed to one actor – the UN, which more often than not meant no legal responsibility, to the possibility of attribution to both actors. Although the concept exists in theory, it has not yet taken place in practice.

A good way to understand dual attribution is by the sliding scales analogy (Nollkaemper, 2011, p.1157). It explains that on either extremity is the exclusive attribution to the UN or to the TCS (*ibid.*). Whereas anywhere in the middle lies dual attribution to both actors (*ibid.*). It can be imagined that on one side, where there is exclusive attribution to the UN, we would find the approach put forward by the UN, that all conduct is in principle attributed entirely to the UN.¹⁵ On the other side, we might find a situation, where the State had issued orders which cut across UN command and control and were executed by their deployed troops, leading to attribution only to the TCS. In the middle, we are likely to find all other situations, where the test of effective control establishes whether and to what degree attribution and consequently responsibility will be shared among the two actors. In other words, where on the scales, the responsibility will settle; will it be more towards the UN exclusive responsibility, which indicates the UN held more broad control over the conduct or will it be more towards the exclusive control of the TCS, implying the reverse.

Until present, there are only cases discussing the part of the contributing States. Indeed, in *Nuhanovic*, immediately after acknowledging the possibility of dual attribution, the Court added that “[it] will only examine if the State exercised ‘effective control’ over the alleged conduct and will not answer the question whether the UN also had ‘effective control’” (*Nuhanovic*, Appellate Court, 2011, para 5.7). The main obstacles in implementing the responsibility of the UN are its broad immunities and a lack of institutions capable of judging the organization.¹⁶ To discuss these issues in detail would be beyond the scope of this research.

Regardless of these limitations, dual attribution has had important

¹⁵ “[A]n act of a peacekeeping force is, in principle, imputable to the Organization, and if committed in violation of an international obligation, entails the international responsibility of the Organization and its liability in compensation. The fact that any such act may have been performed by members of a national military contingent forming part of the peacekeeping operation does not affect the international responsibility of the United Nations vis-à-vis third States or individuals” (Yearbook of the International Law Commission, 2004, p.28).

¹⁶ See more at Blokker, 2015; N. Schrijver, 2013.

consequences concerning the responsibility for peacekeeping operations. It has opened the door for national Courts to examine the conduct of their government independently and due to the individual nature of attribution, this does not affect the possible responsibility of the UN (Nollkaemper, 2011, p.1154). Indeed, if there were no dual attribution, a Court would have a lot less options to examine the conduct of its national State; it would be limited to the sole situation of exclusive State responsibility. Referring to the sliding scales, this is an extreme example and a very uncommon one.

In its current practical implementation, dual attribution does not allow for attribution to both the State and the UN, rather, it only allows for State responsibility. This is a significant shift in practice in the context of peacekeeping. It shows a development from exclusive responsibility of the UN, which necessarily leads to a rejection of the case due to jurisdictional issues, towards the current exclusive responsibility of the State, while leaving the part concerning attribution to the UN unanswered.

Certainly, this is not ideal and does not reflect the actual structure of command and control on most peacekeeping operations. The presumed attribution to the UN is important as on peacekeeping operations the UN must hold the principal command. Had the Court omitted this part of its reasoning, a wrong impression might be given, that the TCS is the only one holding control and consequently responsibility for a peacekeeping mission.

For one thing, this might prompt the States to indeed start exercising more control over their contributed troops. The broader authorization to use force, deployment in dangerous environments, and risk of peacekeepers being seen as a party to a conflict are all reasons which might cause the States to want to maintain greater influence and oversight over their troops. Moreover, the ‘power to prevent’ in its abstract understanding would entail the States always retain the possibility of effective control (Crawford, 2013, p.210).

Furthermore, the impression of only state responsibility might put a strain on the basic concept of peacekeeping. Peacekeeping operations remain subsidiary organs of the UN conducted under the UN flag. With that, they hold many advantages. Normally, it gives the operations legitimacy, means they are impartial, independent and acts

as a sort of shield for individual states, protecting them from getting involved in the conflict. If states were to be seen as individual entities working within peacekeeping together with the UN, this might cause political issues for the contributing states, as they could be seen as interfering with the usually already complicated and risky environments where peacekeeping mission are typically deployed and possibly violating the sovereignty of the host state.

A more independent role of the States would bring to question, whether any real differences remain between peacekeeping and SC-authorized regional coalition forces. Essentially, if the States would hold full command and control over their troops even after their secondment to the UN, this would leave no room for the UN, and would effectively deem peacekeeping to be a sham. Realistically, effective control on a mission is never in the hands of only one actor. The TCS and the UN on a peacekeeping operation are at the core interconnected, as they are both essential for it. Therefore, logically, the attribution of conduct on a peacekeeping operation should be to a certain degree shared.

Moreover, considering the current implementation of responsibility is only at the national judiciaries, which deal with cases against their respective States, this can lead to a myriad of different judgments reaching different conclusions (Blokker, 2015, p.327). It would likely cause confusion and a lack of legal certainty for peacekeepers as well as potential claimants. To add, the TCS have very different legal systems. There is a possibility, that while based on the law of the Host State a crime has been committed, the TCS does not consider that same conduct a crime and might not prosecute it. A consequence can be a loss of legitimacy for the UN. Even if State responsibility provides some relief in the eyes of the victims, this is only a short-term solution. Eventually, the fragmentation of judicial solutions could cause the opposite; a situation where a remedy would depend on the quality of the judiciary of the home State of a certain troop contingent member. Considering most troops are still from developing countries, the legitimacy of peacekeeping operations is likely to plummet.

To add, it has been argued that because of a fear of taking on more responsibility, States might become more reluctant in contributing their troops (Blokker, 2015, p.327; Dannenbaum, 2010, p.185; *Nuhanovaic*, Supreme Court, 2013, para.3.18.3.). Yet, it is not true, that in the face of these new developments, the TCS's have merely two options:

not to contribute troops at all, or to contribute poorly trained troops (Dannenbaum, 2010, p.185). In fact, there is a third possibility, where the States ensure their contributed troops are well prepared for a mission, to protect themselves from being held liable for any wrongful acts by their contributed troops (*ibid.* p.186). Ultimately, it is possible that States might be more reluctant to take part in a peacekeeping operation where they can be held responsible, yet there is likely to be a beneficial tradeoff; though the contributed troops might be lesser in quantity, they are likely to be highly qualified (Dannenbaum, 2010, p.185). This might work in favor of the missions' legitimacy.

CONCLUSION

The answer to the question, what are the practical implications of applying dual attribution in the context of peacekeeping operations, with two words, would be State responsibility. This appears counterintuitive as the title of the research is the responsibility of the UN and not that of the State. The truth is that based on the current practice in this field, the theoretical responsibility of the UN is only a step that leads to the factual reality of responsibility of a troop-contributing State.

Certainly, this is not in line with the command and control structure on a mission. Based on that, the UN would typically be responsible, sometimes together with the contributing State. It is in the concept of dual attribution, that we can find a reflection of the structure of a mission and responsibility which seems fairly divided. It is human to attempt to avoid responsibility or pass it on to someone else. The 'passing the buck' problem exists also amongst states and international organizations (Blokker, 2015, p.327). Yet, by individual states, accepting responsibility even when they could have opted for a different interpretation of the law and avoided it altogether, a certain pressure is exerted on the UN to act accordingly and accept its part of responsibility too. It would seem only fair for each to accept their own.¹⁷

¹⁷ "Cuique suum tribuere" – to render to each their own (Ulpian, Digest).

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Immigration as a Key Factor in the United Kingdom's Decision to Withdraw from the European Union

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ABSTRACT

The post-communist enlargement of the European Union in 2004 and 2007, resulted in the membership of twelve states from Central and Eastern Europe, Baltic, Southeast Europe, and Mediterranean, which together represent more than 100 million citizens. Their rights to move, live and work in the United Kingdom, caused concerns to the British people, which affected their decision to leave the EU in the Brexit referendum. The main purpose of this paper is to highlight the role of immigration in the UK's withdrawal from the EU. For the realization of the research has been applied the qualitative methodological approach, based on data collected from bibliography and the credible Internet sources, related to the EU and the UK, especially to the Brexit process. The results show that not controlling immigration was considered as a big risk for the future of UK citizens and is characterized as one of the key factors that affected in their voting for Brexit. The conclusions of this paper aim to increase knowledge about the Brexit process, with special emphasis for the impact that immigration has had in the UK's decision to withdraw from the EU.

KEY WORDS: Immigration, European Union, United Kingdom, Brexit

POVZETEK

Postkomunistična širitev EU v letih 2004 in 2007 se je izšla v članstvu dvanajstih novih držav iz Srednje, Vzhodne in Jugovzhodne Evrope ter Baltika in Sredozemlja, kar skupaj predstavlja več kot sto milijonov državljanov. Njihova pravica priseliti se, živeti in delati v Združenem kraljestvu je povzročila zaskrbljenost pri Britancih, kar je vplivalo na referendumsko odločitev zapustiti EU. Osnovni namen tega prispevka je osvetliti vlogo imigracije v odločitvi o izhodu iz EU. Ugotavljamo, da je bilo neobvladovanje imigracijskih procesov razumljeno kot veliko tveganje za prihodnost britanskih državljanov in se zato smatra za enega ključnih dejavnikov, ki so vplivali na odločitev za Brexit. Z ugotovitvami skušamo povečati poznavanje Brexit procesa, s posebnim poudarkom na vpliv imigracije pri odločitvi za odhod iz EU.

KLJUČNE BESEDE: imigracija, Evropska unija, Združeno kraljestvo, Brexit

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INTRODUCTION

The paper treats a topic which is very important for the Brexit process, otherwise known as the decision of the United Kingdom to withdraw from the European Union. Brexit is opening new chapters in the history of Britain, while the EU is facing for the first time with the activation of Article 50 of the Lisbon Treaty, by which is regulated the withdrawal of states from EU membership. However, although with a very close result, in the referendum on the UK's membership of the EU held on June 23, 2016, the British people decided to leave the EU.

The main research purposes of the paper are: to emphasize British concerns in the Referendums on the UK's membership of the European Economic Community/European Union in 1975 and 2016; to explain the way how the withdrawal of states from the EU is regulated; to classify the main points of the Brexit negotiations; and to clarify the impact that immigration has had in the decision of the British people to leave the EU.

The research question of the paper is: Was immigration one of the most important factors that affected in the decision of the British people to leave the EU? Whereas the hypothesis of the paper is: The possibility of "controlling immigration" as a result of the UK's withdrawal from EU membership affected the increase of Brexit supporters.

Therefore, to give the research question a right answer and to verify the raised hypothesis, besides the introduction, conclusion, references and the Internet sources, the paper is divided into five chapters. The first chapter emphasizes British concerns in the referendum on the UK's membership of the EEC in 1975, continuing with the second chapter, which describes British concerns in the referendum on the UK's membership of the EU in 2016. The third chapter explains the withdrawal of states from EU membership, while the fourth one classifies the main points of the Brexit negotiations. Fifth chapter is a very special chapter of this paper on which is clarified the impact of immigration in the decision of the UK to leave the EU.

The paper has explanatory, descriptive, comparative and analytical natures, and for its realization are used qualitative methods, relying in the bibliography and in the credible Internet sources related to the EU and the UK, in particular to the Brexit process.

BRITISH CONCERN IN THE REFERENDUM ON THE UNITED KINGDOM'S MEMBERSHIP OF THE EUROPEAN ECONOMIC COMMUNITY IN 1975

Referendums are imperfect devices for making basic decisions about the direction in which a country should move. The legitimacy of the verdict may be compromised in many ways by the timing of the contest or the phrasing of the question, by the level of turnout or the margin of victory. Nonetheless, there may be occasions when a referendum may prove to be the least imperfect mechanism available. A great majority of states have in fact turned to a referendum at some time or other to solve a political or constitutional impasse (Butler and Kitzinger, 1996, p.7).

Such an example is the United Kingdom because organizing a referendum that enables the British people to decide the future of their country, by remaining or leaving the EU, was not just an idea and a fulfilled promise of David Cameron. In fact, this was the second time that British politicians asked the people to decide the country's relationship with Europe, for in 1975 there was a referendum on whether to stay in the European Economic Community or leave it (Glencross, 2016, p.8).

The Labour general election manifestos in February and October 1974 had promised a renegotiation of the UK's terms of membership of the European Economic Community or Common Market, followed by a referendum on the UK's continued membership. After winning the election on 28 February 1974 without a majority and on 10 October 1974 with a narrow majority, in 1975 British Prime Minister Harold Wilson and his government negotiated concessions for the UK from other European governments.

The main areas of UK concern were:

- The Common Agricultural Policy;
- The UK contribution to the EEC Budget;
- The goal of Economic and Monetary Union;
- The harmonisation of VAT;
- The parliamentary sovereignty in pursuing regional, industrial and fiscal policies (Miller, 2015, pp.12-18).

The referendum on the UK's membership of the EEC was held on 5 June 1975. The electorate included 40,456,877 people, whereas the turnout was 64.03%. The results were as follows:

Table 1. Results of the referendum on the United Kingdom's membership of the European Economic Community in 1975

Yes	17,378,581 (67.2%)
No	8,470,073 (32.8%)
Valid votes	25,848,654
Invalid votes	54,540
Total votes	25,903,194

Source: Miller, 2015, p.25

The results proved that reasons such as the security aspect, the protection of British values, trade and industrial goals, as well as the benefits of free trade with the EEC, favored the “remain” option.

BRITISH CONCERN IN THE REFERENDUM ON THE UNITED KINGDOM'S MEMBERSHIP OF THE EUROPEAN UNION IN 2016

Forty-one years later, but not this time by the Labour Party, a referendum was held in Britain on the United Kingdom's membership of the European Union, organized by the Conservative Party, which was led by David Cameron.

On 23 January 2013, Cameron gave a speech at Bloomberg regarding the future of the EU, where he mentioned a lot of challenges inside and outside the European continent, and also emphasized the main problems that worried him as prime minister:

- The problems in the Eurozone;
- A crisis of European competitiveness;
- A gap between the EU and its citizens which had grown dramatically.

He declared that he favored the idea of holding a referendum in which the British people could have the opportunity to decide the future of their country, by remaining or leaving the EU. So if Conservative Party would win British general election in 2015, he promised to hold a referendum on the UK's membership of the EU (Government of the United Kingdom, 2013).

The holding of an “in-out” referendum on Britain's renegotiated EU membership by 2017 was one of the most important promises of the

Conservatives in the aforementioned election (BBC, n.d.). On 9 June 2015 Cameron won the election and at the meeting of the European Council on 25/26 June 2015 set out his plans for an in/out referendum, which was the first step in the negotiation process with the EU (European Council, 2015).

In November 2015 he set out the four concerns of the British people over UK membership of the EU:

- Sovereignty and subsidiarity;
- New strategies of the EU for not detracting the UK trade competitiveness;
- Protection of the non-Eurozone countries;
- **Free movement and immigration.**

The EC debated the UK's referendum plans and agreed to find solutions in all four areas at their February meeting in 2016 (European Council, 2015). At the meeting of the EC on 18/19 February 2016, the British government reached a new settlement for the UK in a reformed EU. This settlement also secured all the UK's objectives set out by Cameron, and gave the UK a special status within the EU, as well as setting the EU on a path of long-term reform, covering 4 areas of the settlement:

- Economic governance;
- Competitiveness;
- Sovereignty;
- Welfare (Government of the United Kingdom, 2016).

On 22 February 2016, David Cameron made a statement in the House of Commons on the UK's new special status in the EU and for the in-out referendum. According to him the perfect solution was to be an even greater Britain within a reformed EU than a great leap into the unknown. He believed that Britain will be stronger, safer and better by remaining in a reformed EU because the British people could play a leading role in one of the most important organizations in the world, by helping and making big decisions on trade and security, which determine their future. Remaining in the EU was a better option because the British businesses could have full access to the free trade single market, resulting with new jobs, investments and lower prices. Therefore, remaining in the EU was a safer option by the fact that the British could work with their European partners to fight cross-border crime and terrorism (Government of the United Kingdom, 2016).

The referendum on the UK's membership of the EU was held on 23 June 2016. The turnout was 72.2% and except for the Scottish Independence Referendum in September in 2014², this was the highest turnout since the UK general election in 1992³ (The Electoral Commission, 2019). The results were as follows:

Table 2. Results of the referendum on the UK's membership of the EU in 2016

Votes	UK	England	Wales	Northern Ireland	Scotland
Yes	17,410,742 (51,9%)	15,188,406 (53,4%)	854,572 (52,5%)	440,707 (55,8%)	1,018,322 (32%)
No	16,141,241 (48,1%)	13,266,996 (46,6%)	772,347 (47,5%)	349,442 (44,2%)	1,661,191 (62%)
Valid votes	33,551,983	28,455,402	1,626,919	790,149	2,679,513
Invalid votes	25,359	22,184	1,135	374	1666
Total votes	33,577,342	28,477,586	1,628,054	790,523	2,681,179

Source: The Electoral Commission of the UK, 2019

An interesting fact during the Brexit referendum was the way how people of different ages voted, based on the fact that in 2016 the average age in the UK was 40 years old (The Office for National Statistics of the UK, 2016).

Table 3. Voting of the referendum on the UK's membership of the EU by the British people of different ages

Age	Leave	Remain
18-24	27%	73%
25-34	38%	62%
35-44	48%	52%
45-54	56%	44%
55-64	57%	43%
65+	60%	40%

Source: BBC, 2016

² The Scottish Independence Referendum was held on 18 September 2014 and was characterized by the electorate that included 4,283,392 people, while 3,899,455 voters or 84.59% took part in the voting.

³ The 1992 United Kingdom general election was held on 9 April 1992 and was characterized by the electorate that included 43,275,316 people, while 33,614,074 voters or 77.67% took part in the voting.

WITHDRAWAL OF STATES FROM THE EUROPEAN UNION

While it has always been generally assumed that the European Union could be dissolved and individual withdrawals permitted by an agreement of all the member states, most publicists believed before the entry into force of the Treaty of Lisbon in 2009 that the European treaties in their Nice version did not permit unilateral withdrawals, in view of express provisions stating that these treaties were concluded for unlimited periods (Dörr and Schmalenbach, 2018, p.1057).

The Lisbon Treaty, signed on 17 December 2007 and entered into force on 1 December 2009, for the first time defined the possibility of voluntary withdrawal of an EU Member State under *Article 50*, which states:

- Any Member State may decide to withdraw from the Union in accordance with its own constitutional requirements.
- A Member State which decides to withdraw shall notify the European Council of its intention. In the light of the guidelines provided by the European Council, the Union shall negotiate and conclude an agreement with that State, setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union. That agreement shall be negotiated in accordance with Article 218(3)⁴ of the Treaty on the Functioning of the European Union. It shall be concluded on behalf of the Union by the Council, acting by a qualified majority, after obtaining the consent of the European Parliament.
- The Treaties shall cease to apply to the State in question from the date of entry into force of the withdrawal agreement or, failing that, two years after the notification referred to in paragraph 2, unless the European Council, in agreement with the Member State concerned, unanimously decides to extend this period.
- For the purposes of paragraphs 2 and 3, the member of the European Council or of the Council representing the withdrawing Member State shall not participate in the discussions of the European Council or Council or in decisions concerning it. A quali

⁴ Article 218 (3) states: The Commission, or the High Representative of the Union for Foreign Affairs and Security Policy where the agreement envisaged relates exclusively or principally to the common foreign and security policy, shall submit recommendations to the Council, which shall adopt a decision authorising the opening of negotiations and, depending on the subject of the agreement envisaged, nominating the Union negotiator or the head of the Union's negotiating team.

- fied majority shall be defined in accordance with Article 238(3) (b)⁵ of the Treaty on the Functioning of the European Union.
- If a State which has withdrawn from the Union asks to rejoin, its request shall be subject to the procedure referred to in Article 49⁶ (European Union Law, 2012).

THE MAIN POINTS OF BREXIT NEGOTIATIONS

On 29 March 2017, British Prime Minister Theresa May⁷ notified the European Council in accordance with Article 50(2) of the Treaty on European Union of the UK's intention to withdraw from the EU. In addition, in accordance with the same article as applied by Article 106a⁸ of the Treaty Establishing the European Atomic Energy Community, she notified the EC of the UK's intention to withdraw from the European Atomic Energy Community (BBC, 2017).

On 5 April 2017 the European Parliament approved the resolution of the negotiations with the UK following its notification that it intended to withdraw from the EU (European Parliament, 2017).

Following the adoption of the guidelines by the EC and based on a recommendation from the European Commission, the General Affairs Council on 22 May 2017 authorised the opening of negotiations, nominated the EU negotiators and adopted negotiating directives (European Council, 2017). The two year countdown to Brexit commenced on 29 March 2017. The task of negotiating the UK's withdrawal from the EU was always going to be challenging for all concerned and especially

⁵ Article 238(3)(b) states: By way of derogation from point (a), where the Council does not act on a proposal from the Commission or from the High Representative of the Union for Foreign Affairs and Security Policy, the qualified majority shall be defined as at least 72 % of the members of the Council representing the participating Member States, comprising at least 65 % of the population of these States.

⁶ Article 49 states: Any European State which respects the values referred to in Article 2 and is committed to promoting them may apply to become a member of the Union. The European Parliament and national Parliaments shall be notified of this application. The applicant State shall address its application to the Council, which shall act unanimously after consulting the Commission and after receiving the consent of the European Parliament, which shall act by a majority of its component members. The conditions of eligibility agreed upon by the European Council shall be taken into account. The conditions of admission and the adjustments to the Treaties on which the Union is founded, which such admission entails, shall be the subject of an agreement between the Member States and the applicant State. This agreement shall be submitted for ratification by all the contracting States in accordance with their respective constitutional requirements.

⁷ Theresa May on 13 July 2016 was invited by Her Majesty, Queen Elizabeth II, to form the government after the resignation of David Cameron on 24 June 2016, thus becoming the second female Prime Minister of the UK.

⁸ Article 106a of the Treaty Establishing the European Atomic Energy Community states: Member States which, before 1 January 1958 or, for acceding States, before the date of their accession, have concluded agreements with third States providing for cooperation in the field of nuclear energy shall be required to undertake jointly with the Commission the necessary negotiations with these third States in order to ensure that the rights and obligations arising out of such agreements shall as far as possible be assumed by the Community.

given the tight time constraints laid out under Article 50 (McGowan, 2018, p.49).

The first phase of Brexit negotiations began on 19 June 2017 and was closed on 15 December 2017. In this phase the UK and the EU were required to tackle three issues:

- EU and UK citizens' rights;
- The financial settlement, including the UK's obligations undertaken while still being a member;
- The specific costs linked to the withdrawal process and the dilemma caused by the Northern Irish border⁹.

The second phase began on 9 February 2018 and this phase focused on the negotiation and ratification of the withdrawal agreement and on a preliminary discussion on the framework for the future EU-UK long-term relationship (Carrapico, Niehuss and Berthélémy, 2019, pp.41-42). However, as a consequence of political clashes within the UK caused by contradictions over a satisfactory withdrawal agreement, the UK's withdrawal from the EU was delayed.

On 20 March 2019, EU leaders took note of the letter from Theresa May, in which she requested delay of Brexit until 30 June 2019, and they offered an extension until 22 May 2019 (European Council, 2019).

For the second time on 5 April 2019, Theresa May sent a letter to the Donald Tusk, which was the President of the European Council, asking for a further extension to the Article 50 period, proposing the date of 30 June 2019. At the special summit on 10 April 2019, 27 EU leaders agreed for an extension of Article 50 until 31 October 2019 (European Council, 2019).

Nevertheless, "Brexit Day" was not even on 31 October 2019. After the resignation of Theresa May, on 24 July 2019 Boris Johnson became Prime Minister of the UK. For the third time, he addressed to Donald Tusk a request to extend the Article 50 until 31 January 2020. The EC adopted a decision to extend the period under Article 50 and the extension was until 31 January 2020 (European Council, 2019).

⁹ The Republic of Ireland–United Kingdom border, sometimes referred to as the Irish border or British-Irish border, runs for 499 km from Lough Foyle in the north of Ireland to Carlingford Lough in the northeast, separating the Republic of Ireland from Northern Ireland.

On 24 January 2020, President of the European Council Charles Michel and the President of the European Commission Ursula von der Leyen, signed the withdrawal agreement in Brussels, and also on the same day the agreement was signed by Boris Johnson in London. On 29 January 2020 the UK notified the EU of the completion of its internal procedures which were necessary for the entry into force of the withdrawal agreement and the European Parliament approved the withdrawal agreement (European Council, 2020). The withdrawal agreement entered into force upon the UK's exit from the EU, on 31 January 2020 at midnight. The UK is no longer an EU member state and is considered as a third country.

The entry into force of the withdrawal agreement marks the end of the period under Article 50 and the start of a transition period due to last until 31 December 2020 (European Council, 2020). But, currently the world is facing with the spread of Coronavirus¹⁰, which has become a global problem with extremely serious consequences. According to the World Health Organization, after the United States of America, most EU countries have the highest number of infected people with Covid-19, while the UK takes the first place in Europe for the number of deaths (World Health Organization, 2020). An early victim of the pandemic has been trade talks between Britain and the EU. With coronavirus consuming the British government's attention, it is hardly an ideal time to thrash out compromises, whereas EU minds are also elsewhere, as they confront the serious risks to the bloc's economy and the potential for destabilization. The chances of getting a deal fixed in time are diminishing (The Economist, 2020).

WAS BREXIT CAUSED BY IMMIGRATION?

As it is known, voluntary factors of migration can be divided in social and economic ones. Some examples of social factors are better living conditions, access to health care, and access to good education, while economic factors include better employment prospects and higher wages.

While migration can benefit countries, by providing new trades, skills

¹⁰ Coronavirus disease (COVID-19) is an infectious disease caused by a newly discovered coronavirus. Most people infected with the COVID-19 virus will experience mild to moderate respiratory illness and recover without requiring special treatment. Older people, and those with underlying medical problems like cardiovascular disease, diabetes, chronic respiratory disease, and cancer are more likely to develop serious illness. The best way to prevent and slow down transmission is to be well informed about the COVID-19 virus, the disease it causes and how it spreads by washing hands or using an alcohol based rub frequently and not touching face.

and a cheaper workforce, there are potential drawbacks to large scale migration. Healthcare and education services can become strained, a large influx of migrants can lead to housing shortages, cultural differences can lead to racial tensions and the welfare system can become strained if migrants claim benefits.

There are two factors that make the lives of irregular migrants, those without proper immigration status, either to reside or work more difficult than those of citizens or legal entrants, which are:

- They have to remain invisible to the immigration authorities and (presumably) to other officials concerned with law enforcement, and to citizens and legal residents who might perceive them as harmful in some way to their interests;
- They have to survive without the support of those institutions designed to sustain the lives of lawful members of that society, including welfare systems, regulatory bodies and agencies for the protection of persons and property (Düvell, 2006, p.52).

A first glance at actors in EU immigration politics shows that three distinct groups are relevant:

- EU institutions such as the European Commission, the European Court of Justice, and the European Parliament;
- Member states;
- Collective actors such as political parties and interest groups (Carrera, 2009, p.21).

From the perspective of member states, immigration policies are not primarily market-making and equal rights policies. For them, immigration entails costs and benefits that are perceived differently according to the respective immigrant categories seeking entry into member states. Member states' autonomy on immigration policies can be challenged by actual spill-over from the single market, anticipated spill-over stressed by EU institutions, and European conventions calling for compliance (Carrera, 2009, p.29).

In order to become a full-fledged citizen via naturalisation, immigrants are usually required to be sufficiently integrated. Whether this is the case can be assessed using various criteria. For example in order to prove that s/he is sufficiently integrated to become a full member of society, applicants for naturalisation in the UK have to show they have

sufficient language skills and knowledge of society. People that did not fulfil the requirements for ‘qualified persons’ status, they had no right to reside, and subsequently no right to the benefits sought (Guild, Groenendijk and Carrera, 2009, p.113).

In the UK exists a special categorization of EU migrants, which are divided into two groups:

- The best, which includes very specific categories such as EU students, researchers, National Health Service workers are depicted within an economic prosperity frame, underlining the contributions those groups make to the UK economy;
- The rest, which includes migrants that are mentioned within arguments of labour and social security, for instance referring to pressures migrants have on native wages, and on public services such as the National Health Service, schools, and housing.

Migration was a concern issue for David Cameron, when he was leading the process of “reform and renegotiation” on the UK’s membership of the EU. On 22 February 2016 he mentioned the desire of the British people to reduce the very high level of migration from within the EU and preventing the abuse of free movement and the abuse of British welfare system that was acting as a magnet for people to come to the UK.

Cameron said that those coming from the EU, who haven’t found work in Britain within 6 months, can be required to leave. According to him, in the UK will be established a new emergency brake so that EU migrants will have to wait 4 years until they have full access to British benefits, and once activated, the emergency brake will be in place for 7 years (Government of the United Kingdom, 2016).

However, the fear of further immigration from EU countries certainly played a role in Brexit, where high immigration may exert downward pressure on wages for low-skilled workers (Welfens, 2017, p.271). When countries such as Poland, Hungary and the Czech Republic joined the EU in 2004, their citizens gained the right to move to the UK to live and work. This resulted in large numbers of immigrants coming to the UK in search of work as the UK economy was booming. Between 2004 and 2006 the UK became the host country for 600,000 Eastern European migrants. Many found jobs, particularly in the construction and retailing trades, earning up to five times as much as they

did in their home countries (BBC, n.d.). In 2004, the UK used the accession of the ten new member states (Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, and Slovenia) to restrict substantially the access to social benefits for all EU migrants (Guild, Groenendijk and Carrera, 2009, p.235).

The growth rate of immigrants from the 12 EU accession countries which joined the EU in 2004 and 2007 (Romania and Bulgaria) was linked to the Vote Leave share. This stands in contrast to migrant growth from the EU countries or elsewhere in the world. It suggests that migration from predominantly Eastern European countries has had an effect on voters. However, it cannot identify the precise mechanism whether the effect on voters is mainly economic through competition in the labour and housing markets, or rather in terms of changing social conditions (Fleming, 2018, p.31). The famous campaign “Vote Leave and Take Control”¹¹ emphasized the possibility of the British people to control immigration if they would vote to leave the EU on 23 June 2016, and have a faire system which welcomes people to the UK based on the skills they have, not by the passport they hold.

Remain campaigners in the UK emphasised how beneficial EU freedom of movement is for British citizens, enabling them to ‘travel, work, study, and retire in the EU, without visas’ and also emphasised the multicultural argument for British students abroad, the positive impact that studying in another EU member state has on gaining valuable international experience.

Alongside of positive categories such as ‘EU students and researchers’ and medical professionals, EU migrants are also mentioned in the context of negative categories such as criminals and ‘low skilled East Europeans’ (Fleming, 2018, pp.40-41). There were mentioned the facts that a quarter of a million EU migrants came in the UK every year, a city the size of Newcastle and this puts a big strain on public services like the NHS and schools. Leave campaigners visually associated through maps, future EU migration from Turkey and other countries with increased refugee movements. For example, a map included countries set to join the EU’, lists five countries like Albania, Macedonia, Montenegro, Ser-

¹¹ “Vote Leave and Take Control” is the campaign for a Leave vote in the EU Referendum that took place on the 23rd June 2016. It was founded on 8 October, 2015 and on 13 April 2016 it was designated by the Electoral Commission as the official campaign in favour of leaving the EU in the Brexit Referendum. Part of the Vote Leave Campaign Committee was also the UK Prime Minister Boris Johnson, which at that time was Member of the British Parliament from Conservative Party.

bia and Turkey and their total populations. Even though not present in the list, Syria and Iraq are also highlighted in a different shade of red on the map, underlining the proximity of Turkey, a potential EU state, with countries from where refugees could come to the UK (Vote Leave and Take Control Campaign, n.d.).

More than a million migrants and refugees from Syria, Afghanistan, Iraq, Kosovo, Albania, Pakistan, Eritrea, Nigeria, Iran and Ukraine crossed into Europe in 2015, sparking a crisis as countries struggled to cope with the influx, and creating division in the EU over how best to deal with resettling people. Tensions in the EU had been rised because of the disproportionate burden faced by some countries, particularly the countries where the majority of migrants had been arriving as Greece, Italy and Hungary. The UK had 60 applications asylum applications for every 100,000 residents and was ranked as twentieth from the EU states, while the EU average was 260.

Then David Cameron said that the UK would accept up to 20,000 refugees from Syria over the next five years, and together with Denmark weren't part of the 24 EU countries that agreed to relocate migrants from Greece and Italy in their territories (BBC, 2016).

The immigrant crisis in 2015 has had a profound effect not only in Britain but also in other EU countries. According to a study realized in 2016 by the Pew Research Center in 10 EU countries (Germany, France, Italy, the Netherlands, the United Kingdom, Greece, Spain, Sweden, Hungary and Poland), the highest level of Euroscepticism was as follows: *Greece (71%); France (61%); Spain (49%); the UK (48%); and Germany (48%)*. The research showed that Euroscepticism was on the rise in EU key countries (Stokes, 2016).

CONCLUSION

There is a number of factors that have contributed in the decision of the British people to leave the European Union, such as the incompatibility of the United Kingdom with certain EU policies, the issue of sovereignty which is like the Achilles heel for Britain, the growth of Euroscepticism, economic issues etc., but immigration was a key factor in the decision of UK citizens for Brexit.

In the referendum on the UK's membership of the European Economic Community in 1975, immigration was not a concern for the British and renegotiation between the UK and the EEC was focused mostly on economic and political issues. Whereas, in the referendum on the UK's membership of the European Union in 2016, anger and fear caused by EU immigrants had an impact on many UK citizens, which at the same time created favorable spaces for the dominance of Eurosceptic views through various campaigns. While in 1975 the British people chose to remain in the EEC mainly because of the economic benefits, in 2016 they chose to leave the EU because for them national security was more important than the various economic benefits they received from EU membership.

Leave campaigners emphasized the "lack of control over immigration" as the main threat for British national security, which increased the number of Brexit supporters. This support was also affected by the migrant crisis in 2015, caused by more than a million refugees mostly from the Middle East, who moved to Europe and whose destinations were the main EU countries. The UK was not part of EU countries which accepted and agreed to relocate immigrants in their territories, despite the raised tensions among EU member states and their efforts to solve this issue in the best way.

After voting for Brexit, the British people understood the importance of their decision to leave the EU because the activation of Article 50 of the Lisbon Treaty is a very complicated process with major consequences. Seemingly, immigration had a major impact in the decision of the British people for Brexit, but did not threaten their national security as they thought.

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Slovenian Gambling Industry: From Land Based to a Need of Stronger Internationalization

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ABSTRACT

Gambling as a part of tourism, which is considered to be a globally important economic sector, is facing a new reality and is practically in shock. Changed circumstances under normal conditions, and all the more so in emergencies, require rapid and effective adaptation. In this context, we want to raise the issue of the readiness of the Slovenian gambling sector to operate under the changed circumstances of international proportions. Also the land-based gambling on the Slovenian territory has a relatively diverse history.

Online gambling began to develop in the middle of the 1990s when it experienced a strong development boom. The article deals with the study of the strategic documents related to gambling in Slovenia, the implementation of guidelines in the normative regulation as well as the adequacy of strategic thinking regarding the international interaction of social activities. Slovenia's strategic attitude towards the development of gambling is mainly focused on land-based gambling in a relatively narrow international space, with relatively conservative and cautious treating of online and classic gambling activities.

KEYWORDS: games of chance, gambling, casino, gaming salon, international economic relations, diplomacy

POVZETEK

Igralništvo kot del turizma, ki velja za svetovno pomembnejšo gospodarsko panogo, se tako kot mnoge ostale panoge, sooča z novo realnostjo in je praktično v šoku. Spremenjene okoliščine v običajnih razmerah, in toliko bolj v izrednih razmerah, terjajo hitro in učinkovito prilaganje. V tem kontekstu želimo tematizirati pripravljenost slovenskega igralništva na spremenjene okoliščine mednarodnih razsežnosti. T. i. land based (offline) igralništvo na slovenskih tleh ima relativno pestro zgodbino.

Spletne (online) igre na srečo so se pričele razvijati sredi devetdesetih let 20. stoletja in doživele močan razmah in razvoj. V članku proučujemo in tematiziramo strateške dokumenta igralništva v Sloveniji, implementacijo usmeritev v normativno ureditev in ustreznost strateških razmišljajev v povezavi z mednarodno prepletenco družbenih dejavnosti. Slovensko strateško razmišljanje o razvoju igralništva je osredotočeno na land based igralništvo na relativno ozek mednarodni prostor, spletne in klasične igre na srečo pa obravnavata relativno konzervativno in previdno.

KLJUČNE BESEDE: igre na srečo, igralništvo, igralnica, igralni salon, mednarodni gospodarski odnosi, diplomacija

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INTRODUCTION

Originally, gambling games were those whose sole purpose was entertainment. All other game-related effects were secondary, becoming gradually part of the games, along with the development of the culture. In cultural development, games and religion have been significantly related. This connection can be observed and found in all people. During the cultural development, people have tried to force luck into the games, by a random decision that does not depend on human will (Gizycki, Gorny, 1972, p. 9).

The game, as a social phenomenon, has been present in human history practically from the very beginning. We associate the phenomenon with a pleasant area of social activities, which offers relaxation and entertainment as well as satisfaction, and does not contain or reflects any negative effects. We are talking, of course, about social games, sports games, dramatic games and also about games of chance² (the result is determined by chance). All of these games will take on a completely different meaning and connotation when the factor of money, goods, or services is included. Thus, the risk becomes a key component. The risk is the basis of human action without which it is practically impossible to live.

The article focuses on the development and responsiveness of the Slovenian gambling industry to international development and trends. It discusses and studies the strategic documents related to gambling after the independence of Slovenia and the implementation of the guidelines into the normative regulation of gambling. Additionally, the article includes reflections and raises the issue of the past strategic orientations taking into account the changed international circumstances in connection with the coronavirus pandemic (COVID-19). It also deals with the land-based (offline)³ gambling, online gambling and classic games of chance⁴. As gambling tourism is part of a wider tourism offer, the strategic documents in the field of tourism in Slovenia are also discussed. The article is aimed at giving a useful general analysis of the gambling industry in the region. Only certain segments from strategies (types of gambling, ownership structure) have been

² Not in the context of the Gambling Act definition of the term where the essential component is payment or investment in the game and the expectation of profit or loss.

³ Casinos, which, in physical form, are located indoors. Gamers' physical presence in the casino is required to be able to play.

⁴ The terms are defined in the section »Overview of Terms«.

considered. The area of gambling levies and their distribution, the enforcement control, concession award policy and socially responsible conducting of the gambling activities has not been included in this article.

Gambling in the EU has not been regulated centrally. Member States regulate this field at the national level, following national values and goals.

Kaburakis and Rodenberg conclude that the European economic sector of the regulated gambling industry is the largest source of income, which represents one of the most volatile areas due to the variety of legal systems governing the gambling sector (Kaburakis, Rodenberg, 2012, p. 64).

A high level of interdependence and interaction of the international community in the context of economic activities has been demonstrated in the recent experience of the coronavirus pandemic in 2020. Benko considers that a high degree of interdependence in social processes is easiest to identify in international economic relations in connection with trade (Benko, 1987, pp. 9-10), which undoubtedly also applies to tourism and gambling. Individual and independent measures imposed by individual countries, especially the closure of state borders or restrictions on the free movement of people between countries, have shown the vulnerability of economic activities related to international markets, and so have Slovenian tourism and gambling industry. Overnight, the tourism industry has become dependent on domestic tourists, and Slovenian land-based gambling has practically died out, as it is largely dependent upon Italian and Austrian tourists. Even before the outbreak of the coronavirus pandemic, part of Slovenia's gaming activity took place online, but not all operators are allowed to operate games of chance online, which actually makes it impossible to do the business at the time when the world was in a "lockdown". A new reality and an uncertain future call for unconventional measures, new models and theories.

OVERVIEW OF TERMS

This section presents the definition of the basic terms: gambling, games of chance, classic games of chance, special games of chance, online games of chance, casino, gaming salon and hazard.

Gambling is “an economic activity that concerns operation of games of chance” (SSKJ, e-source). The phrase “conducting the games of chance” can be defined as the equivalent of the term gambling.

The games of chance, According to the Gambling Act, are “games in which participants have the same chance to win prizes based on the paid amount of money with the outcome of the game depending exclusively or predominantly on chance or some uncertain event”.⁵

Classic games of chance pursuant to the Gambling Act are numerical lotteries, lotteries with currently known winnings, quiz lotteries, bingo, lotteries, sports forecast, sports betting, raffles and other similar games (Ibid, Article 10).

Special games of chance are games played by the players against a casino or against each other on special gaming tables with balls, dice, cards, on boards or on slot machines, as well as betting and other similar games in accordance with international standards.⁶ According to the law, *special games of chance* must be operated only in casinos, with the exception of betting, which is allowed also on the Internet or other telecommunication media.⁷ In gaming salons, however, a joint stock company or a limited liability company may, subject to a granted licence, operate only the games on slot machines, which the players play against the slot machine^{8,9}.

According to the Slovenian legislation, *online games of chance*¹⁰ are not a different type of games of chance - it is merely the way of oper-

⁵ ZIS, Official Gazette of the RS, No. 14/11 - official consolidated text, 108/12, 11/14 – edited and 40/14 - ZIN-B, Article 2.

⁶ The types of special games of chance are:

- the games that players play against each other (chemin de fer, poker);
- the ball games (French roulette, American roulette, boulle);
- the playing card games played against the casino (black jack, punto banco, mini punto, caribbean poker, 30/40, red dog);
- the dice games (craps, tai sai);
- the board games (bingo, keno, big wheel, toto);
- the slot machine games played by players against a slot machine;
- betting.

Source: ZIS, Official Gazette of the RS, No. 14/11 - official consolidated text, 108/12, 11/14 - edited and 40/14 - ZIN-B, Article 53.

⁷ ZIS, Official Gazette of the RS, No. 14/11 - official consolidated text, 108/12, 11/14 – edited and 40/14 - ZIN-B, Article 53.

⁸ Electronic devices that do not require human assistance to perform.

⁹ ZIS, Official Gazette of the RS, No. 14/11 - official consolidated text, 108/12, 11/14 - edited and 40/14 - ZIN-B, Article 92.

¹⁰ The games of chance on the Internet or other telecommunication media. See ZIS, Official Gazette of the RS, No. 14/11 - official consolidated text, 108/12, 11/14 - edited and 40/14 - ZIN-B, Article 53.

ating certain games of chance¹¹. Operating certain special games of chance via the Internet or other telecommunication media (online gambling) may be conducted only by the companies that are given concession for permanent operation of classic games of chance, or for the operation of special games of chance in casinos.¹² Online gambling is not allowed to be operated by the companies that hold the concession for operating special games of chance in gaming salons.

The terms *casino* and *gaming salon*¹³ are not directly defined in the Gambling Act. Dictionary of Standard Slovenian Language defines the term *casino* as “a company, an institution that deals with the organization of gambling” (SSKJ, e-source). From the above, we can derive a definition for a gaming salon and define it as *a company, an institution that deals with the operation of certain gambling (hazardous) games prescribed by law*. The term *gambling (hazard)* refers to a game for money, usually played with cards or dice, the outcome of which depends on chance (*Ibid.*). Mihelič attributes the term “hazard” to the meaning of a special type of game, which, due to coincidences and unpredictability of the outcome, represents an adventure that is irresistibly attractive and contains sweet surprises as well as bitter disappointments (Mihelič, 1993, p. 7).

Often, gambling is defined as an activity of the betting or staking of something of value, with consciousness of risk and hope of gain, whose result may be determined by chance or accident or have an unexpected result (Eadington, 1976, p. Xi). In gambling, i.e. forecasting or predicting an unknown/random outcome of an event, it is difficult for many players to accept the fact that further/future outcomes of events or results are completely independent of the past outcomes of events or results that occurred under similar circumstances. This also applies to connoisseurs of the theory of statistical independence. The belief that a set of successful/winning outcomes of events is inevitably followed by failure/loss and vice versa is very powerful, in fact predominant. Belief is like an optical illusion. Although it is false, we cannot

11 All kinds of special games of chance with the exception of betting. See ZIS, Official Gazette of the RS, No. 14/11 - official consolidated text, 108/12, 11/14 - edited and 40/14 - ZIN - B, Article 3a.

12 ZIS, Official Gazette of the RS, No. 14/11 - official consolidated text, 108/12, 11/14 - edited and 40/14 - ZIN-B, Article 53.

13 Key differences between a casino and a gaming salon: casinos are majority owned by the Republic of Slovenia (local communities and legal entities, whose 100% owner or sole founder is the Republic of Slovenia); they are not subject to a limited number of gaming devices on which special games of chance can be played; they do not have the prescribed rate of return on investment. Gaming salons can be owned by a private owner (foreign or domestic); they have a prescribed minimum and maximum number of gaming devices on which special games of chance can be played. Gaming salons are also subject to a minimum return on investment rate.

dispel it (Cohen, Hansel, 1956, p. 10). In addition to prostitution and espionage, the phenomenon of gambling can certainly be considered one of the oldest “crafts” of civilized society.

OVERVIEW OF SLOVENIAN TOURISM STRATEGIC DOCUMENTS RELATED TO GAMBLING

The article further presents the chronological review of important Slovenian tourism documents related to gambling and highlights key findings from the Resolution on Strategic Goals of Tourism Development in the Republic of Slovenia from 1995, Slovenian Tourism Strategy 2001-2006, Slovenian Tourism Development Plan and Guidelines 2007-2011, Declaration on Partnership for Sustainable Development of Slovenian Tourism from 2011, Strategy for the Development of Slovenian Tourism 2012-2016 and Strategy for Sustainable Growth of Slovenian Tourism 2017-2021.

The importance of tourism for the Slovenian economy is significant, which is also shown by the figures. In 2016, 12.9% of all employees were employed in tourism; tourism generated 8.1% of the total value of Slovenian exports, and the contribution to GDP amounted to 12.6%.¹⁴

In 1995, the National Assembly of the Republic of Slovenia adopted a *Resolution on Strategic Goals of Tourism Development in the Republic of Slovenia* with a program of activities and measures for its implementation (ReSCPRT, 1995). The Resolution states that only Nova Gorica has the characteristics of a complete gambling product. It also states that the attractiveness and advantages of gaming reflect in a concentration of the variety of games and entertainment as well as easy accessibility (what accessibility is meant is not stated – A/N), as well as that for a higher competitiveness, the product requires upgrading in terms of greater diversity and product range (*Ibid.*). In the document Tourism Policy and Analysis of Slovenian Tourism in the Period 1995-2001, the Office for Macroeconomic Analysis and Development states that casinos generated the largest structural share of foreign exchange earnings in 2001, namely 13.6% (Koprivnikar, Šuštersič, 2002, p. 47). The introduction of the American gaming model in the Slovenian tourism industry enabled the development of competitive services on the European market. Gambling, as one of the anthropological characteristics of human development, rep-

¹⁴ Declaration on Partnership for Sustainable Development of Slovenian Tourism, 2017.

resents a lasting source of tourism offer. For the imaginary world, gambling centres represent a fundamental attraction.¹⁵

Gambling tourism is recognized in the *Slovenian Tourism Strategy 2001-2006* as an absolute competitive advantage of Slovenia.¹⁶ The aforementioned Strategy of the Slovenian Tourism from 2001 envisages the construction of five gambling and entertainment centres¹⁷, as a strategic goal of Slovenian tourism, and gambling is defined as a basic business and entertainment orientation.¹⁸ It follows from the above Strategy that gambling was the most developed Slovenian tourism product and it represented the biggest competitive advantage of Slovenia and its biggest tourism business development opportunity. It has been noted that in recent years the basic policy of the gaming industry development has remained markedly restrictive rather than developmental (concession restrictions and high tax burdens). In the 1990s, Slovenia was the first in Europe to develop or introduce the so-called American type of gambling (casino as an entertainment space), however, it has not developed appropriate business (ownership) and other regulatory mechanisms that would suit the mentioned method or type of its tourism offer. The Strategy included gambling tourism in the priority program guidelines of the Slovenian tourism and defined some important business guidelines based on the development of the gaming industry in the period 2002-2006 (privatization of the gambling industry, increase of gambling concessions, tax relief, central state regulation, certification of gambling devices). It was further anticipated that gambling tourism would become the main business program of the Slovenian tourism in the period 2002-2006 and that the activity would be developing within the tourism offer in all major tourist centres with traditional tourism offer. In 2003, a new gambling strategy and appropriate legal/regulatory mechanisms to enable privatization were created. The main investment cycle in the gambling industry was projected for the period 2004-2006.¹⁹

Slovenian Tourism Development Plan and Guidelines 2007-2011, in the part where the internal environment is analyzed, states that the gambling and entertainment product is one of the most important segments

15 Slovenian Tourism Strategy 2001-2006, 2001, p. 12.

16 Ibid, p. 9.

17 Slovenian Tourism Strategy 2001-2006, 2001, p. 32.

18 Ibid, p. 14.

19 Ibid, pp. 16-17.

of the Slovenian tourism²⁰, but the legislation still restricts the development activity, thus reducing the competitive advantage. It is further stated that in the development of the gambling business, it is necessary to follow the guidelines for granting concessions to gaming salons only in tourist places (Uran, Ovsenik, NN, p. 9). Entertainment and gambling are classified into the basic areas of the tourism offer (*Ibid*, pp. 31-32). Slovenian gambling industry is understood to be distinctly an export industry. It is related mostly to the Italian market, which is intensively developing its gambling services. The most important gambling services in Slovenia are concentrated in the border zone between Italy and Austria, while elsewhere they are subordinated to other tourism offers (*Ibid*, pp. 115-116). As a precondition for the creation of a favourable business environment in tourism, when gambling is concerned, it will be necessary, in addition to the creation of more favourable business environment (encouraging entrepreneurship and competitiveness), to envisage a condition in terms of the amendment of the Gambling Act "towards the creation of favourable normative environment encouraging the gambling development cycle (especially the abolition of the progressive fiscal restrictions of gambling activity and concession relief for development investments) and the limitation of the number of concessions for gaming salons (*Ibid*, pp. 69-70).

Declaration on Partnership for Sustainable Development of Slovenian Tourism from 2011²¹ states that gambling is insufficiently integrated into the tourism offer, which is also highlighted in the Strategy for the Development of Slovenian Tourism 2012-2016²² and is recognized as an obstacle to achieving greater competitiveness of the Slovenian tourism.

In *Strategy for the Development of Slovenian Tourism 2012-2016*, gambling and the entertainment tourism form a common product, or a set of leisure services.²³ Gambling tourism, or operation of special games of chance, significantly completes and complements the Slovenian tourism offer and is considered a special segment of tourism, which is internationally competitive and which develops with high added value. One of the identified obstacles in achieving greater competitiveness of the Slovenian tourism is too small, or insufficient integration of

20 By generated income, added value, number of employees and tourism turnover Source: Uran, Ovsenik, NN, p. 115.

21 Declaration on Partnership for Sustainable Development of Slovenian Tourism from 2011.

22 Strategy for the Development of Slovenian Tourism 2012-2016, 2012, p. 34.

23 *Ibid*, p. 45.

gambling tourism into the tourism offer of Slovenia. The Strategy states that it is crucial for the gambling industry to encourage capital-strong concessionaires for operating special games of chance, who are capable of building more socially acceptable gaming centres and investing in the tourism infrastructure by individual destinations. “Specific goals in the field of tourism-oriented gambling are to encourage the development of tourism and entertainment infrastructure by introducing a stimulating system of gambling taxes, to ensure quality and diverse gambling services, to introduce an active concession policy, to create complete gambling areas, to define in more detail conditions for each individual type of gambling and to obtain the largest possible share of economic rent for the state, which still enables an appropriate level of investment in the gambling and tourism product and appropriate return on investment to the concessionaire.”²⁴

In the *Strategy for Sustainable Growth of Slovenian Tourism 2017-2021* the entertainment and gambling tourism are no more considered as the key/main product²⁵ ²⁶, but as the so-called secondary/support product²⁷ to all main products of practically all macro destinations (Alpine Slovenia, Mediterranean Slovenia, Pannonian Slovenia, Central Slovenia & Ljubljana), except so-called Pannonian Slovenia.²⁸ No special measures for gambling are envisaged, except for “restructuring of state-owned hotel companies, which includes an investment plan and a management plan”. Furthermore, the strategy shows that hotel and gambling companies owned by the Republic of Slovenia “are facing inefficient management, lack of investment in recent years and deterioration of hotels and resorts with little hope that the current situation will be resolved in the short term.”²⁹ In the analysis of the tourist industry, the strategy mentions, among other things, “a high share and control of the public sector in hotel and catering companies and gambling. The public sector has 38% ownership share in the 20 largest companies in terms of income in the hotel business, 32% in hotel companies together with gambling and 27% in catering and gambling.”³⁰

²⁴ Strategy for the Development of Slovenian Tourism 2012-2016, 2012, p. 53.

²⁵ Strategy for Sustainable Growth of Slovenian Tourism 2017-2021, 2017, p. 34.

²⁶ Key/main products include Mountain Holidays and Outdoors, Business Meetings & Events, Health & Wellness, Nature Experience, Gastronomy, Culture, Sun & Sea, Sports Tourism, Cruises and Tourism in the Country. Source: Strategy for Sustainable Growth of Slovenian Tourism 2017-2021, 2017, p. 43.

²⁷ In addition to gaming, the secondary/support products include Cruise & Nautical, Shopping and Special Interests. Source: Strategy for Sustainable Growth of Slovenian Tourism 2017-2021, 2017, p. 48.

²⁸ Strategy for Sustainable Growth of Slovenian Tourism 2017-2021, 2017, pp. 39-42.

²⁹ Ibid, p. 60.

³⁰ Ibid, p. 162.

Based on a chronological review of the strategic documents in the field of Slovenian tourism, we can conclude that gambling was recognized in the last decade of the 20th and the first decade of the 21st century as a highly developed activity, representing Slovenia's competitive advantage and its greatest tourism business development opportunity. At the beginning of the second decade of the 21st century, it has been established that gambling is insufficiently integrated into the tourism offer, which is an obstacle to achieving greater competitiveness of Slovenian tourism. Change of direction or the treatment of gambling is defined in the Strategy for Sustainable Growth of Slovenian Tourism 2017-2021, where gambling loses its importance and is classified as a support product to the key product. The gambling treatment, development and services are strongly focused on the land-based services in tourist resorts and border towns, primarily intended for foreign tourists.

OVERVIEW OF STRATEGIC DOCUMENTS RELATED TO GAMBLING IN SLOVENIA

Among the most important/basic documents in the field of gambling are the Strategy of Gambling Development in Slovenia 1997 and the Strategy of Gambling Development in Slovenia 2010-2020, which have been analysed here below. Additionally, the scope and content of the implementation of the normative guidelines outlined in the strategies have also been analyzed and the key findings with an emphasis on the integration/placement of Slovenian gambling in international economic flows highlighted.

STRATEGY OF GAMBLING DEVELOPMENT IN SLOVENIA 1997

The Strategy says that the mission of the gambling activity is that "within the given, clear and development-oriented framework, it is appropriately and transparently managed, with effective supervision in a positive environment, and that it successfully uses the given resources, the effects of which are coordinated towards integrated tourism development. It also encourages the competitiveness of the tourism offer and increases the total tourism income and thus also direct and indirect fiscal resources in the long run" (Vesenjak et. al., 1997, p. 73). As its goal, the Strategy envisages the transfer of the gambling's positive effects to the development of the tourism offer within the bordering area and wider, to the entire territory of Slovenia (*Ibid*, pp. 2-3). It was found that Slovenia had a relatively modern concept of gambling and

that in previous years it successfully competed with European competitors, especially by upgrading its offer. However, the acquired competitive advantage has not been so pronounced in recent years³¹. Demand for gambling tourism grew faster than demand for traditional forms of tourism. In addition to the awareness that gambling can have negative effects in the form of addiction and compulsive gambling, it was largely seen as entertainment. Through the strategy, the development of gambling has been directed to the parts of Slovenia where market resources are provided, but it is necessary to ensure the conditions for development. However, turning the whole of Slovenia into a gambling destination was not the goal of development (Vesenjak et. al., 1997, pp. 1-2). At that time, the income generated by the Slovenian gambling industry predominantly represented cash inflows from abroad. Slovenian gambling was called “net export of services with high added value” (Ibid, p. 31. The gaming services in Slovenia were almost entirely focused on foreign markets. The major market was the north-eastern part of Italy, followed by the market of southern Austria, and the markets of Slovenia and Croatia were negligible at the time of the elaboration of the Strategy (Ibid, p. 45).

At that time³², the European gambling market was dominated by classic and gambling-oriented offer (European type of gambling³³ – A/N), intended for wealthy domestic guests and wealthy tourists. Supply, despite increased demand, did not include gambling³⁴ activities typical of the American³⁵ entertainment and gambling product. It was estimated that an adapted American gambling model has a future and potential also in Slovenia. The proof in favour of this estimation was the successful development of Slovenian gambling in the area of the western state border, which offered the services mainly to the Italian guests. The standard offer of gambling services was believed to have smaller development possibilities. An opportunity for development could have been a modern centre, limited to a specific area, which would include an attractive, integrated, harmonious and modern designed offer. With appropriate management, such a centre, which had never been seen in

³¹ Before 1997, when the strategy was published.

³² Before the Strategy from 1997.

³³ The European type of gambling is aimed at rich clients, limited to gambling and played on gambling tables. The American type of gambling is not limited to gambling only and it is based on a wide range of business activities and consumer products. It is intended for entertainment and leisure offering a rich gaming and other services. It is played on slot machines.

³⁴ Entertainment program, shops, catering, accommodation, etc.

³⁵ The term American type/model of casino/gaming salon is understood as North American model, or a model established in the United States.

Europe, would have a realistic chance of operating successfully (Vesenjak et. al., 1997, p. 50).³⁶ The existing situation in Slovenia, such as the proximity of rich markets and the tendency of tourists from these markets to enjoy rich, quality and temperamental life, should, in addition to good business tradition, quality staff, and so on, have enabled the Slovenian gambling industry, in contrast to other tourist products, the fastest and the most effective development (Vesenjak et. al., 1997, p. 50).

The characteristics of the gambling guests, in addition to visiting casinos and participating in gambling, are also the use of other gambling-related services such as shopping, catering, or accommodation, that is, the consumption outside the range of the gambling services. It means that gambling activities also affect the development of other activities in the place where the casinos are located, which further affects the tourist attraction of the place and the region. Therefore, the starting point for casinos, or the companies involved in the operation of games of chance, is cooperation and stimulation of the development of tourism in the place where the gambling activities are carried out (*Ibid*, p. 31).

In terms of the global strategic definitions, the Strategy states that gambling is an integral part of Slovenia's comprehensive tourist offer. The strategic management of the development policy ensures a model of gambling and entertainment offer that will be naturally and culturally acceptable. Development of the activities/offers is enabled only in areas where market conditions are appropriate, meaning primarily the presence of foreign guests. Gambling that takes place online and payments are made abroad must be legally restricted (Vesenjak et. al., 1997, p. 81). The use of slot machines outside casinos³⁷ must be prohibited or the machines removed (Vesenjak et. al., 1997, pp. 83 and 86).

For the next 10-year period, the issuing of 14 large concessions³⁸ (gaming and entertainment centres, casinos in tourist resorts, city casinos) and 20 small concessions (gaming salons)³⁹ was proposed, and all the

³⁶ We concluded that the assessment of the mentioned possibilities and opportunities from the Strategy has initiated some thoughts and activities towards the construction of a mega entertainment centre, with Hit Harrah company in 2005. The idea and the project were not realized.

³⁷ Gaming Act, Official Gazette of the RS, No. 27/1995, Art. 92-102.

³⁸ Taking into account the already issued at the time of adoption of the Strategy.

³⁹ Concerning operation of special games of chance in gaming salons, the minimum percentage of return is prescribed in relation to payments into the games, namely slot machines must return at least 90% of the payments. It is supposed to be a preventive security measure in terms of protecting players in gaming salons, who are supposed to be predominantly domestic. The percentage of the return for large concessions is not prescribed (*op. Cit.*).

concessions were to be granted before Slovenia's accession to the EU, which would protect Slovenia's economic interests in the field of gaming. Its focus was on export-oriented gaming services, that is, on foreigners, and the ownership of gaming companies was to remain in the domain of domestic owners (Vesenjak et. al., 1997, pp. 81-82).

Classic games of chance are not included in the Strategy, and in this regard it is only stated that "it will be necessary to regulate the field of operating various games of chance within the framework legislation, both for operating classic games of chance and special games of chance" (Ibid.).

NORMATIVE IMPLEMENTATION OF STRATEGIC DIRECTIONS OF GAMBLING AFTER 1997

The amendment to the Gaming Act of 2001⁴⁰ abolishes the use of slot machines outside casinos and regulates gaming business, i.e. operating special games of chance in gaming salons. Until then, slot machines were allowed to be used in certain spaces outside the casinos.⁴¹ The number of concessions for gaming salons was not yet defined, but the upper limit of the share of shareholders or the partners of foreign legal entities and natural persons was determined, which together was not allowed to exceed 25% of the share of a company having a concession for special games of chance in gaming salons.⁴² This restriction on the foreign entities ownership was removed in the amendment to the Gambling Act of October 2003⁴³, which stipulates the condition for operators or concessionaires that only a person who has the citizenship of the Republic of Slovenia or a Member State of the European Economic Area, or the registered seat in the Republic of Slovenia or a Member State of the European Economic Area, is allowed to participate in the company's capital. With the implementation of the amendment to the Gaming Act of 2001⁴⁴ the operation of games of chance in Slovenia becomes the exclusive right of the Republic of Slovenia, and the ownership of casino concessionaires was defined in detail in 2003 onwards.⁴⁵ The key provision is that the Republic of Slovenia controls the majority share in companies that have a concession for the operation of special games of chance in casinos.

40 Act Amending the Gaming Act (ZIS-A), Official Gazette of RS, No. 85/2001.

41 Gaming Act, Official Gazette of the RS, No. 27/1995, Article 93.

42 Act Amending the Gaming Act (ZIS-A), Official gazette of RS, No. 85/2001, Article 93.

43 Act Amending the Gaming Act (ZIS-B), Official gazette of RS, No. 101/2003, Article 1.

44 Act Amending the Gaming Act (ZIS-A), Official gazette of RS, No. 85/2001, Article 1.

45 Act Amending the Gaming Act (ZIS-B), Official gazette of RS, No. 101/2003, Article 4.

The normative regulation of online gambling was implemented for the first time in Slovenian legislation in the Act of 2001⁴⁶, which we estimate as relatively late, especially considering that the beginning of online gambling in the world dates back to the mid-1990s.⁴⁷ It is, however, true that the operation of online games in Slovenia was allowed only to “companies that obtain a concession for the permanent operation of classic games of chance or a concession for the operation of special games of chance in casinos”⁴⁸, which were either majority state-owned or full state-owned companies.

The number of concessions for casinos and gaming salons was defined in the Gaming Act of 2003. The maximum number of concessions granted for casinos was limited to 15 and for gaming salons to 45⁴⁹, which does not reflect the guidelines of the 1997 gaming strategy.

Significantly larger number of concessions was defined for gaming salons (45) than it was defined in the Strategy (20) (Vesenjak et. al., 1997, pp. 81-82). The four types of gaming products proposed in the Strategy (gaming and entertainment centres, casinos in tourist resorts, city casinos and gaming salons) were not legally regulated, and the number of slot machines in gaming salons was limited to 200 instead of 100 as proposed in the strategy.

GAMBLING DEVELOPMENT STRATEGY IN SLOVENIA 2010-2020

The mission of the Strategy states that “special games of chance in Slovenia complete the offer of Slovenian gaming and non-gaming activities in tourism and as a gaming and tourism product represent a specific segment of tourism that can be internationally competitive and consequently can continue to develop with higher added values, which are today typical for most tourist products in Slovenia.” In order to realize the mission in the strategic period, a smaller number of granted concessions is emphasized, whereby the concessionaires will be stronger in terms of capital and able to build more socially acceptable gaming centers. The offer of classic games of chance in Slovenia was carried out to the extent demanded on the domestic market and for the purpose of financing of disability, humanitarian and sports or-

⁴⁶ Act Amending the Gaming Act (ZIS-A), Official gazette of RS, No. 85/2001, Article 3a.

⁴⁷ The History of Online Gambling. Available at URL: <https://www.onlinegambling.com/online-history/>

⁴⁸ Act Amending the Gaming Act (ZIS-A), Official gazette of RS, No. 85/2001, Article 3a.

⁴⁹ Act Amending the Gaming Act (ZIS-B), Official gazette of RS, No. 101/2003, Article 1.

ganizations.⁵⁰ The key findings of the Gambling Development Strategy from 2010 show that the gaming market in Slovenia was saturated and, with unchanged demand, the number of operators of games of chance in casinos and gaming salons was too large.⁵¹ A higher demand can be achieved only with the additional range of gambling services as well as higher quality of the gaming and non-gaming offer.⁵²

The Strategy states that the concept of the classification of games of chance into classic and special⁵³ is no longer appropriate. With the development of new technologies and related games with remote access via the Internet, the term “classic” gambling is most often used for games of chance that are played in certain indoor locations (the terms land-based or off-line gaming are also used), but the term *special games of chance* is not known in other countries /regulations or it is not in use. Guidance is given to abandon the existing classification of games of chance and re-classify it into lottery games, betting and casino games. It follows from the Strategy that the definition of individual types of classic and special games of chance is unclear and inconsistent and unsystematically determined. Namely, they are defined in terms of the casino player/casino relationship, then in terms of playing accessory (ball games, cards, dice, boards, slot machines) and as betting games, which is the general term in games of chance. The issue of ambiguity and inconsistency is highlighted mainly in betting, namely sports betting are included in the classic games of chance, and at the same time, betting is a series of special games of chance.⁵⁴

Furthermore, regarding the offer of games of chance, the Strategy recognizes decreasingly smaller difference between the casino and the gaming salon. Namely, with the development and introduction of new technologies (computerization and automation of typical games of chance - card, dice and roulette games), when certain games, which could be played only with human assistance before, now can

⁵⁰ Gambling Development Strategy in Slovenia 2010-2020, 2010, p. 27.

⁵¹ Data for 2020 show that there are 10 casinos and 25 gaming salons in Slovenia (a total of 35 gaming units), and in 2005 there were 13 casinos and 31 gaming salons (a total of 44 gaming units). Two companies have a concession to operate classic games of chance. Source: Extract from the register of concessionaires. Available at URL: https://www.gov.si/assets/ministrstva/MF/Financni-sistem/DOKUMENTI/Igre-na-sreco/Priloga-6_Izvlecek-iz-registra-koncesionarjev-za-igralnico.pdf, https://www.gov.si/assets/ministrstva/MF/Financni-sistem/DOKUMENTI/Igre-na-sreco/Priloga-7_Izvlecek-iz-registra-koncesionarjev-za-igralni-salon_2019.pdf, https://www.gov.si/assets/ministrstva/MF/Financni-sistem/DOKUMENTI/Igre-na-sreco/NewPriloga-5_Izvlecek-iz-registra-prirediteljev-klasicnih-iger-na-sreco_2019.pdf.

⁵² Gambling Development Strategy in Slovenia 2010-2020, 2010, p. 27.

⁵³ The definition of terms is given in the chapter Overview of terms.

⁵⁴ Gambling Development Strategy in Slovenia 2010-2020, 2010, p. 32.

be played also via electronic devices, casinos are increasingly resembling gaming salons. The visitor can no longer notice any significant difference between casinos and gaming salons. Now he can play for larger amounts also in the gaming salon, with a wide offer of slot machines and a mandatory registration and identification upon entry, just like in the casino.⁵⁵

For the strategic period 2010-2020, five categories of tourist gaming products have been defined: mega entertainment centre, gaming entertainment centre, grand casino, casino and gaming salon. The differences between the categories are in the type and scope of the offer. In addition to the gaming offer, larger gaming centres must also offer accommodation and catering establishments, a congress centre, a health and wellness centre, and a space for parties and events. Casinos and gaming salons do not need to provide additional gaming offers.⁵⁶

Online gambling, according to the current legislation, does not fall into the category of special games of chance, but only special way of operating of the gambling. Consequently, in Slovenia they are not planned, that is, there are no concessions or concessionaires⁵⁷ for the operation of online gambling. An individual online game is operated by a concessionaire on the basis of and in accordance with the concession agreement. A more appropriate term for online gambling (games operated via the Internet and other telecommunications means) is the term *remote gaming*. As regards the online gambling, the strategy defines and prescribes that the games should be operated to a limited extent, to meet domestic demand, that is, to maintain the existing operation of online gambling. The possibility for this type of gambling operation should be granted to the concessionaires who operate lottery games and betting and to the concessionaires who operate games of chance at *gaming and entertainment centers* and at *grand casinos*, who would also operate online the same games they operate in the casino. The field of online gambling needs to be monitored at EU level and it should be actively involved in the joint regulation of this area. It is important to effectively protect the consumer, maintain social order, prevent fraud, money laundering and gambling addiction.

⁵⁵ Ibid, p. 33.

⁵⁶ Ibid, pp. 33-34.

⁵⁷ Issuance of special licenses or concessions for online gambling in the EU Member States exists only in Malta, Italy and France.

Regarding the ownership structure of concessionaires who operate classic games of chance, the Strategy highlights the unresolved issue of the existing regulation. It also presents an appropriate solution, namely that a concessionaire is publicly owned by non-profit organizations, where the non-profit purpose of the business should be pursued in favour of financing disability, humanitarian and sports organizations. The rules on the ownership structure of concessionaires operating special games of chance in casinos should remain unchanged in the future.⁵⁸ It is also proposed to change the limit of a maximum 20% of shares per individual private company and the exception that the ownership share of the state, state-owned companies and local communities may be less than 51%, only in cases of joint ventures with the private sector into gaming and entertainment mega centre.⁵⁹ The ownership structure of companies that operate special games of chance in gaming salons is not specifically prescribed, nor are any changes envisaged.⁶⁰ In the field of operation of the classic games of chance, it is anticipated that in the future in Slovenia there will be two providers of classic games of chance, which will be in public ownership or owned by non-profit organizations. As it is typical of most other countries, this area will be regulated by a public monopoly. The area of special games of chance is aimed at reducing the number of concessions, which will be larger and located in tourist areas with an emphasis on strengthening the tourism component. By 2020, it is planned to gradually reduce gaming units (casinos and gaming salons) to a maximum of 30.⁶¹

NORMATIVE IMPLEMENTATION OF STRATEGIC DIRECTIONS FOR GAMBLING AFTER 2010

It has been found that after 2010 there have been no considerable conceptual changes in the normative regulation that could change/upgrade the gambling model in Slovenia. Among other things, the amendment to the 2010 act⁶² prescribes the change of the authority who decides on the restriction of access to websites on which online games of chance are operated without the concession from the Government of the Republic of Slovenia.

In 2018, an amendment to the Gaming Act was proposed. The basic

⁵⁸ The majority of ordinary shares of a concessionaire must be owned by the state, state-owned companies and local communities, and maximum of 49% of ordinary shares of the concessionaire may be owned by private companies.

⁵⁹ Gambling Development Strategy in Slovenia 2010-2020, 2010, p. 37.

⁶⁰ Ibid, p. 35.

⁶¹ Ibid, p. 28.

⁶² Act Amending the Slovenian Gaming Act (ZIS-D), Official Gazette of RS, No. 106/2010.

purpose was to systematically regulate and stabilize the financing of the Foundation for Funding Sports Organizations (FŠO) and the Foundation for the Funding Disability and Humanitarian Organizations (FIHO) and to regulate the field of sports betting operation with the EU acquis.⁶³ The goal would be achieved by introducing the possibility of awarding concessions for operation of betting to a larger number of concessionaires, which would enable a higher tax inflow. The proponent supports this proposal with arguments that in Slovenia there is an "administrative monopoly" over the operation of classic games of chance (betting), as most of the Slovenian residents use the online services of other providers outside the Republic of Slovenia. As a result, most of the financial resources that domestic residents spend on sports betting outside Slovenia are not integrated into the Slovenian financial and tax system. Additionally, a more appropriate definition of betting is proposed - the skill game. In the skill game, the player, thanks to his knowledge and experience, has a partial influence on the outcome, which is not typical for other games of chance, which are completely dependent on chance.⁶⁴

This section can be finished with the conclusion that the new gaming act was to be prepared by the Ministry of Finance of the Republic of Slovenia within six months after the adoption of the Strategy⁶⁵, that is, until the summer of 2011. The review of positive legislation in the field of gambling shows that the guidelines set out in the strategy were not realized. Unfortunately, a frequently found practice has been seen along with the basic shortcoming of strategies - non-implementation or poor implementation and the lack of upgrading or improvement.

MAIN FINDINGS

Gambling was once considered to be the greatest competitive advantage and the greatest tourism development opportunity, as well as the main program of Slovenian tourism. Today, however, it can be seen that gambling is increasingly moving away from the primary position in tourism. At the time of the predominant offer of land-based gambling (casinos and gaming salons), when online gambling had not yet been developed, we can talk about a relatively successful and complex Slovenian tourism product, which included shopping, oil, culinary and

63 Report on a draft act amending the Slovenian Gaming Act (ZIS-F), second reading, EPA 2540-VII.

64 Zorman, 2018, Draft Act Amending Slovenian Gaming Act (ZIS-F).

65 Gambling Development Strategy in Slovenia 2010-2020, 2010, p. 54.

gambling tourism meeting the needs of daily foreign visitors.

Having analysed the content of the two strategies so far we may point out that significantly more attention was paid to the land-based gambling, and classic and online gambling were treated with restraint or with the focus on ownership control of the market for such games of chance, which is uninteresting for foreign investments and hinders the expansion into the international markets. In practically all forms of gambling, except for gaming salons, there is an essential emphasis on the protection of the domestic ownership structure for managing the gambling market in Slovenia, with the primary goal being, the so-called export of activities, or an offer that will be attractive for daily foreign tourists.

The gaming development strategy for the period 2010-2020 envisages and provides guidelines for the development of such a product that would significantly increase the interest even of foreign guests from distant countries, who would have, in addition to the gaming offer, an additional high-quality and wide offer⁶⁶ for which reason they would not stay just for one day and just for the purpose of gambling. In case of such an offer, provided by the so-called mega entertainment centre, an exception in the ownership structure of the company would be granted, and it would obtain a concession for operation of the games of chance to such an extent and with the above mentioned additional offer. In this case, the state and local communities would give up the majority share in such a company and thus provide private, even foreign capital with a more interesting and stimulating business environment. The success of this type of product, considering the non-compliance with other challenges, primarily infrastructural⁶⁷ is questionable, and investments and development are consequently risky.

The online gambling, which basically allows remote access and use, and compared to the land-based gambling expands the market from the narrow/local international market to a significantly wider international market, is treated in the Strategy with restraint and caution. It results from the point of view that online gambling should be operated to a limited extent and meet only the needs of the domestic market.

⁶⁶ Accommodation and catering establishments and other tourist attractions (sports and recreation, health and wellness centres, congress centre, entertainment events).

⁶⁷ Airport, port, roads.

There is no identified ambition to break through or expand Slovenian online gambling over wider international developments, but, unlike the land-based gambling, which is highly oriented and dependent on foreign guests, it is focused on the domestic guests. This proved to be extremely sensitive and vulnerable for the existing Slovenian gambling model during the “lockdown” and all the restrictions during the corona crisis. Slovenian land-based gambling immediately ceased when the borders were closed, and the online gambling offer was focused on the domestic guests and thus unprepared for changed circumstances. The Slovenian gambling model is focused on a narrow international space, on neighbouring countries with a higher economic standard and consequently higher purchasing power of the guests. Behaviour and habits of people have changed and will continue to change, all the more intensely in view of the effects and consequences of the coronavirus pandemic. Thus, a thorough consideration of the necessary adaptations and changes might be useful.

So far, the relative success of Slovenian gambling, which has stagnated in the last decade or even recorded a declining trend⁶⁸, is based on daily foreign guests, mainly from neighbouring Italy and Austria, and a smaller part are other foreign guests for whom visiting the casino is not their primary goal when visiting Slovenia. It seems that focusing on the relatively narrow international market has satisfied the ambitions of the development of Slovenian gambling and that there are no more ambitious strategic considerations in terms of a wider international space. In this context, we perceive the absence of ambition regarding inclusion or consideration of the Slovenian gaming model that would include a broader international framework and take into account the situation in the narrow, regional market in Europe, as well as in the world market.

The Slovenian gambling market had been already saturated before 2010⁶⁹, and additional demand can only be achieved by increasing the volume of the gambling and the additional non-gaming offer, which would arouse the interest in the wider international market. It cannot be denied that Slovenian land-based gambling is stagnant, and that the online gambling is not at a competitive stage of development and focused on domestic guests, which undoubtedly makes it difficult to expand the scope of business, which is directly related to and depen-

⁶⁸ Details available at URL: https://www.fu.gov.si/drugo/posebna_podrocja/igre_na_sreco/#c4709

⁶⁹ Gambling Development Strategy in Slovenia 2010-2020, 2010, p. 27.

dant of the wider international space. When any activity goes beyond the national framework and is positioned either in a narrow or a wide international space, its further international development requires an understanding of the importance of international relations and diplomacy, especially economic diplomacy. Bazdan attaches great importance to successful economic diplomacy and cites it as one of the factors of economic growth and social development of the most developed countries in the world (Bazdan, 2011, pp. 105-106). In the age of globalization, diplomacy is increasingly taking on an economic role.

Globalization is a process in which national borders play an increasingly smaller role. Processes, events and activities take place independently of the territorial boundaries of each country. In this context, the use of the Internet, and thus online gambling, has incredible potential and is much easier and faster to reach a wider international space compared to land-based gambling. Online gambling is basically intended for remote access or participation in games of chance and are practically automatically placed in the international space. However, the technological development of the Internet and online gambling and the associated possibility of relatively simple expansion of activities to the wider international space are not sufficient in itself without the interest, ambition and social/political consensus which are strongly needed. It is economic diplomacy what is needed for promoting and protecting the interests in the international community.

We associate the concept and the phenomenon of economic diplomacy with the development of modern diplomacy⁷⁰ which includes several subjects, from the Ministry of Foreign Affairs, the Line Ministry, chambers, interest associations and companies (Jazbec, 2009, pp. 77-80). The very fact that Vienna Convention on Consular Relations, in Article 5, includes among its key tasks the acquiring of information regarding the development of commercial, economic, cultural and scientific life in the receiving State by all permitted means, the reporting on it to the sending State and providing information to those interested in this, testifies to the importance of the role of diplomacy in the development and strengthening of economic interests internationally.

There is a relatively large number of interest groups⁷¹ in the global

70 The period after the end of World War II. Source: Jazbec, 2009, p. 39.

71 <https://www.gamingregulation.com/associations/>

gambling industry, e.g. European Casino Association (ECA)⁷², European Gaming & Betting Association (EGBA)⁷³, The European Lotteries (EL)⁷⁴, Gaming Regulators European Forum (GREF)⁷⁵ and many others. The membership of the Slovenian companies in various associations is perceived here⁷⁶, but the membership of the Line Ministry competent for gambling and the Ministry of Finance in various international associations or organizations, which are directly related to gambling, are not included. As already noted, diplomatic activities, in our case modern economic diplomacy, which operates at the level of chambers, interest associations and also companies, are essential for the cooperation on the international market and the realization of interests.

The development potential and fast expansion of online gambling was perceived relatively early. The so-called classic gambling (offer of land-based casinos) experienced the development and expansion of online gambling as a potential threat, not recognizing an opportunity. The fact is that online gambling is not such a new reality and that responding to changing needs requires fast and at the same time thoughtful action. The level of online gambling development in Slovenia is not at the level competitive to the international offer.

CONCLUSION

Undoubtedly, we are witnessing new, changed circumstances that will be reflected in the habits of individuals and the society as a whole. Much of the activity that does not require physical presence moved to the Internet during the coronavirus pandemic. We can rightly conclude⁷⁷ that gambling is no exception and that online gambling is recording a growing trend and increasing use compared to land-based gambling. Both types of gambling services, that is, the land-based and online gambling, have advantages and disadvantages. Physical casinos (land-based) have their own charm. It is a place where people, in addition to playing, can also socialize and watch a show (entertainment

72 <https://www.europeancasinoassociation.org/>

73 <https://www.egba.eu/>

74 <https://www.european-lotteries.org/>

75 <http://www.gref.net/>

76 Hit d.d. in ECA, Loterija Slovenije d.d. and Športna loterija d.d. in EL.

77 At the time of writing there were no available, serious and in-depth analyses of the impact of the coronavirus pandemic on the in-use performance ratio between land-based gambling and online gambling.

program), or dine in a restaurant. On the other hand, online casinos offer gambling from the comfort of your own home and an easy access anytime from anywhere.

This brief study of Slovenian gambling gives a general impression that the Slovenian model of gambling is relatively conservative, limited to a very narrow international area and extremely restrained and cautious about online gambling, which makes it difficult or prevents the development and expansion of the activities. Thus, a relatively conservative ambition to focus on foreign gambling guests in the wider European and international space is perceived. Outside the micro environment (the border area of Italy and Austria, with the exception of some locations in the new states on the territory of former Yugoslavia), there is practically no detectable presence or influence of Slovenian gambling.

Let us conclude the study with the thought that the realization of every social activity first of all requires interest and ambition, followed by social consensus, and regarding the entry into the international space, the modern economic diplomacy in a broader sense. It seems that the Slovenian gambling industry, on the path of its development, has stopped somewhere between vague ambition and the conclusion of a social consensus. The step towards serious and active involvement of economic diplomacy in the promotion and protection of Slovenia's international gambling interests seems distant, at least until the first two preconditions are met.

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The Vienna Conventions on Diplomatic and on Consular Relations: A Philosophy of the Preambles

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ABSTRACT

The Vienna Convention on Diplomatic Relations and The Vienna Convention on Consular Relations constitute the very focal part of the diplomatic and consular law and its codification. Although adopted six decades ago, they remain an irreplaceable part of defining, explaining and implementation of diplomatic work, roles of diplomats, their mission and relations among key actors of this profession and activity.

This article dwells on the substances, understanding and messages of the preambles of both Conventions. They rest on tradition, are rich with continuity, flexibility as well as with defined legal form and structure. Their language is dry, formal, nuanced, direct and open at the same time. They contain moral and ethical aspects, but also functionality, pointing out that diplomacy must be based on rules that respect legal basis of human behaviour and on promotion of friendly relations among nations, regardless of differences that exist among them. We understand this as a philosophy of the preambles.

KEY WORDS: Vienna Convention on Diplomatic Relations, Vienna Convention on Consular Relations, preamble, tradition, philosophy, ethics

POVZETEK

Dunajska konvencija o diplomatskih odnosih in Dunajska konvencija o konzularnih odnosih predstavljata ključni del diplomatskega in konzularnega prava ter njegove kodifikacije. Čeprav sta bili sprejeti pred šestimi desetletji, ostajata nenadomestljiv del definiranja, razlaganja in izvajanja diplomatskega dela, diplomatov, njihovega poslanstva in odnosov med ključnimi dejavniki diplomacije kot poklica in kot dejavnosti.

Prispevek se ukvarja z vsebino, razumevanjem in s sporočilnostjo preambul obej konvencij. Obe temeljita na tradiciji in sta bogati s kontinuiteto, fleksibilnostjo ter z jasno pravno formo in strukturo. Njun jezik je suhoparen, fomalen ter znansiran kakor tudi neposreden in odprt hkrati. Vsebujejo moralne in etične vidike ter funkcionalnost in poudarjata, da mora diplomacija izhajati iz pravil, ki upoštevajo pravno osnovo človeškega obnašanja in razvijanje prijateljskih odnosov med narodi ne glede na številne razlike med njimi. Navedeno lahko razumemo kot filozofijo obej preambul.

KLJUČNE BESEDE: Dunajska konvencija o diplomatskih odnosih, Dunajska konvencija o konzularnih odnosih, preambula, tradicija, filozofija, etika

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INTRODUCTION

Both Vienna Conventions, namely The Vienna Convention on Diplomatic Relations (henceforth Diplomatic Convention) and The Vienna Convention on Consular Relations (henceforth Consular Convention; when speaking about both of them also: Conventions), form the very corps of the diplomatic and consular law. Adopted and ratified almost six decades ago, they remain the main fundament for codifying diplomats' acts and behaviour, and the way diplomacy functions as a profession and as an organization. Scholarly discourse on both Conventions primarily focuses on presenting and explaining legal and protocol aspects of these two documents, but also their practical applicability in management of relations between states as well as between states and international organizations. The aspect of the applicability of both Conventions is rich, detailed and nuanced as well.²

Our ambition in this paper is, however, to look beyond this, at the sophisticated indirect meaning of both Conventions, having in mind messages they bring, substance they share, and nuances they inhibit. Generally speaking, we call this endeavor *a search for the philosophy of the Conventions*. Our research focus is on the philosophy of the preambles of the both Conventions. We pay primary focus on the preamble of the Diplomatic Convention and comparative focus on the preamble of the Consular Convention. We contemplate on the preambles, discuss and draw comparisons as well as generalize how they are understood within diplomatic studies, but also beyond them, referring not only to legal studies but also to philosophy, history, ethics, sociology and psychology.³

For this purpose, we use methods of analysis, synthesis, comment, comparison and, since the author of this contribution is a career diplomat, also a method of observing through one's own participation.⁴ Our main thesis is that understanding the multilayered substance of the both preambles brings us to a conclusion that diplomacy is not only a profession, but also a mission with deep ethical and moral aspects, framed with and resting on a clear legal background, rich with tradition, continuity and functionality.⁵

² For more on this comp. Berridge and James, 2003, Feltham, 1994, Okano-Heijmans, 2013, Sen, 1988, Wagner, 2007, and Wouters et al, 2013.

³ For more on this comp. Criekemans, 2014, Jazbec, 2013, and Kaufmann, 2013.

⁴ More on this method in Burnham, 2004, and Mason, 2002.

⁵ For more on this comp. Cooper, 2013.

DIPLOMATIC AND CONSULAR LAW

The key point in the development of diplomacy and in the process of codification of diplomatic and consular law was the adoption and ratification of Vienna Convention on Diplomatic Relations (1961 and 1964) and the Vienna Convention on Consular Relations (1963 and 1967), around sixty years ago.⁶ Both legal documents arrange and dwell, in the most developed, comprehensive and systematic way, the work of diplomats and their definition. Further on, they elaborate on various aspects of their mission, and deal with basic elements of the diplomatic structure as well as with the relations among them, primarily between the sending and the receiving state and their authorities, i.e. foreign ministries in particular. They discuss rights and duties of diplomats, diplomatic missions and their states in the broader frame of their efficient performance and management.

Together with the Convention on Special Missions and the Convention on the Representation of States in Their Relations with International Organizations of a Universal Character and within the frame of the founding Charter of the United Nations, they present the basic corps of diplomatic and consular law. Additionally, both Conventions count among those international legal documents that are ratified by the highest number of states (the Diplomatic one even by 192) and are among the most respected and implemented ones.⁷ Also for this reason, diplomatic and consular law presents the most advanced part of the codified areas of the international law.⁸

One could define diplomatic and consular law as a system of legal rules and principles of international customary and obligatory law that explains diplomatic and consular relations among states, legal status (rights and duties) of states' representations and representatives abroad (and international functionaries) and takes care of their international legal status, their duties, as well as their privileges and immunities. Besides regular bilateral diplomatic relations and special missions, it also regulates, within the frame of multilateral diplomacy, the legal status of the states' representatives accredited at international organizations and at international conferences, and defines rules of international employees (Bohte and Sancin, 2006: 36).

⁶ For more on this comp. Brglez, 1998.

⁷ For a collection of these and some other conventions from this area see Simoniti (2014).

⁸ For more on a relation between diplomacy and law see Farer, 2013.

As main sources of diplomatic and consular law, one should list international general and special customary law, international treaty law, general legal principles that are generally accepted, as well as customs, habits and rules of politeness. This is important to bear in mind since both preambles, in their last clause, point out that “the rules of customary international law” are those, which shall govern, also in the future, any questions that are not expressly regulated within the Conventions (either of them). This shows the immense importance of customs transformed into international legal norms – it is the custom from which stems regulation of diplomatic work and all related issues.

GENERAL AND COMPARATIVE DISCUSSION ON BOTH CONVENTIONS

Before starting with an insight analysis of both preambles, let us have a brief look at Conventions, their form and structure, on a general and comparative level.⁹

Both Conventions start with a preamble that is followed by a series of articles. In the case of the Diplomatic Convention there are 53 articles and in the Consular one 79 articles. The forms of both documents follow the same approach, namely listing articles one by one, while presenting their content. After the preamble, the few opening articles present the purpose of the Conventions, define basic terminology¹⁰ as well as list diplomatic functions and consular functions.¹¹ Both Conventions end with a few articles presenting general and final provisions respectively (48 – 53 and 74 – 79).¹²

However, their structures differ. While in the Diplomatic one, articles follow one by one without being listed in various structural or topical units; the Consular one is structured in such units. This difference is not only visual and structural, but also substantial. The Consular Convention is structured into four chapters with the first two structured into two sections, while chapters three and four have a unison structure from this point of view. All chapters, sections and articles have titles. The structure is as follows:¹³

⁹ Comp. also for example Simoniti and Agius, 2014.

¹⁰ Both Conventions use term “expressions” (Article 1). The title of this article in the Consular one is “Definitions”.

¹¹ The official wording is “the functions of a diplomatic mission” (Article 3), but in the Consular one “consular functions” (Article 5).

¹² When referencing both Conventions we always list first the Diplomatic Convention and then the Consular one, unless explicitly indicated.

¹³ Bold and italics M.J.

Chapter I. Consular Relations in General (articles 2 – 27)

Section I. Establishment and Conduct of Consular Relations (articles 2 – 24)

Section II. End of Consular Functions (articles 25 – 27)

Chapter II. Facilities, Privileges and Immunities Relating to Consular Posts, Career Consular Officers and other Members of a Consular Post (articles 28 – 57)

Section I. Facilities, Privileges and Immunities Relating to Consular Posts (articles 28 – 39)

Section II. Facilities, Privileges and Immunities Relating to Career Consular Officers and other Members of a Consular Post (articles 40 – 57)

Chapter III. Regime Relating to Honorary Consular Officers and Consular Posts Headed by such Officers (articles 58 – 68)

Chapter IV. General Provisions (articles 69 – 79)

As far as the structure of the Consular Convention is concerned, one should also point out that it formally begins with Article 2: Establishment of consular relations, while the first Article (Definitions) belongs to the introductory part, although not officially defined as such. Additionally, as already mentioned, each article holds a title, which points out its substance and the topic of presentation. The Consular Convention is, as one can see, quite detailed, which helps to easier find the sought topic.

One could speculate that the main reason for this difference lies in the different core understanding of diplomatic and consular relations. Diplomatic relations are by definition a matter of political conduct between the government of the sending state and the government of the receiving one, i.e. implementing foreign policy, meaning politics as such (that depends on interests primarily and might be quite changeable). There are no exact forms and ways to pursue this, apart from having in mind diplomatic functions.¹⁴ Consular relations, as defined in the consular functions, however, concern basically provisions on interests of citizens and their companies of the sending state in the receiving state, i.e. protection of interests of bodies of private and corporate law. This protection is regulated by international law, as well as by legal arrangements of the sending and the receiving state. Consular relations are implemented by the legal book strictly, while diplomatic ones present primarily management of political affairs. Hence, the former must be defined clearly,

¹⁴ Comp. for example Benko, 1998, and Petrić, 2013: 118–141.

while the latter need not be, what is reflected also in the structure of both Conventions.

Another issue is the relation between the two Conventions. The Diplomatic one was adopted in April 1961 and entered into force on April 24, 1964, and the Consular one was adopted on April 24, 1963 and entered into force on March 19, 1967. From both preambles, one can understand that the Diplomatic one is a basis for the preparation and the adoption of the Consular one,¹⁵ since the second diplomatic function defines protection of interests that is presented and discussed in details in consular functions. From this stems their interdependence and the conclusion/presumption that the Consular Convention is a substantial continuation of the Diplomatic one. The dynamics of preparation, adoption and entering into force of both of them clearly show this as well. We should not speak about vertical subordination between the two of them, but should understand this relation as based on substance, topic of discussion and as a way to regulate and implement diplomatic and consular relations. The complementary nature of both Conventions as the primary aspect that defines their relation is an important achievement of both documents. It is a fact that throughout the major part of diplomatic history, diplomatic relations (and diplomatic service) as well as consular relations (and consular service) were two separate instruments and institutions, hardly having any direct contact. Only at the beginning of the previous century, when classical diplomacy was coming to its end, the trend of understanding both of them as a single and united part of the state administration, started to develop.

Last but not least, it is important to point out that both Conventions count among those with the biggest number of ratifications (192 and 180 respectively) among international conventions. This fact illustrates their wide acceptability and applicability, especially since they have been both practically in use for six decades without being changed at all.¹⁶ Further on, their recognition has not been questioned even though the international relations and the international community witnessed intensive structural changes during this period of time.¹⁷

¹⁵ More on this later on when we discuss both preambles.

¹⁶ There has not been a serious formalized try to amend them.

¹⁷ More on this in Jazbec, 2021.

THE PREAMBLE OF THE DIPLOMATIC CONVENTION

GENERAL REMARKS ON THE DIPLOMATIC CONVENTION

The preamble is brief and exact, describing primarily legal and diplomatic language that tries to encompass broad understanding of diplomacy, the mission of the Convention as well as the historical frame within which it was developed. It consists of five clauses and two short, open sentences, the opening and the closing one. The former introduces, in the preamble, the philosophy of the Diplomatic Convention and the latter introduces, with articles, its content. Its philosophy could be understood as a concentrated, condensed and crystalized notion of the whole document. One could also claim a kind of diplomatic mission as well as a mission for diplomats, while the content is present in the listed articles, a kind of *acquis diplomatique*.

The opening sentence “*The States Parties to the present Convention,*”¹⁸ informs the reader about the intentions of the states that are parties to this Convention, referring to the clauses of the preamble. The clauses that present ambitions of the Parties of the Diplomatic Convention are listed in the preamble and we discuss them thoroughly here on. And the closing sentence “*Have agreed* as follows:” directs the attention of the reader – after being acquainted with the preamble – to the content of the Convention, being a concrete, operational result, stemming from the spirit of the preamble and presented with a clear, direct legal and diplomatic language. Between the two sentences, there lies a condensed, concentrated, but still clear philosophy of the preamble that is, to our mind, also one of the main characteristics of the whole Convention, its mission and message.

CLAUSES AND THEIR UNDERSTANDING

With this section, we come to the main part of our paper, namely focusing on understanding the philosophy of the preambles of the Diplomatic Convention. We firstly quote the clause discussed and then analyze and comment on it. After finishing this clause vivisection and before heading to the comparatively repeat of the process with the preamble of the Consular Convention in the next part of the paper, we will comment and wrap up our view on this part.

¹⁸ Italics in this part of the paper are from the discussed Convention.

CLAUSE ONE

“Recalling that peoples of all nations from ancient times have recognized the status of diplomatic agents,”

The very beginning of this clause points out tradition – diplomacy is an old profession. It stems from ancient times and already then it was obvious that those persons, who intermediate between two sides, need – in today’s language – a diplomatic status, i.e. protection and immunity, to be able to pursue their missions. Further on, ancient times were before states – nation states – came to existence, since peoples of all nations were recognizing this fact, as the clause says. The notion of a nation state emerged with the Peace of Westphalia, while the first origins of diplomacy, as we understand it today, appeared more than three millennia earlier, in ancient times, as the clause number one defines it. According to Jazbec (2009: 31-51), this helps to define the period of early diplomacy.

Additionally, the fact that diplomacy originates from ancient times in which diplomatic immunity was an accepted principle, serves as the point of departure for understanding not only the Diplomatic Convention, but diplomatic affairs as such. The authors of the Convention placed this reference, this recall, at the very beginning of the document. Whenever discussing diplomacy, one should bear in mind that this is not only “the most important institution of our society of states” (Berridge, 2015:1), the “funny old trade” (Roberts, 2014: ix) and the “most rewarding of profession (Ibid., p. x), but an activity with a millennia long tradition, experiences and, consequently, flexibility.

One would hardly wish to have a better, more concise and messaging opening of the Convention that presents the very core of diplomatic and consular law and lays down the fundamentals of this activity.¹⁹

CLAUSE TWO

“Having in mind the purposes and principles of the Charter of the United Nations concerning the sovereign equality of States, the maintenance of international peace and security, and the promotion of friendly relations among nations,”

¹⁹ Jönsson and Hall speak about the essence of diplomacy (2005) and Magalhaes points out the pure concept of diplomacy (1988).

After defining the origin of diplomacy and the principle of immunity in clause one, the preamble makes, in the second clause, a further step in binding diplomacy, its mission and notion to a broader frame of human activity. We can clearly notice deduction as the main methodological approach in the preamble.

While defining a diplomatic mission, States Parties to this Convention had in mind the founding Charter of the United Nations that puts forth the principle of sovereign equality of States. It is the basic outline that marks relations among states in their international intercourse, with responsibilities, rights and duties at the same time: states are by legal definition equal, they all share sovereign equality. Next, they also share and agree upon the maintenance of international peace and security as their primary aim. Whatever their historical experiences are, they swear to peace and security. Even more, one could claim that with accepting this Convention and agreeing upon its content, they also express their commitment to peace and security; they oblige themselves to follow it. And henceforth, they promote friendly relations among nations.

This is of the utmost value – friendly relations among nations. This is a highly ethical aspect of the Diplomatic Convention and of the entire diplomatic business as well. Ethical moment is deeply engraved in what diplomats do and states believe in. It would be most probably too much to claim that all the states follow this principle in reality, but with the acceptance of the Diplomatic Convention, sixty years ago, they took this principle for granted and obliged themselves to follow it. And since the Convention has not been changed so far, we should claim it is still that way nowadays. This makes it possible to claim that diplomacy is a noble profession. One pragmatic aspect of diplomats' work is that they forward interests of their sending authority to the receiving authority, in a form of governmental decisions, which change and vary from time to time. But another, the principle one, is to do what they can to promote friendly relations between states. The former might be a criterion to evaluate a concrete diplomatic service of a concrete state, but the latter is the criterion to judge diplomacy as a profession.

CLAUSE THREE

“Believing that an international convention on diplomatic intercourse, privileges and immunities would contribute to the development of

friendly relations among nations, irrespective of their differing constitutional and social systems,”

Since presenting what States recall and have in mind, they express with clause three their belief in the power of legality in reaching political goals. Friendly relations among nations present that goal, placed in the founding document of the United Nations. Hence, an international document that would regulate making that goal true is needed in achieving this goal with the instrument of diplomacy. With a support of a legal tool that would dwell on diplomatic intercourse, privileges and immunities, States would be able to contribute in reaching that goal. With this clause, the preamble takes a step forward: States did not only agree upon, they also expressed their willingness to contribute, to take action in achieving this goal. International relations offer a broad spectrum of tools and arrangements for states to take action, although they are not obliged to. To stick to a passive behaviour is nothing new in international relations. It could be easy and comfortable, but this preamble and its clause three encourage them to be active, to contribute. And this rests on what is being put in the very core of diplomatic work since ancient times. Namely, the status of diplomatic agents should be also legally defined in a separate binding document.

Such a document would enable States to focus on developing friendly relations among nations as their primary goal, in particular since they were aware (and still are) of their different constitutional and social systems. This fact should not hinder States in promoting friendly relations. They pursue it irrespectively of existing differences, in their legal, political and social set ups. It is a manifestation of a statesmanship and a related wisdom to take this differences into account and try to reach out on their basis to others, who are – and will most probably remain – different. Apart from the principle of willingness, this shows a strong feeling of pragmatism that is part of each political discourse as well. What is important is that they all share a goal of promoting friendly relations among nations and believe in the usefulness of a legal act that will support them in doing so.

Diplomacy is an ancient profession, which rests on tradition and experience, based on millennia old acceptance of the status of diplomatic agents, while their mission rests, in a broader sense, on main international legal documents discussing and defining their mission. And States obliged themselves voluntarily to take this into account and fol-

low it while pursuing friendly relations. Tradition, ethics and wisdom emerge as main philosophical aspects of diplomacy.

CLAUSE FOUR

“Realizing that the purpose of such privileges and immunities is not to benefit individuals but to ensure the efficient performance of the functions of diplomatic missions as representing States,”

Friendly relations among nations manifest the ultimate goal of states' discourse in international relations. Diplomats pursue the achievement of this goal on behalf of their states, while representing them, and in doing so they enjoy the ancient instrument of diplomatic immunity, status and privilege. States agree with this and accept it. With this Convention they intentionally and formally deliver it to diplomatic agents.

But most probably, pragmatism and realistic approach also guided States to include in a separate clause an explicit reference pointing that diplomats enjoy this ancient affordability for the purpose of their mission only, and not, eventually, for their personal benefit. This aspect of their work is there to ensure efficient performance of the functions of diplomatic missions. This is a clear demonstration of functionality that the Convention places at the very centre of the diplomatic profession.

One could claim that it paid off very well that there is a commonly shared and legally binding awareness of this enjoying status and all the related privileges, only with an aim to be able to perform duties without disturbances, efficiently and for the benefit of developing friendly relations among nations and for the management of relations among states, and other international actors. This is the ultimate diplomatic mission and everything what diplomats have, share and enjoy is focused on fulfilling this goal. Even more, one could even claim that diplomats have to use each and every opportunity to maintain, deepen and broaden friendly relations. Diplomatic invention, skillfulness and imagination are and should be endless in pursuing this goal.

It is important to point out as well that diplomats, when fulfilling this goal, get enriched and benefit from achieving their objective. This is the real benefit in diplomatic work that an individual dealing with it should enjoy. The benefit lies hidden in achieving one's mission, in

deepening friendships and promoting them. This benefit outreaches any quasi benefit that diplomat would try to get by misusing the Convention.

CLAUSE FIVE

“Affirming that the rules of customary international law should continue to govern questions not expressly regulated by the provisions of the present Convention.”

After laying down the origin, principles and notion of diplomatic profession with a reference to the United Nations Charter and to this Convention, the authors pointed out in the last, the fifth clause, the matter of a future regulation of diplomatic relations. The approach followed is a routine one, that is not new in legal documents. What is, however, important here, is that States have agreed to leave it to the customary international law to govern any open issues that might arise in the future, after the adoption of the Diplomatic Convention, concerning the work of diplomats and diplomatic relations as a whole. States demonstrated obvious trust in customs, being codified as a huge legal area, which is also the most important source of diplomatic and consular law.

We do not know about everything the authors of the this Convention had in mind when offering this approach. But the document lasted for six decades without changes and is going to last for a certain, probably long, time as well. Trust that States invested in international customary law to govern any questions did prove as well deserved. Judging the whole period of time, one can easily witness huge structural changes of the international community, which, however, did not prevent the Diplomatic Convention from functioning. Nothing, that was provided by the Convention, although sometimes outdated influenced the practical efficiency of the Convention in regulating diplomatic relations.²⁰ Even some technological aspects (like the introduction of internet into diplomatic communication) that appeared in diplomatic practice, not mentioned or envisaged by this Convention, (could not have been, of course) did not influence either the practical efficiency of diplomatic relations. This is by no doubt a huge success, both in theory as well as in practice, for such a broadly used legal document.

²⁰ Like regulating communication between diplomatic mission in the receiving State with its government in the sending state by a wireless transmitter with the consent of the receiving State (Article 26/1.).

Deduction, as the main methodological approach in the preamble, ends with this clause. As we can see from its quotation, it is of a general nature, defining in advance, with a cart blanche, that each and every question that could arise in diplomatic practice, regardless of any concrete binding, should be governed by the rules of customary international law. One could claim that deduction serves well as a method of presenting, explaining and codifying the philosophy of the preamble. In the end, a general approach comes to value again, wrapping up the conceptualization of the Diplomatic Convention.

SOME OF THE MOST IMPORTANT FINDINGS

After this detailed, multilayered and interdisciplinary analysis of each clause and the preamble of the Diplomatic Convention as a whole we comment on their messages and telling.

The Convention, as said, is a legal document that codifies diplomatic and consular law. It defines the object (“what”) as well as interprets it (“what does this mean”) for concrete diplomatic (and consular) practice, but also tells why it is that way (like stemming from the rules of customary international law, law of treaties, customs, habits).

This legal document is to a high degree complemented by a diplomatic approach, mainly through flexibility of wording and provisions.²¹ Definitions, to be able to stand the test of time, should be general, and exact to the point at the same time, but also open at the edge, not closed for possible new topics that should be regulated; they should stay open in a certain way. One could claim the discussed Convention is that type of a document: it is legally binding, dry and formal, but also narrow and broad, obligatory and advising in text and style, but at the same time also flexible and nuanced. It is functional, rests on tradition, continuity and accumulation of experiences. It also shares ethics and nobility, putting friendly relations among nations as well as the maintenance of international peace and security in the first place. From these stems the de facto definition of diplomacy and the guiding principle for the work of diplomats: they enjoy their diplomatic status since ancient times to be able to perform efficiently their main task, i. e. representing their states.

21 But diplomatic flexibility is just a means of making obligation possible by offering a flexible and broad approach to find a way of materializing obligatory approach. This way could differ from circumstances to circumstances, but still remains the same as a rule. Basically, it doesn't matter when the issue comes to this end, sometimes it does not at all (on purpose because of delaying it or since it is not possible in the given moment), the rule remains as it is. The author of this paper can back up this with his broad diplomatic experience.

To fully comprehend the nature and the notion of the preamble, and with it also the whole Convention, one should have a careful and closer look at the sequence of the highlights from each clause. They follow like this: *recalling, having in mind, believing, realizing, and affirming.*

From one point of view, this sequel illustrates the way diplomacy works in the long run as a process. It advances, cumulates, and complements the understanding, effect and contextualization of the philosophy of the Convention; that is, the legal and diplomatic documents that paved the way for diplomacy as we have been understanding it for the last six decades, and will most probably continue to do so for the same period of time, if not longer.

From another point of view, this sequence offers an additional insight view into the structure of the preamble and with this also into its philosophy as well as into the way States approached it. We stated earlier, in this part of the paper, that the Diplomatic Convention introduces its content with the opening and closing sentence as well as with the preamble, in between, that consists of five clauses. A careful and closer observation would show that, also in the preamble as such, there are the opening and closing clauses and three in between that put forward a concrete substance.

States that are Parties to the discussed Convention firstly, in clause one, *recall* the historical tradition, origin and validity of the status of diplomatic agents. Then, the three consecutive clauses define this substance: *having in mind, believing, and realizing.* They inform the reader what it is all about, what are the main parameters of this Convention as a paramount document that crafts out, together with the Consular Convention, a diplomatic paradigm. And lastly, with the fifth clause, we learn what they *affirm*: the general rule of governing any other question that may be brought into the focus of the Diplomatic Convention.

THE PREAMBLE OF THE CONSULAR CONVENTION

GENERAL REMARKS ON THE CONSULAR CONVENTION

In this part of the paper we discuss the preamble of the Consular Convention, using the same approach and methods as we did in the previous part with the Diplomatic one. This means that discussion is short-

er and more concentrated, since we do not repeat all those parts of the text discussed that are equally applicable to both Conventions, but primarily point out the differences and their understanding as well as meaning. We present all of the clauses, case by case, and then comment and compare them with those from the Diplomatic Convention, hence pointing out the differences and similarities.

The preamble of this Convention is also brief and exact, describing, with primarily legal language that tries to encompass a broad understanding of consular relations, being part of diplomatic relations, their mission as well as the historical frame within which they were developed. It consists of six clauses (one more than the Diplomatic one) and two short, open sentences, the opening and the closing one. The former introduces, in the preamble, the philosophy of the Consular Convention and the latter introduces its content in the articles. Its philosophy could be understood as a concentrated, condensed and crystallized notion of the whole document. One could also claim that it introduces a kind of a mission for consuls, while the content is present from the listed articles that are very exact, precise and stick to the point that could also be understood as a kind of *acquis consulaire*.

The opening sentence “*The States Parties to the present Convention,*”²² informs the reader about the intentions of the states that are parties to this Convention, referring to the clauses of the preamble. The clauses that present ambitions of the Parties of the Convention are listed in the preamble. As said, we discuss them here primarily on a comparative basis, pointing out the specifics of doing consular business as a separate, but consistently complementary part of diplomatic business as a whole.

The closing sentence “*Have agreed as follows:*” directs the attention of the reader – after being acquainted with the preamble – to the content of the Consular Convention, being a concrete and an operational result stemming from the spirit of the preamble and presented with a clear, direct legal language. Hardly any diplomatic notion could be noticed, due to the different nature of diplomatic relations and consular relations in their daily practical implementation.

²² Italics also in this part of the paper are from the discussed Convention.

COMPARISON OF CLAUSES WITH THE PREAMBLE OF THE DIPLOMATIC CONVENTION

We firstly quote the clause discussed and then analyze and comment on it, on a comparative basis with those of the preamble of the Diplomatic Convention. Since we have already discussed the clauses of the preamble of the Diplomatic Convention, we will try not to repeat the same findings, but just refer to them.

CLAUSE ONE

“Recalling that consular relations have been established between peoples since ancient times,”

The main message of this clause is the same as in the Diplomatic Convention: consular relations have been established since ancient times, though not between peoples of all nations, but “between peoples”. The pure purpose of their establishment is being pointed out, but not their recognition as such. There is no mention of the status of consular officers either.

With a reference to the time of origin (ancient times), one should add that consular relations, i.e. consular protection started to blossom during the period of the Italian City States when Mediterranean witnessed highly dynamic trade activities.²³ Generally speaking, this clause points out that long ago, there existed a strong interest of peoples for their personal protection as well as for the protection of their goods when travelling outside from their communities.

CLAUSE TWO

“Having in mind the Purposes and Principles of the Charter of the United Nations concerning the sovereign equality of States, the maintenance of international peace and security, and the promotion of friendly relations among nations,”

This clause is a very repetition of the second clause from the preamble of the Diplomatic Convention. This simple statement contains deep messaging: above all, it points out that diplomatic relations and consular relations are part of the same diplomatic intercourse, area and ac-

²³ With a similar approach one could say that diplomatic relations started to blossom during the period of the Greek City States when war and peace dominated diplomatic agenda.

tivity. When speaking about diplomats and consuls, they belong to the same, diplomatic profession, only the implementation of their functions differs in practice. This is due to the difference between diplomatic and consular functions. This comes out of the different nature of diplomatic relations (representing states) and consular relations (provision of protection of interests), but on a general level, the profession is one and the same.

As the second clause in the preamble of the Diplomatic Convention defines diplomacy, as here repeated, it also via facti defines what consuls – as part of the diplomatic profession – do. Hence, this clause is a kind of a policy prelude to the third and fourth that define the relation between the two Conventions.

CLAUSE THREE

“Considering that the United Nations Conference on Diplomatic Inter-course and Immunities adopted the Vienna Convention on Diplomatic relations which was opened for signature on 18 April 1961,”

The importance of this clause lies in the fact that it recognizes the importance of the Diplomatic Convention for defining consular relations. It is the Diplomatic Convention that laid down the premises for a consequent defining of consular relations with similar approach and similar legal document. Therefore, this clause defines the interdependence between the two Conventions and the fact that the Consular one stems from the Diplomatic one. However, had not this been the case, also Diplomatic Convention itself would have provided the basis for the exercise of consular relations. Though, consular relations are defined via this way, presented and elaborated in a much more detailed, applicable and efficient way.

Nevertheless, this does not presuppose a subordinated relation between the two Conventions and areas. It is more of a horizontal, complementary relation. Additionally, the States Parties to the Diplomatic Convention, expressed their belief in the third clause that such a Convention would contribute to the development of friendly relations among nations, and this one, as a kind of policy and process follow-up, states the fact of adopting the Diplomatic Convention. This fact has practically been taken as a starting point for adoption of a similar convention that would regulate consular relations.

CLAUSE FOUR

“Believing that an international convention on consular relations, privileges and immunities would also contribute to the development of friendly relations among nations, irrespective of their differing constitutional and social systems,”

This clause repeats the same notion, content and understanding that have already been presented in the third clause of the Diplomatic Convention. With this, it strengthens our belief that the relation between the two Conventions is of a complementary nature. A special convention, dealing only with consular relations, privileges and immunities, would contribute – as the Diplomatic one – to the development of friendly relations among nations, the ultimate aim of the States Parties to both Conventions. And, again, also in this case with the same approach: irrespective of the existing differences in their constitutional and social systems. Though, it should be added that the frame and scope of diplomatic immunity is bigger than of the consular one. But the former is still broad enough to satisfy all the needs of a consular post and consular officers to efficiently perform their functions.

While discussing the fourth clause, we can already notice that both preambles share the same value approach (tradition, continuity, ethics) and methodology (deduction). Clauses number three and four, hence, round up the relation between the two Conventions and also point to the fact that the Consular one has one clause more in the preamble. This strengthens their complementarity and interdependence, but also supports the impression of legal and diplomatic round up of the two documents.

CLAUSE FIVE

“Realizing that the purpose of such privileges and immunities is not to benefit individuals but to ensure the efficient performance of functions by consular posts on behalf of their respective States,”

Again, we see the repetition of the notion from the Diplomatic Convention, though with some differences that refer to the general differences between both types of relations.

While following the same stream of thought, legal logic, and func-

tionality as well, we notice one of the main differences between the two types of relations. Diplomatic agents represent their states, while consular officers perform consular functions on behalf of their states. Representation, as the first diplomatic function, is not also a consular function.²⁴ This could be, on a general level, described as the main difference between the two types of relations.

And, if we repeat after the discussion of clause four of the preamble of the Diplomatic Convention, what could only at first glance seem a bit idealistic, a devoted and engaged fulfillment of consular functions can bring by itself a huge personal benefit to a consular officer. It is the satisfaction of a person in need that reflects this benefit as a moral, ethical category. It remains with a consul for the rest of his/her life. Protection of interests of bodies of private and corporate law of the Sending State in the Receiving State offers a wide range of activities that, when implemented well, concisely and, in due time, exercise what is needed. This is important for a concrete person in the very moment and affects his/her destiny in a single decision of a consul. With the difference to this, diplomatic affairs are often impersonal, abstract and vague. They hardly affect destiny of a single person with a concrete diplomatic move or gesture, since they focus on management of relations between states what is always a process.

CLAUSE SIX

“Affirming that the rules of customary international law continue to govern matters not expressly regulated by the provisions of the present Convention,”

This clause also represents another repetition of a notion that the Diplomatic Convention already brought about for the whole area of diplomacy as a profession and activity. The affirmative nature of customary international law stands out obviously and generally.

There is, though, one terminological difference. This clause uses the term “matters” and the last one in the preamble of the Diplomatic Convention uses the term “questions”. The difference stems from different nature of the types of relations that was already discussed. However,

²⁴ Compare article number 3 of the Diplomatic Convention and the article number 5 of the Consular Convention respectively. However, consular officers are allowed to perform diplomatic functions under certain conditions: if there exist not diplomatic mission of the sending State in the Receiving States and if the Receiving State agrees with such an act (compare article 17 of the Consular Convention).

the trust invested in the rules of customary international law, also in this Convention, is definite and given here as well in advance.

SOME OF THE MOST IMPORTANT AND COMPARATIVE FINDINGS

As it is the case with the Diplomatic Convention, this Convention is also a legal document that codifies diplomatic and consular law; the former primarily as a frame and the latter in its concrete substance. It defines the object (“what”) as well as interprets it (“what does this mean”) for concrete consular practice, but also tells why it is that way (like stemming from the rules of customary international law, law of treaties, customs, habits as well as with a strong explicit and implicit reference to the Diplomatic Convention).

While the preamble shares to certain extend some aspects of diplomatic flexibility, this is not the rule of the document as a whole. Consular relations and their exercise mean an exact, precise and legally supported endeavor, where flexibility remains fixed within the limits of a legal act, regardless of the fact how broad these limits are and how much of a maneuver space they offer to the consular officer exercising these functions.²⁵

This Convention is also primarily legally binding, dry and formal, but also narrow and broad, obligatory and advisory in text and style; in some aspects, it is also flexible and nuanced, though this does not stand out as it does in the Diplomatic one. But it is functional, rests on tradition, continuity and accumulation of experiences. It shares ethics and nobility, putting friendly relations among nations and the maintenance of international peace and security in the first place. Also consular posts and officers enjoy their privileges and immunities for the efficient performance of consular functions on behalf of their states (although not to such extent as diplomatic agents).

If we try to have a careful and closer look at the sequence of the highlights from each clause, we would see the following order of appearance (in six key words, following the six clauses): *recalling, having in mind, considering, believing, realizing, and affirming*.

²⁵ But still this offers enough possibility to the consular officer to be flexible within the limits of the relevant law referring to each person (citizen of the Sending or of the Receiving State, citizen of a third state or being stateless) seeking service from him/her. The author of this paper can back up this with his broad consular experience.

Consular relations could be to a certain point, and in the long run, understood as a process, but more on a general level. They advance, cumulate, and complement the understanding, effect and contextualization of the philosophy of the preambles of both Conventions and of the Consular Convention; that is, the legal documents that paved the way for consular relations as we have understood them for the last six decades, and will most probably continue to do so for the same period of time, if not longer. One difference with the diplomatic relations would be the fact that globalization offers unlimited possibilities to travel, which creates more need for consular protection. It has not been put under question as diplomacy is from time to time because of the another effect of the globalization: the advanced development of media and transport technology sometimes create an impression that diplomacy is not needed anymore, since that technology can compensate diplomatic work (provision of information and maintaining contacts).

It is also with this sequence that it offers an additional, insight view in the structure of the preamble and with this also in its philosophy, as well as in the way States approached it. We stated that the Consular Convention also introduces its content with the opening and closing sentences as well as with the preamble in between that consists of six clauses. A careful and closer observation would show that also in the preamble as such there is the opening and closing clause and four in between that put forward a concrete substance (as already said before, one clause more than in the preamble of the Diplomatic Convention).

States that are Parties to the discussed Convention firstly, in clause one, *recall* the historical tradition, origin and validity of consular relations. Furthermore, the following four consecutive clauses define this substance: *having in mind, considering, believing, and realizing*. They inform the reader what it is all about, what are the main parameters of this Convention as a main document that crafts out the understanding of consular relations, as well as the content and the exercise of protection of interests, all understood as a part of the diplomatic paradigm as a whole, though not directly indicated as such. And lastly, in the sixth clause, we learn what they *affirm*: the general rule of governing any other questions that may be brought into the focus of the Convention.

Overall, the structure of both preambles follows the same approach, with a difference only in the number of clauses: six, i.e. one more, in

the case of the preamble of the Consular Convention. It points out a substantial and topical relation (complementarity above all) with the preamble of the Diplomatic Convention. This would as well mean that one should speak about the philosophy of both preambles as a whole. This philosophy is structured, consistent and presents an important aspect for understanding both Conventions as a fundament of diplomatic and consular law and its codification.

CONCLUSION

Our research interest in this paper focused on the preambles of the Vienna Convention on Diplomatic Relations and the Vienna Convention on Consular Relations. Both preambles present substantial, topical and areal introduction to both Conventions and their regulation of the field concerned.

With the opening and closing sentences as well as with the clauses in between (five in the Diplomatic Convention and six in the Consular one), both preambles elaborate the frame of the profession of diplomacy (with protection of interests, i.e. consular affairs as a complementary part of diplomacy) and its multilayered understanding, which rests on tradition, continuity and functionality. In addition to this, both preambles – apart from being a typical introduction to two of the most known international legal conventions – express ethics, moral standing, and nobleness. They point out the maintenance of international peace and security as well as the promotion of friendly relations among nations as their ultimate goal and mission. States that are Parties to both Conventions obliged themselves voluntarily to follow and respect them, regardless of differences between them as far as their constitutional and social systems are concerned.

It should also be pointed out that strong attention has been payed to the power of customary international law, which should govern all future questions or matters that are not regulated in the Conventions. With this affirmative approach, States expressed the important level of trust they placed in the rule of the law in advance, without exactly knowing what could happen. Although being a rather standard clause in many legal documents, this investment in trust in such an unpredictable area as international relations, adds significantly to the broad understanding of the notion of both preambles and Conventions. All

this is a result of a millennia long development of diplomacy that was codified six decades ago and is still in force and acceptable, in spite of huge structural changes that the international community has been facing throughout this time.

We argue that this wide-ranging set of characteristics that has a strong interdisciplinary nature, stemming primarily from international law (above all from the customary one), history, philosophy, diplomacy, ethics, sociology and psychology, presents a broad, general and defining understanding of diplomacy as a profession, activity and mission. From this complex approach, the philosophy of both Conventions could be contemplated as an advanced notion, cemented in both preambles. This is noticeable as a structural result that is elaborated and crafted out through both preambles and encompasses, on a general level, the undertaking of both Conventions and the mission of diplomatic work, while their concrete content is a matter of primarily legal explanation through a series of articles.

To wrap up, the above presented and discussed philosophy of the Conventions adds, to our strong belief, to the further and deeper understanding of both Vienna Conventions. They are far from being only two internationally renowned and respected legal acts that regulate diplomatic work in full. They primarily lay down a fundamental, cross referential and structurally advanced understanding of international intercourse that has a clear philosophical dimension, with diplomacy at its core.

This reasoning points out a demand for an interdisciplinary and structurally complex research, as well as understanding of diplomacy as one of the oldest professions with huge accumulation of tradition, continuity and functionality and flexibility. Therefore, this ancient instrument of regulating relations among states and promoting friendly relations among nations cannot function without its backing on ethics and trust, being the essential parts of both preambles. It is only the philosophical dimension that can encompass this substantively comprehensive approach and contemplation.

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TREATIES

Vienna Convention on Diplomatic Relations
http://untreaty.un.org/ilc/texts/instruments/english/conventions/9_1_1961.pdf (18.12.2020)

Vienna Convention on Consular Relations
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25 Years After the Dayton Peace Agreement – Way Ahead

ZIJAD BEĆIROVIĆ¹

ABSTRACT

2020 marks the 25th anniversary of the General Framework Agreement for Peace in Bosnia and Herzegovina, known as the Dayton Peace Agreement. While over the period of 25 years the agreement has preserved its basic elements, through the arbitration award on Brčko, interventions (decisions) of the High Representative of the international community (OHR) and decisions of the Parliamentary Assembly of Bosnia and Herzegovina it has also undergone significant changes. Although the general observation is that the Dayton Peace Agreement stopped the war and brought peace to Bosnia and Herzegovina, its insufficiencies became apparent through the establishment of an unfunctional state of Bosnia and Herzegovina, which aspires to become an EU and NATO member. Development of a rationally organized and functional rule-of-law state is one of the key requirements of its admission into EU. Therefore, the reform of the political organization of BiH is possible only within the framework of fulfillment of conditions for integration of Bosnia and Herzegovina into EU membership. The constitutional changes represent the foundation and solution for progress of BiH in all segments of society from which changes in other segments of the BiH society could continue.

KEYWORDS: Bosnia and Herzegovina, Dayton Peace Agreement, Federation of BiH, Republic of Srpska, Brčko District BiH, Srebrenica

POVZETEK

Leto 2020 zaznamuje 25. obletnica Splošnega okvirnega sporazuma za mir v Bosni in Hercegovini, znanega tudi kot Daytonski mirovni sporazum. Medtem ko je v obdobju 25-ih let sporazum ohranil svoje osnovne elemente, je z arbitražno razsodbo o Brčkem, posredovanji (odločitvami) visokega predstavnika mednarodne skupnosti (OHR) in odločitvami Parlamentarne skupščine Bosne in Hercegovine, doživel pomembne spremembe. Čeprav je splošno opažanje, da je Daytonski mirovni sporazum ustavil vojno in prinesel mir Bosni in Hercegovini, so se njegove pomajkljivosti pokazale z ustanovitvijo nedelujoče države Bosne in Hercegovine, ki si prizadeva za članstvo v EU in NATU. Razvoj racionalno organizirane in funkcionalne pravne države je ena ključnih zahtev za sprejem Bosne in Hercegovine v članstvo EU. Zato je reforma politične organizacije BiH mogoča le v okviru izpolnjevanja pogojev za vključitev Bosne in Hercegovine v članstvo EU. Ustavne spremembe predstavljajo temelj in rešitev za napredek BiH v vseh segmentih družbe, iz katerih bi se lahko nadaljevale spremembe v drugih segmentih družbe.

KLJUČNE BESEDE: Bosna in Hercegovina, Daytonski mirovni sporazum, Federacija BiH, Republika Srbska, Brčko Distrikt BiH, Srebrenica

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INTRODUCTION

2020 marks the 25th anniversary of the signing of the Dayton Peace Agreement², 25th anniversary of the genocide in Srebrenica and 75th anniversary of establishment of the UN. In a way, all these events are interconnected. What have we learned from the lesson on Bosnia and Herzegovina?

The fall of the Berlin Wall, the collapse of socialist regimes in East Europe, particularly the USSR, led to epic changes and emergence of a new world order. The will of the citizens of BiH, expressed at the referendum, to live in peace in a sovereign and independent Bosnia and Herzegovina was thwarted by nationalist and hegemonic (great-state) projects, primarily of the neighboring Serbia, but also Croatia.

Pursuant to the decisions from the First Session of ZAVNOBiH³, Bosnia and Herzegovina was founded as a state of its citizens and equal peoples: Bosniaks (then Muslims), Serbs, Croats, members of the Jewish and other peoples. The First Session of ZAVNOBiH reaffirmed the will of the BiH peoples, who had decided in the course of their antifascist activities to establish their own statehood and use that identity as the basis to develop in freedom and pursue economic prosperity within the frame of the federal state of Yugoslavia. The decisions from the First Session of ZAVNOBiH were historically verified in the period that followed and became executive on the basis of the conclusions of the Second Session of ZAVNOBiH in Sanski Most in 1944 and the Third Session of ZAVNOBiH in Sarajevo in 1945.

The idea of statehood of Bosnia and Herzegovina was modeled by the decisions from the Second Session of ZAVNOBiH, which included the decision on institutionalization of ZAVNOBiH as the highest legislative and executive people's representative body of Bosnia and Herzegovina within the frame of the Federal People's Republic of Yugoslavia. Article 5 of the decision stipulates "*Until the people's Government of Bosnia and Herzegovina is organized, all functions of the government shall be performed by the Presidency of the State Anti-fascist Council for the National Liberation of Bosnia and Her-*

² The General Framework Agreement for Peace in Bosnia and Herzegovina <https://www.osce.org/files/f/documents/e/0/126173.pdf>

³ ZAVNOBiH – State Anti-fascist Council for the National Liberation of Bosnia and Herzegovina.

zegovina. For that purpose, the required number of departments for state administration affairs shall be established as a part of the Presidency." Pursuant to the decision on promulgation of ZAVNOBiH into the highest legislative and executive people's representative body of Bosnia and Herzegovina, the decision on organization and functioning of the People's Liberation Boards and People's Liberation Assemblies in Bosnia and Herzegovina was adopted. The decision regulated that the people's government in villages, municipalities and cities shall be represented through people's liberation boards, while the people's government at the level of counties, districts and areas shall be represented through county, district and area people's assemblies.

An important milestone in definition of the statehood of Bosnia and Herzegovina was the Declaration of the rights of citizens in Bosnia and Herzegovina, adopted at the Second Session of ZAVNOBiH. The provisions of the Declaration were in line with the then and the modern European standards on protection of human and civic freedoms. Declaration of the rights of peoples in Bosnia and Herzegovina guarantees freedom of worship, freedom of assembly, agreement and association, freedom of the press, personal security of citizens and security of their property, freedom of private initiative in the economic sphere, and the equality of women and men.

One of the provisions of the Declaration of civil rights in BiH later became a constitutional principle, specifically the provision on equality of Muslims (Bosniaks), Serbs, and Croats of Bosnia and Herzegovina, which is their common and indivisible homeland. The equality of BiH peoples became a determinant of statehood of Bosnia and Herzegovina, which affirmed Bosnia and Herzegovina as a political, cultural and national framework for national emancipation and development of national identity through equality of Bosniak, Serb and Croat peoples.

The direction of development of statehood of Bosnia and Herzegovina, which had begun during the anti-fascist and liberation fight, was fully defined at the Third Session of ZAVNOBiH, held in Sarajevo from 26 April to 28 April 1945.

The Socialist Republic of Bosnia and Herzegovina was one of the six republics with equal rights within the framework of the Socialist Federal Republic of Yugoslavia (SFRY). In the process of dissolution of the

SFRY, pursuant to the decision of Badinter⁴ Commission Bosnia and Herzegovina had the right to organize a referendum on independence, which was held on 29 February and 1 March 1992. In the period of dissolution of the Yugoslav socialist federation from 1990 to 1992, Bosnia and Herzegovina introduced a multiparty system and organized its first multiparty elections in 1990.

At the first multiparty elections, which took place in November 1990, the mono-ethnic parties won a landslide victory. Specifically, the Party of Democratic Action (SDA) – the Bosniak people's party, Serb Democratic Party (SDS) – the Serb people's party and the Croatian Democratic Union BiH (HDZBiH) – the Croat people's party. Namely, at the first multiparty elections in 1990 these three parties won 84% of mandates in the BiH Parliament. In fact, this laid the foundations for introduction of ethnic-based political pluralism in Bosnia and Herzegovina. The three parties established the government and divided the sectors in the state administration among themselves without previously brokering a coalition political agreement. At the very beginning of their mandate, in 1991 and 1992, this translated into their inability to achieve consensus.

In 1991 and early 1992, the Parliament of Bosnia and Herzegovina discussed the state-legal status and political future of the Republic of Bosnia and Herzegovina after the dissolution of the Yugoslav socialist federation. The Parliament decided that on the basis of BiH's statehood developed over its long history, Bosnia and Herzegovina should establish a state-legal status of a sovereign and independent state, in the same way and using the same right that other Yugoslav republics (Slovenia, Croatia, Serbia, Macedonia and Montenegro) had. Such a proposal of the Parliament of Bosnia and Herzegovina was reaffirmed at the referendum of citizens organized on 29 February and 1 March 1992.

On the basis of the support by 64% of citizens to the sovereign status of the state of Bosnia and Herzegovina, BiH was international-

⁴ The Arbitration Commission of the Peace Conference on Yugoslavia, also known as the Badinter's Commission, was named after its President Robert Badinter, President of the Constitutional Court of France. The most important opinions of the Commission were as follows: the process of the dissolution of the SFRY had completed and so the SFRY no longer existed as a state; the boundaries between former federal units become state borders of successor countries and cannot be altered by force, but only by agreement; the issue of succession of states should be resolved on the basis of the principles of international law and equitable division; membership of the SFRY in international organizations could not be continued by any successor state; the Federal Republic of Yugoslavia is a new country and cannot be considered a continuation of the SFRY; the succession date for Croatia and Slovenia was 8 October 1991, Macedonia 17 November 1991, BiH 6 March 1992 and FRY (Serbia and Montenegro) 27 April 1992.

ly recognized by EU member countries and majority of countries in the world. All parties, both ruling and opposition ones, were in agreement that after the dissolution and fall of the Yugoslav socialist federation Bosnia and Herzegovina was to develop as a sovereign and independent state - except for the Serb Democratic Party (SDS) led by Radovan Karadžić. The SDS opposed any form of sovereignty, independence and statehood of Bosnia and Herzegovina. Its policy advocated ethnic division and negation of Bosnia and Herzegovina. Specifically, the SDS decided to follow the political project of creation of the so-called *Great Serbia*.

In 1992, the SDS arbitrarily withdrew from the BiH Parliament and commenced military activities aimed at imposition of the siege of Sarajevo. A forced exile of civilian population, Bosniaks and Croats, from a part of Bosnia and Herzegovina followed, as well as establishment of Serb Republic of Bosnia and Herzegovina as the Republic of the Serb People. For the purposes of execution of military operations, the Army of the Serb People was established. It predominantly comprised of the forces from the inherited Yugoslav People's Army (JNA).

After the war, which was fought from 1992 to 1995, the Dayton Peace Agreement was initiated on 21 November 1995 and the peace-building phase begun. Since the Dayton Agreement Bosnia and Herzegovina has been simultaneously going through a post-socialist transition, internal integration, and development of state institutions- all in social-historical conditions of a post-conflict society.

At the beginning of XXI century Bosnia and Herzegovina survives and develops within the geopolitical framework established by the Dayton Peace Agreement in 1995. The framework for a peaceful political solution of the war in Bosnia and Herzegovina was established with the will of leading global powers within the Contact Group: United States, Russian Federation, Great Britain, France and Federal Republic of Germany.

The post-war and post-Dayton building of peace and democratic institutions of the state of Bosnia and Herzegovina was rendered possible through the engagement of the international community and the EU. The economic, social and political development progressed success-

fully in the period of use of the Bonn powers⁵ on the basis of which the High Representative of the international community (OHR) was able to promulgate laws on temporary basis.

In the period from 1997 to 2012, thanks to these powers, the Office of the High Representative in BiH (OHR) imposed around 900 different decisions. This compensated for the absence of consensus among the ruling parties with respect to adoption of laws and management of development of the state of Bosnia and Herzegovina. From 2008 Bosnia and Herzegovina has a contractual relation with the EU that is based on the Stabilization and Accession Agreement (SAA). As a result of the strengthening of nationalist rhetoric, after 2006 Bosnia and Herzegovina plunged into the economic, social and political crisis of its development. The crisis culminated in the mass protests of citizens in February 2014. After a period of stagnation, the development of Bosnia and Herzegovina took a positive turn in 2015 when at the initiative of Germany and UK, the EU launched a new approach with respect to the possible acceleration of integration of Bosnia and Herzegovina into the EU, also known as the *Berlin Process*.

CIRCUMSTANCES IN THE EVE OF SIGNING OF THE DAYTON PEACE AGREEMENT

During the war in Bosnia and Herzegovina, from 1992 to 1995, several peace plans were devised: the Vance-Owen plan; the Owen-Stoltenberg plan; the Washington Peace Agreement; the Contact Group Plan and the Dayton Peace Agreement.

The Contact Group Plan was based on separation of forces and two territorial units: 49% for the Republic of the Serb People and 51% for the Federation of Bosnia and Herzegovina. It reflected a consensus reached by the leading global powers: US, Russia, France, England and Germany on a peaceful solution for the war in Bosnia and Herzegovina, which became the final peace solution with the acceptance of the Dayton Peace Agreement in November 1995. (Pejanović, 2005, p.11)

The defense of sovereignty and territorial integrity of the state of Bosnia and Herzegovina was led by the wartime Presidency of the Republic

⁵ In December 1997, at the meeting in Bonn, the Peace Implementation Council granted the High Representative in BiH (OHR) the Bonn powers. At the time, the Peace Implementation Council considered Annex 10 of the Dayton peace agreement, which defines the authorities of the High Representative, and authorized the High Representative to remove from office public officials who violate legal commitments or, in general, the Dayton peace agreement, and to, if deemed necessary, impose key laws if the legislative bodies of BiH are unable to adopt them.

of Bosnia and Herzegovina, which as the civilian command managed the defense activities of the Army of the Republic of Bosnia and Herzegovina, as the military force of all its citizens. At the same time, the Presidency of the Republic of Bosnia and Herzegovina was engaged in negotiations aimed at brokering of a peace solution for Bosnia and Herzegovina.⁶ From 1992 to 1994, negotiations were organized within the framework of the Geneva Peace Conference for former Yugoslavia. The arbitrators for the negotiations were appointed by the UN and EU. Specifically, Cyrus Vance and Thorvald Stoltenberg on behalf of the UN, and Robert Owen and Carl Bildt on behalf of the EU. They mediated the modeling of several peace plans for Bosnia and Herzegovina.

The first peace plan mediated by Cyrus Vance and Robert Owen regarding the basis of organization of Bosnia and Herzegovina included ten provinces and joint bodies of the state of Bosnia and Herzegovina. The concept of provinces envisaged three predominantly Bosniak provinces, three predominantly Serb provinces and three predominantly Croat provinces. According to the plan, the city of Sarajevo was to have a special status. This plan did not win the support of the Serb side. It was rejected by the Assembly of the Serb People at its session on Jahorina⁷ (Donia, 2012, p.30).

The second peace plan for Bosnia and Herzegovina came in mid-1994. This plan was based on the organization of Bosnia and Herzegovina in three ethnic republics: the Bosnian with predominantly Bosniak population, the Serb with predominantly Serb population and the Croat with predominantly Croat population. Namely, Bosnia and Herzegovina was envisaged as a union of three ethnic republics. In this way the ambitions related to ethnic division of Bosnia and Herzegovina reached their peak. However, the peace plan including three ethnic republics did not win the support at the expanded session of the wartime Parliament of Bosnia and Herzegovina, held in Sarajevo on 27 and 28 August 1993 (Begić, 1997, p.143).

⁶ In the peace talks, the interests of Bosnia and Herzegovina were represented by a state delegation of the wartime Presidency of the Republic of Bosnia and Herzegovina. Pursuant to the BiH Constitution, in conditions of war the wartime RBiH Presidency performed the role of the Parliament and the supreme commander. The Presidency adopted the Platform that defined the goals of defense of integrity and multiethnic character of the Republic of Bosnia and Herzegovina, which was the basis of its actions and activities in the conditions of war.

⁷ The session of the Assembly was held on 5 May and 6 May 1993 on Jahorina. At the session, General Ratko Mladić sought the support of the representatives and urged them to reject the plan- as was decided at the end of the session. The proposal of Slobodan Milošević to accept the Vance-Owen peace plan was also rejected. Namely, this plan did not allow for ethnically-defined entity of the Serb people, because the Bosniak, Croat and Serb people have lived together on the whole territory of the state of Bosnia and Herzegovina.

After the failures to tailor a peace plan for Bosnia and Herzegovina within the framework of the Geneva Peace Conference, came the initiative for talks between Bosniaks and Croats aimed to stop the Croat-Bosniak war conflict. The talks commenced in the first half of 1993. They were organized in Washington with the mediation of the US Administration and finalized in March 1994 with the adoption of the agreement on establishment of the Bosniak-Croat Federation.⁸ The Washington Peace Agreement provided for peace on the territory controlled by the Army of the Republic of Bosnia and Herzegovina and the Croatian Defense Council (HVO). The Washington Agreement later became the basis for achievement of the comprehensive peace solution for Bosnia and Herzegovina- the Dayton Peace Agreement.

In an attempt to achieve a comprehensive peace solution for Bosnia and Herzegovina the international community established the Contact Group (US, Russia, Great Britain, France and Germany). The Contact Group comprised countries that were the leading global powers and permanent members of the UN Security Council, except Germany. They brokered a consensus on the basic principles for the peaceful political solution for the war in Bosnia and Herzegovina. The consensus was modeled into the peace plan of the Contact Group. The plan envisaged existence of two units within Bosnia and Herzegovina, specifically the Bosniak-Croat federation and the entity of the Serb people.

The Contact Group plan became the basis for the modeling of the Dayton Peace Agreement. The US took the lead in the negotiations for a comprehensive peace solution. The chief mediator in the negotiations was Richard Holbrooke, Special Envoy of the US President. The US administration organized the final negotiations in the town of Dayton in November 1995.

The Dayton Peace Agreement was based on the Contact Group, which reflected the will of major global powers to stop the war and massive sufferings of civilians in Bosnia and Herzegovina. The General Framework Agreement for Peace, also known as the Dayton Peace Agreement, has 11 annexes. The military aspect of the Dayton Peace Agreement laid down the foundations for stopping of the military activities with the assistance of NATO. The most important parts of the civilian aspects of the Dayton Peace Agreement were related to

⁸ At the inaugural session of assembly, held on 30 March 1994, the Constitution of the Bosniak-Croat federation with ten cantons as federal units was adopted.

the Constitution of Bosnia and Herzegovina and the return of refugees and displaced persons. Annex 1A is the agreement on military aspects of the peace solution related to the sub-regional and regional arms control.

The Dayton Constitution of BiH provided for new constitutional-political organization of the country including the institutions of the state of Bosnia and Herzegovina and two entities, the Federation of Bosnian and Herzegovina with 51% of the territory of BiH, and Republic of Srpska with 49% of the territory, which do not have the legal identity of a state. After the international arbitration, in 1999 the Brčko municipality was awarded the status of a district tied to central institutions of the state of Bosnia and Herzegovina. All peace plans coined prior to the Dayton Peace Agreement were primarily derived on ethnic basis.

DAYTON PEACE AGREEMENT

The Dayton Peace Agreement was not created by the will of the political actors in Bosnia and Herzegovina or their readiness to make compromises. The agreement was a result of engagement of the international community and leading global powers. The US government had the lead in consolidation of the activities of the international community aimed at achieving a peaceful political solution. The Contact Group, which comprised the US, Great Britain, Germany, France and Russia, reached a consensus on ending the war and organization of the state of Bosnia and Herzegovina in 1994 and 1995. The consensus was the basis on which political, diplomatic and military pressure was put on Radovan Karadžić's regime to accept the peaceful political solution in November 1995 in Dayton. The final signing of the agreement took place in December 1995 in Paris.

The genocide in Srebrenica committed in July 1995 was a turning point and informed accelerated brokering of consensus by the international community to end the war in BiH in the form of the Dayton Peace Agreement. Srebrenica was a test for the UN, which the UN did not pass. The developments in Srebrenica speeded-up the adoption of the peace agreement in BiH. At the same time, the UN was defeated in Srebrenica and by its failure to prevent genocide- as the UN admitted subsequently. The lesson from the 1992-1995 war in Bosnia and Herzegovina is a lesson for the entire world.

The question that arises is what has the Dayton Peace Agreement brought to Bosnia and Herzegovina?

The Dayton Peace Agreement provided the assumptions for implementation of the peaceful political solution in Bosnia and Herzegovina, which included the arrival and deployment of NATO military troops and civilian forces in the form of the High Representative of the international community (OHR). The NATO military forces had the mandate to stop the combat activities and establish a security framework for peace building and development of democratic institutions of the state of Bosnia and Herzegovina. At the same time, the High Representative was given the mandate and the support of the international community to act as the supreme authority for interpretation of the Dayton Peace Agreement and creation of conditions for its implementation.

For Bosnia and Herzegovina, the assumption for implementation of the Dayton Peace Agreement has ensured:

1. Sovereignty and integrity;
2. Continuity of statehood of BiH through international guarantees and continuation of international and legal identity, as well as membership in the UN;
3. Internal reintegration of the state through the peace building process, return of refugees and establishment of democratic institutions.

The Dayton Peace Agreement has played an historical role with respect to peace building, development of institutions of the state of Bosnia and Herzegovina and implementation of integration of Bosnia and Herzegovina into the EU and NATO. In addition to its basic text, the Dayton Agreement also contains 11 annexes to the agreement. Another important element of the Dayton Agreement is the part related to the processing of persons who had committed war crimes and the International Criminal Tribunal for former Yugoslavia in The Hague (ICTY), and therefore its legacy as well.

Furthermore, the Dayton Peace Agreement also includes the Constitution-Annex IV, which provides for political organization of Bosnia and Herzegovina in two entities (the Federation of BiH and Republic of Srpska) and defines the institutions of the state of Bosnia and Herzegovina. Although the intention was to establish two multiethnic entities, in practice, as a consequence of war, the entities were established

on ethnic basis. Namely, the Federation of Bosnia and Herzegovina is a predominantly Bosniak and Croat entity, while Republic of Srpska is predominantly a Serb entity.

Instead of political pluralism based on civic interest, the Dayton constitutional-political organization of Bosnia and Herzegovina cemented ethnic pluralism, which has its historical roots in Bosnia and Herzegovina in the victory of ethnic parties -SDA, HDZ and SDS- at the first multiparty elections in 1990.

The ethnic pluralism was created on the absolute power of the three mono-ethnic parties and immanently contains social strands of ethnic homogenization of BiH peoples- Bosniak, Serb and Croat. As a result, the ethnic homogenization has generated another social strand, which is the aspiration of ethnic parties to territorialize their power on the ethnically-defined areas. The pursuit of creation of ethnically pure areas on the ethnically- mixed territory of Bosnia and Herzegovina during the 1992-1995 war, led to persecution of more than two million citizens of BiH, ethnic cleansing, war crimes and genocide. However, this was not the end of detrimental historical perils of ethnic pluralism. One of the consequences was the historical inability of ethnic parties to build a political consensus in the Parliamentary Assembly of Bosnia and Herzegovina on the issue of statehood of Bosnia and Herzegovina and key issues for its political and economic development. The absence of consensus of ethnic parties was compensated by decisions and laws which the High Representative of the international community adopted over a period of ten years after the signing of the Dayton Agreement.

The dominance of the ethnic aspect in the constitution of entities and state institutions of Bosnia and Herzegovina further strengthened the position of ethnic parties. This enabled the ethnic parties to win at postwar elections organized in 1996, 1998, 2002, 2006, 2014 and 2018, while the civic-oriented parties recorded only two victories at elections in the post-Dayton period - in 2000 and 2010.

In all election cycles the will of the citizens was not modeled on the civic-interest basis - within the public opinion of a single civil electorate in BiH. It was modeled on ethnic basis by means of ethnic homogenization and ethnic territorialization of power on the territory of Bosnia and Herzegovina. Ethnic parties resorted to election engineering,

which they used to create tensions in the eve of an election campaign- both, in the social reality and media. These tensions have always led to ethnic homogenization, as a result of what the citizens predominantly voted in favor of their respective ethnic parties.

ECONOMIC CONSEQUENCES OF THE DAYTON PEACE AGREEMENT

Annex IX of the Dayton Peace Agreement is an agreement on establishment of Bosnia and Herzegovina public corporations. It provided for an opportunity to establish public corporations of Bosnia and Herzegovina for provision of common public services, such as utility services, energy supply, postal and communication services – to the benefit of both entities. The Agreement also defined that the parties to the agreement were to establish a public corporation, which would organize and operate transportation facilities, such as roads, railways, and ports, for their mutual benefit. For this purpose, establishment of the transportation corporation of Bosnia and Herzegovina was envisaged. Establishment of this transportation corporation was to serve as a model for establishment of other joint public corporations- such as for the operation of utility, energy, postal and communication facilities.

None of the above was realized, except for the establishment of only one joint public corporation- *Elektroprenos BiH*, despite the fact that the country has, *inter alia*, three power-supply companies, three (para)national telecommunication operators, two hydro-meteorological institutes, more than 20 accredited universities, etc. As the negotiations in the Dayton included politicians, military officers, diplomats and lawyers, no plan for economic development of Bosnia and Herzegovina was negotiated.

“Because there is no manual for post-conflict reconstruction of Bosnia and Herzegovina, the persons present in Dayton, who were primarily politicians, military officers, and their legal and policy advisors, drafted the Framework with an eye to identifying and setting forth the basic elements deemed essential to securing and maintaining peace and reconstructing Bosnia and Herzegovina” (Haynes, 2008, p.5).

The largest part of responsibility lays on the political structures in Bosnia and Herzegovina. The framework peace agreement for BiH is a guarantor of the power of ruling political structures However, the in-

ternational community, and particularly the EU, is not innocent here. Twenty five years after the end of the war, in many segments the economic situation is significantly worse than it was prior to the dissolution of the SFRY, despite the fact that the conditions for economic recovery of Bosnia and Herzegovina were far better than those in Europe after the end of World War II in 1945. Who impedes economic development and reconstruction?

The Dayton Peace Agreement is an impediment to economic growth in BiH. The expensive state administration is a result of internal political organization of the state. More than half the budget is spent on salaries and administrative costs of the public and state administration. The administration structure is complicated and expensive. The organization of the country defined by the Dayton Agreement negatively reflects on the economy, because it had divided into two parts the once single economic and geographic entity, and further divided the Federation of BiH into additional 10 parts- while at the BiH level there is also the Brčko District of BiH as an autonomous local self-governance unit. The high level of corruption is the “*cancer*” of Bosnia and Herzegovina and hinders economic development. There is also the problem of lack of harmonization of policy and support to economy. The economy’s structure is unsatisfactory. Although the foreign debt is relatively low, it is still a point of concern because of the inappropriate economy’s structure. The donor funds were either not used in the designated manner or went “*missing*”. The donations provided in the period from 1995 to 2000 amounted to somewhere between 43 and 65 billion dollars. The main donors include the EU, World Bank, USAID and OSCE, which donated around 290 million dollars through funding of preparations and implementation of elections.

Increasing the level of employment and undertaking of the first steps on strengthening of coordination encourage the policies aimed at improvement of the business climate. The influence of the state on the economy continues to be a point of concern. The quality of public finances is poor. The state and the entities are still highly dependent on loans from international bodies and institutions. The origin of foreign investments is not completely clear. The high unemployment level includes high unemployment of the youth and a significant “*grey economy*” share. Bosnia and Herzegovina has significant human and natural potential; it is rich in natural resources and has a large diaspora, which is an important economic factor. Development of democracy and dem-

ocratic institutions, as well as stimulating development of private initiative, are key for development of Bosnia and Herzegovina.

HOW TO IMPROVE THE DAYTON PEACE AGREEMENT

In the post-Dayton period Bosnia and Herzegovina has continuously been faced with two crises: the crisis of social-economic development and the crisis of political management. The crisis of social-economic development is visible in the social practice through the fact that half a million of citizens of BiH are unemployed, around 400,000 are pensioners and dozens of thousands of young educated people leave the country each year in pursuit of employment (which was particularly intensified prior to the Covid-19 pandemic). Furthermore, 30% of the population lives below the poverty line. When it comes to the presence of corruption, Bosnia and Herzegovina is among the countries with the highest level of corruption and in 2019 ranked 101th on the CPI (Corruption Perceptions Index) list of 198 countries compiled by Transparency⁹ International.

The crisis of political management is reflected in the inability of the ruling parliamentary parties to achieve a consensus in the Parliament of Bosnia and Herzegovina on development of the state of Bosnia and Herzegovina to the level of its self-sustainability and membership in the EU and NATO. Namely, the ethnic parties have fortified ethnic pluralism. Since 1990, the three ethnic parties have been the SDA, SDS and HDZ, whereas in 2006 the SDS was replaced by the Alliance of Independent Social Democrats (SNSD) headed by Milorad Dodik. These parties have imposed themselves as the parties that have the exclusive right to represent their respective peoples - Bosniak, Serb and Croat. The ethnic-based national parties have reinforced their power through ethnic pluralism. They have imposed their exclusive right to represent their respective peoples- Bosniak, Serb and Croat¹⁰ (Filipović, 1997, p.109).

As a result, the ethnic parties promote ethnic-national policies and manage state resources on the basis of their mutual agreement. In an area inhabited primarily by members of one people, governance func-

9 Source: Transparency International CPI 2019 <https://www.transparency.org/en/cpi/2019/results/table>

10 Following their absolute victory at the first multiparty elections in 1990, the three ethnic parties: SDA, SDS and HDZBiH dividing the sectors on the following principle: 5 for the SDA; 4 for the SDS and 3 for the HDZ BiH. In such a way they introduced a kind of "ownership" over state resources. On top of it, the ethnic parties also introduced the political stance according to which "they are the only authentic representatives of the interests of the three peoples."

tions in the form of one-party monopoly. An example is governance in predominantly Croat cantons by the HDZBiH and predominantly Bosniak cantons in the Federation of BiH by the SDA. The situation is similar when it comes to the governance of Republic of Srpska by the SNSD. In the entity and state parliaments the ethnic parties do not apply the democratic postulate for establishment of a parliamentary majority. Namely, they do not establish a parliamentary majority on the basis of an agreement on a program-based coalition but create partnerships for exercise of government power. Specifically, after elections they divide the sectors in the government, while adoption of laws in the parliament remains uncertain. This method is continuously applied in the Parliamentary Assembly of Bosnia and Herzegovina. The adoption of laws in the Parliamentary Assembly of Bosnia and Herzegovina is rendered difficult and impeded also by the application of the entity-based vote (requirement of entity-based approval). That is why the Parliamentary Assembly of Bosnia and Herzegovina does not have the required dynamics in making decisions on adoption of reform laws. The power of the parliament lies in the hands of the leaders of the ruling parties.

A prevailing practice in the political discourse is that everything depends on the agreement of the leaders of ruling parties. In practice, a model of meeting of leaders in restaurants and at picnic sites is being promoted. Sometimes the High Representative of the international community gives legitimacy to such a practice of making decisions outside the relevant institutions. The meetings of the leaders of the coalition/partner parties are not disputable. What is disputable is the making of decisions outside the constitutional framework and the established parliamentary procedure.

The example of the failure to adopt amendments to the BiH Constitution that would provide for implementation of the judgment of the European Human Rights Court in the *Sejdić-Finci* Case in the period from 2009 to 2014 shows that the leaders of political parties have usurped parliamentary democracy and turned it into partocracy - by making decisions outside the Parliament. In the period from 1996 to 2009 the inability of the ruling parties to reach a consensus and manage the development of the state of Bosnia and Herzegovina was compensated by the High Representative of the international community, who promulgated decisions and laws on the basis of the Bonn powers.

The postwar and post-Dayton period of political development of the state of Bosnia and Herzegovina entailed several different processes. All these processes in their entirety contributed to the peace building process and modeling of the historical process of integration of Bosnia and Herzegovina into the Council of Europe¹¹ and Euro-Atlantic institutions - EU and NATO. Unlike other post-socialist countries, in addition to the post-socialist transition the state of Bosnia and Herzegovina also went through the process of return and reintegration of refugees and exiled persons and the process of reconstruction of economic and utility infrastructure that had been devastated by war. It is safe to say that without the engagement and assistance of the international community and the EU, particularly the US, it would almost not be possible to overcome such a specificity of the BiH society and the contradictions in its development.

In the first five years after the war that is from 1995 to 2000 the main trends in postwar reconstruction of Bosnia and Herzegovina were created and managed by the international community. Specifically, the reconstruction of road and utility infrastructure was initiated and funded by the international community and the EU. This created the conditions for freedom of movement of citizens and operation of social services, such as the education and health care system. In the period from 1995 to 2000, the parliamentary elections were conducted by the Organization for Security and Cooperation in Europe (OSCE). The first post-war multiparty elections were held in September 1996. At the time, a social climate was created in which the electorate became ethnically homogenized. The three ethnic parties, SDA, HDZBiH and SDS, overwhelmingly won the elections. Namely, the three parties together won 86% of the mandates in the Parliamentary Assembly of Bosnia and Herzegovina. The opposition parties were marginalized. Nevertheless, in the decision making process in the Parliament of Bosnia and Herzegovina the ruling parties did not have a consensus on a majority of issues on which they were to make decisions. Furthermore, they also did not have a consensus on the design of the banknote, coat of arms and the flag of BiH. In absence of their consensus, the decisions were made by the then High Representative Carl Bildt. At the next parliamentary elections, which were held in 1998, the ethnic parties won again. (In this period, the mandates of parliament members and executive authorities lasted two years). It was only in 2000 that civic mul-

¹¹ Bosnia and Herzegovina became a member of the Council of Europe in 2002. The Stabilization and Accession Agreement between Bosnia and Herzegovina and the EU was signed in 2008, but entered into force in 2015.

ethnic parties had managed to win at parliamentary elections and establish a majority in the Parliament of BiH. The Alliance for Democratic Changes led by the Socialist Democratic Party of BiH (SDPBiH) was established. The Alliance also included the Party for BiH (SBiH) and the Party of Democratic Progress (PDP) from Republic of Srpska. In its short mandate of two years, the democratic Alliance initiated economic and political reforms. With the support of the international community, the Alliance for Democratic Changes managed to adopt amendments to entity constitutions that prescribed application of the decision of the BiH Constitutional Court from 2000 on the constituent character of peoples on the whole territory of the state of Bosnia and Herzegovina. This provided for abolition of the constitutional discrimination of the Serb people in the Federation of BiH that is of the Bosniak and Croat peoples in Republic of Srpska (Pejanović, Fink Hafner, 2006, pp.58-59). With the abolition of discrimination on ethnic basis, Bosnia and Herzegovina fulfilled an important requirement for admission to the Council of Europe in 2002.

The Constitutional Court of Bosnia and Herzegovina organized a public hearing to discuss the issue of constitutional inequality of the Serb people in the Federation and the Bosniak and Croat peoples in Republic of Srpska. The SGV (Serb Civic Council), VKBI (Council of the Congress of Bosniak Intellectuals), HNV (Croat People's Council) and *Krug 99* (Circle 99), as well as representatives of entity parliaments and experts contributed to the discussion. All were in agreement that it was necessary to abolish the ethnic-based discrimination of peoples in the BiH entities (Pejanović, 2005, p.257).

However, the Alliance for Democratic Changes could not fulfill expectations of the citizens with respect to employment growth in a period of two years. Hence, at the 2002 parliamentary elections, the citizens voted again in favor of ethnic parties. In two mandates, 2002-2006-2010 period, the ethnic parties in the Parliament of Bosnia and Herzegovina did not have strong coalition agreements on the implementation of reforms. However, since 2002 all the reforms took place in the context of strategic commitment of the state of BiH and BiH society to integration into the EU and NATO. The absence of consensus among the ruling ethnic parties was compensated by the High Representative of the international community and application of Bonn powers. On the basis of the Bonn powers, in the period from 1999 to 2007 the High Representative of the international community adopted 800

decisions.¹² All the laws promulgated by the High Representative - a total of 145- laid the foundations for implementation of the most important reforms in the process of integration of Bosnia and Herzegovina into the EU. Special importance was attached to the reforms that allowed for expansion of competencies and change in the structure of the BiH Council of Ministers. Namely, in 2005 through the modifications of the law, the structure of the BiH Council of Ministers, which as per the Law on the Council of Ministers from 1997 initially included three ministries, was expanded to include nine ministries in 2005. The ninth ministry being the Ministry of Defense established following the creation of the single Armed Forces of Bosnia and Herzegovina (Pejanović, 2015, p.236).

Important reforms were also implemented with respect to establishment of new institutions of the state of Bosnia and Herzegovina. These included the Border Police of Bosnia and Herzegovina, Intelligence Security Agency (OSA-OBA) and State Investigation and Protection Agency (SIPA), Indirect Taxation Authority, the Office of the BiH Prosecutor and the Court of Bosnia and Herzegovina. These and other reforms have strengthened the capacity of state institutions of Bosnia and Herzegovina. These reforms, together with the partial police reform, enabled Bosnia and Herzegovina to meet the conditions for signing of the Stabilization and Accession Agreement with the EU in 2008. Although the agreement awaited its ratification for a long period of time, all until 2015, through the SAA Bosnia and Herzegovina entered into a contractual relation with the EU.

The reform of the Constitution of Bosnia and Herzegovina (the Dayton constitution) appears as the most complex reform in the post-Dayton political development of the state of Bosnia and Herzegovina. Namely, there is no consensus of the ruling political parties in the BiH Parliament on the constitutional reform, which would provide for modification of the Dayton constitution. This was evident in the case of the vote on the proposal of the "*April Package*" of amendments to the constitution of Bosnia and Herzegovina in 2006¹³(Pejanović, 2012, pp.170-173).

12 The Alliance for Democratic Changes remained in power from 2000 to 2002. In this period four important projects were implemented. Bosnia and Herzegovina was co-opted in to the Council of Europe, the state border service tasked with border control was established, discrimination on ethnic basis was abolished through adoption of amendments on constituent-character of peoples to the constitutions of the Federation of BiH and Republic of Srpska and parallelisms in the exercise of government powers by the SDA and HDZ were eliminated.

13 The discussion on the "*April Package*" of amendments to the Constitution of Bosnia and Herzegovina lasted for two days, in late April 2006.The "*April Package*" of amendments to the BiH Constitution did not win the support of two-thirds of representatives because representatives from the Party for BiH, then a ruling party, were against the proposed modifications of the Constitution of Bosnia and Herzegovina. The proposed amendments to the Dayton constitution of Bosnia and Herzegovina envisaged strengthening of the institutions at the level of the state of Bosnia and Herzegovina, and particularly the BiH Presidency, BiH Parliament and BiH Council of Minister.

The “*April Package*” did not get the support of two-thirds of the representatives. At the time, Christian Schwarz-Schilling, then High Representative of the International Community, did not use his Bonn powers or exert adequate pressure to persuade the representatives from the Party for BiH (SBiH) to support the “*April Package*” of constitutional changes.¹⁴ Since then the international community has changed its dynamics with respect to influencing implementation of reforms. The attempt of development of an inter-party agreement, with the mediation of the EU, for constitutional changes in 2009, also remained unsuccessful. All this showed that modification of the Dayton constitution is not possible as long as there is no consensus of the ruling parties on the issue. This consensus will become possible when the EU and the international community, on the basis of their geopolitical roles, impose the basis for constitutional changes. Until then the state of Bosnia and Herzegovina will exist as an unfunctional state with a permanent decision-making-crisis in the BiH Parliament. However, there is also a need for further engagement of the EU and the international community on provision of assistance in implementation of reforms within the framework of the European integration process.

After Bosnia and Herzegovina signed the Stabilization and Accession Agreement with the EU in 2008, the implementation of this agreement was delayed. Namely, one requirement caused delays in the ratification of the agreement in EU institutions. The requirement was related to the judgment of the European Human Rights Court in the *Seđić-Finci* Case. The judgment was rendered in December 2009. All the attempts to implement the judgment through adoption of amendments to the Constitution of Bosnia and Herzegovina made in the period from 2009 to 2014 remained unsuccessful¹⁵ (Pejanović, 2015, p.145).

In the period from 2008 to 2015 the process of integration of Bosnia and Herzegovina was at a halt. The post-Dayton years of social development of Bosnia and Herzegovina have shown that any halt in implementation of the European integration process leads to tendencies of destabilization of the BiH society. It is more than certain that if there is no

¹⁴ The adoption of European standards represents a new constitutional constitution in the development of the state of Bosnia and Herzegovina. The development of the new content of the Constitution of Bosnia and Herzegovina implies existence of a geo-political basis expressed through the power and will of the US administration, EU and Contact Group member countries.

¹⁵ In this mandate of the Parliamentary Assembly of Bosnia and Herzegovina the ruling parties that constituted the majority were not able to reach a consensus on implementation of the judgment of the European Human Rights Court in the *Seđić-Finci* Case. The decisions on possible proposals of amendments were made outside the BiH Parliamentary Assembly and by a circle of party leaders. In such a way the power of the Parliament of Bosnia and Herzegovina was usurped.

implementation of the European integration process, then there are no favorable conditions for internal integration of Bosnia and Herzegovina and preservation of its stability.

Since 2012 new social-historical trends and developments emerged in the world and Europe. War conflicts broke out in Middle East countries (Iraq, Libya, Syria, and Yemen). The Islamic state (ISIL) became the proponent of military activities in Iraq, Libya and Syria. ISIL recruited volunteers, who upon return to their respective countries constituted a threat of terrorism. Terrorist attacks conducted in a number of cities in European countries¹⁶ instilled fear among citizens and threatened stability and peace. Dozens of young men/women from Bosnia and Herzegovina went as volunteers to the war zones in Syria. Return of ISIL members to Bosnia and Herzegovina creates major risks to security of citizens from possible terrorist activities.

The risks of geopolitical change that affect Bosnia and Herzegovina also include those stemming from the war conflict in East Ukraine. Namely, during the war conflict in Ukraine members of radical groups from Serbia and Republic of Srpska went as volunteers to the warzone in Ukraine to fight on the side of pro-Russian forces.

The influence of Russia on social trends in Bosnia and Herzegovina is evident in Republic of Srpska, particularly in the economic sector (oil processing and distribution). At the same time, Russia exerts political influence as well. During several of his visits to Russia, Milorad Dodik, then Republic of Srpska President was given support for his radical nationalist undertakings. He was also given support for the implementation of the referendum of the citizens of Republic of Srpska on 9 January, the disputed and unconstitutional day of Republic of Srpska. The referendum was organized on 25 September 2016, shortly before the local elections. The political homogenization of citizens aimed at achieving a high turnout at the referendum continued through the election campaign and Milorad Dodik's party (SNSD) won the local elections by a landslide. The atmosphere created in relation to the referendum on 9 January, day of Republic of Srpska, led to rising of ethnic tensions. Once again the idea of organization of a referendum on secession of Republic of Srpska from Bosnia and Herzegovina was

¹⁶ The terrorist attacks conducted in 2015 and 2016 in the cities of France (Nice and Paris) and Germany (Berlin) resulted in dozens of civilian casualties. In Bosnia and Herzegovina, two terrorist actions were conducted by extremist Wahhabi movements- the assassination of a police officer in Zvornik and two members of the Armed Forces of BiH in Rajlovac, Sarajevo.

advocated. The tensions were so high that they created fear of an outbreak of war conflicts.

Geopolitical changes happened in the EU as well. The burden of inflow of refugees from Syria and the Middle East disrupted the relations among EU member countries. Hungary decided to erect a wall at its borders. A referendum on withdrawal of Great Britain from the EU (Brexit) was organized. This influenced instability in the functioning of EU institutions. Strengthening of radical right-wing parties in EU member countries caused additional difficulties in the functioning of the EU. These parties advocated withdrawal of their respective countries from the EU. The most radical request came from Marine Le Pen, leader of the National Rally in France (Muhar, 2017, pp.58-60).

The concept of Euro-regions could be acceptable for Bosnia and Herzegovina with respect to establishment of its internal region-based structure. As an outcome of the idea of Euro-regions and its institutionalization in practice, the regional interests in the structure of EU bodies became equal to the interests of nation states. One third of the EU budget is directed to support underdeveloped regions and cross-border interregional cooperation. Through history, different regional centers with the associated areas were formed in Bosnia and Herzegovina. During the 400 years of the Ottoman Empire, *sanjaks* (*administrative divisions*) functioned as regional centers of government in Sarajevo, Banja Luka, Bihać, Zvornik, Mostar and Travnik. After the arrival of the Austria-Hungarian administration at the end of the XIX century and the industrialization of Bosnia and Herzegovina, new industrial-city centers were developed: Tuzla, Zenica and Doboj. Specifically, Tuzla became a new regional center, while Zvornik lost its status of a regional center. Over a period of more than forty years of development of Bosnia and Herzegovina under socialism seven regional centers were created: Bihać, Banja Luka, Doboj, Zenica, Sarajevo, Tuzla and Mostar. For a short period of time, immediately after World War II, there were four regions: Banja Luka, Mostar, Tuzla and Sarajevo. If scientific-expert criteria, which are applied in development of Euro-regions, would be applied, then an optimum solution for Bosnia and Herzegovina would be to have four regions. The population of the regions would vary between 700,000 and 1,000,000. The regions would be multiethnic and self-sustainable in their social development. They could successfully engage in cross-border interregional cooperation and pursue their development interests through

the EU Committee of Regions. These regions would contribute to equalization of economic development of the regions, and therefore also development of regional institutions in the area of healthcare, education, traffic, management of natural resources and environment protection.

Successful implementation of the modified approach of the EU towards Bosnia and Herzegovina and its membership in the EU requires a united political engagement of the EU and US, so that the integration process would progress without new halts. It is also necessary to introduce annual reports to the European parliament on the results achieved in the implementation of reforms in BiH. In such a way, the responsibility of the parliamentary bodies in Bosnia and Herzegovina and the EU Special Representative for Bosnia and Herzegovina would lead to transparency and a higher level of accountability. The political forces that demonstrate a destructive approach to implementation of reforms in Bosnia and Herzegovina should be sanctioned, as their conduct would constitute a violation of the principles of the Dayton Peace Agreement. Specifically, strengthening of peace and stability through Euro-Atlantic integration. The negative consequences to parliamentary democracy were evident when in 2012 and 2013 the leaders of the ruling parties, together with the EU Commissioner for Enlargement Štefan Füle disempowered the BiH Parliament with respect to implementation of the judgment of the European Human Rights Court in the *Sejdic-Finci Case*. A number of meetings with political leaders from BiH that were organized in European capitals yielded no results. This suppressed democratic decision making process in the BiH Parliament and strengthened the political bureaucracy.

The following assumption stems from the necessity to increase the democratic capacity of the Parliamentary Assembly of Bosnia and Herzegovina. According to the Dayton constitution, the BiH Parliamentary Assembly has 42 representatives. This is an insufficient institutional capacity for the work of the boards and committees, particularly when the adoption of laws that will provide for introduction of the EU *acquis communautaire* begins. The inability of entity parties to tailor a coalition political program that would be the basis for achieving a consensus with respect to adoption of a catalog of laws during their mandate period in the BiH Parliament also limits the democratic capacity of the BiH Parliament.

The researches conducted into the scope of parliamentary democracy suggest that the number of representatives in the Parliamentary Assembly of Bosnia and Herzegovina should be increased from the current 42 to 95. This would be done through adoption of the European clause and modification of the election law. Another idea that is being advocated is the necessity to establish a broad coalition in the parliamentary assembly for the "*European state of Bosnia and Herzegovina*" project. Almost all parliamentary parties should join the broad coalition for the purposes of acceleration of the integration of Bosnia and Herzegovina into the EU, as has been the practice in all candidate countries for membership in the EU. A European, democratic and economically prosperous state of Bosnia and Herzegovina should be a wish of all its citizens. All the reforms, including the constitutional reform, will be more successfully implemented if there is a broad coalition for a European Bosnia and Herzegovina.

The Constitution of Bosnia and Herzegovina has a major insufficiency. Namely, five persons can block the entire state. A member of the Presidency of BiH, the chair or the deputy chair of the BiH Council of Ministers and three delegates from a caucuses of one people (Bosniaks, Croats or Serbs) in the House of Peoples of the BiH Parliament. Hence, five persons can block the entire state. Some mistakes were made in Dayton in this respect, because the intention was close cooperation among political actors in the implementation of the Dayton Peace Agreement. However, just the opposite has happened in practice. The entity blockade in the BiH Parliament would have been avoided in majority of cases, had true massive return of refugees and displaced persons occurred. Namely, in that case the population structure would be almost the same as the prewar one; hence such blockades could have been prevented in majority of cases. In fact, that is one of the reasons behind the obstructions of the return of refugees and displaced persons in all parts of BiH.

The constitutional reform should be the basis for a functional state of Bosnia and Herzegovina. It would also facilitate generation of other solutions, such as the adoption of a new election law. The current constitutional solutions allow for (ab)use of vital national interest, because it has not been accurately defined. The principle of parity and proportionality has been inconsistently (ab)used. Having the three key offices in the entities (entity president, speaker of the government

and prime minister) held by persons from three different ethnic communities, would contribute to relaxation of relations in BiH, which would lead to the requirement to abolish the present asymmetries between the two entities. The Federation of BiH has a kind of a semi-presidential system, which should be harmonized with the situation in the entity of Republic of Srpska, so that the two vice-presidents would have identical roles (symmetry) in both entities. For the purposes of future solutions it is necessary to device an optimum combination that would include the civic concept of the state and take into account the ethnic factor.

Positive political changes in BiH cannot be implemented without the roles of the neighboring states of Serbia and Croatia, which are also the co-signatories to the Dayton Peace Agreement, not its guarantors. Furthermore, the example of special and parallel relations and connections of Serbia with the entity of Republic of Srpska are unprecedented in the EU practice. Hence, in the course of integration into the EU (Serbia and BiH), these agreements must be terminated, as something of the kind does not exist in the constitutional order of any EU member country, nor in the EU *acquis communautaire*.

The process of Euro-Atlantic integration is important for any country, because it mobilizes the majority of forces in the country for achievement of the goal. An efficient model needs to be found for acceleration of the European integration process in Bosnia and Herzegovina.

CONCLUSION

The Dayton Peace Agreement gives primacy to the ethnic principles in modeling of institutions of the political system. By its name, the entity of Republic of Srpska, has primacy in articulation of the interests of the Serb people. The other entity, Federation of BiH, is based on articulation of the interests of the Bosniak and Croat peoples. The Dayton constitution gave broad legal competencies to the entities. Unlike the entities, the institutions of the state of Bosnia and Herzegovina were given limited competencies. Because of such a political-constitutional organization, the state of Bosnia and Herzegovina exists as an unfunctional state. Its unfunctionality is also informed by the monopoly-position and dominance of ethnicity and ethnic parties in the management of social processes and development. The practice so far has shown that ethnic parties have no political will to achieve a mutual consensus on key issues for development and future of the state of Bosnia and Herzegovina. As a result, the entities and the state of Bosnia and Herzegovina do not have stable parliamentary majorities or governments created on the basis of a stable majority. Therefore, the BiH society and state are faced with continuous production of political crises in their development and frequent blockades of the work of specific institutions. The entity blockade (entity majority) in the BiH Parliament could have been avoided in majority of cases had there been mass return of refugees and displaced persons, because then the population structure in the entities would be approximately the same as the prewar one. This was one of the reasons behind the obstructions of the process of return of refugees and displaced persons in all parts of BiH. The institutions of the state of Bosnia and Herzegovina have the need to rely on the role and assistance of the international community that is the EU and US, in the implementation of the Dayton Peace Agreement and peace building efforts.

Development of a rationally organized and functional rule-of-law state is one of the key requirements for admission of Bosnia and Herzegovina into EU membership. Therefore, the reform of the political organization of BiH is possible only within the framework of fulfillment of conditions for integration of Bosnia and Herzegovina into EU membership. Two phases are possible in that respect: 1) first phase, a partial reform, within which expanded competencies of the BiH Parliamentary Assembly, a new position of the BiH Presidency

and establishment of a new structure of the BiH Government with a strong prime minister would be defined; 2) the phase that includes establishment of the whole organization of the rule-of-law state and its structures, including internal territorial organization in line with the EU criteria and standards. In the second phase it would be necessary to rationalize the political organization of BiH and bring it in line with the European democratic model. This means establishment of institutional structure of the political system at three levels of exercise of government powers: local, regional and state. The constitutional changes represent the foundation and solution for progress of BiH in all segments of society from which changes in other segments of the BiH society could continue.

Throughout its history Bosnia and Herzegovina, as a separate entity, functioned well as a part of a broader entity such as the Ottoman Empire, Austrian-Hungarian Empire, Socialist Federal Republic of Yugoslavia and now possibly the EU. Regardless of how much membership in the EU is important for BiH, its previous integration into NATO would guarantee an enduring peace and lasting stability. In fact, the BiH's path to EU and NATO is defined by the Dayton Peace Agreement.

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book reviews

**Stop Genocide and Holocaust Denial;
Conference Proceedings IV International Conference**
Petra Kocen

From WWI to WWW. Geopolitics 100 Years Later
Anis H. Bajrektarević
Styliani Papadimitriou

Petra Kocen

STOP GENOCIDE AND HOLOCAUST DENIAL; CONFERENCE PROCEEDINGS IV INTERNATIONAL CONFERENCE, SARAJEVO, 20 AND 21 JUNE 2019

The Association of Victims and Witnesses of Genocide, The Association-Movement Mothers of Srebrenica and Žepa Enclaves, Sarajevo, 2020, 283 pages

This book is a collection of articles and speeches contributed by the esteemed participants of the international conference that took place on the 20th and 21st June in Sarajevo. It is dedicated to the topic of genocide denial, with a special focus on the current denial of the Srebrenica genocide and the Holocaust. The Association of Victims and Witnesses of Genocide together with the Association-Movement Mothers of Srebrenica and Žepa Enclaves have organized the annual conference for the fourth time. To commemorate, to remember, to remind.

In 2019, the conference coincided with the 24th anniversary of the Srebrenica genocide and the 50th anniversary of Holocaust remembrance. It commemorated both events, bringing together international professionals investigating and documenting genocide and Holocaust denial, representatives of the international community, non-government organizations, researchers, professors, as well as the genocide survivors and witnesses. In short, all people who



share the goal to make genocide and holocaust denial strictly prohibited and punishable by law. With this in mind, the conference once again pointed out the necessity of ethics and moral in international relations as well as in politics.

Emphasis was placed on the concept of genocide, which according to Dr. Gregory Stanton, President of Genocide Watch, has 10 stages (Petrila,

p.225). In the Introductory Remarks (2019, p.13), it is stressed that:

“[...] genocide denial is its last phase, as the genocide does not end with execution, persecution, rape and other crimes committed with genocidal intentions; it continues until the perpetrators and their followers are ready to face the past and accept the truth”.

This thought was repeated throughout the conference. It was approached by scholars, judges, prosecutors, victims and witnesses, each presenting their individual view. Their diverse backgrounds gave a very rich overview of the topic. Particularly valuable were the personal testimonies of victims and witnesses, which at times made the idea of genocide denial appear absurd. A similar observation was made by professor Lipstadt (2019, p.97), stating that “[t]here are facts, there are opinions, and there are lies”, blatantly calling out genocide and holocaust denial lies bordering on ridicule. The conference played an important role in countering those lies.

The aim of the forum in Sarajevo was to reveal the current principle deniers, their strategies, capacities and methodology. Additionally, to understand the best methods in tackling this final stage of genocide. For this purpose, several panels were formed to discuss the different topics, and numerous contributions were pre-

sented to overview and research the topic discussed.

The symposium was opened with welcoming remarks by the president of Mothers of Srebrenica and Žepa enclaves and a Member of the Presidency of Bosnia and Herzegovina. It continued with speeches by the President, Chief Prosecutor, and Registrar of the IRMCT, and the UN Secretary-General's Special Advisor on the Prevention of Genocide. Afterward, Panel I began deliberating on the concepts of genocide and Holocaust denial, their functions and motives today. It offered a broad perspective on the concept, featuring experts on the Jewish culture and history, and on the tragic past of Bosnia and Herzegovina.

Panel II welcomed representatives of the international community, offering their comparative insight and big picture view. An important topic were the lessons drawn from Germany and its approach to Holocaust denial (Bećirović, 2019, pp. 107-111). Furthermore, the roles of the Office of the High Representative (OHR), the European Parliament (EP), the International Court of Justice (ICJ) and the ICTY/IRMCT were emphasized. The latter was also featured in Panel III, discussing the Legacy of the International Tribunal. The IRMCT Registrar Olufemi Elias (2019, p. 56) highlighted the importance of decisions taken by the Tribunal in his opening speech:

“By hiding what happened on those days, by tampering with history, the deniers are creating space for the perpetrators of genocide to go unpunished and for history to repeat itself. [...] Memory, aided by facts established beyond reasonable doubt, accessible to everyone, is our best shield against denial and revisionism to ensure that accountability and justice prevail over evil ideology.”

Indeed, ICTY/IRMCT decisions and judgments taken beyond reasonable doubt are essential in establishing the true facts about the events that took place between 1992 and 1995 in Bosnia and Herzegovina. Additionally, these decisions and documents must be available openly to the public, for them to have their full effect in countering the deliberate spread of misinformation. It has to be documented, with a clear goal to be prevented.

Panel IV was dedicated to the honest truths of victims and witnesses of genocide, while Panel V approached the methods and goals of denial, calling out the key actors by name. This is an especially important topic, as it includes the sensitive issue of primary school education (Kolarić, 2019, p. 212), where revisionism can cause incredible damage and continue to feed disparities in the generations to come. Among the names, The Republic of Serbia and the entity Republika Srpska were most often mentioned. To them, the President of the IRMCT

(Agius, 2019, p. 40) addressed the following:

“I have a message for the leaders of Republika Srpska who have been actively attempting to distort the truth of the genocide for two and a half decades: You have not succeeded, otherwise you would not be intensifying your efforts now. And you will continue to fail.”

The final Panel VI addressed the currently most common tool of the so-called deniers – the media. It already played an important role in documenting the Holocaust, genocides in Rwanda, Armenia, Bosnia and Herzegovina and the United States. Still today, it continues to report and inform the broader public about certain court proceedings. On the other hand, when abused, it serves as a powerful means to distribute false information and distort the truth.

The conference was completed by a set of conclusions and demands adopted unanimously by the Conclusion Commission. The first and most important one was a call to all deniers to stop with revisionism, the glorifying of war criminals and war crimes. Instead, they must accept and respect the verdicts of the international courts. This is, plainly speaking, what we call the rule of law. And the rule of law is institutionalized justice.

Furthermore, a demand was placed

on the authorities of Bosnia and Herzegovina to increase their efforts in putting an end to denial. For this reason, the Parliamentary Assembly of BiH was called upon to pass the Law on the Prohibition of Genocide and Holocaust Denial or alternatively, the Office of the High Representative should impose it.

The next demand was to the international community, which must ensure regional cooperation in the prosecution of war criminals. The BiH judicial bodies are requested to begin adopting the legacy of the ICTY/IRMCT and implementing the recommendations and reports by international institutions, associations of victims and NGOs. Lastly, the educational authorities must include the history of the said war in school curriculums in accordance with the ICTY/IRMCT legacy.

Today, the law incriminating genocide denial has not yet been implemented in Bosnia and Herzegovina and the discussion on denial remains as relevant as it was at the time of the conference. Perhaps, this is the most important time to remember its keynote message (Agius, 2019, p. 44):

“we must leave no stone unturned in our efforts to isolate the deniers. They will continue to lie, but in time, through our efforts, they will be diminished. History is on the side of justice, and we will prevail.”

Indeed, the final message is one of hope. As the Association of Victims and Witnesses of Genocide and the organization Mothers of Srebrenica and Žepa Enclaves together with the conference participants continue to speak the truth, so the deniers are active in their attempts of revisionism. For this reason, the publication of selected articles and transcripts of the most esteemed experts and most knowledgeable victims and witnesses remains an invaluable source of information and wisdom. A beacon of light to do away with all that is false and humbly welcome reconciliation. Their messages are of even greater importance in the year in which we remember the 25th anniversary of both the genocide as well as the Dayton Peace Accords.

Styliani Papadimitriou

Anis H. Bajrektarević FROM WWI TO WWW. GEOPOLITICS 100 YEARS LATER

Less explored aspects of geopolitics, technology, energy and geo-economics, and other foreign policy essays

Addleton Academic Publishers, New York, 2018, 342 pages

ISBN 978-1-942585-41-1 (e-book)

Sarajevo author Anis H. Bajrektarević has already authored six books and numerous articles on, *inter alia*, geopolitics, history and international relations. Like its predecessors, *From WWI to www: Geopolitics 100 years later* deals with issues of those fields, exposing less explored aspects of geopolitics, technology, energy and geo-economics. While it opens by shedding light on how two hot and one cold war led to today's worldwide instability, it soon enough brings the focus on Europe, touching upon important considerations, such as its negative economic growth, and its forever high-valuable democracy, which is balancing between the rising of extreme-right parties and the hordes of immigrants and refugees arriving from Asia and Africa. During the whole book, after all, we can feel the author's uncertainty regarding Europe's identification: Is it a unity based on values and ideas or a unity based solely on economic and power motivations?

**From WWI to www.
Geopolitics 100 years later**

**Od WWI do www.
Geopolitika sto godina poslije**

Anis H. Bajrektarević



Without doubt, it would be an omission to not refer to the innovative title of the book, which intrigues the reader at first sight. Instead of just putting down the dates that signify the beginning and the end of the period that the author is referring to, he chose the captivating form of "WWI" and www. Obviously, the author refers to the one hundred years

between the First World War and the internet age we live now, when all the communications can take place remotely, the information is transmitted around the world in seconds, and the online world is becoming our new reality.

From WWI to www: Geopolitics 100 years later is an investigation of the European Union's identical crisis, creating questions about Europe's boundaries, challenges and concepts. In order to answer these questions, one cannot but turn to history, not only because history repeats itself, but also because history is necessary for the thorough understanding of the current situation and problematic. And, undoubtedly, Bajrektarević is an expert in presenting the history of geopolitics, stressing the points that brought us where we stand today.

Despite the fact that *From WWI to www: Geopolitics 100 years later* is a collection of papers, previously published in different languages and journals across the world, the book is very coherent, well-structured and conclusive. For instance, instead of describing directly the crisis and the issues that we face today, it also presents an extensive historical analysis through which it attempts to explain the socio-political circumstances that formed Europe the way it is. Moreover, in order to help us understand Europe better, the author makes us see the bigger picture, by covering in his book various relevant global issues.

This is why it becomes important to comprehend the US policies, as well as the oil politics in the Middle East, China's place in the petrodollar system and security issues faced in Asia. This is also why the author explains the current global challenges, such as the cognitive deficit crisis or the environmental crisis. It is all part of the framework that shapes Europe and affects it crucially while (re)discovering its character and mandate.

In his book, Bajrektarević refers to the origins of pan-European ideas, which later led to the creation of the European Union. However, through an exciting journey in the field of geopolitics, the author proves that Europe has changed dramatically since its foundation, and is struggling to achieve its integration, uphold its democratic values and regain its power in the global scene. So, by including, historical, political and cultural references, *From WWI to www: Geopolitics 100 years later* manages to cover the whole spectrum of what forms Europe, regarding its powers and strengths, but also its limitations and contradictions.

By explaining thoroughly the interaction of great powers, as well as the society's current obsession to advance technologically more and more, in order to produce more, it is not hard for the author to prove that the standards and goals of Europe are focused on its economic empowerment. After all, isn't the gain of more power the central axis

around which all the global policies rotate? And isn't the expansion of the European influence the reasoning behind the EU's position vis-à-vis the dissolutions that took place in the regions of Eastern Europe and the Balkans? These and many other questions are answered in the book, which brings to its readers the relative historical and geopolitical context.

An undoubtedly very interesting part of the book, is the one where the author deviates a bit from the past 100 years that he is mainly referring to, and he focuses more to the future of Europe, comparing somehow the way Europe used to be with the way it is today. As he very well states, Europe has always proclaimed itself as the land of compromise between capital and labour, the land where cheap labour does not have a place and the protection of the environment is always one of the first in line mandates. However, who cannot see clearly today that this approach has changed? Who cannot see that Europe has adopted a policy that favours overseas investments and has accepted services and goods from the extremely low waged Chinese workers? It is true that Europe has lost its initial left position, as well as its compassionate spirit. At the same time, as the author very well notices, although nowadays the EU is enjoying its best educated workforce ever, it does not enjoy the high standard of living that he would expect. For instance, extremism is currently see-

ing a sharp increase all over the continent, while Europe is trying to face its financial issues by cutting down its education and science budget, which, according to the author, is the one that, in the long term, guarantees the high level of life that Europeans enjoy. This is why it does not come as a surprise to Bajrek-tarević that the current situation, combined with Europe's current apathetic youth, may be giving ground to those looking forward to power concentration, a dangerous phenomenon that has been already witnessed in the past in times of similar crises. And after having said all this, the author makes an extraordinary turnover, and tries to show that the crisis is not only economic or political. As he very successfully mentions, even though Europe's budget is mostly spent to refinance the banks, neglecting public services and the protection of the labour, the society still has a lot of power that lies within it. Thus, what matters most to him is that we do not lose ourselves in this era, that we do not take this situation as something that characterises the old continent, but, on the contrary, we face this as an opportunity to turn Europe towards what it used to be. After all, as the author very precisely quotes from Monnet, "Crises are the great unifier".

Towards the end of the book, reference is made to the phenomenon of climate change, with the author concluding that the crisis we face is indeed deriving from many different

policies and practices, which can be financial, environmental and politico-economic. After all, as he states, the Climate Change (CC) Report is more of an analysis of human “CC”, which stands for competition and confrontation, instead of the ideal “CC” that should dominate the world, that of cooperation and consensus.

Thus, from an experienced diplomat or politician to a specialist in

geopolitics or international law, and from a history enthusiastic to a student of geo-economics, everyone can expect to be thrived by *From WWI to www: Geopolitics 100 years later*. If learning in-depth about history and today's global issues is what you have been aiming for, then you just have to pick up the book and start reading.

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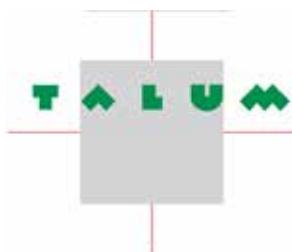
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