

European Union Foreign Affairs Journal

eQuarterly for European Foreign, Foreign Trade, Development, Security
Policy, EU-Third Country Relations and Regional Integration (EUFAJ)

N° 01– 2017

LIBERTAS

ISSN 2190-6122

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ISSN: 2190-6122

Published by: LIBERTAS – Europäisches Institut GmbH, Lindenweg 37, 72414 Rangendingen, Germany

Phone: +49 7471 984996-0, fax +49 7471 984996-19, e-mail: eufaj@libertas-institut.com

Managing Director: Hans-Jürgen Zahorka

Registered: AG Stuttgart, HRB 243253, USt ID no.: DE811240129, Tax no.: 53 093 05327

Internet: www.eufaj.eu, www.libertas-institut.eu

Subscription Rate: Free. All previous EUFAJ issues can be downloaded free of charge on www.eufaj.eu.

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Proposal/example for quotation: EUFAJ [or: European Union Foreign Affairs Journal] 1-2015, then number of page (e.g. EUFAJ, 1-2015, 32).

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Editorial

Dear readers,

observing European and international politics is thrilling - like making it or being a citizen. Brexit, as usual, divides villages, families, friends - but from time to time there are demonstrations in London where, what a miracle, EU flags are waved, mainly by young people. Theresa May obtains all kinds of defeats, and it is a practical example of Sigmund Freud to observe the British flock of ministers. Trump seems - for the day only - tamed and civilized, at least in foreign policy, but you never know ... From time to time he provides the best comedy programme ever. And it is becoming strangely silent around Putin - no miracle, as he has all hands to do with his present construction sites.

The rising star on the rabble-rousing boards is Mr. Erdogan from Turkey. He will be the reason why the ministries of foreign affairs of the EU will have to recruit routined psychologists, as a decent normal person has difficulties to get what he says and wants. May be EUFAJ publishes in one of its next issues a contribution that he is in truth a modern fascist? Or an article who in the EU economy still wants to play ball with his kind of country - or about the development of tourist figures (arrivals from foreign countries in Turkey).

With this "trio infernal" we have to look on ourselves. Are some people in the European Council going bonkers, or the people behind them? And what about the right-wing candidates in the Netherlands, France, or Germany? Lots of people have still to be convinced. This is why I finish now...

With best regards,



Hans-Jürgen Zahorka

EU Good Offices in Revolutionary Egypt (2012-2013)

James Moran and Gabriel Munuera Viñals

James Moran is the former EU Ambassador and Head of the European Union Delegation in Egypt and now Principal Adviser, Middle East and North Africa, in the European External Action Service (EEAS) in Brussels. His co-author Gabriel Munuera Viñals is the former Head of the Political Section of the EU Delegation Cairo, both for the period 2012-2016. Now he works for the EU Delegation in Ankara/Turkey. The views reflected in this article are their own, and do not represent European Union policy.

The protests that led to the downfall of Hosni Mubarak in February 2011 opened what may plausibly be deemed a revolutionary period in Egypt, a time of great turmoil but also of opportunity, in a regional context of deep change that became generally known as the Arab Spring.

That revolutionary period, which arguably came to a close in the late summer of 2013, witnessed a constitutional referendum and a constitutional declaration issued by the Supreme Council of the Armed Forces (SCAF) which initially guided the transition after the January 2011 revolution. This set the stage for a parliamentary poll, won clearly by Islamist formations led by the Muslim Brotherhood's Freedom and Justice Party and a presidential election won by Mohammed Morsi of the MB, both historic firsts in the country.

The period was also marked by momentous rulings by the Supreme Constitutional Court, which dissolved the lower house on faulty electoral law grounds and annulled two draft electoral bills under which parliamentary elections were being convened; Morsi's deeply controversial constitutional declaration in November 2012 temporarily sheltering presidential decisions from judicial oversight, and a no less divisive new constitution issued by a constituent assembly boycotted by non-Islamist forces; the emergence of a National Salvation Front coordinated by Nobel Peace prize winner Mohamed ElBaradei, gathering mainly the new secular parties; and especially in early 2013 a number of mediation attempts by various internal and external actors, including the EU;

This, in a context of constant street demonstrations peppered with violent episodes; a significant deterioration of law and order resulting from the de facto withdrawal from the streets of vilified police forces; and a deep economic crisis, marked by collapsing tourism receipts, FDI flows and foreign exchange reserves.

Following massive street protests, Mr Morsi was ousted in July 2013, the constitution was suspended and the upper legislative chamber dissolved by the military. A political roadmap was announced by then Minister of Defense General Abdel Fattah Al Sisi, supported by the NSF, religious leaders and the Salafi Nour party. After some six weeks of further disruption, security services were ordered to disperse pro-Morsi demonstrations and sit-ins, most notably in Cairo's Raba'a square, and violence erupted, resulting in the loss of many lives on all sides, notably among the Islamist protesters.

A new constitution and constitutional referendum, presidential and parliamentary elections followed in 2014 and 2015, under very different circumstances from those of the period this article focuses on.

The significance and assessment of the period from Mubarak's fall to the launching of a new political regime/transition by then Minister of Defence Al Sisi remains deeply sensitive and controversial, with judgements often clouded by very strong emotions in Egypt and differing international agendas. Most observers would agree that many mistakes were made by the various key actors in 2011-2013, in particular by the Morsi administration and the Muslim Brotherhood, which was clearly unprepared for the Executive, with very few helping hands from political opponents. The international response is also subject to much reflection. Some lament the opportunities missed, both for the country and beyond. And many others rejoice at what they saw as a potential tragedy for the country being averted in July 2013 by ousting the Muslim Brotherhood from power.



The famous pyramids are a symbol for Egypt, more than 4.500 years old and UNESCO World Cultural Heritage. The pyramids are based in Gizeh, a part of greater Cairo, at the border of the city which has around 20 million inhabitants.

Photo; Wikipedia

This piece at any rate does not aim at passing final judgment on the short-lived Morsi Administration, or the “revolutionary” period, for which much more space (and a longer time perspective)

would be needed. The objective here is to try to illustrate, in the context of the developments at that time, the efforts deployed by the European Union to “accompany” Egypt as it swam in the uncharted and turbulent waters of democratic transition; and in particular the good offices carried out under the leadership of EU High Representative/EC Vice President Catherine Ashton, who, at the request of the key players, namely the Morsi administration, the NSF and, somewhat less

explicitly, the military, visited Egypt ten times in 2012/13. In this, she had the full support of the EU Member States.

Bernardino Leon, at the time the EU Special Representative for the Southern Mediterranean, also played a major part in this, spending much of his time in Cairo during this period. Ashton and Leon worked for a political accommodation between the two camps. Those attempts, often deployed in close coordination with the US, ultimately failed in preventing the ouster of the Morsi Administration and the subsequent harsh repression of its supporters, but in our view hold valuable lessons for EU peacemaking and foreign policy in general, which are worth a closer look (see below).

The election of Mohamed Morsi to the Presidency in June 2012, when he defeated Ahmed Shafiq, a long-time Mubarak Cabinet member and his last Prime Minister, was unprecedented, in that it marked the accession of Political Islam to high office of a major, indeed the largest, Arab country. While he quickly arrived at an accommodation with the military in a pact that gave him authority over civilian, if not security matters, his presidency faced very significant challenges.

The always fragile economy was in a tailspin after some 18 months of turbulence following the January 2011 revolution; law and order had deteriorated; the MB dominated parliament was hamstrung (the lower house of parliament had been dissolved by the judiciary in June 2012); and the constituent assembly, set up to craft a new constitution, was boycotted by most secular forces since its inception in the spring of 2012. Moreover, despite Morsi's election, which had been generally accepted at home and abroad as fair, the country remained deeply divided.

His attempts at politically broadening the executive, including the offering of a vice-presidency former Nasserist presidential candidate Hamdeen Sabahi, bore little fruit, the Brotherhood being profoundly mistrusted in many secular quarters. That summer also witnessed a surge in Jihadist insurgency in North Sinai, with a terrorist attack in early August on border guards which premised the “retirement” of SCAF leaders Tantawi and Anan. In turn, the military establishment agreed to the appointment of a new Defence Minister from their ranks, namely Abdel Fatah Al Sisi, who at that time appeared ready to work with the Administration on restoring stability in the land.

From the beginning of the Morsi Presidency the EU, through several high level engagements and pronouncements, conveyed firm support to the democratic transition in the country and to its speedy completion. Those most notably included the EU Foreign Affairs Council conclusions of 25 June 2012 and the EU-Egypt Task Force Joint declaration of 14 November 2012, the latter being an attempt to provide major new economic support by bringing to Cairo European and international institutions (The European Commission, the European Investment Bank and the European Bank for Reconstruction and Development), as well as hundreds of EU private sector investors).

Throughout, the EU repeatedly stressed the importance of inclusiveness and respect for fundamental human rights, as well as the urgency of promptly concluding an agreement with the International Monetary Fund, so as to redress fundamental economic imbalances and set the country on a financially sustainable path, restore FDI flows and kick start growth. That agreement required broad political buy-in. At the Task Force, the EU accompanied political support with substantial additional aid pledges, to the tune of a potential total of EUR 5.5 billion and including a EUR 500 million loan and grant for macroeconomic support linked directly to a new IMF arrangement.

As the first anniversary of his presidency approached in the late spring of 2013, Morsi's record on all those counts (inclusive governance, respect for human rights, economic reform) was decidedly poor. The country remained mired in deep political polarisation, between on the one hand Islamists that, despite some tactical differences, rallied strategically around the MB Administration and its project. And on the other essentially secular forces, which included political parties ranging from liberals to socialists to Nasserists, many gathered in the fragile National Salvation Front; large sectors of the judiciary; the state apparatus; and business, media and secular civil society, mainly from the urban middle classes.

In the background, the military, concerned about polarisation and the disorder it engendered, was increasingly wary of the new Islamist dispensation. However, with the difficult SCAF period of 2011/12 uppermost in its mind, when the military had become politically exposed and lost popularity, it remained reluctant to return to the political forefront, given the cost of unseating a democratically elected president who retained a measure of popular support and the very difficult situation that they would almost certainly inherit.

A political accommodation between these forces had proven elusive, despite a number of reconciliation efforts, domestic as well as international (see below).

Several missed opportunities could be identified. The first came with the initial senior appointments by Morsi, following his campaign promises of being a President for all Egyptians and having Copts and women play prominent roles. In the event he appointed a combination of sympathizers, Brothers, bureaucracy insiders and holdovers from the previous cabinet under the SCAF. Only two women featured, one of whom the sole Coptic member of the cabinet.

The second missed chance of a grand accommodation was bound up with the constitutional process. Despite a number of secular withdrawals from the Constituent Assembly shortly after it was established in June, when they were not granted a blocking minority in decision-making, others, including prominent figures such as Ahmed Maher, the leader of the 6 of April revolutionary movement, or Anwar el Sadat, chair of the dissolved People's Assembly's Human Rights Committee, stayed on, as did representatives from the Church. But almost all walked out in November 2012, when they felt that their views were not taken on board by the Islamist majority.

On the economic front, prospects for accommodation were made worse by the fact that, despite constant assurances of their commitment to it by Morsi and his close confidantes, the IMF deal was never finalized, due mainly to their reluctance to bite the bullet on the necessary economic reform measures given his quickly declining political capital by the end of 2012; and, it must be said, a basic lack of understanding of how the international financial system operates. With hindsight, the failure to follow through on this was one of Morsi's major errors, as apart from much-needed financial sustenance, it would have provided substantial reassurance to a largely skeptical business community and many others at home and abroad who held to the view that the MB was either congenitally incapable of, or could not be trusted with, the provision of real economic governance.

Hesitation about the IMF coincided with what was probably the key mistake made during Morsi's brief tenure, namely the Constitutional Declaration of 22 November 2012, whereby President Morsi replaced the Mubarak-appointed Prosecutor General, whom he saw as an obstacle to properly investigating Mubarak's alleged crimes, and announced the sheltering of his decrees and declarations from judicial and political scrutiny until the promulgation of a new constitution.

Indeed, Morsi's Administration was convinced that the Judiciary was working against them and this declaration was certainly influenced by a fear bordering on panic that Supreme Constitutional Court rulings expected on 2 December could have entailed the dissolution of both the MB-friendly Shura Council and the Constituent Assembly. In the event, it triggered outrage among many who saw it as a power-grab, and huge crowds gathered again in Tahrir Square. The Declaration also provided a rallying point for the hitherto fractured secular opposition, which coalesced in a National Salvation Front nominally headed by Mohammed ElBaradei. Former prominent presidential candidates Amr Moussa and Hamdeen Sabbahi also joined the Front, as did well-known politicians such as Mounir Fakhry Abdel Nour and liberal/ centrist parties such as the Wafd, the Free Egyptians and the Social Democrats.

A parallel, deeply polarising development was the completion and adoption of the new constitution in December that year. Despite provisions for a two-month extension, the Assembly rushed the adoption of the text on the night of 30 November. That further antagonized the opposition and fueled additional protest, resulting in clashes in front of the presidential palace and attacks on FJP/MB offices around the country, leaving several people dead and troubling images of MB supporters attacking, illegally detaining and interrogating anti-Morsi demonstrators, admittedly in the face of less than vigorous dispersal of demonstrations by the police.

The substance of the constitution itself was another element fueling polarization. It did curtail presidential powers, empowered the parliament, prohibited torture and enshrined some new rights, such as a clean environment, and greater worker participation in corporate management.

But it also included provisions of a more Islamic flavour and, not least because of the rushed process, contained much ambiguous language.

Specific points of concern to secular parties and HR NGOs included: human rights being made contingent on a chapter on state and society where the former has a role in protecting public morals and the true nature of the Egyptian family, and in ensuring that women can combine their “duties towards their family” with work in the public service; articles prohibiting insulting prophets and messengers, and more generally other human beings; provisions that perpetuated military officers in the ministry of defense and permitted military trials of civilians that “harm” the armed forces; provisions that limited freedom to practice religion and build places of worship to Islam, Judaism and Christianity; article 219, which made the principles of Sharia (inspiration of all legislation, already in the previous 1971 constitution) more explicit; and provisions that granted Al Azhar obligatory consultative status on all Sharia-related matters. Plus the granting to the largely Islamist-dominated Shura Council (voted in by just 12% of the electorate) of full legislative powers until the election of a new House of Representatives.

After a brief lull following the adoption of the constitution, street protest peaked again on 25 January 2013, the second anniversary of the revolution. Protests and clashes in a number of cities, plus the ill-timed sentencing to death in Port Said of 21 local football supporters for the killing of 72 rival fans from Cairo, resulted in some 60 people dead over that week-end and very troubling reports of abuses, such as protesters illegally detained and tortured in police training camps.

As those events unfolded, deepening mutual mistrust and acrimony, the NSF continually pressed Morsi to engage in a real dialogue, including the offer of concessions. Their demands included the establishment of a national unity government (with the related postponement of the parliamentary elections), replacing in particular the Prime Minister and the Ministers of Interior, Justice, Supply, Local Development and Information, given the key role of these ministries in the conduct of elections; and the replacement of the new Prosecutor General, whose appointment was in legal doubt. Other desiderata of some NSF leaders included the appointment of a committee to discuss amendments to the constitution; the independent investigation of human rights abuses, possibly in the context of a truth and reconciliation commission; and the “de-brotherhoodisation” of state institutions.

The electoral law inevitably became another bone of contention. A draft was crafted in February by the Shura, ignoring suggestions from centrists and the church, notably regarding possible preferential quotas for women and Copts on party lists. Elections to the House of Representatives were announced by President Morsi for April-June, only to see the Cairo Administrative Court cancel his decree and send the law back to the Supreme Constitutional Court; which then received two sets, as the Shura sent new drafts to the Court on 12 April (that were also eventually declared unconstitutional). By then the NSF had already announced a boycott and the President had acknowledged that polls would probably not be held until October.

A number of domestic bridge-building initiatives were launched at various stages of that protracted political crisis, in particular by Al Azhar Grand Imam Al Tayyeb, who hosted a cross-party gathering issuing a 10-point manifesto rejecting violence and promoting dialogue. Youth leaders such as Ahmed Maher (6 April Movement coordinator) and moderates like Anwar el Sadat also made efforts; as well as the main Salafi Al Nour party, which tentatively agreed with the NSF on an eight-point agenda for genuine national dialogue featuring a national unity government.

It is in that convoluted context that the EU, through the efforts of Mrs Ashton and Mr Leon, deployed strenuous bridge building efforts, at the request of the parties: the President himself and his Aide for Foreign Affairs Essam el Haddad; and the NSF, primarily through Coordinator ElBaradei, but with frequent outreach to other key players such as Amr Moussa, Hamdeen Sabahi and Free Egyptians and Social Democrat party leaders. Close contacts were also established with the military leadership. These good offices were complemented by, and closely coordinated with, those of US counterparts, and apart from the abovementioned, included regular contacts with Said el Kattatni, the FJP secretary general and speaker of the Shura, and the MB's Deputy Supreme Guide and main strategist Khairat al Shater.

At the same time, the EU was for the first time also invited to send an Electoral Observation Mission to monitor the parliamentary polls the government had intended to hold in 2013, and engaged quite intensively (also via the Council of Europe's Venice Commission) directly with the Presidency with respect to a new NGO law that was meant to facilitate the work of civil society after the raiding and closure of international NGO's, such as IRRI, NDI, Konrad Adenauer Foundation and Freedom House in late 2011 and the sentencing of some of their staff members for alleged violations under the existing 2002 law.

Given the deep polarization in the political scene, EUSR Leon focused on the economy, which as a less toxic area had potential to encourage rapprochement, and the idea of a national economic conference was launched. It was to be led domestically but with international involvement/participation, and concentrate on four points that needed urgent attention: the double-digit budget deficit, the energy crisis underpinned by significant arrears to oil multinationals, the need to improve the business climate and attract FDI and tourism, and issues related to social justice and poverty alleviation. Reasonably positive noises were heard from both sides in that regard, and there were also indications that Morsi was ready to consider a cabinet reshuffle, setting up a multiparty committee to oversee the electoral process (polls to be postponed by six months) and a special committee to look into alleged human rights abuses thus far during his presidency.

But the mistrust between the camps was by now so deeply ingrained that the conference idea fell on stony ground. NSF Principals, seeing the rise of the Tamarrod movement (below) feared being accused by the street of betrayal if they were seen to be compromising with Morsi, while

MB leaders were convinced that the State bureaucracy and Judiciary were determined to thwart any attempt to exert control over them.

What was arguably the last real window for political compromise was squandered when a much anticipated cabinet reshuffle, which, hoping for greater inclusiveness the EU and other mediators had encouraged, was announced on 7 May 2013 to widespread disappointment, as, rather than the hoped for enlargement of the governmental tent, it increased the number of MB members and sympathizers in the executive, including an unimpressive new economic team, but no opposition representatives. New offers had reportedly been made to opposition politicians, including Wafd's chairman Said al Badawi, but under the circumstances, and with a signature collection movement demanding new presidential elections led by a new youth initiative called Tamarrod (rebel) fast gathering speed and aiming at mass mobilization on 30 June, Morsi's first anniversary in power, those openings went unanswered.

With public discontent mounting amidst regular power cuts and a sudden shortage of fuel in gas stations (seen as intentional by the MB), public warnings by the military, and despite continuing mediation attempts involving all key actors, mass demonstrations in Cairo and other main cities (notably Alexandria) were held from 30 June, leading to Al Sisi issuing a 48 hour ultimatum for politicians to compromise on 1 July.

Al Sisi himself made a last ditch effort to convince Morsi to accept the Tamarrod demand for early presidential elections, but came away empty-handed.

As the temperature reached boiling point, with millions in the street, the military arrested President Morsi on 3 July and Al Sisi, surrounded by NSF's ElBaradei, Al Azhar Grand Imam and the Coptic Pope, but also Al Nour's Secretary-General, announced that same evening the suspension of the constitution, the dissolution of the Shura Council and a 'roadmap to democracy' including the crafting of a new constitution and the holding of parliamentary and presidential elections.

EU good offices continued in July and August 2013, including a visit by Mrs. Ashton to the facility where Morsi was being detained, and again and more publicly conducted in close collaboration with the US, mainly in the figure of State Department Undersecretary William Burns. Leon and Burns made an attempt in August to prevent the forced dispersal of the pro-Morsi sits-in at Raba'a and Nahda squares, where thousands of MB/Islamist supporters had gathered following Morsi's ousting and demanded his reinstatement. Leon communicated assurances from then Vice-President ElBaradei that no force would be used and that a few prominent Islamist leaders (Speaker Said el Katatni and Al Wasat leader Abulaila Madi) would be released, provided that as a first step additional inflows of protesters to the sit-in would stop, gradually leading to a peaceful dispersal. Agreement to this was obtained via MB Spokesman Gehad el Haddad.

But this was not enough to convince the Cabinet and the dispersal was effected by force on 15 August, with much loss of life. That effectively marked the end of any real prospect for mediation, although the programme to protect the democratic process subsequently launched by then Deputy Prime Minister and moderate social democrat politician Ziad Baha Eddin continued, without success, to try to make progress later in the year.

While the EU's efforts were ultimately not successful in bringing about political accommodation in Egypt, and bearing in mind what we try to illustrate above, it would be fair comment to say that under the circumstances prevailing at the time, the EU and its Member States did all they could do in the interests of stability, development and democratic advancement. It can also be argued that through showing the intense European and wider concern for the fate of the country and its people, and by focusing at all times on the importance of human rights and non-violent solutions as well as reminding the key players of their responsibilities, international mediation of this kind contributed to taking some of the steam out of what was an exceptionally fractious and volatile transition, thus helping to limit the damage.

But as things turned out, the situation on the ground was simply too intractable for any one actor or cast of characters, domestic and/or external, to resolve. And today, as many Egyptians of all stripes and at all levels are well aware, reconciliation remains a fundamental challenge for the long term well-being and stability of their society, and by extension the Arab world as a whole. There are many important lessons for Egypt and the region to be had from this seminal experience, and it is to be hoped that they are being reflected on by all, including the Brotherhood, but as said, it is not our intention to go into that here. As for lessons for the EU, we would highlight the following:

- “Being there” through regular high level political/diplomatic engagement with all sides, provided in this case by the extraordinary personal commitment of EU High Representative and Vice President Catherine Ashton. In this, she was backed up by the constant efforts of EUSR Leon, supported and complemented by the daily political/diplomatic work of the European External Action Service and the EU Delegation on the ground, and not least, by the EU Member States. Occupying the ground in this way is crucial in establishing the personal contacts and trust that can pave the way to the deployment of good offices, and for taking a leading role in that regard within the international community.
- In its own neighbourhood, a joined-up EU can offer something that is unique among major international actors: its deep economic engagement as the home of the region's main foreign investors, prime trading partner and aid donor, its cultural affinity and familiarity, added to the perception that its security and military agenda is essentially non-threatening, make it easier for the EU to build trust with all sides. The quality of engagement at all levels in Egypt was thus second to none and there were many times

during the mediation period when it was the only external entity able to talk with all concerned parties.

- Diplomatic efforts of this kind are likely to be seen as much more credible if they are bolstered by comprehensive assistance packages: given clear political leadership, which in Egypt at this time was the case, The EEAS and European Commission, operating in well-coordinated tandem, together with European financial institutions, can make a real difference. Rapid, tailor-made procedures and solutions can be devised and out-of-the-box thinking can be brought to bear. The 2012 Task Force concept incorporated all of this, and while some of its work was derailed by subsequent events, especially the failure of the Morsi administration to deliver on the IMF agreement, it did in fact help usher in significant new financial support for Egypt's longer term development, notably through intensifying the commitment of the EIB and EBRD, which have subsequently in 2013-16 delivered much of the original package under the Task force.
- The EU can carry formidable economic and diplomatic weight, as long as it operates hand-in-hand with its Member States, and like-minded international partners; a tall order, but a must if the EU is to translate its crisis resolution potential into actual capacity to shape developments on the ground in crisis/transition. This involves all capitals passing similar messages to crisis/transition domestic actors, and aligning their collective efforts and tools around a common objective. This was in fact largely so during the period dealt with in this article, which also coincided with the early days of the Lisbon treaty, when there was a strong commitment by all to making the new EU foreign policy machinery effective.

The Muslim Brotherhood in Egypt - Fountain of Islamist Violence

Cynthia Farahat



Cynthia Farahat is an Egyptian author, columnist, political analyst, writer and researcher. of Coptic origin, Co-founder of the Misr El-Umm (2003-06) and the Liberal Egyptian (2006-08) parties, which stood for peace with Israel, market economy, and the abolition of theocracy. She is on Al-Qaeda affiliated groups' hit list, and was officially banned from entering Lebanon for her work for regional peace. Ms Farahat was under long-term surveillance by the State Security Intelligence Service before moving to the United States in 2011.

She worked with the German Friedrich Naumann Foundation for Liberty in Cairo, co-authored several books in Arabic, among them "Desecration of A Heavenly Religion," which was officially banned by Al-Azhar Islamic University in Cairo in 2008, for its critical research of Egyptian Islamic blasphemy laws. Ms Farahat is currently a columnist for Al-Maqal Daily Newspaper from Cairo. She has testified before the U.S. House of Representatives and received an award from the Endowment for Middle East Truth (EMET) in 2012, and the Profiles in Courage Award from ACT for America in 2013. She is an Associate Fellow at the Middle East Forum and, published in numerous Arabic and Western journals, such as the Middle East Quarterly, National Review Online, Front Page Magazine, Fox News, and The Washington Times.

Cynthia Farahat belongs to what is considered in Europe as conservatives in the US. She criticizes ex-President Obama for his Middle East policy. Both are no reasons not to publish her views in EUFAJ - in particular as she understands a lot about the Muslim Brotherhood, coming from Egypt, and she has got her own head which, in Egypt, would not be considered as conservative at all. This article, which will terminate in a book on the Muslim Brotherhood in Egypt, was published first in Middle East Quarterly, under "[The Muslim Brotherhood, Fountain of Islamist Violence](#)", Spring 2017. <http://www.meforum.org/6562/the-muslim-brotherhood-fountain-of-islamist> We thank the publisher of this paper for transferring the copyright, and we publish this article as it is an important contribution also for the EU's policy towards Egypt as well as Muslim thinkers and activists.

What to make of the Muslim Brotherhood (MB)? During the Obama years, it became commonplace for the U.S. administration and its Western acolytes to portray the Muslim Brotherhood as a moderate option to "more radical" Muslim groups. Thus, for example, U.S. director of National Intelligence James Clapper incredibly described the organization as "largely secular"[\[1\]](#) while John Esposito of Georgetown University claimed that "Muslim Brotherhood affiliated movements and parties have been a force for democratization and stability in the Middle East."[\[2\]](#)

On the other hand, in 2014, the United Arab Emirates formally [designated](#)[\[3\]](#) the Muslim Brotherhood and its local and international affiliates, including the U.S. based Council on American-Islamic Relations (CAIR),[\[4\]](#) as inter-national terrorist groups. A British government review commissioned the same year similarly asserted that

parts of the Muslim Brotherhood have a highly ambiguous relationship with violent extremism. Both as an ideology and as a network it has been a rite of passage for some individuals and groups who have gone on to engage in violence and terrorism.[\[5\]](#)

In the United States, Senator Ted Cruz (R-Tex.) and Rep. (House of Representatives Member) Mario Diaz-Balart (R-Fla.) have recently introduced legislation to designate the Muslim Brotherhood as a terrorist organization. In February 2016, the U.S. House Judiciary Committee approved a house bill that calls on the State Department to designate the Muslim Brotherhood as a foreign terrorist organization. In July 2016, Rep. Dave Brat (R-Va.) [introduced](#) the "Naming the Enemy within Homeland Security Act," a bill that prohibits the Department of Homeland Security from funding or collaborating with organizations or individuals associated with the Muslim Brotherhood.[\[6\]](#)

The question is which view is correct? Without doubt, the second one is. The Muslim Brotherhood has been a militaristic organization since its inception and has operated as a terrorist entity for almost a century. It influenced the establishment of most modern Sunni terrorist organizations, including al-Qaeda, al-Gama'a al-Islamiyya (GI) Hamas, and the Islamic State (ISIS). These organizations have either been founded by current or former Brotherhood members or have been directly inspired, indoctrinated, or recruited by MB members and literature. Contrary to what the MB propagates to Westerners, MB violence is not just in the past but is an ongoing activity.

Historical Background

The Muslim Brotherhood was founded in 1928 by Hassan al-Banna (1906-49), an Egyptian schoolteacher and sometime watch repairer from a small rural town north of Cairo. Reared in a deeply devout household steeped in the Hanbali school of Islamic



The Muslim Brotherhood was founded in 1928 by Hassan al-Banna (third from left). An Egyptian schoolteacher from a rural town north of Cairo, Banna engaged in Islamist activities from a young age, joining a local group that intimidated and harassed Christians and non-observing Muslims in his hometown.

jurisprudence popular among Wahhabi and Salafi jihadists,[7] Banna engaged in Islamist activities from a young age, joining a local group that intimidated and harassed Christians and non-observing Muslims in his hometown.[8] He was also fascinated by secret societies, cults, and fraternal orders, which flourished in Egypt at the time, and this obsession drove him to form the Brotherhood as a fraternity cult with its own secret militia - al-Tanzim al-Khass (the Special Apparatus, also known as the Secret Apparatus) - charged with strategizing, funding, and executing military training and terror activities.[9].

During the first few decades of its existence, the Special Apparatus carried out numerous acts of political violence

The MB infiltrated the Egyptian army with a group that overthrew the monarchy in a bloodless coup in July 1952.

in Egypt, notably the 1947 assassination of Judge Ahmed Khazinder Bey and the 1948 assassination of Prime Minister Mahmoud Nuqrashi Pasha, who reportedly considered outlawing the MB.[10] At that time, according to a secret U.S. intelligence memorandum, the Brotherhood's "commando units" were estimated to possess "secret caches of arms ... reported to have 60,000 to 70,000 rifles." [11] This military buildup was accompanied by infiltration of the Egyptian army, including the conspiratorial group of Free Officers, who in July 1952 overthrew the monarchy in a bloodless coup.[12]

The Secret Apparatus was not only involved in assassinations but also carried out a large wave of terrorism and bombings.[13] Thus, for example, on Christmas Eve 1945 it bombed the British Club in Egypt, and in December 1946 bombed eight police stations in Cairo. Two years later, the

Brotherhood bombed several Jewish homes in Cairo and many Jewish owned businesses and cinemas.[14] The Brotherhood also bombed trains in Sharqia and Ismailia, as well as the King George Hotel in Ismailia. In a 1948 [raid](#) on one of the organization's Cairo offices, the police confiscated 165 bombs.[15]

After Banna's assassination in 1949, Hassan Hudaybi, who succeeded him as MB general guide (al-Murshid al-Amm), claimed to have dissolved the Secret Apparatus in order to ease the government's persecution of the movement,[16] only to be arrested in 1965 alongside other MB leaders for forming a new militia that engaged in military training with a view to assassinating President Gamal Abdel Nasser.[17] Hudaybi managed to escape with a three-year prison sentence (the MB's foremost ideologue Sayyed Qutb was executed in 1966 together with two other leaders); his false denial of the MB's military wing was to become a standard tactic of the Brotherhood to date.

Laying Infrastructure

This denial notwithstanding, the late 1960s and early 1970s saw the formation of a number of MB terror groups under ostensibly independent banners. The first such group was Gama'at al-Muslimin, commonly known as Takfir wa-l-Hijra (Excommunication and Emigration), formed by two leaders of the Secret Apparatus released from prison: Shukri Mustafa and Sheikh Ali Ismael, brother of MB leader Fattah Ismael who was executed alongside Qutb.[18] Another terrorist group created by the Brotherhood at the time was al-Gama'a al-Islamiyya (GI, the Islamic group), which was responsible for the October 1981 assassination of Egyptian president Anwar Sadat. Both groups were founded by active leaders of the Brotherhood, who never claimed to have left the organization or their leadership positions therein. Indeed, in his last speech, one month before his assassination, Sadat equated the GI with the Brotherhood and expressed regret for having released many Brotherhood operatives from prison.[19]



Omar Abdel Rahman ("The Blind Sheikh") and nine others were convicted of seditious conspiracy in connection with the 1993 bombing of the World Trade Center.

During the 1990s, the Egyptian authorities battled against a sustained wave of Islamist terrorism involving attacks on government officials and the country's Coptic minority, the murdering of foreign tourists as well as an audacious attempt on the life of President Hosni Mubarak while he was in Ethiopia in June 1995.^[20] In the same year, GI's leader and MB spiritual authority, Omar Abdel Rahman, known as "The Blind Sheikh," and nine others were convicted of seditious conspiracy in connection with the 1993 bombing of the World Trade Center. Abdel Rahman is currently serving a life sentence in a federal prison in North Carolina, and in Muhammad Morsi's first speech as Egyptian president in Tahrir Square, he called for Abdel Rahman's release and acknowledged the sheikh's family who was present in the audience.^[21]

No less important was the formation of the movement's International Apparatus by Banna's son-in-law Said Ramadan. Having fled Egypt to Saudi Arabia in 1954, Ramadan moved to Geneva in 1958 where he established the International Apparatus under the guidance of Mustafa Mashour, head of the Secret Apparatus, future MB general guide, and author of its militant [manifesto](#) "Jihad Is the Way."^[22] The International Apparatus was not fully operational until the mid-1980s when Mashour, who fled Egypt after Sadat's assassination, settled in West Germany^[23] in 1986 where he reestablished the [Apparatus](#).

The MB's International Apparatus is involved in operating and funding terrorist groups responsible for attacks on American soil.

The International Apparatus is not just responsible for the Brotherhood's public operations, but is also involved in operating and funding terrorist groups

responsible for attacks on American soil. Thus, for example, Chakib Ben Makhlof, one of the most prominent leaders of the MB's Geneva office, is also the president of the Federation of Islamic Organizations in Europe. He has been described by Egyptian member of parliament and terrorism expert Abdel Rahim Ali as "one of the most dangerous operatives of the Brotherhood's International Apparatus."^[24] Likewise, according to Egyptian general Fouad Allam, who investigated the MB's operations in the 1960s-70s, the Geneva office funneled funds that helped establish al-Gama'a al-Islamiyya.^[25]

Later Influence

The International Apparatus's most critical mission, though, has been to infiltrate, subvert, and recruit operatives from within the armies, governments, educational systems, and intelligence agencies of the MB's targeted states, especially in the West, in what is called "civilization jihad."

This term dates to a 1991 document titled *The Explanatory Memorandum*, drafted in a meeting that outlined the Muslim Brotherhood's strategic goals for North America and entered as evidence in the Holy Land Foundation (HLF) terror funding trial in 2008—the largest terror

financing case in U.S. history.[26] In 2009, five MB leaders were charged with providing material support to Hamas, the Brotherhood's Palestinian branch and a designated foreign terrorist organization.

The 1980s and 1990s were the two most important decades for the "civilization jihad." During this time, Hamas was transformed from an essentially missionary and charitable organization seeking to win Palestinian hearts and minds into a fully-fledged terror group during the first intifada (December 1987-September 1993), and the seeds were sown for the advent of al-Qaeda through the newly-formed Maktab al-Khidamat (MAK, the Services Bureau), also known as Maktab Khidamat al-Mujahidin al-Arab (the Services Bureau of Arab Jihadists) and the Afghan Services Bureau.

As jihadists flocked to Afghanistan and Pakistan to fight the Soviet occupation, the Brotherhood was busy running recruitment, jihadist services through its MAK offices throughout the Middle East. In 1984, MB operative Abdullah Azzam established the MAK office in Jordan.[27] Azzam's philosophy helped establish and organize the Brotherhood's "global jihad" movement, which earned him the alias, "The Father of Global Jihad." [28] No less important, this philosophy inspired GI and Egyptian Islamic Jihad (EIJ) to try to export their terrorism and greatly inspired Osama bin Laden, whom Azzam taught at a Saudi university.[29]



In 1985, MB operatives Abdullah Azzam (L), bin Laden, and Ayman Zawahiri (R) founded MAK in Pakistan, which evolved into al-Qaeda. The Amman MAK recruited Abu Musab Zarqawi, who founded Jama'at al-Tawhid wa-l-Jihad, which evolved into al-Qaeda in Iraq and eventually into ISIS.

In 1985, Azzam, bin Laden and Ayman Zawahiri, leader of Takfir wa-l-Hijra who fled Egypt after the Sadat assassination, founded MAK in Pakistan, which subsequently evolved into al-

Qaeda. Meanwhile, the Amman MAK office recruited one of the world's most brutal terrorists of modern time, [Abu Musab Zaraqawi](#).^[30] Mentored by Jordanian former MB leader Abu Muhammad Maqdisi, in 1999, Zaraqawi founded Jama'at al-Tawhid wa-l-Jihad (Organization of Monotheism and Jihad), which six years later, evolved into al-Qaeda in Iraq (AQI) after Zaraqawi pledged allegiance to bin Laden in late 2004. This group eventually morphed into ISIS after Zaraqawi's death in June 2006. Indeed, in a 2014 interview reported in Al-Arabiya News, the Muslim Brotherhood spiritual guide Yusuf Qaradawi admitted that ISIS leader Abu Bakr Baghdadi was a member of the Muslim Brotherhood.^[31] For their part, several MB leaders publicly announced their support for ISIS, including the Qatar-based Sheikh Wagdy Ghoneim.^[32]

The nature of al-Qaeda's current relationship with the Brotherhood is somewhat unclear. While Zawahiri argued that bin Laden's affiliation with the MB was severed in the 1980s due to differences over the anti-Soviet Afghanistan campaign,^[33] this claim was discounted by Tharwat Kherbawy, the highest ranking MB member to have defected from the organization,^[34] and also by evidence suggesting that the Brotherhood is still organizationally involved with al-Qaeda. Thus, for example, after Morsi's July 2013 ouster from power, Zawahiri issued a videotaped statement on his behalf where he [criticized](#) Egyptian Salafi jihadists for not formally joining the Muslim Brotherhood's Freedom and Justice Party to help it uphold Shari'a law.^[35] In another statement, Zawahiri criticized the deposed MB president for having played politics with opponents,^[36] but eventually prayed for his release and supported him while he was facing trial for inciting the killing of regime opponents and for espionage for foreign militant groups including Hamas, Hezbollah, and Iran's Revolutionary Guard Corp.^[37]

A Political Party or a Jihadi Group?

The Obama administration's stubborn support for the Morsi regime and its tireless attempts to cast the MB as a moderate organization are preposterous—not only because the Brotherhood is the bedrock of some of the worst terror groups in today's world but also because violence is endemic to the movement's *raison d'être*: restoring the caliphate via violent jihad. Were the Brotherhood to give up this foundational goal, it would lose its legitimacy and sole reason for existence. This is why Banna used military terminology in structuring the MB, calling the organization "Allah's battalion,"^[38] a term used to this very day to denote the MB's governing core; this is why the current Brotherhood leadership includes operatives who personally engaged in violent jihad and terror activities such as Abdel Moneim Abul Futuh.^[39]



Osama Yassin, a former minister in Muhammad Morsi's cabinet, revealed that members of the MB's 95 Brigade militia engaged in the abduction, beating, and torture of "thugs" during riots leading to Mubarak's downfall.

Furthermore, the organization's Secret Apparatus remains intact and operational with new recruits required to undergo military training by such militias as the [95 Brigade](#),^[40] which was established in 1995 and which played an active role in the January 2011 riots leading to Mubarak's downfall. In a series of interviews with [al-Jazeera](#) TV, Osama Yassin, a former minister in Morsi's cabinet, revealed that members of the brigade engaged in the abduction, beating, and torture of "thugs" and threw Molotov cocktails at their opponents.^[41] Asked by an Egyptian newspaper to clarify these revelations,^[42] the MB dismissed them as a joke. Still, the brigade operatives were later implicated in the killing of anti-Brotherhood protestors. In March 2014, for example, two operatives were sentenced to death after an online video clip showed them killing a teenager by throwing him from a building.^[43]

According to the Brotherhood's own standards and internal [bylaws](#),^[44] there are ten solid, unchangeable *thawabit* (precepts) in their organization's *bai'a* (Islamic oath of allegiance) process. The [fourth](#) of these precepts is violent jihad and martyrdom,^[45] which the Brotherhood states is an obligation of every individual Muslim, as well as the collective obligation of their organization.

Unfortunately, many American specialists either receive foreign funding or are otherwise oblivious to these facts and actively engage in an information campaign. For example, a Brookings Institute article turned the

The current Brotherhood leadership includes operatives who personally engaged in violent jihad and terror activities.

meaning of the "fourth precept" of the Brotherhood's bylaws on its head, stating that it stipulated that "during the process of establishing democracy and relative political freedom, the Muslim Brotherhood is committed to abide by the rules of democracy and its institutions."^[46]

Reality, of course, was quite different. When after Mubarak's downfall the Muslim Brotherhood rose to power in a [sham presidential election](#),^[47] which brought its operative Mohamed Morsi to the presidential palace, its [violent](#)^[48] and undemocratic rule triggered, in short notice, mass protests throughout the country that brought millions of protestors to the streets and enabled the military to overthrow Morsi in a bloodless coup.

Islamic Reformers

Indeed, the sheer brutality of ISIS and various Brotherhood-affiliated or inspired terror groups across the Middle East has led to the advent of a mainstream Islamic reformist movement that draws on vastly more popular support than the Brotherhood itself. This unprecedented revival of a reform-oriented movement has received too little attention in the West. For example, Islam Behery, one of the movement's heroic leaders, was incarcerated for a year for blasphemy for insulting al-Azhar University and the Sunni doctrine on his television [show](#).^[49] For two years, that show had been dedicated daily to exposing the brutality and terrorism of Sunni doctrine while offering a non-theocratic, liberal interpretation of Islam that pushes for separation of mosque and state. Behery received a presidential pardon in December 2016, which was unprecedented in Egyptian history.

Another supporter of reformation and freedom of thought is Ibrahim Issa, a popular Egyptian commentator, television host, and owner and editor-in-chief of the independent opinion newspaper [Al-Maqal](#). Earlier this year, Issa announced that he would end his TV show due to "current events," kindling speculation that the cancellation was related to Saudi [pressure](#) on the Egyptian regime because of Issa's criticism of the kingdom's violent Wahhabi sect.^[50] Issa's reformist stance has placed him on terrorist hit lists since 1992, and he has been living under tight security ever since. His opposition to the Muslim Brotherhood has made him one of the organization's high profile targets, and in 2015, he became the subject of an official [fatwa](#) declaring him an "infidel."^[51]

Another heroic figure of Islamic reform currently facing the possibility of incarceration for blasphemy is the popular author and prominent secular figure Sayyed Qemani. His sin: stating that al-Azhar University should be [designated](#) a terrorist organization.^[52] Behery, Qemani, and their like have the support of the most mainstream media figures in Egypt and across the Middle East, and they have dramatically changed the Islamic political discourse. Yet Western audiences have almost never heard of their heroic efforts.

The war of ideas is highly dynamic in today's Middle East. The vast majority of the region's peaceful Muslims are marginalized by Western support for the Brotherhood and the West's refusal to designate the MB as a terrorist organization.

Conclusion

The deadly Brotherhood cult is responsible for almost a century of terror since the young Banna engaged in the intimidation and harassment of his Christian and moderate Muslim neighbors. Since then, the Brotherhood established Hamas as its Palestinian wing. Three Brotherhood activists established al-Qaeda. Brotherhood leaders, from inside their prisons, founded al-Gama'a al-Islamiyya and Egyptian Islamic Jihad. Brotherhood members recruited the founder of Jama'at al-Tawhid wa-l-Jihad who started the trend of video decapitations, and one of its former operatives is currently acting as the caliph of Islamic State. The MB also has other connections to organizations on the U.S. government's list of foreign terrorist organizations.

The majority of the region's peaceful Muslims are marginalized by Western support for the Brotherhood.

Neither Washington, nor any capital, can hope to counter Islamic terrorism successfully without allying with Muslim figures fighting on the forefront

of the battle of ideas. Washington can give these moderate Muslims a voice by designating the Muslim Brotherhood as a terrorist organization.

The Brotherhood has stated its intention to destroy the West's "miserable house" by infiltrating Western society and institutions and subverting them from the inside.^[53] Designating the Muslim Brotherhood as a foreign terrorist organization will stop its operatives from reaching sensitive positions in the intelligence community and in other powerful U.S. government positions. It will also stop Brotherhood operatives in the United States from funding terrorism operations worldwide.

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Private Military and Security Companies: Industry-Led Self-Regulatory Initiatives versus State- Led Containment Strategies

Raymond Saner



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¹ The current article was originally published by the CCDP Working Paper no. 11, Centre on Conflict, Development and Peacebuilding, Graduate Institute of International and Development Studies, Switzerland, 2015. Established in early 2008, the CCDP is a research organ of the Graduate Institute of International and Development Studies, Geneva. It constitutes the Institute's focal point for research in the areas of conflict analysis, peacebuilding and the complex relationships between security and development. See more under: <http://graduateinstitute.ch/ccdp>

List of Acronyms

ANSI	American National Standard Institute
ASIS	American Society for Industrial Security
CFA	Ceasefire Agreement
DCAF	Geneva Centre for the Democratic Control of Armed Forces
DIS	Draft International Standard
EU	European Union
FDIS	Final Draft International Standard
ICoC	International Code of Conduct
ICoCA	International Code of Conduct Association
ICRC	International Committee of the Red Cross
IHL	International Humanitarian Law
ISO	International Organization for Standardization
ISO TC	ISO Technical Committee
MD	Montreux Document
NATO	North Atlantic Treaty Organization
NGO	Non-Governmental Organization
NWI	New Work Item
OSCE	Organization for Security and Co-operation in Europe
PMC	Private Military Company
PMSC	Private Military and Security Company
POW	Prisoner of War
PSC	Private Security Company
SOFA	Status of Forces Agreement
UAE	United Arab Emirates
UN	United Nations
UK	United Kingdom
USA	United States of America
WPS	Worldwide Protective Services

Preface

The increasing privatization of security is a central feature of the way in which the control and oversight of armed force is currently being recalibrated – requiring no less than a comprehensive rethinking of the relationship between the state and the individual citizen. Studying armed actors and their functions has been an intrinsic part of the CCDP research agenda, and we thus welcome the useful contribution by Raymond Saner on this important topic.

The Working Paper focuses on recent self-regulatory guidelines that have been created by private military and security companies (PMSCs) in order to deter calls for stricter regulations of the industry. This self-imposed quasi-regulatory space counters other international efforts – notably the Montreux Document and the International Code of Conduct – which seek to strengthen the resolve of states and PMSCs to uphold and respect international humanitarian law (IHL) and human rights. This “battle of influence” over the regulation of the use of force, Saner contends, leads to rising

tensions between stakeholders who form coalitions consisting of states, PMSCs, and civil society actors on either side of the regulation cleavage. The paper calls for new measures that continue to build on IHL and the Geneva Conventions, but that go beyond the current regulatory positions of existing international initiatives.

This publication, somewhat exceptionally, was not generated from the CCDP's own research activities. But given the timeliness of Raymond Saner's contribution and the urgency of the topic, we thought it worthwhile to continue the CCDP conversation by publishing this paper. Needless to say, the CCDP cannot take credit for the substance of the paper nor the recommendations it brings forward.

Keith Krause
CCDP Director

Introduction

The transitions from the colonial to post-colonial and from Cold War to post-Cold War eras have resulted in today's multi-polar geopolitical reality which is characterized by increasingly divergent definitions of diplomacy, sovereignty, and warfare. Concomitant with this blurring of terms, there has been a proliferation of non-state actors in important areas of international relations including trade, communication, finance, and security (Saner and Yiu, 2002).² This "blurring of boundaries" has made it harder to ensure that international humanitarian conventions such as the Geneva Conventions, Human Rights Laws, and the Conventions on the Protection of Refugees are being respected and implemented by the signatory governments. Commenting on the need to engage with armed non-state actors in order to encourage respect for humanitarian norms, Andrew Clapham notes:

*The exclusion of armed groups from the normal treaty-making process, and their subsequent inability to become parties to the relevant treaties, mean that alternative non-legal regimes have had to be adopted. These regimes, whether established by the UN Security Council, the UN Human Rights Council, NGOs, or by national truth commissions, operate in a grey zone between law and politics: relying on international legal principles for the normative framework, and remaining dependent on political pressures, rather than courts, for the enforcement of these norms.*³

Focusing on one group of armed non-state actors, namely PMSCs, James Cockayne writes:

² Saner, Raymond and Lichia Yiu. 2003. International Economic Diplomacy: Mutations in Post-modern Times. Discussion Papers in Diplomacy No. 84. The Hague: Clingendael Institute of International Relations, pp. 1-37.

³ Clapham, Andrew and Paola Gaeta, eds. 2014. The Oxford Handbook of International Law in Armed Conflict. Oxford: Oxford University Press, p. 706.

*There is now a network of military entrepreneurs operating around the world, recruiting in one country, headquartered in a second, contracted to a third, perhaps operating weapons in a fourth to carry out attacks in a fifth.*⁴

The study “Corporate Mercenaries” by Fabien Mathieu and Nick Dearden gives examples that highlight the high risks for states and civil society that stem from the increasing use of PMSCs, by governments such as those of the USA and the UK. A few examples cited in the report are:

*In Saudi Arabia, US-based PMSCs play a key role in protecting the monarchy from unrest. Until recently BDM, parent of Vinnell, provided logistics, intelligence and maintenance services to the Saudi air force. Vinnell itself trains the Saudi National Guard, while Booz Allen Hamilton runs the military staff college. SAIC supports the navy and air defences, and O Gara protects the Saudi royal family and trains local security forces. In East Timor, Australian forces leading the UN Transitional Administration peacekeeping force in 1999 depended on logistics outsourced to PMSCs, while the UN employed private intelligence and security firms to assist.*⁵

Commenting on the US war on terror, Amnesty USA (2015) stated

*that the number of contractors being deployed in Afghanistan and Iraq exceeded the number of US military personnel and that contracted companies have also served in more sensitive roles, such as interrogation and translating during questioning of alleged terrorist suspects.*⁶

The private military industry fulfils a range of supportive functions and is often split into two sectors, Private Military Companies (PMCs) and Private Security Companies (PSCs). The former offers services such as military base guarding and explosive ordnance disposal, while the latter mostly deals with security consulting and investigative services.⁷ However, the lines between PMCs and PSCs are not always clear cut, since both types of companies at times offer services in the two subfields -- thus making the identification of main activities difficult to ascertain, as described below.

PMSCs have played an important role in war making and related security activities, and will most likely play an even larger role in the coming years. This Working Paper discusses the tensions between the PMSC industry, their client governments and supportive NGOs vis-à-vis other governments and NGOs that want to limit the use of PMSCs in order to ensure continued

⁴ Cockayne, James. 2014. Private Military and Security Companies, in Clapham, Andrew and Paola Gaeta, eds. *The Oxford Handbook of International Law in Armed Conflict*, Oxford: Oxford University Press, p. 625.

⁵ Mathieu, Fabien and Nick Dearden. 2006. *Corporate Mercenaries: The Threat of Private Military and Security Companies*. London: War on Want, p. 4.

⁶ Amnesty International USA. *Private Military and Security Companies – The Cost of Outsourcing War*. Undated, retrieved from website of Amnesty USA: <http://www.amnestyusa.org/our-work/issues/military-police-and-arms/private-military-and-security-companies>.

⁷ Krahmman, Elke and Aida Abzhaparova. 2010. *The Regulation of Private Military and Security Services in the European Union: Current Policies and Future Options*. EUI Working Papers, Academy of European Law. Florence: European University Institute, p. 6.

application and respect of IHL and human rights. The tensions between these two groups will be discussed in the subsequent sections.

This paper focuses more on the PMSC industry than on state-led containment strategies because information about the leading PMSCs and their commercial structures is less known to the public. What is not included in this paper are other forms of war making and violence, such as local and violent non-state actors (armed rebel groups, hostage-taking criminal gangs, violent religiously-oriented extremist groups, etc.); quasi-independent political “volunteer” groups dispatched from a government army to fight in another country; or the financial support given to religious extremist groups fighting regional wars (e.g. the financing of ISIS in Syria by some Gulf states). Moreover, this study does not include conventional mercenaries, nor their “legitimized” colleagues such as the French Legionnaires and other such organized armed groups (e.g. armed Taliban fighters from Pakistan engaging in combat in Afghanistan against local Afghan government forces). All of the above-mentioned armed non-state actors require separate studies and in-depth discussions about the current regulatory oversight and possible ability to sanction them based on violation or non-compliance with existing principles such as IHL and human rights.

Hence, the term PMSC as used in this study pertains solely to the commercially-oriented providers that offer their military and security services to state actors. The term Private Security Company and the term Private Military Company are interchangeable and illustrate the fact that some PMCs and PSCs often work on similar contracts and for similar clients. Additionally, such companies often have diversified business structures that encompass military and security-based services that are kept apart from the budgets and reporting of the core company through sophisticated holding and subsidiary arrangements. These organizational structures are often transnational, making it difficult to assess the full nature of more globalized PMSC

Definitions and Use of Private Military and Security Companies

Arguably, since the rise of nationalism, the state has borne the responsibility of a legitimate monopoly of force. From Nozick’s description of how the emergence of one dominant protective agency leads to the ideal minimalist state⁸ to Weber’s normative claim that the state is the lone depository of lawful violence,⁹ it is an accepted element of mainstream tenets of philosophy and international law that national armies fight on behalf of nations. However, entities that operate internationally, including states, have found it advantageous to delegate the protective role of the state military to the private sector.

⁸ Nozick, Robert. 1977. *Anarchy, State, and Utopia*. New York: Basic Books.

⁹ Weber, Max. 1970. “Politics as a Vocation”, in *From Max Weber: Essays in Sociology*. London: Routledge & Kegan Paul.

The US Government broadly defines PMSCs as “persons or businesses... that provide products or services [to the military] for monetary compensation”.¹⁰ Although Moshe Schwartz agrees that private security can broadly be considered as the delivery of militarily supportive services from a private company to a state army, a more precise legal definition of a PMSC has not yet been agreed upon.¹¹

State militaries are legally responsible to the state and society and operate under a strict code of conduct, as described in the Geneva Conventions and 1907 Hague Convention Regulations. They are also liable under national codes of military justice and are regularly scrutinized by public opinion.¹² In contrast, PMSC employees report solely to the principals of their company regardless of their national or ideological background.¹³ These private sector actors function under no consistent sense of loyalty or commitment to a cause (which has long embroidered the military profession with respect and prestige).¹⁴

To whom PMSCs are accountable is a crucial question – e.g. accountable only to their clients (governments and their agencies), to IHL and humanitarian rules, or to some in-between regulatory space (see the example below on the new PMSC ISO standard). The latter of the three could give PMSCs opportunities to operate within quasi-legal and quasi-regulated conditions without being accountable to IHL and human rights agreements, in contrast to a state army and state security officers.

The following section gives a detailed example of how the PMSC industry is attempting to create quasi-regulatory mechanisms that could provide the industry with a grey area of regulatory space. Doing so could dilute accountability and soften requirements with regards to respect and implementation of international humanitarian law and principles.

Differentiating PMSCs from armed services conducted by the state still does not provide a clear idea of their space in the international field. The idea that PMSCs provide military services solely for monetary compensation legally defines them as criminals, no different from soldiers of fortune or mercenaries. The United Nations, while employing many PSCs for peacekeeping and humanitarian operations, believes that “the recruitment, use, financing and training of mercenaries should be considered as offences of grave concern to all States”.¹⁵ Thus it is clear

¹⁰ Nimkar, Ruta. 2009. “From Bosnia to Baghdad: The Case for Regulating Private Military and Security Companies”, *Princeton Journal of Public and International Affairs*, Vol. 20, pp. 1-24.

¹¹ Schwartz, Moshe. 2009. *The Department of Defense’s Use of Private Security Contractors in Iraq and Afghanistan: Background, Analysis, and Options for Congress*. Darby, Pennsylvania: Diane Publishing.

¹² Dogru, Ali Kemal. 2010. *Outsourcing, Managing, Supervising, and Regulating Private Military Companies in Contingency Operations*. Monterey, California: Naval Postgraduate School, p. 3.

¹³ Singer, Peter Warren. 2003. *Corporate Warriors: The Rise of the Privatized Military Industry*. Ithaca, New York: Cornell University Press, p. 154.

¹⁴ Dogru, Ali Kemal. 2010. *Outsourcing, Managing, Supervising, and Regulating Private Military Companies in Contingency Operations*. Monterey California: Naval Postgraduate School, p. 5.

¹⁵ United Nations. 1989. *International Convention against the Recruitment, Use, Financing and Training of Mercenaries*. General Assembly Resolution 44/34, 4 December 1989.

that a cogent difference between PSCs, PMCs and mercenaries needs to be identified at least for the sake of coherent international governance.

Rona Gabor, representing the UN Working Group on the use of Mercenaries at the Montreux +5 conference in December 2013, remarked that [the] Working Group has made every effort to clearly distinguish mercenaries whose activities are prohibited under international law from private military and security actors who operate within a legal framework.¹⁶

Protocol I of the Geneva Conventions lists six criteria that an entity must fulfil to be considered a mercenary. These criteria include individuals who are “motivated to take part in the hostilities essentially by the desire for private gain and ... [are] promised ... material compensation substantially in excess of that promised or paid to combatants of similar ranks and functions in the armed forces of that Party.”¹⁷ While this is broadly applicable to PMSC employees, criteria such as “specially recruited locally or abroad in order to fight in an armed conflict,” and thus “take a direct part in the hostilities,” do not necessarily apply to all PMSCs, particularly to those that deal with logistics or armed security.

The PMSC Industry

Market information describing the PMSC industry is scarce and difficult to find, with data alternating between being publically available and highly confidential. This is especially true for the PMSC industry in developing countries, possibly due to a lack of accountability and transparency mechanisms. Several large PMSCs operate transnationally, including in countries with less stringent rules regarding the transparency of commercial and legal data. This is further complicated by the fact that many such companies (and particularly smaller PMSCs) may be headquartered in one country while holding a branch or representative office in another. For instance, a PMSC might have a minority equity share in a local company in a country that does not require the publication of business records, and thus the full picture of the diversified business operation cannot be corroborated with other data. Internalization also takes the form of silent partnerships, non-equity investments, third party participation, and other means of diversification, which further complicates the quest for a comprehensive view of global PMSC operations.¹⁸

¹⁶ Gabor Rona. Remarks by Gabor Rona, speech delivered at UN Working Group on the Use of Mercenaries, Montreux +5 Conference, Montreux 11-13 December 2013. Retrieved from <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14105&LangID=E>

¹⁷ Additional Protocol to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), Geneva, 8 June 1977, Official Records of the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts. Bern: Federal Department of Foreign Affairs, 1978.

¹⁸ For examples of non-equity foreign investment see Arquit, Anne, Jonathan Gage and Raymond Saner. 2011.

Estimates of both the total value of the PMSC industry, and the number of companies within it, vary greatly. For instance, Sonia Fenazzi cites Swiss government sources that estimate the total turnover of the PMSC industry at CHF 930 million (approximately USD 1029 million), with hundreds of thousands of individuals employed, while an anonymous French government source has been cited estimating the industry's worth at USD 400 billion with millions of employees and 6500 companies worldwide.¹⁹

Analysing the 50 largest known PMSCs, the findings reveal interesting trends and features.²⁰ With regard to legal registration, a majority of the 50 largest known PMSCs are registered in the USA (27) and the UK (12). The remaining PMSCs are spread between South Africa (2), Sweden (2), Israel (2), Canada (1), the Dominican Republic (1), the Netherlands (1), Australia (1), and Spain (1). Of these 50, 30 are multi-functional (security and non-security business units), 31 are privately held companies, and only 18 have signed the International Code of Conduct (ICoC) which is based on the Montreux Document (MD). The following section will discuss the MD and the ICoC in more detail.

The ten largest known PMSCs are Academi (USA), Aegis Defence Services (UK), DynCorp Int. (USA), G4S (UK), L-3 MPRI Inc. (USA), Vinnell Corp. (USA), BAH (USA), Garda World Securities (Canada), Prosegur (Spain), and Kellogg, Brown & Root (KBR Inc.) (USA). Four of the ten companies have legal headquarters in a different territory than their commercial headquarters, seven are privately held companies, and half of them have signed the ICoC (see Table 1).

The countries of operation and of the clients of these 10 largest known PMSCs were found to be widely spread across continents and encompass governments, multinational companies, UN agencies, and large NGOs (table 2).

A further analysis of the top 10 known PMSCs shows that these companies offer the following services: Advising/consulting (9/10), armed protection (9/10), military training (6/10), surveillance/intelligence (4/10), cyber security (3/10), logistical support (10/10) and technical support (7/10) (Table 3).

As is evident from the analysis above, the market for PMSCs is large and considerably globalized despite the majority of the companies having Anglo-American origins. The remainder of the top 50 list also includes PMSCs mostly from Western OECD member countries, such as Spain, the Netherlands and Israel. The number and significance of PMSCs registered in BRIC

Levers to Enhance TNC Contributions to Low-Carbon Development - Drivers, Determinants and Policy Implications. Geneva: CSEND/DiplomacyDialogue. Retrieved from <http://www.diplomacydialogue.org/publications/environmental-diplomacy/99-levers-to-enhance-tnc-contributions-to-low-carbon-development-drivers-determinants-and-policy-implications.html>.

¹⁹ Sonia Fenazzi. 2013. Private Armies Enter Judicial Cross Hairs, article published on SwissInfo, 24 February 2013. Accessed on 15 August 2014 from <http://www.swissinfo.ch/eng/private-armies-enter-judicial-cross-hairs/35057486>

²⁰ Author's own calculations and estimates.

countries is unknown and publically available data can only be found for PMSCs registered in South Africa and the Dominican Republic.

One can only hypothesize at how many more PMSCs operate in other countries, be it for emerging or transition country governments or transnational enterprise clients. Because of the scarcity of information on PMSCs, particularly in developing countries, the aforementioned figures only convey a picture of what is known and are therefore indicative rather than authoritative.

Self-Regulatory Initiatives by PMSCs

Faced with growing public criticism and increased scrutiny by governments and international organizations, some of the leaders of the PMSC industry decided to launch a self-regulatory exercise. Arguably, this could be interpreted as a preventive action faced with the risk of tighter regulations being installed. The first move toward self-regulation was launched in the USA, the country with the highest number of large PMSCs. Very quickly, a new US ISO quality standard was developed for the PMSC industry by the industry association ASIS, and in close cooperation with the US standard organization ANSI (American National Standard Institute). The US ISO standard was officially adopted in 2012; the Sié Chéou-Kang Center at the University of Denver describes the details of the new quality standard and its adoption in the US and UK as follows:

Industry Regulation

ANSI/ASIS International Standards

Founded in 1955, ASIS is a society of individual security professionals dedicated to increasing the effectiveness and productivity of security professionals by developing educational programs and materials. ASIS is an ANSI-accredited Standards Developing Organization, and within ASIS the ASIS Commission on Standards and Guidelines works with national and international standards-setting organizations and industry representatives to develop voluntary standards and guidelines for security professionals. With funding from the U.S. Department of Defence, the ASIS Commission on Standards is currently promulgating four sets of standards for private security companies.

- *PSC.1 - Management System for Quality of Private Security Company Operations - Requirements with Guidance*
- *PSC.2 - Conformity Assessment and Auditing Management Systems for Quality of Private Security Company Operation*
- *PSC.3 - Maturity Model for the Phased Implementation of a Quality Assurance Management System for Private Security Service Providers*

- *PSC.4 - Quality Assurance and Security Management for Private Security Company's [sic.] Operating in the Maritime Environment*

ASIS/ANSI PSC.1 Adoption by Countries

Two countries have adopted ASIS standards for their private security contracting. After the approval by ANSI of ASIS PSC.1 in May of 2012, the United States Department of Defence adopted the standard. The U.S. specifies in its DFARS regulations that all contracts with private security providers must use PSC.1. In December of 2012, the United Kingdom announced that PSC.1 would be the standard for all its future private security contracts.²¹

As a next step, stakeholders of the American PMSC industry, with support from their PSC business partners in the UK, requested the ISO secretariat in Geneva to circulate an ANSI/ US request for the creation of a new working group in charge of developing an ISO PSC standard that could be approved by the entire international membership of the ISO. The request for a new standard, or (in ISO terminology) a “New Work Item” (NWI), was firstly vetted by the ISO management board. However, once the ISO secretariat confirmed that the request was compliant with the ISO’s core mission and mandate, it was submitted for voting by all international members of the ISO family of National Standard Organizations.

The NWI was labelled ISO/PSC 284 and a proposal was handed to the ISO membership describing how the drafting of this new standard should be organized. Communications from the ISO secretariat clarified that the US ANSI organization would provide the convenor (secretary in charge of the NWI) and secretarial support for the drafting process. A New Work Item, in ISO terminology, means starting at 0 points leading progressively to a final document with 60 points called an ISO standard. From 0 to 60 points, an NWI undergoes several rounds of drafting, voting, and amending until it gets approved through voting as an FDIS (Final Draft International Standard).

Most importantly, the ISO secretariat noted that the basis of the NWI should be the ASIS/ ANSI standard, and that the process to approve the future international ISO standard (PSC 284) should start at the technical level of a Draft International Standard (DIS). This means beginning at point 40 out of a total 60 point stage, then leading to a Final Draft International Standard (FDIS).²² The time frame given to reach the final stage was one year, provided that the international ISO membership voted in favour of the DIS and FDIS.

²¹ Sié Chéou-Khang Center for International Security and Diplomacy, undated, Private Security Monitor – Industry Initiatives – ASIS. Retrieved from http://psm.du.edu/industry_initiatives/asis_international.html.

²² International Organization for Standardization. International harmonized stage codes, undated. Retrieved from http://www.iso.org/iso/stages_table.htm.

With admirable speed and great efficiency, the first meeting of the ISO PSC 284 was held on 9-10 December 2013 in the same hotel where the subsequent Montreux Document +5 conference was held from 11-12 December 2013. The convenor of ISO PCS 284 was very effective in moving the working group forward in its drafting endeavour and efficient regarding conference organization, management, and the use of IT communication technology.

The members of the working group then decided to change the name of the draft standard, and with impressive speed the working group submitted a request to the ISO Technical Management Board in Geneva for a change of title and scope, which was quickly obtained. The name of the new international standard was changed to read “Management System for Private Security Operations: Requirements with Guidance”; it aims to provide principles and requirements for a Security Operations Management System. The new title reads less technical and makes it easier for later branding.

A second work meeting was held in Washington DC, hosted by ANSI and conducted in person and virtually (via WebEx) on 11-12 August 2014. Subsequently, the group worked on a draft DIS of the ISO PSC 284. The DIS draft made extensive reference to the Montreux Document, the International Code of Conduct, and international humanitarian and human rights law.

The first two working group meetings in December 2013 and August 2014 were attended by a limited group of country delegations mostly from the USA, the UK, France, and Sweden as well as a small number of single country representatives. During these meetings, the author of this paper acted as representative of SNV, the Swiss ISO organization. Besides representing a very limited sample of national ISO organizations, the small number of national delegations is indicative of who has interests in the topic, as more than half of the participants were from the USA and the UK, the countries with the greatest number of PMSC headquarters. Another important characteristic is the fact that this new ISO standard will only be applicable for certification of PSCs and not PMCs, the companies considered by many as being too close to being “mercenaries”. However, as shown in the previous section, many of the large PMSCs show double functionality operating units which serve in military context while others operate as non-combat security units.

Voting on the DIS text of the standard started in December 2014 and was concluded by 10 March 2015, when the DIS was approved by the membership and declared valid. Of the 15 participating members (P-members), six voted in favour (Australia, Egypt, France, Sweden, UK, and USA) and two voted against the DIS (Germany and Spain) while seven P-members abstained (Austria, Barbados, Belgium, Italy, Netherlands, Poland and Switzerland). The DIS was hence approved based on a very small number of just six approving members out of a total of 119 ISO members with full membership status with voting rights (not included are members with non-voting right status such as correspondent and subscriber members).

The fast-track process towards the final step of approval, however, soon ran into procedural difficulties. In view of what the ISO Technical Management Board considers a rise of global insecurity, it proposed to merge several security-focused ISO standards into the ISO Technical Committee (TC) 292, whose overall scope is security. The decision to integrate related standards into TC 292 led to the merger of TC 8 (ISO 28000 series – Security management systems for the supply chain); TC 223 (Societal security); TC 247 (Fraud countermeasures and controls) and PC 284 (Management systems for private security operators) which was given a new ISO number, namely ISO DIS 18788.

A third meeting was held on 14-17 April 2015 in London and hosted by the British Standard Institute. The objective of this meeting was to discuss 14 pages of comments and amendments submitted by the member organizations as part of the DIS voting process – some of which are currently being integrated into the text.

The working group decided to forego the option of going through a final round of voting once amendments of the DIS will have been made (a process previously referred to as FDIS), and will instead send the amended DIS to the ISO secretariat for it to be declared final and ready for publication. Once the ISO secretariat will publish it, which is expected to happen in the third quarter of 2015, the standard will be available for certification of PSCs.

The surprising decision to integrate security-related standards into TC 292 offers this industry an opportunity to be less visible, and hence less exposed to possible criticism as it will be part of a larger group of standards, which neutralizes potential scrutiny of PMCs' subsidiaries operating in countries with weak governance practice.

The merger into TC 292 also offers the possibility to reinterpret the scope of ISO 18788.

The French contribution to the enlarged TC 292 has been to call for some form of “homeland security”.²³ A British communication suggests the need to distinguish between security services in urban/industrial settings and those in fragile or unstable environments, while a communication by Australia suggests a longer list of the many kinds of security risks that could be addressed by PSCs.²⁴ What is worrisome, however, is the fact that six member countries could push through a new and politically very sensitive ISO standard following the established voting rules of the ISO.²⁵ There are 119 ISO member states with full voting rights! It is highly probable that many member states did not notice the emergence of this new standard, nor did they follow the drafting in detail.

The speed at which the new standard has been developed is remarkable, as it will only have taken two years to complete and likely become available for global certification by the autumn of

²³ ISO/TC 292, N 48, 24 February 2015.

²⁴ ISO/TC 292, N 42, 2 February and N 43, 13 February 2015.

²⁵ ISO/PC 284, N 116 Ballots and Comments, 17 March 2015

2015. In contrast, the Montreux Document is currently only valid in 50 states and three international organizations. CEN, the European committee for standardization, started its own technical committee called “CENT/TV Private Security Services” on 19 November 2014 and will also attempt to create its own certification standard for PSCs. In view of this remarkable speed of self-regulation by the industry, governments should take note of the revised scope of the new ISO standard and the statement that

it provides a business and risk management framework for organizations conducting or contracting security operations and related activities while demonstrating:

Conduct of professional security operations to meet the requirements of clients and other stakeholders; Accountability to law and respect for human rights; and Consistency with voluntary commitment to which it subscribes.²⁶

However, no mention is made of “accountability towards international humanitarian law”, and “respect for human rights” is formulated as a general suggestion not as a requirement (normally indicated as “shall” in ISO requirement standards).

The PMSC industry has shown remarkable mastery by creating a self-regulatory instrument which benefits from the legitimization of being part of the ISO family of standards at a time when the PMSC industry has come under growing criticism and scrutiny by civil society organizations. Baum and McGahan (2013) analysed the industry’s resilience to such criticism and concluded that:

Military entrepreneurs demonstrated PMSCs’ efficacy, articulated faults of international and military practise and norms, expressed PMSCs’ ability to address these faults and support sovereign interests, and reframed, reoriented and regulated PMSCs’ activities to address critical concerns.

PMSCs gained legitimacy through a series of events that reconfigured the military field, reinforced by broader institutional shifts including privatization, since the end of the Cold War. Some of these field-reconfiguring events had unanticipated consequences for the deployment of military capabilities – consequences that were actively constructed and reinforced by the activities of institutional entrepreneurs.²⁷

The PMSC industry has presented an astonishing ability to protect itself from regulatory sanctions by showing evidence of entrepreneurial efforts, such as the creation of the new ISO standard described above. This suggests that the industry has the ability to fend off criticism and create a new quasi-regulatory space that it can use to counter attempts to tighten regulation

²⁶ ISO/PC 284, N39, 2nd Working Draft, 8 November 2014, p. 19.

²⁷ Baum, Joel and Anita McGahan. 2013. “The Reorganization of Legitimate Violence: The Contested Terrain of the Private Military and Security Industry during the Post-Cold War Era”, Research in Organizational Behaviour Vol. 33, pp. 3-37, at pp. 34-35.

through new inter-governmental initiatives such as the Montreux Document and the related ICoC described below.

Countermoves by States and International Humanitarian Organizations

The increase in the use of PMCs and PSCs around the world has far outpaced the development of intergovernmental regulatory structures. The evolution of defence technology suggests that the nature of PMSCs themselves may continually change, requiring a constantly evolving monitoring technique to keep abreast of the changes.



Humanitarian actors

A group of nation states have collaborated to create joint regulatory frameworks that intend to close any notion of a legal vacuum for transnational PMSCs:

The Montreux Document

Under the leadership of the Swiss government, and in collaboration with the International Committee of the Red Cross (ICRC), the Montreux Document was drafted in 2008 and ratified by 17 countries as the first internationally significant document pertaining directly to PSCs. As of

June 2015, ratification has grown to 52 as well as three international organizations, namely the supranational EU, the OSCE, and NATO.²⁸

The official name of the document is *The Montreux Document: On pertinent international legal obligations and good practices for States related to operations of private military and security companies during armed conflict*.²⁹ It is divided into two parts – the first recalling the obligations of the contracting, territorial, and home states, under international humanitarian and human rights law, and the second outlining guidelines for national measures to improve accountability, transparency, and overall regulation of PSCs.

Mandated by the Swiss government, the Geneva Centre for the Democratic Control of Armed Forces (DCAF) organized regional conferences to disseminate the content and intention of the MD with the goal of increasing its membership. Regional conferences were held in Latin America, Central Asia, and South East Asia during the period of 2011-2014, and in 2013 a special conference was organized in Montreux to celebrate the first five years of the Montreux Document.

ICoC

As a second step, an International Code of Conduct for Private Security Providers (ICoC) was elaborated to include PMSCs in order to create an industry mechanism to help PMSCs conduct their business within the boundaries of IHL and human rights.

The ICoC is a multi-stakeholder initiative convened by the Swiss government. It aims to define principles and standards of the private security industry based on human rights and international humanitarian law, as well as to improve accountability of the industry by establishing an external independent oversight mechanism. The Articles of Association seek to establish this mechanism which will include certification, auditing, monitoring, and reporting. By signing the ICoC, signatory companies publicly commit to operating within it, and are expected to seek to become members of the Code, which began functioning by mid-2013.

The Preamble of the Code lists eight points that make reference to the Montreux Document and to the United Nations Guiding Principles on Business and Human Rights for implementing the UN “Protect, Respect and Remedy” framework. Point 7 of the Code specifies applications that have direct bearing on the previously discussed efforts by the PMSC industry to create its own certifiable standard, and states that:

²⁸ Swiss Federal Department of Foreign Affairs. 2015. Participating States of the Montreux Document. Retrieved from <https://www.eda.admin.ch/eda/en/fdfa/foreign-policy/international-law/international-humanitarian-law/private-military-security-companies/participating-states.html>

²⁹ Swiss Confederation and the ICRC. 2008. The Montreux Document. Retrieved from https://www.icrc.org/eng/assets/files/other/icrc_002_0996.pdf

those establishing this Code recognize that this Code acts as a founding instrument for a broader initiative to create better governance, compliance and accountability. Recognizing that further effort is necessary to implement effectively the principles of this Code, Signatory Companies accordingly commit to work with states, other Signatory Companies, Clients and other relevant stakeholders after initial endorsement of this Code to, within 18 months:

- a. Establish objective and measurable standards for providing Security Services based upon this Code, with the objective of realizing common and internationally-recognized operational and business practice standards; and*
- b. Establish external independent mechanisms for effective governance and oversight, which will include Certification of Signatory Companies' compliance with the Code's principles and the standards derived from the Code, beginning with adequate policies and procedures, Auditing and Monitoring of their work in the field, including Reporting, and execution of a mechanism to address alleged violations of the Code's principles or the standards derived from the Code.³⁰*

ICoCA

A further step towards institutionalizing the ICoC was taken in February 2013 with the creation of the Association of the ICoC (abbreviated ICoCA).³¹ Membership of the ICoC Association consists of States or intergovernmental organizations, private security companies, and civil society organizations – also referred to as the three stakeholder groups.³² All the member states of the ICoCA also support the Montreux Document, and include states with many PMSC headquarters.

The main bodies of the Association are the General Assembly, the Board of Directors, and a Secretariat that is currently supported by DCAF. The General Assembly and the Board of Directors are supposed to represent each of the three pillars of promoting, governing, and overseeing implementation of the ICoC through the following methods:

1. Certification of member companies,
2. Monitoring member companies, and
3. Handling complaints of alleged violations of the code of conduct.

³⁰ International Code of Conduct Association. 2010. The International Code of Conduct for Private Security Service Providers. Retrieved from http://icoca.ch/en/the_icoc.

³¹ International Code of Conduct Association. Homepage – The Code – History. Retrieved from <http://www.icoca.ch/en/icoc-association>

³² For more information about membership of the ICoCA see <http://www.icoca.ch/en/membership>.

Colliding Regulatory Initiatives

The quick effort by the PMSC industry to create its own self-regulatory standard appears to collide with the initiative of governments under the umbrella of the Montreux Document, and even more so with the subsequent creation of the ICoC, and later the ICoCA.

A media note by the Office of the Spokesperson of the US State Department mirrors the collision of the two regulatory initiatives. The media note is titled “State Department to Incorporate International Code of Conduct into Worldwide Protective Services Contracts” and dated 16 August 2013:

The Department of State recognizes and appreciates the progress made on the development of the ICoC and the pending establishment of an ICoC Association. As long as the ICoC process moves forward as expected and the association attracts significant industry participation, the Bureau of Diplomatic Security (DS) anticipates incorporating membership in the ICoC Association as a requirement in the bidding process for the successor contract to the Worldwide Protective Services (WPS) program. DS also anticipates that the successor contract to WPS will require demonstrated conformance with the ANSI/ASIS PSC.1-2012 standard (Underlining added by the author).³³

The State Department’s communication indicates an ambiguity on behalf of the US government. Support of the ICoC is made contingent on “attracting significant industry participation” and that PMSCs bidding for US WPS programs would have to demonstrate conformance with the ANSI/ASIS PSC 1.-2012, which is the ISO quality standard described in the previous section of this paper.

Several of the 10 largest PMSCs have not signed the ICoC (see table 1) and many of the medium-sized PMSCs have not yet signed either. There seems to be a race between the two standards and the related certification, monitoring, and auditing mechanisms. It is not clear which standard will prevail.

According to Ambassador Valentin Zellweger, “a new impetus has been given to the MD process”.³⁴ Efforts in the coming years will focus on a new dimension, namely the implementation of the MD at the national level”. To that avail, at the last meeting of the signatories of the MD, a decision was taken by the members to have regular meetings called the “Montreux Document Forum” to continue working on the implementation of the Montreux Document and to share good practices and discuss challenges regarding the regulation of PMSCs.

³³ U.S. Department of State. 2013. State Department to Incorporate International Code of Conduct into Worldwide Protective Services Contracts. Media Note from the Office of the Spokesperson, dated 16 August 2013. Retrieved from <http://www.state.gov/r/pa/prs/ps/2013/08/213212.htm>.

³⁴ Author’s personal communication with Ambassador Valentin Zellweger, Director, Department of International Law, Swiss Federal Department of Foreign Affairs.

Concerns have been raised about the implementation challenges of the MD by Buckland and Burdzy (2013). They observe that there is a lack of precision in the ways national laws address which functions PMSCs may or may not perform, with states adopting both prescriptive and permissive approaches to the determination of services. They also offer the following assessment:

*What is not always clear, however, is how applicable this legislation is to the activities of PMSCs based in one state but operating abroad, either in another state or in international waters as part of maritime security operations. States can address this challenge in two ways: by clarifying that domestic legislation is applicable abroad or by separately adopting specific legislation relating to the foreign activities of PMSCs.*³⁵

They conclude with recommendations to support the implementation of the MD, namely conducting more outreach (dissemination) activities to inform states of the intentions of the MD, create more tools such as model laws and contract templates, to do capacity building through training, and to institutionalize the MD by creating a regular dialogue where MD participants can meet. The latter recommendation has been implemented with the creation of the Montreux Document Forum. Additional efforts are scheduled to be made to address the other sensible and timely recommendations.

The preface of the MD reflects the perspective of the ICRC. It is based on the following understanding:

1. *That certain well-established rules of international law apply to States in their relations with private military and security companies (PMSCs) and their operation during armed conflict, in particular under international humanitarian law and human rights law;*
2. *That this document recalls existing legal obligations of States and PMSCs and their personnel (Part One), and provides States with good practices to promote compliance with international humanitarian law and human rights law during armed conflict (Part Two).*³⁶

In a private communication with the author, the ICRC further clarified that although PMSCs as legal entities are not bound by IHL (unless they are parties to an armed conflict), their employees must comply with applicable IHL in situations of armed conflict. In addition, states have an obligation to ensure respect for IHL.³⁷

³⁵ Buckland, Benjamin and Anne Marie Budza. 2013. Progress and Opportunities, Five Years On: Challenges and Recommendations for Montreux Document Endorsing States. Geneva: DCAF, p. 6.

³⁶ Swiss Confederation and the ICRC. 2008. The Montreux Document. Retrieved from https://www.icrc.org/eng/assets/files/other/icrc_002_0996.pdf, Preface, points 1 and 2, p. 9.

³⁷ Comments made by the legal department of ICRC provided by the office of Peter Maurer, President of the ICRC, 3 December 2014.

According to the ICRC, the Montreux Document thus does not claim to create stronger legal frameworks for PMSCs. It argues that international laws preventing human rights abuses by PSCs already exist and that all that is legally necessary is clarification. In theory, the authors of the Montreux Document would argue that if states, beginning with those that ratified the Document, actually followed the existing international laws that govern warfare (and then built their own national frameworks to support the international standard), PSCs would be regulated substantially better than they are now. Many actors representing the PMSC industry, nation states, and concerned academics largely support this view and hence consider that there is no legal vacuum internationally with regards to the use of PMSC services.

The legal situation is neatly reported in a summary of discussions that took place at Chatham House:

One speaker asked what the position was in a situation of armed conflict. In reply it was noted that PMCs and their personnel were bound by international humanitarian law in the same way as regular military forces, civilians and NGOs etc. If personnel had been formally incorporated into the military/security forces of the hiring State, their position would be the same as the regular forces. If, on the other hand, they were not so incorporated and nevertheless played a direct part in combat, they would lose any civilian immunity from attack and could be prosecuted for their activities. If they were captured, they would not be entitled to POW status. It was generally agreed that there was no vacuum in international law. The problems were ones of enforcement of the law, control and accountability, and of establishing an effective chain of command.³⁸

The fact that a clarification of IHL and human rights law is needed through documents like the MD and ICoC suggests that a considerable number of states and non-state actors no longer are cognizant of their legal obligations, or worse, may be looking for ways to soften or altogether avoid responsibility and accountability of their behaviour before, during, and after situations of armed conflict.

The main issue that needs to be addressed appears to be the lack of adequate national laws and inadequate implementation of existing laws dealing with PMSCs. The two regulatory initiatives, one being a self-regulatory quality standard created by the PMSC industry, and the other being additional explanations of existing IHL and human rights law (the Montreux Document and the ICoC), both aim to affect national law-making and legal implementation. Simply reiterating that states have to comply with existing IHL and human rights law is insufficient to address the growing regulatory tension between, on the one side, the PMSC industry and the governments

³⁸Chatham House. 2005. Private Military Companies: A Legal Vacuum?, Summary of discussions at Chatham House on 16 March 2005, pp. 2-3.. Retrieved from: <http://www.chathamhouse.org/sites/files/chathamhouse/public/Research/International%20Law/il160305.pdf>,

that draw on it the most (e.g. USA and UK) and, on the other side, the governments and civil society organizations who prefer to see more regulatory impact at a deeper, i.e. national, level.

Countries that make extensive use of PMSCs show ambiguity about which regulatory initiative they prefer to support (see US State Department's message cited above). The statement by Deborah Avant (2008), a scholar and expert on PMSCs, fits with this ambiguity when she states that the US Department of Defense spent a whopping USD 314 billion on PMSC services in 2007, and suggests that a distinction should be made between the "puppeteers" (US government) versus the "puppets" (PMSCs like Blackwater, now called Academi).³⁹

Elke Krahmman (2013) addresses the question of whether the increased acceptance of PMSCs indicates a transformation of the international norm regarding state monopoly on the legitimate use of armed force. Her study considered four measures to be indicative of a possible norm change namely a) changes in state behaviour, b) state responses to norm violation, c) the promulgation of varying interpretation of the norm in national and international laws and regulations, and d) changes in norm discourse. Based on her empirical analysis from the USA and its allies, she concludes that

... the USA is leading the way towards a transformation of the international norm of the state monopoly on violence, involving a revised meaning. Although this understanding has not yet been formally implemented in international laws, it has allowed a growing number of countries to tolerate, accept and legalize the use of armed force by PMSCs in the international arena.⁴⁰

Faced with possible re-interpretation of international norms such as humanitarian and human rights law by leading PMSC users, host countries that allow foreign PMSCs to operate on their sovereign territory could show more "local ownership". This could be done by demonstrating sovereignty through the use of SOFAs (Status of Forces Agreements) to take more regulatory and supervisory responsibility, rather than to let foreign governments import PMSCs freely and thereby protect their security personnel from local prosecution in case of violation of humanitarian and human rights law.⁴¹

In light of the blurring of regulatory boundaries, it is important to raise the question of whether international humanitarian law will prove sufficiently strong to overcome attempts to reinterpret the rules of war-making and international conduct by states that make extensive use of PMSCs. Also considering the increasing involvement of non-state actors in local, regional, and

³⁹ Avant, Deborah. 2008. "The Real Blackwater Controversy", The San Diego Union Tribune. Published online, 20 June 2008. Retrieved from http://legacy.utsandiego.com/uniontrib/20080620/news_1z1e20avant.html.

⁴⁰ Krahmman, Elke. 2013. "The United States, PMSCs and the State Monopoly on Violence: Leading the Way towards Norm Change", Security Dialogue, Vol. 44 (1), pp. 53-71, at p. 53.

⁴¹ Mason, Chuck. 2012. Status of Forces Agreement (SOFA): What Is It, and How Has It Been Utilized? Washington: Congressional Research Service, Summary.

international conflicts – be they PMSCs or other forms of combatants – one cannot help wonder whether the world is returning to a state best described as a “pre-Westphalian peace”.⁴²

If this is the case, one must consider how international humanitarian and human rights law can be entirely safeguarded as a growing number of state actors continue to transform their regulatory regimes towards a “blurring of boundaries” of war-making and of norms regulating war and armed conflict.

Recommendations

Include companies that produce lethal high-technology arms in the ICoC

While the need to regulate PMSCs also plagues supranational and international policy-making, a pressing issue with the way domestic solutions to private military and security regulation are formulated is that they are normally a legislative reaction to a past crisis. Sarah Percy wrote in an article for the ICRC that “attempts to regulate the private military and security industry have been stymied by a tendency to be constantly ‘regulating the last war’ or responding to the challenges of a previous manifestation of private force rather than dealing with the current challenges”.⁴³

The PSMC industry has started to use cyber-weaponry and artificial intelligence to replace the role of humans in combat. This would circumvent problems with casualties, expensive employee benefits such as pensions, and perhaps even legal liability since humans are no longer the perpetrators of violence. In Singer’s bestseller “Wired for War”, he describes the pressing likelihood of electronic bodies akin to robots replacing humans on the battlefield.⁴⁴ Highly esteemed British physician, Professor Stephen Hawking has also warned that the use of artificial intelligence may change the conduct of warfare and that a wealth of legal conflicts may ensue as a result.⁴⁵ Thus, it is important that current domestic solutions to the problem of PMSC regulation are forward thinking. This recommendation suggests broadening the PSC criteria in the ICoC to accommodate this particular advancement of war technology.

⁴² For an overview of the Westphalian peace and its impact on diplomacy and treaty making see Meerts, Paul. 2014. *Diplomatic Negotiation: Essence and Evolution*. The Hague: Clingendael Institute of International Relations, pp. 141-162.

⁴³ Percy, Sarah. 2012. “Regulating the private security industry: a story of regulating the last war”, *International Review of the Red Cross*, Vol. 94 (887), pp. 941-960, at p. 941.

⁴⁴ Singer, Peter Warren. 2009. *Wired for War: The Robotics Revolution and Conflict in the 21st Century*. New York: Penguin Books.

⁴⁵ The Independent. 2014. Stephen Hawking: ‘Transcendence looks at the implications of artificial intelligence – but are we taking AI seriously enough?’ Published online, 1 May 2014. Retrieved from <http://www.independent.co.uk/news/science/stephen-hawking-transcendence-looks-at-the-implications-of-artificial-intelligence--but-are-we-taking-ai-seriously-enough-9313474.html>.

The main and most rectifiable problem with the acceptance criteria for the ICoC is that the PSCs must be using humans to carry out protective services. Companies such as Boeing have large defence units with the capacity to build machinery capable of unmanned combat. They are, however, not signatories to the ICoC and have every incentive not to identify themselves as PSCs at all.

Such large corporations that provide a range of services do not want to be associated with the PMSC industry, but prefer to be viewed as suppliers and thereby remain unaccountable for the way their products are used. Since the capabilities of such companies is quickly approaching the realm of artificial intelligence, this author recommends that the criteria for joining the ICoC should be extended to suppliers of security services that do and do not include humans, but which can autonomously cause death or injury.

While the discussions above focus on the Western war industry and PMSCs that use modern technology applied to warfare, we should not forget that China has a tremendously large army of IT specialists who work on behalf of the Chinese government for civilian and military goals, an observation that also goes for Russia and its often covert PMSCs.

Regular review of states' record of compliance with IHL and additional protocols

Taking the review process of the Human Rights Council as an example, signatory states to IHL should be reviewed on a regular basis to bring their compliance to the fore. Such a review process should include a signatory state's use of its armed forces, and the behaviour of PMSCs domiciled within the state.

This should occur on a tri-annual basis and involve an independent investigation into the respect of the Geneva Conventions both by the state and by the PMSCs that it hosts. Relevant for the regulation of PMSCs, a response to this independent report must be submitted by the reviewed state before the report is published.

Similar to the Human Rights Council review, the signatory state that is being reviewed should discuss and comment on the independent report, followed by the possibility for other signatory states and NGOs accredited to ECOSOC to make comments and ask questions to the state. In order to give "teeth" to this soft law instrument, states that allow their nationals to work for PMSCs that are found to commit gross human rights abuses shall be brought to the International Criminal Court in The Hague.

Given that the ICRC is the body in charge of the application of the Geneva Convention, it should not be asked to organize these IHL reviews, but maintain its impartiality which is very much needed to get access to victims and detainees in all parts of the world.

Instead, one could imagine that a new organization be established under the guidance of the Swiss, Dutch, and Norwegian governments who represent cities of historical humanitarian significance as for instance the Geneva Conventions and Human Rights Council (Geneva), International Court of Justice (The Hague), and peace initiatives (Oslo).

Oversight of PMSC-initiated ISO standard by the Montreux Document Forum

In light of the pace of the industry's self-regulation efforts through internationally recognized ISO standards, as well as the fact that the drafting of these standards was done by the two most prominent PMSC hosting countries (UK and USA), it would be globally useful to establish an impartial organization that keeps track of the implementation of these new quality standards that will be used when contracting PMSCs. In other words, there might be overlap or contradictions between the use of ISO quality standards and the implementation of the Montreux Document, especially since several of the largest PSCs have internal units that operate as PMCs.

Neither the Montreux Document nor the ICoCA have normative legitimacy or sanction power. The upcoming ISO 18788, formerly PC 284, only applies to PSCs and hence certification might not cover the PMC activities of PMSCs. ISO certification is vulnerable to corrupt business practice, hence certifications in a fragile developing country should not be expected to be at the same level of rigour as is the case for British or American ISO certifications.

The international validity of a national ISO certification is also ambiguous – e.g. does a UK ISO 18788 certification cover all activities at global level of a UK PMSC including non-equity business relations it might have with another company abroad? In view of some countries (including the UK and the USA) that already link PMSC contracts to certifications based on ANSI/ASIS standards, it can be expected that the future ISO 18788 standard will be used by the USA, the UK, Sweden, France and other countries as the basis for issuing contracts to PMSCs.

ISO certification organs are supervised by their respective national accreditation bodies. The practice of accreditation and its subsequent rigour varies greatly from one country to another. It would therefore be wise and expedient to give the ICoCA secretariat the mandate and task to verify ISO 18788 certification and business practices of certified PMSCs, both on a regular basis and through spot-checks, and thereby act as a validation agency.

ICoCA's verification of ISO 18788 certifications should be mandated by the Montreux Document and reports on the conformity of PMSCs, which should also be submitted to the Montreux Document Forum on an annual basis.

The above recommendations should not be seen as mutually exclusive, but rather as complementary and mutually reinforcing. There should not be a war of ideas and commercial interests when it comes to the regulation of PMSCs. Rather, there should be sufficient common

sense to help the sprawling PMSC industry avoid practices that breach IHL and human rights law, that are harmful to humans, and that are non-congruent with long-term goals for social, economic or environmental sustainability.

Conclusion

The private military and security industry is a booming sector of the global economy. This has led to a situation in which regulatory governance has become more complex, and in which the boundaries between international humanitarian law and human rights law have become blurred due to the lack of strong oversight at the horizontal (global) and vertical (national and subnational) levels.

Some PMSCs have expressed commitments to the implementation of IHL and international human rights by signing up to the ICoC and ICoCA. They have done so out of a concern that PMSCs willing to take high risks may become attracted to operating in unstable countries marked by a non-respect of the Geneva Conventions and international human rights, as such operations could endanger the reputation of the PMSC industry as a whole.

However, the question remains how to regulate PMSCs and ensure the continuous implementation of the regulatory framework while also securing that governments are monitored and held accountable to their duties as signatories of the Geneva Conventions, IHL, and human rights.

It is important that the type of regulation and regulatory mechanisms that are developed can grow dynamically with the expansion of the PMSC industry. These must allow for the emergence of clear regulatory hierarchies that span all signatory countries and include oversight of the industry's self-regulatory standards and practices.

It is also important to note that there is no single ideal regulatory avenue for policy-makers. While contemporary debates surrounding solutions to this problem are based on whether national or international law is the best method, this paper suggests that PMCs and their contracting parties are able to cherry-pick which guidelines and legislation to follow. Policy-makers should therefore embrace the added strengths of policing private military and security companies with a web of complementary instruments consisting of hard and soft law mechanisms.

Finding solutions that provide sufficient freedom of action for PMSCs and their clients would be welcome, as long as state and non-state actors involved in war making and security governance demonstrate respect and comply with IHL and human rights law.

Annexes

Table 1: Ten largest known PMSCs and their corporate profiles

<i>Company</i>	<i>Year founded</i>	<i>Legal HQs</i>	<i>Commercial HQs^a</i>	<i>No. of employees</i>	<i>Date of information</i>	<i>Type of company/ Marketization (USD million)</i>	<i>Revenues (USD million)</i>	<i>ICoC Sign.</i>
Academi	2011 ^b	McLean, VA, USA	McLean, VA	10,000	2013	Private	13,500	2010
Aegis Def. Serv.	2002	London, UK	Basel, Switzerland	1,001-5,000	Unknown	Private	500-1000	2010
DynCorp. Int.	1946	Fairfax, VA, USA	Fairfax, VA	27,000	2011	Private	3,047	2010
G4S	1901	London, UK	Crawley, UK	620,000	2013	Public	6,325,000	2010
L-3 MPRI Inc.	1987	Alexandria, VA, USA	Alexandria, VA	40,000	Unknown	Private	500-1000	NA
Vinnell Corp.	1985	Fairfax, VA, USA	Fairfax, VA	1,000-5,000	Unknown	Private	50-100	NA
Booz Allen Ham.	1914	McLean, VA, USA	McLean, VA	25,000	Unknown	Public 3 ⁵ 40	5,758	NA
Garda World Sec. Corp.	1995	Montreal, Canada	Dubai, UAE	45,000	Unknown	Private	1,400	2010
Prosegur	1976	Madrid, Spain	Madrid, Spain	150,000<	Unknown	Public 3 ¹ 00	5,031	NA
Kellogg, Brown & Root (KBR Inc.)	1988	Houston, TX, USA	Houston, TX	14,000-27,000	2011	Public 3 ⁵ 06	7,420	NA

- a. 4 out of 10 have commercial HQs that are different from their legal HQs
- b. Originally founded in 1997 as Blackwater.

Key: Private = privately held company; Public = publically held company

Table 3: Mapping the ten largest known PMSCs by services offered

<i>Company (N=10)</i>	<i>Categories/Segments of Services</i>						
PMSC	<i>Advising/Consulting</i>	<i>Armed Protection</i>	<i>Technical Support</i>	<i>Military Training</i>	<i>Surveillance/Intelligence</i>	<i>Cyber Security</i>	
Academi	1	1	1	0	1	0	1
Aegis Def. Services	1	1	0	1	0	1	1
Dyn Corp. Int.	1	1	1	1	0	0	1
G4S	1	1	1	1	0	0	1
L-3 MPRI Inc.	1	1	0	1	0	1	1
Vinnell Corp.	1	1	1	1	0	0	1
Booz Allan Hamilton	1	0	1	0	1	1	1
Garda World Security Co.	1	1	1	1	1	0	1
Prosegur	0	1	0	0	0	0	1
Kellogg, Brown & Root (KBR Inc.)	1	1	1	0	1	0	1
Number of companies engaged in the service segment (N=10)	9	9	7	6	4	3	10

Table 2: Ten largest known PMSCs, countries of operation, and past clients

<i>Company</i>	<i>Countries of operations</i>	<i>Past clients</i>
Academi	Mexico, Afghanistan, Israel, South Africa, Brazil, Tanzania, Kenya, Puerto Rico, Germany, Somalia, Azerbaijan, Jordan, India, Russia, West & North Africa.	Include US Navy, the Walt Disney Company, Chevron, Royal Caribbean Cruise Lines, US Pentagon, State Department and Intelligence Agencies, Monsanto, Deutsche Bank, and Barclays.
Aegis Def. Serv.	New York (USA), Maputo (Mozambique), Tripoli (Libya), Baghdad (Iraq), Riyadh (Saudi Arabia), Basra (Iraq), Kabul (Afghanistan), Nigeria, London (UK).	Include Italian Foreign Ministry, UN Agencies, London Organising Committee of the Olympic and Paralympic Games, diplomats in Northern Europe and North Africa, oil/gas client in Iraq, Nigeria and East Africa, international advisory firm in Yemen, US Department of Defense, and marine salvage firm in the Northern Arabian Gulf.
DynCorp. Int.	US and 39 other countries including Iraq, Afghanistan, Arab Gulf countries, Bolivia, Bosnia, Somalia, Angola, Haiti, Colombia and Kosovo.	Include US government departments, FBI, CIA, UNCTVPO, UN Peacekeeping Missions, and the African Union.
G4S	Over 120 countries in six continents. Has a higher presence in high-growth developing markets.	Include Ernst & Young, Exxon Mobil, Honeywell, IBM, Intell, and the London Organizing Committee of the Olympic Games.
L-3 MPRI Inc.	80 Countries in six continents, including Equatorial Guinea and Kuwait.	While specific clients cannot be verified, evidence suggests that past clients have included commercial businesses, law enforcement agencies, and government and military bodies such as the US Army and various US federal departments.
Vinnell Corp.	Mainly Saudi Arabia and other Middle Eastern states, but has also operated in Vietnam, Iraq and Pakistan.	While specific clients cannot be verified, evidence suggests that past clients have included commercial businesses, law enforcement agencies, as well as government and military bodies such as the US Army and Saudi Arabian National Guard.
Booz Allen Ham.	69 locations across six continents including the UAE and other states in the Middle East and North Africa.	Include US civilian government agencies, commercial organizations, defence and intelligence organizations, international organizations, and non-profit organizations.
Garda World Sec. Corp.	Afghanistan, Argentina, Columbia, Haiti, Iraq, Libya, Mexico, Nigeria, Pakistan, Somalia and Yemen.	Include companies and organizations in the oil and gas, diplomatic, and infrastructure sectors.
Prosegur	17 countries in Europe, Latin America, Asia and Australia.	Include industrial, residential, and commercial companies.
Kellogg, Brown & Root (KBR Inc.)	Over six continents including in Kosovo, Afghanistan, Iraq and Cuba.	Include US military and government agencies, as well as companies in the energy, petrochemicals, and industrial and civil infrastructure sectors.

European Fund for Sustainable Development (EFSD)

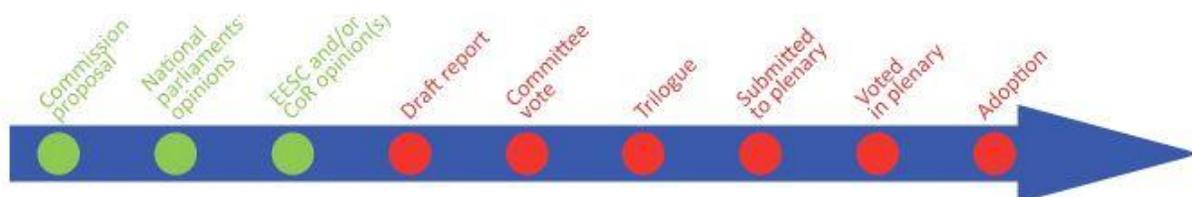
Marta Latek

EU Legislation in Progress 02.2017, European Parliamentary Research Service (EPRS), European Union, 2017

Overview

The Commission took the opportunity provided by the September 2016 mid-term review/revision of the Multi-Annual Financial Framework (MFF) 2014-2020 to propose the creation of a new innovative financial instrument – the European Fund for Sustainable Development (EFSD). The EFSD is part of the partnership framework for cooperation with countries with high irregular emigration and is one of the pillars of the new external investment plan, inspired by the success of the investment plan for Europe. The proposed fund aims to mobilise EU grants to catalyse investment from public and private sources to tackle the root causes of migration in the European neighbourhood and Africa, while helping to achieve the 2030 Agenda Sustainable Development Goals. Some NGOs have voiced concern regarding the migration compacts themselves, and the proposal for the new fund, fearing the use of development policy resources for migration management purposes and in pursuit of European private sector interests.

Proposal for a regulation of the European Parliament and of the Council on the European Fund for Sustainable Development (EFSD) and establishing the EFSD guarantee and the EFSD guarantee fund		
<i>Committees responsible:</i>	Foreign Affairs (AFET), Development (DEVE), and Budgets (BUDG) jointly under Rule 55	COM(2016) 586 14.9.2016 2016/0281(COD)
<i>Rapporteurs:</i>	Doru-Claudian Frunzuličă (S&D, Romania) Eduard Kukan (EPP, Slovakia) Eider Gardiazabal Rubial (S&D, Spain)	Ordinary legislative procedure (COD) (Parliament and Council on equal footing – formerly 'co-decision')
<i>Next steps expected:</i>	Initial discussions in joint committee meeting	



Introduction

Subject to unparalleled external migratory pressure driven by conflict, instability and poverty in its neighbourhood, the EU is adapting its policy framework to cope with the protracted crisis. On 7 June 2016, the European Commission adopted a communication on establishing a new partnership framework with third countries under the European agenda on migration, proposing new 'migration compacts' with key third countries from which migrants originate and transit. Tailored agreements have initially been concluded with Jordan and Lebanon, to be followed by compacts with 'priority' countries (Ethiopia, Mali, Niger, Nigeria and Senegal; then Eritrea, Somalia, Sudan, Ghana, Ivory Coast, Algeria, Morocco, Tunisia, Afghanistan, Bangladesh and Pakistan) combine elements from different EU instruments and policies to provide strong incentives for partner country cooperation on migration management.

Introducing an element of conditionality linked to countries' cooperation on readmission and return, the 'compacts' have a longer term objective to address the root causes of migration. In this context, on 14 September 2016, the Commission proposed a new European external investment plan (EIP) package, building on the experience of the successful investment plan for Europe, to scale up private sector involvement in socio-economic development in the partner countries, thus contributing to alleviate the poverty that is one of the main causes of migratory pressure.

This EIP will be based on three pillars: mobilising investment through the new investment fund and its guarantee; technical assistance to develop economically viable projects; cooperation programmes and dialogue to improve economic governance and promote a better business environment. The EFSD, the EFSD guarantee, and the EFSD guarantee fund, will be the main instruments through which the first pillar will be implemented.

Existing situation

Since 2007, the EU has increasingly engaged in 'blending' – using EU grants to leverage loans from public and private finance institutions to support its external relations objectives. In the current context of constrained resources, a series of innovative financial instruments has been set up to increase the volume and flexibility of development finance, as well as EU action visibility.

Currently there are seven EU regional blending facilities, under three main blending frameworks, according to the EU financing instrument providing support (see Table 1): the Latin America Investment Facility; the Asia Investment Facility; the Investment Facility for Central Asia; the Africa Investment Facility; the Caribbean Investment Facility; the Investment Facility for the Pacific; and the Neighbourhood Investment Facility. These geographically focused mechanisms link a grant element, provided by official development assistance (ODA), with loans from public institutions or commercial lenders.

The grant contribution from EU blending facilities can take different forms, for optimal support of the investment projects that have to contribute to the fulfilment of EU and partner country strategic development goals:

- investment grant and interest rate subsidy, aiming at reducing the initial investment and overall project cost for the partner country (47 % of all grants);
- technical assistance, to ensure quality, efficiency and sustainability of a project (31 %);
- interest rate subsidy (11 %);
- risk capital (i.e. equity and quasi-equity) aiming at attracting additional financing (6 %);
- guarantees, to unlock financing for development by reducing risk (4 %).

In the last nine years, around €2.7 billion of EU grants, co-financed over 270 projects, helped to unlock investments with an estimated volume of €50 billion in EU partner countries. The projects mainly concerned energy and transport (60 %), social infrastructure (27 %) and private sector support (13 %).

The European Investment Bank (EIB) is the largest implementer under the blending facilities (up to 30 % across all facilities). The EIB has been active outside the EU for more than 50 years, mainly on the basis of the external lending mandate or the Investment Facility for ACP states. These EU mandates have evolved over time, in line with changing and regionally diverse priorities. Broadly, EIB supports three main objectives outside the EU: local private-sector development, economic and social infrastructure and climate change mitigation and adaptation; with an additional transversal objective of regional integration.

In parallel, since January 2013, the new Financial Regulation applicable to the EU budget allows the European Commission to create and administer EU trust funds in the field of external action.

Among three trust funds created so far, the EU emergency trust fund for Africa (EUTF) aims at tackling, as the EFSD will also do, the root causes of irregular migration and forced displacement by promoting economic and equal opportunities, security, and development.

The fund pools resources from different sources; the main part, €1 billion out of €1.8 billion, is an EU contribution from European Development Fund (EDF) reserves. The rest, €82 million, is pledged mainly by EU Member States.

Framework	Facility name	Year of establishment	EU contribution	Leverage effect 2010-2015	
Development cooperation instrument (DCI) blending framework	Latin America Investment Facility (LAIF)	2010	€232 million for 28 projects (2010-2015)	1:29	
	Asia Investment Facility (AIF)	2010	€89 million for 18 projects (2010-2015)	1:30	
	Investment Facility for Central Asia (IFCA)	2010	€119 million for 22 projects (2010-2015)	1:7	
European Development Fund (EDF) blending framework	Africa Investment Facility (AIF) (replacing former EU-Africa Infrastructure Trust Fund (EU -AITF) in place since 2007)	2015)	€654.9 million for 77 projects (2007-2015)	1:14	Part of EFSD
	Caribbean Investment Facility (CIF)	2012	€68.6 million for 9 projects (2012-2015)	1:8	
	Investment Facility for the Pacific (IFP)	2012	Two EIB-led operations €10 million (2012-2014)	No data	
European neighbourhood blending framework	Neighbourhood Investment Facility (NIF)	2008	€1.072 billion 95 projects (2008-2014)	No data	Part of EFSD

Table 1 – EU blending facilities

Source: European Commission.

Parliament's starting position

In its resolution of 14 April 2016 on the private sector and development, the Parliament welcomed a stronger role in development cooperation for the (properly regulated) private sector. Parliament stressed that official development assistance (ODA) must remain a key means for eradicating poverty in developing countries, and that it cannot be replaced by private funding. However, Parliament acknowledged the benefits of leveraging private finance with ODA under conditions of transparency, accountability, ownership and alignment with country priorities and debt sustainability risk. The Parliament called upon the Commission to clearly demonstrate the financial and development additionality of blended projects in each case.

In its resolution of 12 April 2016 on the situation in the Mediterranean and the need for a holistic EU approach to migration, the Parliament recognised that the global approach to migration and mobility (GAMM) is the basic instrument setting out the objectives of EU external policy on migration. Addressing the root causes of migration should be the main focus, and should be accompanied by supplementary financial means to help build capacity in third countries, by facilitating investment and education; strengthening and enforcing asylum systems; helping to better manage borders; and reinforcing legal and judicial systems. A parallel position is seen in Parliament's resolution of 7 June 2016, on the 2015 EU report on policy coherence for development, where Parliament acknowledged the need to strengthen the link between migration and development policies. The resolution points out that the development policy objective to eradicate poverty should be better integrated into new EU migration policy, including economic, political and social development focused actions that would help to address the underlying causes of the current crisis. It also stresses that development aid should not be used for migration control purposes, and calls on the EU and the Member States to refrain from reporting refugee costs as ODA at the expense of the development programmes which tackle the root causes of migration.

In its resolution of 13 September 2016 on the EU trust fund (EUTF) for Africa, the Parliament stressed that the use of EUTF funds allocated from the European development fund (EDF) and development policy budgetary instruments should fulfil ODA criteria. The Parliament also expressed concern that the financing of the trust fund may be implemented to the detriment of development objectives, and condemns the use of EDF and ODA for migration management and control in the absence of clear development objectives. The Parliament emphasised that the main goal of development policy, as stated in Article 208 of the Treaty on the Functioning of the European Union (TFEU), must remain the reduction and eradication of poverty.

In a draft joint own-initiative report on addressing refugee and migrant movements: the role of EU external action (Committees on Foreign Affairs and on Development, rapporteurs: Agustín Díaz de Mera García Consuegra, EPP, Spain and Elena Valenciano, S&D, Spain), the rapporteurs expressed the view that EU development policy should continue to address the underlying causes of forced displacement and welcomed the new partnership framework. However, they also voiced concern regarding a quantitative approach apparent in the migration compacts, which propose measurable increases in the number and rate of returns as a main goal; and stressed that migration management objectives should be balanced and complemented by a focus on developing local economies and improving levels of security and regional mobility.

The report expresses support for the external investment strategy, and calls upon the Commission to ensure coherence between various financing instruments and projects and avoid dispersion of EU funds. The draft report also notes that the creation of various trust funds and ad hoc financial instruments, while improving the flexibility and visibility of European action, endanger budgetary unity and Parliament's budgetary authority. The rapporteurs call for greater European

Parliament involvement in the scrutiny of the new financial instruments, including a Parliament seat on their steering committees.

European Council starting position

On 28 June 2016, the European Council endorsed the Commission's proposal for a new partnership framework with third countries, and asked the Commission to present the external investment plan in September 2016, to be examined by the European Parliament and the Council as a matter of priority. The European Council conclusions of 21 October reaffirmed the importance of the External Investment Plan to the implementation of the new partnership framework. At its meeting of 15 December the European Council stressed the need for a swift implementation of the legislation relevant to the plan.

Preparation of the proposal

Announced in the framework of the Commission proposal for migration compacts in June 2016, the European external investment plan – and thus the creation of the EFSD – were further outlined in the Commission communication 'strengthening European investments for jobs and growth: towards a second phase of the European Fund for Strategic Investments and a new European External Investment Plan', of 14 September 2016. The creation of the new fund was also mentioned in the chapter on migration in the Commission communication on the mid-term review/revision of the multiannual financial framework 2014-2020. The communication stresses that addressing the long term root causes of migration requires a massive increase in available resources, and that the external investment plan will aim to catalyse the active involvement of the private sector necessary for the different modes of development cooperation.

Since 2013 the role of the private sector in development cooperation has been increasingly recognised in a series of Commission communications. In July 2013, a communication on financing the post-2015 development agenda 'Beyond 2015: towards a comprehensive and integrated approach to financing poverty eradication and sustainable development', the Commission presented the new comprehensive and integrated approach to development financing, in which all available resources (public domestic, public international, and private) should be considered as a whole. In this framework, new forms of public cooperation with the private sector, recognised as a key driver of growth, should direct private investment to promote financial investments that fulfil environmental, social and economic objectives. The 2014 communication, 'involving the private sector in generating jobs and growth in developing countries', envisages action to be taken to support the development of the private sector in developing countries, on one side; and to increase the European private sector contribution to financing development cooperation on the other. The Commission thus proposed action to create a better business climate to attract foreign investment, to promote company social responsibility, and to promote public-private partnership. The public support of private investment should be subject to several conditions, such as measurable development impact; additionality; neutrality

(no market distortion); and adherence to social, environmental and fiscal standards. The Commission recognised blending as an important instrument for leveraging additional resources for development. The EFSD is a continuation of this approach and will, according to the Commission, promote the objectives described in the 2014 communication.

The changes the proposal would bring

The EFSD, the EFSD Guarantee and EFSD Guarantee Fund constitute one of the three pillars of the external investment plan. Alongside the new fund (pillar 1), the Commission proposes to focus on technical assistance to support local partners in the preparation of projects which are sustainable and attractive to investors (pillar 2), and on actions aimed to improve the business environment and economic governance in the partner countries (pillar 3). The new fund will be composed of two regional platforms: one for Africa and the second for the EU neighbourhood (south and east), with the possibility of creating a supplementary platform in the future. The EFSD will function as a 'one-stop shop', proposing access to well-established blending facilities coupled with a new, additional guarantee for public and private investors and financial institutions that request integrated financial support for eligible investment in ACP African countries and the EU neighbourhood. The aims are to scale up resources for addressing the root causes of migration and to contribute to the achievement of the SDGs. The Commission stresses the consistency of this objective of the regulation with the overall aim of EU development policy – the eradication of poverty – in line with Article 208 TFEU.

The EFSD guarantee is one of the components of EFSD that will leverage additional financing by allowing risk sharing with private investors, international financial institutions and development banks. The EFSD will combine resources from two existing blending facilities (€ 2.6 billion from revamped blending facilities NIF and AfIF) and the corresponding EFSD guarantee fund will be based on funding of €750 million, including €350 million from the EU budget and €400 million from the European development fund, with additional contribution from Member States and public financial institutions. The EFSD guarantee fund will intervene with liquidity to compensate, if necessary, losses covered under the guarantee agreement.

The proposal envisages that the EFSD will be managed by the Commission, under a strategic board composed of representatives from the Commission, of the High Representative, of the Member States, and of the EIB; and two operational boards, one for each regional investment platform. Beyond its role on the strategic board, the EIB's role remains undefined in the draft regulation on the EFSD, and indeed under the external investment plan more generally. The EP may gain observer status on the strategic board. The Commission shall report on an annual basis to the EP and to the Council on the financing and investment covered by the EFSD guarantee. The Commission expects that EFSD will trigger additional public and private investment of up to €44 billion, and if the Member States match the EU contribution, this could be twice as much – €88 billion.

Court of Auditors

European Court of Auditors Special Report No 16 (2014), on the effectiveness of blending regional investment facility grants with financial institution loans to support EU external policies, concludes that in the 2007 -2013 period, blending was generally effective, but the full potential of the established facilities was not fully realised due to Commission management shortcomings. Also, for half of the projects examined, there was insufficient evidence to consider that the grants were necessary for the loan to be granted, while, in a number of these cases, there were indications that the investments would have been made without an EU contribution.

Advisory committees

In its draft opinion the European Economic and Social Committee (EESC) considers the proposed regulation a step in the right direction towards tackling the root causes of irregular migration. It welcomes the alignment of the new proposal with the EESC stance on greater involvement of the private sector in development financing, and the use of ODA to leverage private investment linked to clearly defined development goals. It also recommends involving civil society organisations in partner countries in the decision-making process. Finally it underlines the need for the new fund to focus on fragile states, where the proposed guarantee may help the private sector to face the higher risk.

In its opinion on a Partnership Framework with third countries under the European Agenda on Migration, adopted on 8 February 2017, the Committee of the Regions welcomes the Commission proposal, including the pillar aimed at mobilising investment in Africa and EU Neighbourhood countries. In order to match the total contribution made available by the EU, the Committee of the Regions proposes that specific agreements are signed with Member States and other international partners.

National parliaments

The deadline for the submission of reasoned opinions on the grounds of subsidiarity passed on 19 December 2016. No reasoned opinion has been adopted.

Stakeholders' views

This section aims to provide a flavour of the debate and is not intended to be an exhaustive account of all different views on the proposal. Additional information can be found in related publications listed under 'EP supporting analysis'.

Contrary to the proposal for EFSD, which has not yet been widely discussed, the overall framework of the migration compacts and the external investment plan has come under heavy criticism by numerous non-governmental organisations (NGOs).

Prior to the endorsement by the June 2016 European Council of the migration compacts, 124 NGOs issued a joint statement, calling upon the Council to reject the Commission communication establishing a new partnership framework with third countries. Denouncing the 'instrumentalisation' of development policy for migration management purposes, these stakeholders reject the idea of conditionality for the attribution of EU aid based on migration indicators. Concerning financing, their main concern is the diversion of development resources towards migration management.

Accordingly, for Oxfam, the external investment plan alone cannot address the causes of forced displacement. Indeed conflict and insecurity are among its main causes and companies are unwilling to invest in unstable countries, preferring larger and richer developing economies. The EU should rather support public investment to create the conditions needed for sustainable development. For this stakeholder, the external investment plan is expected to promote multinationals' presence in developing countries without ensuring respect for labour and environmental standards. Actionaid has also expressed concern that supporting business community investment in developing countries, while resisting regulation of European companies' operations, may aggravate the human rights situation of people living in poverty in the global south. In November 2016, several NGOs in the development field expressed further concerns and recommendations on the external investment plan in general, as well as its first pillar, the new fund and its guarantee. Among the main points raised are:

- the risk of ODA being diverted from public investment and essential services,
- the risk of ODA being used to leverage private-sector investment in less risky countries, rather than least developed countries,
- insufficient social, labour and environmental safeguards in the draft EFSD regulation
- need for stringent eligibility criteria for EFSD interventions to ensure commitment to SDGs, Busan development effectiveness principles and Paris climate agreement
- establishment of a centralised grievance mechanism
- need to scale up evaluation and monitoring to assess the impacts of blended supported project and its compliance with development effectiveness principles
- EFSD should be used exclusively to support local companies, especially SMEs.

Legislative process

The proposal was forwarded to the European Parliament and the Council on 14 September 2016. The file was initially allocated to Parliament's Development (DEVE) Committee, however given the transversal nature and the importance of the issue covered by the proposal, it was decided, under Rule 55, that the Development, Foreign Affairs and Budget Committees should work on equal footing. The three rapporteurs will draw up a single draft report, which shall be examined and voted on by the committees concerned, under the joint chairmanship of the three committee chairs. According to a provisional timetable, the joint vote could take place on 24-25 April.

On 13 December, the Council adopted its negotiating position in the form of a partial general approach (partial because financial amounts are in brackets, pending the MFF review). The Council position sees the EIB's role in the operational management of the EFSD guarantee reinforced and embodied in a specific agreement with the Commission. It also contains a proposal to earmark at least 20 % of the funding for sectors contributing to the implementation of the Paris Agreement on Climate Change, and stresses the need for all actions under the EFSD regulation to fulfil the ODA-DAC criteria.

Is Europe ready for the Belarus crisis?

Arkady Moshes and Ryhor Nizhnikau

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Stability, stability, stability: the watchwords of the Lukashenko regime. Photo from Sergei Grits

A new crisis in the east of Europe may be in the making. Europe should assess how it will act - if and when it erupts.

The results of the on-going normalisation in relations between the EU and Belarus have been very modest, and so have been the domestic changes, which the turn in the European policy was intended to assist. Meanwhile, Moscow reacted to Alexander Lukashenko's perceived "drift to the west" by toughening its approach towards Minsk.

In February 2016, the EU decided not to prolong the sanctions it had imposed five years earlier on the regime of Alexander Lukashenko in response to brutal repressions against Belarusian political opposition. The sanctions were lifted as a reward granted to Minsk for the release of remaining political prisoners, for a less oppressive presidential campaign of 2015 and – perhaps, above all – for Belarus' refusal to fully support Russia in the conflict over Ukraine. At the same

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time, the decision was driven by hopes and expectations that the normalization of relations between Europe and Belarus would stimulate the latter to start domestic liberalization and economic reforms.

The timing was also quite suitable for Brussels to test its revised “customer-friendly” European Neighbourhood Policy with less accent on values and more attention paid to raising partner countries’ resilience. In turn, Minsk was willing to explore new funding opportunities and weaken its excessive dependence on Moscow.

The EU’s current policy of technocratic, “go-slow” re-engagement with Belarus is a policy for fair weather. Today, a year later, it is apparent that the results of EU-Belarusian rapprochement have been quite modest. In practice they are visible, besides minor EU project funding, mostly in the sphere of migration. EU and Belarus signed the so-called Mobility Partnership and generally advanced in the negotiations on visa facilitation and readmission. Furthermore, from January 2017 EU citizens, as well as altogether nationals of 80 countries, can visit Belarus for 5 days visa-free.

Political liberalisation, however, did not take place. Even though one opposition candidate and one representative of civil society were elected into the national parliament during the 2016 elections, OSCE found most of its previous recommendations ignored and was able to cite only slight improvement in the general conduct of elections. Media and political activists remain under pressure. The EU-Belarus Human Rights Dialogue showed little convergence on core issues including the death penalty, still applied in the country.

Economic changes did not start, either. Despite some reformist rhetoric, Minsk rejects the conditionality put forward by the IMF (a loan of \$3 billion is offered in return), which also blocks the way towards EU macroeconomic assistance. The government prefers to stick to the old model, namely, to maintain state’s commanding role in the economy and support public sector and the Soviet-style welfare system. As Lukashenko said in October 2016: “we have already had all the reforms”.

The problem is that the model, the basis of the regime’s domestic legitimacy, does not function any more. In 2016, Belarus’ GDP fell by 2.6% and stays now at 2007 level. Exports went down by 13%. The country has only 5.4 billion dollars in gold and currency reserves, whereas the external debt due in 2017 only is 3.4 billion. Seeking to increase the budget revenue, the authorities prosecute businesses, raise utility tariffs and tax so-called “social parasites” for unemployment.

Meanwhile, generous Russian subsidies, which have been traditionally the main source of Belarusian “economic miracle”, are not available today. And the reason is not so much Russia’s own worsening economic situation, but the fact that Moscow apparently takes Lukashenko’s “drift to the west” rather jealously and creates additional leverages vis-à-vis its “closest ally”.

What is to be expected is a “less for more” policy aimed at securing full loyalty of Belarus in the geopolitical standoff between Russia and the west with minimum expenses.

The time may be right to start thinking about the previously unthinkable — be it economic collapse in Belarus, radical internal transformations or an externally-triggered crisis

In fact, Russian-Belarusian relationship has been already significantly re-shaped. In 2016, Moscow refused to lower the gas price, as requested by Minsk, and as a result the latter at the moment owes Russia \$550m. In the second half of 2016 Russia cut the supplies of crude oil from 12 to 6.5m tons, which incurred an estimated \$1.5 billion loss in export revenues for Belarus. Russian authorities drastically limit agricultural imports from Belarus. Macroeconomic assistance from the Eurasian Economic Union (EEU) is routinely postponed.

In turn, Alexander Lukashenko doubles down and demonstrates disobedience. Minsk refused to conclude an agreement that would allow Moscow to have an air force base in Belarus. It unilaterally raised the fees for the transit of Russian oil. In December 2016, Belarusian leader chose not to show up at the summit of the EEU in St Petersburg and is dragging his feet with signing a new Customs Code of the Union. Belarusian authorities have recently arrested three bloggers representing the ideology of “Russian world” in the country. To put it shortly, the bilateral conflict continues to escalate.

It would be irresponsible to predict that the trend will necessarily lead to the removal of Alexander Lukashenko by Moscow or “voluntary reunification” of Belarus and Russia along the Crimean scenario. Possibly, a temporary compromise will be found. At the same time, it is obvious that Belarus is not any longer an island of stability in EU’s Eastern Neighbourhood it once was.

The EU’s current policy of technocratic, “go-slow” re-engagement with Belarus is a policy for fair weather. The time, however, may be right to start thinking about the previously unthinkable — be it economic collapse in Belarus, radical internal transformations or an externally-triggered crisis. All of these scenarios would require a much higher level of Europe’s preparedness, commitment and resources.

When Russia considers an Armenian undesirable - Report on a deportation



Stepan Grigoryan from Armenia is active in the civil society movement, as Director of Analytical Center on Globalization and Regional Cooperation (ACGRC) in Yerevan. He is a former diplomat of Armenia who was Authorized representative of Armenia in the Collective Security Agreement of CIS as well as Extraordinary and Plenipotentiary Minister of Armenia in Russia. He was also for five years Member of the Armenian National Assembly. Read what he wrote about an incident in Moscow on 30.8.2016,

"On August 30th 2016 I had quite an unusual experience and I think it is high time for me to finally analyse what has happened and draw the appropriate conclusions. On that day the Russian authorities refused me entry into their country. The border guards at Sheremetyevo, Moscow's international airport, did not allow me to leave the airport stating that I am not permitted to enter Russia until 2030. My flight, however, was a transit one and late that night I was supposed to be on my way home to Yerevan. Since I had 14 hours to spare before my flight, I was planning to visit one of Moscow's cemeteries, where in October 2014 my father Gevork Grigoryan was buried.

Instead, I was deported back to Armenia. During the time I was detained at Sheremetyevo, my passport was confiscated and I was escorted to the so-called "sterile zone", which is controlled by the guards. In the notification that I received from the Russian guards, there were different references to the Federal Law of Russia "On the order of exit and entry into the Russian Federation" which were largely dedicated to listing different kinds of criminal activity or any sort of deed breaching the rules committed by foreign citizens.

But none of this has anything to do with me. I have not been doing any sort of activity in Russia in the last 20 years. In my case, only the clause nine of Article 26 of that Law could have applied: "About expulsion of foreign citizens who have participated in activities of international organisations which are undesirable on Russian territory."

It is no secret that the Analytical Centre on Globalisation and Regional Cooperation (in Yerevan), of which I am the head, actively co-operates with European NGOs, Euro-Atlantic centres and various funds which support our activities. Moreover, we are not hiding the fact that

we would like the future of the Armenian nation to be one of the European family of nations, which upholds democratic values and freedoms. That is why I am confident that the decision of the Russian authorities was unequivocally politically motivated.

Naturally, during my arrest and detention, my family contacted the Ministry of Foreign Affairs of the Republic of Armenia with a request to find out where I was and what the reason for my delay was. Taking into consideration that I was a previous deputy of the Armenian parliament (1990-1995) and I had worked at the Armenian Ministry of Foreign Affairs (between 1995 and 1998 I was the Envoy Extraordinary and Minister Plenipotentiary of Armenia to Russia and in 1996-1999 the plenipotentiary representative of Armenia in the Collective Security Treaty Organisation of the Commonwealth of Independent States), the actions on the part of Russian authorities can hardly be called friendly.

On September 2nd, 2016 the Armenian ambassador to Russia demanded an explanation as to my detention from the Russian authorities. Furthermore, Shavarsh Kocharyan, the Armenian deputy minister of foreign affairs, asserted that the Armenian Ministry of Foreign Affairs is dealing with the issue and will notify when there is information to report. On September 6th the Armenian Ministry of Foreign Affairs still had not received a response about my deportation from Russia. On that day Kocharyan told journalists that any state has a right to refuse entrance to certain people without explanation. “This particular incident is unusual because it was the first time that such measures were taken in the relations between Armenia and Russia. That is why we have been in touch with the Russian foreign ministry and we are awaiting a response”, Kocharyan said.

Also on September 6th, 2016 there was a reaction by the Russian embassy in Armenia. An advisor named Oleg Shapovalov commented on the “Sheremetyevo issue”, during his interview with journalists saying that Russian authorities do not have a “blacklist” of Armenian citizens. He did not mention any possible reason why I was not granted access to enter the country only adding that he did not know: “In this particular case it just so happens that Mr Grigoryan was not allowed to enter the Russian territory. Technically, we are not obliged to provide any explanation, however, upon request from the Armenian foreign ministry, we asked our counterpart for a comment on the situation and we are working on the issue. We will inform the Armenian ministry about the results.”

At that time there was still hope to receive an official response as requested from the Armenian side. But to this day I, personally, am still awaiting a response from the Russian authorities; one which reassures me that this action was politically motivated. The sole fact that I am denied the right to enter Russia until 2030, says a lot already.

Many Armenian politicians and experts have proposed their own possible explanations regarding my incident. The most popular presumption is that Moscow is trying to put pressure on representatives of the Armenian civil society. Generally speaking, *the civil society in Armenia is*

quite liberal and could pose a threat for the Kremlin who wishes to turn the country into a Russian province. The majority of those working in the civil society are convinced that Russia has a blacklist of citizens who are proponents of democratic developments in Armenia or who are critical of the Russian government.

I would also like to turn the reader's attention to the comment by one of the Russian experts concerning my incident, who remarked that any country can close the border for any undesirable individual, even if it is politically motivated. To which I would like to now respond: It is understandable when Russia and Ukraine adopt individual sanctions against each other since they are currently, to put it lightly, not on friendly terms. But the relationship between Russia and Armenia is strategic and I consider it to be unacceptable if Russia really does have a blacklist of undesirable Armenians. Furthermore, there is a visa-free regime between Armenia and Russia; Armenian citizens have the right to move freely in Russia. If there is a ban for certain individuals, then Russia has to send a notification on every particular case beforehand.

The story about my deportation from Moscow to Yerevan received a lot of attention in Armenia and abroad. Many Armenians have conveyed their solidarity to me. A large number of politicians, experts, public activists and journalists have expressed their criticism towards the policies of the Russian authorities and have voiced their own opinions why the government acted in such a way. Many deputies of the Armenian parliament and high-ranking officials have openly spoke out and asserted their support in my case, not to mention numerous announcements made in my defence by various Armenian and international organisations. I would also like to point out that on September 16th the Armenian National Platform for the Eastern Partnership Civil Society Forum, which consisted of more than 200 active NGOs in our country, posted a message about the incident with the observation: “Recently such cases have become more frequent, where Armenian people have become a target of the Russian governmental and non-governmental institutions. Not long ago a Russian website posted a list of people – representatives of the Armenian civil society – with their private information and photos who, presumably, belong to an Armenian network of American spies. The platform condemns the actions of the Russian government towards Stepan Grigoryan...”

In the end, it is clear to me that this incident was an attempt by the Russian authorities to put pressure on the independent sector of Armenian civil society.”

In addition, in its Resolution No.10/AA/2016 (draft Resolution No.13/AA/2016) from November 29, 2016, in Brussels, the Eastern Partnership Civil Society Forum stated on the case of Stepan Grigoryan:

“Based on the 16 September 2016 Statement issued by the EaP CSF Armenian National Platform, the Eastern Partnership Civil Society Forum states: On 30 August 2016 in Moscow Sheremetyevo airport the border guards of the Russian Federation arrested Stepan Grigoryan, an active representative of Armenian civil society, former deputy of the RA Supreme Council and

former adviser to RA Minister of foreign affairs, Chairman of the board at the Analytical Centre on Globalization and Regional Cooperation. After 10 hours of detention, during which his passport was seized, he was deported to Armenia from Russia. The Russian authorities' groundless and unlawful actions restricting the right to free movement of citizens of the Republic of Armenia are politically motivated, as Stepan Grigoryan actively cooperates with European non-governmental organizations as the head of the Analytical Centre on Globalization and Regional Cooperation, and does not conceal the fact that his organisation envisages the future of the Armenian people as part of the family of European countries built on democratic values. Stepan Grigoryan does not engage in any activity in the Russian Federation, and his cooperation, in Armenia or elsewhere, with international organizations recognized as "undesirable" on the territory of Russia should not have given cause for to prevent his private visit and the subsequent ban on his entry to the Russian Federation until 2030.

It is not the first time that Armenian civil society representatives have been targeted by Russian state or non-state actors of late. The Eastern Partnership Civil Society Forum condemns the unlawful action of the Russian state authorities against Stepan Grigoryan.

The Eastern Partnership Civil Society Forum demands that the authorities of the Russian Federation cease intervening in the domestic affairs of neighbouring countries and imposing unlawful sanctions against their citizens according to their political views and civic activity.

The Eastern Partnership Civil Society Forum calls on the diplomatic service of Armenia to demonstrate adherence to democratic/these principles and consistency in the protection of the violated rights of the RA citizens.

The Eastern Partnership Civil Society Forum suggests that the representatives of its member and partner organizations reconsider the appropriateness of visiting Russia, as well as using airports in the Russian Federation as transit zones."

Under the headline "Russia's 'black lists' and sincere confession", Nelly Grigoryan wrote in "Aravot" from 11.1.2017, that at a press conference held on 6 October 2016, the Russian Foreign Ministry's speaker, Maria Zakharova, stated that the Russian Foreign Ministry has examined the Armenian Foreign Ministry's note about the banning of Armenian citizen Stepan Grigoryan's access to Russia and has responded to it. The Russian Foreign Ministry's response clarifies that the Russian side has not reconsidered its decision on banning the access of the Armenian political scientist to Russia until 2030 reiterating the preliminary reasoning that the activities of the Armenian political scientist are a threat to the RF security.

Grigoryan had told her that he was grateful to the Russian side for such a sincere answer, "I had a fear that they will associate with some technical issues, with crime and the like. But the answer is very clear, they said that my activities are a threat to Russia. And since I have not lived in Russia and have not conducted any activities in Russia, it is clear that they are referring to my

political and social activities. With this response, the Russian side affirmed that the decision was political.”

Grigoryan showed himself convinced that this case is an evidence of the existence of “black lists” in the Russian Federation (as they exist e.g. also for possible visitors from the European Union). Incidentally, Russia has conducted this policy against the Western countries since the years of the USSR. The access of the Armenian political scientist to Russia was banned on August 30, 2016. At the airport, he was shown a document, based on which the access of people to Russia can be banned. Stepan Grigoryan has found one clause in this document: Article 26, paragraph 9, according to which his access to this country is banned. This clause was enshrined on May 23, last year, and in his opinion, it obviously carries a political character as it bans the access of people to Russia who are working with the international organizations that are undesired in Russia. As to which organization cooperating with his organization is undesirable for Russia, this was left in the dark.

However, Stepan Grigoryan notes that recently he had conducted active social activities with various European and American organizations struggling for democracy in Armenia, “I raise my questions, also in the connection with regional cooperation, I criticize Russia’s posture over Armenia in the CSTO and the Eurasian Economic Union. In other words, it is clear that they will dislike my struggle for the establishment of democracy in Armenia, my cooperation with the European and Western organizations.” During all this time, Stepan Grigoryan is characterizing the response of the RA Foreign Ministry, the RA Embassy to Russia and the note sent to the Russian Foreign Ministry positive, therewith highlighting the existence of the problem, the surprise at what has happened, especially with the Armenian citizens having a high diplomatic level and a former Armenian Member of Parliament.

As to what steps have been taken and will be taken by the Armenian Foreign Ministry after such a sincere confession by the Russian side, the political scientist does not know. At the same time, he notes that in such cases, it is accepted in practice that the principle of reciprocity should work. In the given case, Stepan Grigoryan is not a senior person, and formally, the MFA cannot reply but he thinks that it would be nice, nevertheless, to answer, “For example, there are many public and political figures in Russia whose stance is pronounced anti-Armenian and not only on Karabakh conflict. It would be nice to ban the access for some of them to Armenia”.

“I think that the time has come for the authorities of Armenia to elaborate response options as well. I am not saying to spoil relations with these countries but they can ban the access of this-or-that political and public figures who have pronounced anti-Armenian stances to Armenia to show that the authorities are ready to defend the interests of their citizens,” said Stepan Grigoryan, adding that if Armenia is unable to defend its citizens in this sphere, therefore it is unable to select a Secretary-General in the CSTO.

This was seconded by a seasoned expert on human rights in Armenia: In “news.am”, the **head of the Vanadzor office of the Helsinki Citizen's Assembly, Artur Sakunts**, confirmed that the



Russian Ministry of Justice has a list of organizations which receive grants from non-Russian organizations. According to the Russian authorities, the latter are foreign agents. In his words, Grigoryan has a diplomatic level and in this context the statement made by the advisor to the Russian Ambassador on that this incident won't influence the Armenian-Russian relations seems odd. “Their message implies that all the criticism regarding the Russian policy doesn't interest them. That is, the Armenian-Russian relations are developing on an

official level, but there can be no relations on the public and expert levels,” Sakunts stated. According to him, Grigoryan's freedom to move was restricted and his rights were violated due to political views.

This was an encroachment not only on Stepan Grigoryan, but also on the whole public sector of Armenia, which has different stances. Grigoryan has the right to be outraged by the fact that his entry to Russia is banned till 2030, while the Migration Service may deprive a specific person of this right for five years. Grigoryan had declared to “news.am”, “the notification said that I am refused to enter Russia under Articles 26 and 27. Article 27 had nothing in common with me, only the 9th point of Article 26 somehow corresponding [to my case]. The aforementioned point bans the entrance to the Russian territory of foreigners, who work or cooperate with different international organizations and NGOs, which are undesirable for Russia. But the names of the undesirable organizations were not mentioned. Personally I cooperate with different organizations.”

Alik (Alexander) Arzumanyan who had served as Minister of Foreign Affairs from 1996 until his resignation, with President Levon Ter-Petrossian, had declared as well in “news.am”:



declared the activities of a number of European and Western structures as anti-Russian and, probably, have assigned to develop a method to sever those who collaborate with those structures, said Alexander Arzumanyan, referring to this case of banning entry to Russia.

“Apart from being a political scientist and an expert, Stepan Grigoryan served as a deputy ambassador of Armenia to Russia. Therefore, what happened with him needs to be considered against the background of hunting witches in Russia. Probably, they prepared a list. As is known, Russian declared activities of a number of Western European

organizations as anti-Russian, and, perhaps, it was assigned to develop a separate strategy to severe those who collaborate with them.”

As for the steps of the Foreign Ministry of Armenia in that regard, Arzumanyan said that he hoped that it will find out whether there was a list of undesirable persons and would suggest to publish that list.

Nagorno-Karabakh Republic: Now under the name Republic of Artsakh. The Referendum of 20.2.2017

The name will be changed gradually - this is not a matter of a big-bang operation, says the de-facto Minister of Foreign Affairs of Artsakh/Nagorno-Karabakh, Karen Mirzoyan. On 20.2.2017, the citizens of the 155.000 people breakaway territory from Azerbaijan had voted in favour of a new constitution. One of the changes will be the new name: Artsakh, an old Armenian name for the country between Armenia and Azerbaijan. After all, the people of Artsakh have time; both names "are identical" (Art. 1 (2) New Constitution). So it may take some years until the name will be replaced consequently.

Artsakh is not recognised by any country, although it has many links with Armenia, including the currency, a road link (one only), and military assistance. Artsakh is considered by many Armenians as "their" homeland, as cradle of Armenian civilisation - which at least is partly right, of course among many other "cradles" of Armenia. It became independent in autumn 1991, held a referendum on independence in December 1991, and holds now a territory of 12.000 sq.km - more than five times the size of Luxembourg, about one third of Belgium and a bit more than the half of Slovenia, but with only a fraction of their populations. If one sees the country with the own eyes it becomes evident why this is the case: mountains, mountains, mountains. This is exactly what the name "Nagorno" says - mountains. The capital of Artsakh, Stepanakert, is a peaceful town with approximate 56.000 people. The country is divided into seven regions (Askeran, Hadrut, Martakert, Martuni, Shahumian, Shushi, Mashatagh).



Heading the European Friends of Armenia (EuFoA) observer delegation: Dr. Michael Kambeck, Acting Director of EUFoA, Brussels (right), besides Hans-Jochen Schmidt, former German Ambassador in Armenia, as embedded expert (left), at a press conference after the Referendum.

The referendum of 20.2.2017 was observed, as all elections and referendums, by international observers, but not official ones (e.g. by the OSCE, the EU, the Council of Europe etc.), but of unofficial ones - like by the European Friends of Armenia (EuFoA), a French observer delegation, but also of some strange-looking political provenance, like e.g. the Austrian FPÖ, a very right-wing political party, or the Aleksandar Dugin run Russian Institute of Eurasianism, or even the German Eurasianism Center, probably a one-man show of otherwise unknown right-wing politician(s?). This will have to be changed in the future, so that election or referendum assessments will be taken more serious in Europe, as Artsakh claims - and they are right with this - to be a system in the European tradition of "European values". Some of the observers do not represent these values.

Some of Artsakh's political parties had complained before the referendum, pleading for "No", of being hindered in campaigning. This was mainly the case in the capital. There is no transition country which follows to 100% the Council of Europe Venice Commission claim in their "Good Practices for Referendum" of not abusing of media or administrative power by the acting governments, but in the case of Artsakh one has also to consider the facts that society there is based on a strong self-defense, consent-based thinking. This is necessary to survive in a system of freedom. And of course it also justifies the existence of opposition, who however said before the referendum that they will accept the result. There are at least 13 political parties registered in Artsakh, and about 230 (!) non-governmental organisations (NGOs), of which 20 may be operating.

One must be very clear: the citizens of the former ruling country Azerbaijan have at present not at all the possibility to go into a referendum like the Artsakh citizens. Insofar the latter merit a



A polling station in Artsakh: According to the overwhelming observations a transparent and very correct voting procedure. The booth is in the background. Mostly held in schools, the teachers' collegium is well represented within the local election commissions. All the voters of the district are posted outside of the polling station at a wall.

"solidarity of the democrats" in the European Union. Yes, there were some incidents in Artsakh, when e.g. an opposition Member of Parliament, Hayk Khanumian, an activist of the National Revival Party and founding chairman of the "European Movement of Nagorno-Karabakh", having studied in Strasbourg/France, was beaten up before the Parliament building. This is, of course, not a good sign. But it has to be stated that journalists can largely write whatever they want and can, and there is also the possibility of operating NGOs under different political auspices, which is not the case in Azerbaijan, who has not any more a functioning civil society.

After all, it was no miracle that the referendum was considered as formally well developed, and also no decisive mistakes have been noted, e.g. in the counting of votes. Around 90% have voted with "Yes", around 10% with "No", and this with a turnout of 76,5% - which was slightly higher than in most elections before February 2017. It is interesting that in the capital, Stepanakert, the turnout was evidently lower while in smaller villages, some of which had not more than 100-200-300 voters, the voter turnout was tending close to 100% - a good sign for voters' conscience. In the capital, there have been traditionally many opposition and dissenting votes, who partly did not go to the polls. Insofar, a totally democratic result, and a good sign for the Artsakh citizens as they have reached as much as they could the community of democratic countries.



Among the members of the European Friends of Armenia observer delegation: Embedded former German Ambassador in Armenia, Hans-Jochen Schmidt (right), and EUFAJ Chief Editor Hans-Jürgen Zahorka (left), before the central square of Stepanakert.

It is clear that several countries or the OSCE and EU had pointed out that they cannot recognise the referendum, as it would be held in a non-recognised state. This is good diplomatic custom. But it has to be noted that e.g. the OSCE has also noted that it is up to the relevant citizens to regulate their conditions of life - including a Constitution - as they deem. This reminds of the

steps Kosovo had undergone on their long way to independence, being today recognised by 111 countries (out of 193 UN member states).



On the road from one rural polling station in a village to the next. It is not so easy to cover many outposts in the Artsakh of February - due to road conditions. Nevertheless it was possible during the referendum day for one team to cover up to 12 - 15 polling stations.

The new Constitution will have a certain tendency to a presidential regime. In a small community of 150.000 people this is something different than in bigger states. Also, the present security situation of the country justifies possibly a more stringent leadership in crisis situations with many people. It cannot be abused as there is a certain checks-and-balance system in the Constitution. However, the President can thank also those who voted against it as they have "thought around the corner". This is always a good sign for a functioning civil society. The other aspect, of course, is that the President will be able to run for a third time now, his terms being until now limited to two. But this limit is of course not valid everywhere - e.g. in Germany, in UK, etc., while in USA, France, Armenia, Russia (where Putin has shown how it can be circumvented) etc. two terms are possible only.

There is one clause in the new Constitution which is worth-while to be discussed and compared: the right of legislative initiative (old Constitution: art. 90, new Constitution: art. 122). The old version reads:

"1. The right to initiate legislation in the National Assembly shall belong to the President of the Republic, its [the National Assembly's] members and the Government...."

The new art. 122 says:

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"1. The President of the Republic and a Deputy shall have the right to legislative initiative."

It can be assumed that the "and a Deputy" are not meant cumulative, i.e. that also any Deputy would be free to launch legislation. But the interesting part is art. 122 (2):

"At least 2,5 percent of citizens having the right of suffrage shall have the right to submit a draft law to the National Assembly on popular initiative."

This clause, being in principle similar to relevant EU rules, is a clear strengthening of civil society who now has a "threat" of collecting signatures in their hands, thus being able to co-determinate definitely the agendas of the Parliament's discussions.

Above all, the day after a constitutional referendum is the first day of new possible constitutional debates. These discussions have another quality in a small community like Artsakh than in larger countries. A widely unobserved, but well-done referendum (including some thoughtful opposition) has been held at the borders of Europe - and this largely (but not totally) according to the Good Practice catalogue of the Venise Commission of the Council of Europe.

See the whole Interim (and later Final) Report about this Referendum - with positive and negative aspects of the vote - as seen by European Friends of Armenia (EuFoA) under www.eufoa.org or directly under http://www.eufoa.org/newsroom/389/51/Interim-conclusion-of-the-Referendum-Observation-Mission-in-Nagorno-Karabakh-Artsakh/?cntnt01limit=4&cntnt01template=display_home&cntnt01options=1&cntnt01detailpage=latest-news&cntnt01orderby=item_date+DESC&cntnt01origid=15.

Hans-Jürgen Zahorka

Azerbaijan Attacks European Parliamentarism - by Arrest Warrants against Members of European Parliament

The Azerbaijan press agency APA reported on 22.2.2017 on a new case for the prosecutors of the country. This is indeed a *novum* in European parliamentarism. It is clear that the prosecutors would not act without the encouragement of the government. See the original text of this press agency release here:

Prosecutor General's Office: „A criminal case was launched against members of the European Parliament“



Azerbaijan has announced an international arrest warrant for European Parliament members (EP) Frank Engel (Luxembourg), Eleni Teoharus (Cyprus) and Jaromir Stetin (Czech Republic) for the monitoring of the „referendum“ in Nagorno Karabakh, spokesperson of the Prosecutor General's Office Eldar Sultanov told [APA](#).

Azerbaijani General Prosecutor's Office instituted criminal proceedings against the foreigners who have committed an illegal visit the occupied territories of Azerbaijan, also sent a corresponding request to Interpol for their announcement on the international wanted list, said on Wednesday the press service of the Prosecutor General.

“A criminal case has been launched against the members of the [European Parliament](#) under the relevant articles of the Criminal Code for repeated illegal visit to the occupied territories of Azerbaijan, in particular, on suspicion of illegal visit to Nagorno Karabakh to participate in the so-called “referendum” as the “observers” on February 20,” Prosecutor General's Office said in a statement.

In addition, the accused European parliamentarians charged for conducting propaganda of separatist entity called „Nagorno Karabakh Republic“, illegal participation in the activities organized in those territories, and presenting illegal entity in the occupied territories of Azerbaijan as an independent republic.

“The court decided to arrest F.Engel, E.Teoharus and J. Stetin and they have been declared internationally wanted through Interpol,” the report says.

This constitutes an incredible attack on European parliamentarism. Three Members of European Parliament went as observers to a referendum. There were around 100 international observers at the constitutional referendum in Nagorno-Karabakh from 20.2.2017, according to the result of the referendum now called Artsakh, which should regulate the circumstances how the people there live in the future. Artsakh is not recognised by any other country, but it works together with institutions all over the world (like e.g. Kosovo in a phase of its history) and, in a strong contrast to Azerbaijan itself, it can be considered to be, *in grosso modo*, a democratic community, which in the region might be topped only by Georgia. This is a positive sign, but for the Azerbaijan government it seems to be a bad one: They do not let their people live in a freedom like it is the case in the disputed territory of Artsakh. There no state harassment is known to bloggers, critical journalists, opposition members etc., as it is the case in Azerbaijan, who even has managed institutions in the EU to have compiled a list of their political prisoners. Azerbaijan, after all, is not only the most corrupt regime among the Council of Europe Member States, but it is also the most repressive, where it seems to have doubled now Belarus. Only brother state Turkey has imprisoned more journalists at present, but it has also more than ten times the population.

What can the EU do?

The three arrest warrants are, of course, ridiculous. They also include that *the accused European parliamentarians [are] charged for conducting propaganda of separatist entity called „Nagorno Karabakh Republic“*. This is a propaganda notion like e.g. in Turkey „terrorism“ is used for opposition members, or as it was used in Soviet times, but definitely not in an open society. And it should be reminded that OSCE was compelled to cancel their own observer mission for the Azeri parliamentary elections in autumn 2015 (see also <http://www.osce.org/odihr/elections/azerbaijan/181611>).

The warrants might be enforced by states who „just want to do a favour“ towards Azerbaijan. Belarus did so some weeks ago in the case of the Russian-Israeli blogger Lapchin who was extradited to Azerbaijan (“...just to have some conversations with the police...“). This would be an incredible violation of free parliamentarism. Any European parliamentarian, and not only in the EU parliament, has the right to observe whatever election or vote may be held anywhere in the world, if he was invited (which was the case), even if not. To observe an election or a general

vote like a referendum is a good tradition among democracies or not-so-advanced democracies, it is a good sign for popular vote and people's power. That this is attacked under the pretexts used by the Azeri government is an incredible attack on free parliamentarism. This should be solved under political auspices only, by discussions, debates, parliamentary actions. The fact that Azerbaijan reduced their actions to criminal procedures shows only the nervousness of a regime who could not do anything – due to their commitment to gas and oil extraction only and a lack of economic diversification – against an economic and monetary downturn, and who did not really manage to overcome the disparities between the capital and rural areas. Instead of this, it buys arms by the billions (euros) from Russia and exercises regularly a belligerent language against their neighbour. It is the European country with the worst state branding policy, with a too transparent „caviar diplomacy“ and corruption towards third countries as well – see the present investigation in the Council of Europe Parliamentary Assembly member Volonté who is under suspicion to have got 2,4 mill. euro from Azerbaijan sources.

1. The EU could – and should – after all, besides a clear resolution by the European Parliament, first suspend all talks with the Azeri government until the arrest warrants would be withdrawn formally - this is the minimum. To be on a blacklist as *persona non grata* and to be under the threat of an international arrest warrant (even if it not implemented by most of the Interpol member states) are two different pairs of boots, and the warrants go too far, in view of the "delinquency" which was in no phase directed against Azerbaijan.

2. The EU could also approach all third country governments and ask them whether they will follow to implement this international arrest warrant by Azerbaijan. This should be confirmed by any other government with yes or no, as it is not clear if legal procedures will be correct in some of these states – see the extradition of Lapchin from Belarus. This should be launched in an official diplomatic note. Then the EU would see clear, as these notes normally keep their direction.

It is a chance to enhance EU common foreign policy – and also European parliamentarism, which cannot be forced to meet the level of what is considered as parliamentarism by Azerbaijan.

The Faroe Islands - a small but maybe decisive move ahead?

New Referendum on 25th April, 2018 - and then?



Half way between Scotland and Iceland in the Northeast Atlantic, the Faroe Islands are a group of 18 mountainous islands, with a total land area of some 1400 sq. kilometres, a sea area of 274,000 sq. kilometres and a population of almost 50.000.

There are political circumstances which have to be studied thoroughly, in the EU's periphery. One of these is a communication by the Prime Minister of the Faroe Islands from mid-February 2017, Aksel V. Johannesen, announced that a referendum on the Faroese constitution will be held on 25 April 2018. The Government is aiming to ensure as broad support as possible for the new Faroese constitution, both in the Parliament and amongst the Faroese people. Leaders of both coalition and opposition parties in the Faroes have been working in recent months to find consensus, based on a proposal that has been under development for several years. Indeed, the drafts of a new Constitution are now in discussions since more than eleven years, but constitutional changes sometimes take a lot of time.



“My task has been to consolidate a spectrum of views in order to achieve as broad a consensus as possible on this fundamental matter for Faroese society. It is no secret that the political parties have divergent views on certain aspects of the proposed constitution. This has had an influence on the process so far,” said Aksel V. Johannesen, Prime Minister.



The Government of the Faroe Islands

The Government had originally intended for the constitution to be put to a referendum before the end of 2017. It is now planned for 25 April 2018. The proposal will first be submitted to the Parliament when it convenes on 29 July for its 2017/18 session. A six-month period will then be required from the time the proposal is adopted in the Parliament until the referendum is held.

“The Faroese constitution will define our identity as a nation and our fundamental rights and duties as a people, including our right to self-determination. It will also be a safeguard against the abuse of power. This will be clearly reflected in the requirement that the Faroese people must be consulted by referendum on questions related to further independence from, or further integration with, Denmark.

The same will also be the case in relation to membership in supra-national organisations, such as the EU. The Faroese constitution will move the ultimate decision-making power from the Parliament to the people on such fundamental questions. This will be a triumph for the Faroese people and for democracy in the Faroe Islands”, said Prime Minister Johannesen.

What this referendum is good for?

At first, it enables the country to vote about independence (from Denmark), but also to join e. g. the European Union. With a clear cut clause in the Constitution that any approach to a supranational structure is possible. Whatever happens with the Faroes, they will always be attached somehow to Denmark; insofar Denmark could have an outspoken interest in the Faroes as an EU Member State. The Faroes run already a well-functioning Mission to the EU, while having also other representations in Reykjavik/Iceland, London, Moscow and of course also Copenhagen. In Moscow, the main *raison d'être* is the access of Faroese fish products to the Russian market, and the Faroes also try to find a free trade agreement with the Eurasian Economic Union. Whether this will function, is another question.

But a possible orientation towards the EU might be immanent. While having of course special relations with the UK, they have even more special relations with Scotland, which wants to remain in the EU, with very good reasons. Until now, the Faroes have managed some direct agreements with the EU (e.g. on research), and there are no bad experience. The major problems for any further relations with the EU might be, among others:

- fishery policies - but this is not impossible to cope with, as it is mainly a quantitative issue;
- whaling - here it depends if the Faroes manage to explain to the EU that they need it for themselves;
- budget issues - until now, Denmark pays 68 mill. EUR to the Faroes per year. A bigger part of it would have to be taken into account by the EU. But in view of the enlargement into the North Atlantic, the EU should show itself here generous. It did the same e.g. with African countries, taking over French burdens, or with the currency Franc CFA.

Otherwise, the Faroes are a state under the Rule of Law, and human rights are well known there. It has been since many years part of Denmark, and it has almost the same per-capita revenue. Now the referendum gives them a possibility to full independence, to join the EU - not more, at present. And the referendum will first have to be won.

Until then, to many fellow Europeans the Faroes may be known above all as daring football players, who e.g. won against Austria.

The Western Balkans and the 2016 EU Enlargement Package - Prospects and Perspectives

Velina Lilyanova

European Parliamentary Research Service (EPRS), Members' Research Service, 2017

Summary

In November 2016, the European Commission presented its annual enlargement package, consisting of a communication that takes stock of the implementation of the 2015 multiannual strategy and a set of reports on the Western Balkan countries and on Turkey in their capacity of candidates or potential candidates for EU membership. Since 2015, the Commission has been applying a new reporting methodology aimed at enhanced transparency and comparability among the aspirant countries. In 2016, it shifted the timeframe for publishing the next enlargement package from the autumn of 2017 to the spring of 2018, to better align it with the release of the economic reform programmes and the increased focus on economic governance.

In 2016, the Commission continued prioritising complex and long-term reforms as part of its 'fundamentals first' approach. Its main message was that enlargement policy continued to deliver results and promote reforms, albeit slowly and unevenly. The EU's reconfirmed commitment to the Western Balkan countries' accession processes was duly reflected in the Slovak Presidency programme, which stressed the importance of enlargement policy for the EU's own political and economic stability.

Amidst a host of increasing complexities and declining public support, concerns have been raised that enlargement policy might be side-lined. Thus, while the EU needs to keep up momentum, a significant part of the responsibility rests with the countries themselves. The region needs political will to keep reforms on the agenda and deliver results. In this context, regional cooperation and good neighbourly relations are once again brought to the fore as an indispensable means of re-energising common reform priorities and maximising the benefits for the region.

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- Annual enlargement reports: new aspects
- The 2016 enlargement package: main 'fundamentals first' messages
- Country highlights, domestic context and expected developments
- Challenges and prospects

Annual enlargement reports: new aspects

Over the years, the EU's enlargement policy and requirements towards current and potential candidate countries have changed, and so has the process of reporting on their progress. Most recently, in 2015 and 2016, the European Commission introduced several changes to the approach to enlargement. While further adjustments are not ruled out, the focus in the coming years will remain on the so-called 'fundamentals'.

In 2015, instead of an annual strategy, the Commission published a multiannual enlargement strategy to cover its five-year mandate. Subsequent communications are to take stock of developments in the reporting period and follow up on its implementation.

As part of its new reporting methodology, the Commission placed a stronger emphasis on the state of play, and harmonised the assessment scales, making it easier to gauge a country's readiness for EU accession and compare it with other countries over time. The reports included clearer recommendations for priority actions to be carried out within a year, making it easier to track their implementation. Attention shifted to a set of priority areas, known as 'fundamentals first': rule of law (judiciary, corruption and organised crime); fundamental rights (freedom of expression); economic criteria; and public administration reform. Progress assessments placed particular emphasis on implementation and on the track record linked to concrete results in each area.

The Commission further highlighted the importance of regional cooperation, the connectivity agenda and the migration crisis, while keeping its focus on civil society (introduced in 2014) as a part of the political criteria. Its 2014-2020 Guidelines for EU support to civil society in enlargement countries introduced the creation of an enabling environment for civil society development as a priority in the enlargement process.

In 2016, the cycle of annual reports was shifted from autumn to spring, thus the next reports will be published in spring 2018. This will help streamline the reporting process, but also harmonise it with the calendar year and the release of the economic reform programmes defining the structural reform agenda.

The 2016 enlargement package: main 'fundamentals first' messages

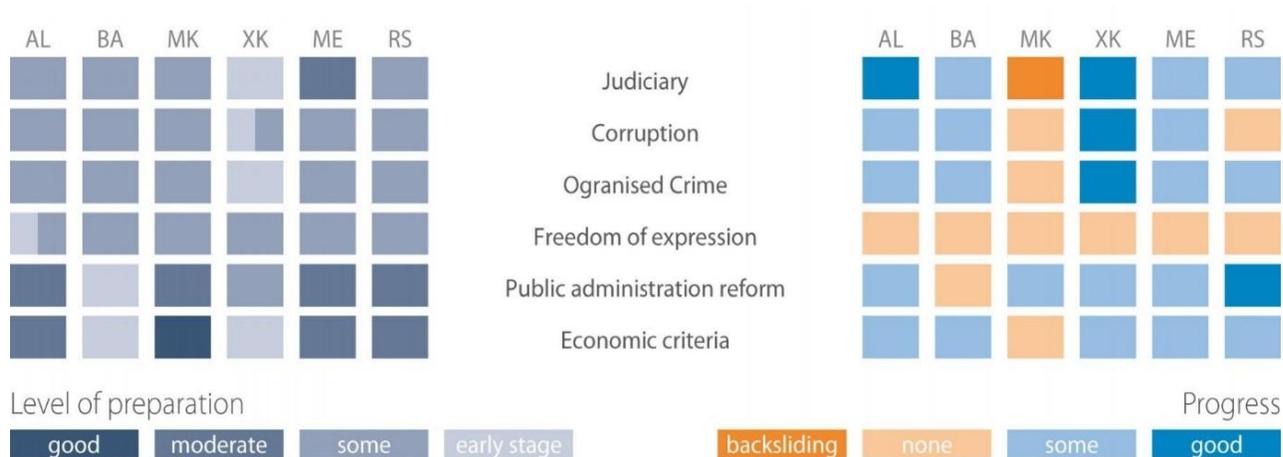
Echoing President Jean-Claude Juncker's 2014 Commission inaugural statement, which put a five-year halt on enlargement, the 2015 multiannual enlargement strategy stated that the aspirant countries face challenges, 'such that none will be ready to join the EU during the mandate of the current Commission'. Nevertheless, when presenting the 2016 package, Commissioner for European Neighbourhood Policy and Enlargement Negotiations, Johannes Hahn, stated that the EU membership prospect remains a major factor for stability and transformation in the region, and that the enlargement process is an 'irreplaceable tool' for supporting and guiding political and economic reforms. The EU thus confirmed its continued support for reforms, stressing that they

must be a top priority of the aspirant countries and that the credibility of the process must be improved.

In 2016, the country reports preserved their focus on the 'fundamentals', and the overall message was that the enlargement policy continues to deliver results. Previously recognised challenges remained, and reforms had advanced, albeit mostly slightly. Unlike Turkey, whose 2016 report often mentioned the word 'backsliding', the Western Balkans presented, according to the Centre for European Policy Studies, a 'mixed' picture, with 'modest, if not decidedly negative assessments' regarding their reform processes. While naming Albania as 2016's winner for its significant reform efforts concerning the rule of law, think-tank Oxford Analytica remarked that reforms elsewhere had not been as pronounced.

Montenegro, the 'leader' in the accession process, continued to be a steady achiever and had fully aligned itself with the EU's foreign policy positions. Serbia's progress was rated 'remarkable', as it had held credible elections, opened key negotiation chapters with the EU, and shown a constructive attitude both to regional cooperation (including the EU-led dialogue with Pristina) and the migration crisis. Bosnia and Herzegovina (BiH) took important steps that brought it nearer to candidate status. Least favourably, FYR Macedonia was deemed 'a captured state' for its inefficient and corrupt institutions, compromised democratic process and divisive political culture.

Figure 1 – 'Fundamentals first': level of preparation and progress



AL = Albania, BA = Bosnia and Herzegovina, MK = FYR Macedonia, XK = Kosovo, ME = Montenegro, RS = Serbia

Source: EPRS, 2016.

Rule of law: judiciary – Albania in the spotlight

The state of play in the rule of law area is a common concern for the region. Efforts have been made to modernise the legal frameworks and infrastructure, but the implementation and administration of justice remain inefficient and inconsistent. The judiciary's independence and accountability need to be ensured across the region.

In 2016, Albania was the top achiever in this area, and its 2016 report focused on the judicial system. After overcoming political polarisation, it adopted constitutional amendments by unanimity. It passed a set of key laws providing for the institutional overhaul of the judiciary, preparing the ground for a deep and comprehensive justice system reform. It also adopted the 'vetting law', banning criminal offenders from taking up posts as judges, prosecutors, or legal advisors. The opposition challenged the law's constitutionality before the Constitutional Court, which in turn requested an *amicus curiae* brief from the Venice Commission. In December 2016, the latter found the vetting law to be compliant with international conventions; days later the Albanian court also ruled in its favour. Work continues on the adoption of 40 related legislative acts.

In July 2016, Serbia opened chapters 23 and 24 (judiciary and fundamental rights) and started working on action plans for related reforms. It still faces big challenges, and the report's recommendations include adopting a law on free legal aid, amending constitutional provisions related to recruitment and career management in line with European standards, and reducing the backlog of court cases. Throughout 2016, Montenegro's agenda also focused on rule of law reforms; the pace of its accession negotiations will be dependent on the achievement of tangible results, particularly in fighting corruption and organised crime.

Kosovo, although at an early stage, took positive steps by amending its constitution and secondary legislation necessary to implement the 2015 justice package laws, and adopting related strategic documents. It also fulfilled the obligation to establish Specialist Chambers and a Specialist Prosecution Office for investigating allegations of international crimes committed during and after the 1999 conflict. The mandate of the EU Rule of Law Mission was extended until June 2018. As for BiH, it still needs an action plan to implement its 2014-2018 justice sector reform strategy.

FYR Macedonia was in the least favourable position. Its domestic crisis exposed, among other things, recurrent political interference in the work of the judiciary. The 2016 report stressed that democracy and rule of law had constantly been challenged. The shortcomings brought to light by a wiretapping scandal were not addressed adequately, and further undermined the credibility of the judicial system. The newly established Special Prosecutor faced multiple obstacles, and no progress was made on the recommendations from 2015 or on previously identified outstanding issues.

Corruption – 'prevalent in many areas' and a 'serious problem'

The aspirant countries countered corruption and organised crime with formal measures: strengthening legal frameworks, creating new institutions and adopting strategies. However, one sentence, found in all six reports, conveyed the main message: 'corruption remains prevalent in many areas and continues to be a serious problem'. The EU places high importance on tangible results; it therefore insists on establishing a track record of investigations, prosecutions and court rulings in both high and low-level corruption cases.

Albania passed a new law on whistle-blower protection and destroyed cannabis plantations, but its track record of final convictions remained low. In November 2016, the EU launched an anti-corruption project in the country, described as 'the biggest of its kind' in the region, to assist the government administration in preparing for EU membership. BiH adopted a 2016-2019 anti-corruption strategy and a related action plan, but its efforts have not yet translated into concrete results.

FYR Macedonia had a strong track record of investigations, prosecutions and convictions on corruption offences committed by lower-level officials, and a very weak one for higher-ranking officials. There was no proper follow-up to the 2015 wiretapping scandal, which had raised serious allegations of high-level political corruption.

Kosovo strengthened its institutional capacities with a new multi-disciplinary investigative team and a tracking mechanism for cases involving high-level corruption and organised crime, but its preparation is still at an early stage. In Montenegro, an independent Anti-Corruption Agency with administrative investigation powers started work in 2016. Still, the track record for investigations and convictions, in particular for high-level cases, remains limited. In Serbia, anti-corruption efforts have yet to yield meaningful results, and institutions do not serve as a credible deterrent. Adoption of a new law on the Anti-Corruption Agency and amendments to the criminal code are still pending.

Freedom of expression: a 'no progress' area

The reports found that, while fundamental rights are broadly enshrined in the legislation, they are not strictly abided by in practice. Freedom of expression is an area of particular concern, where none of the countries made any progress in 2016. Although the situation varies by country, the general trend is worrisome and deteriorating. Political independence of public broadcasters, media financing, and transparency of media ownership and exposure of journalists to threats and pressure are shared concerns across the region.

In Albania, despite the 'no progress' grade, the overall environment was assessed as 'conducive to the freedom of expression', whereas in Serbia it was deemed 'not conducive' to the full exercise of this right. Serbia has not fully implemented its media legislation and the privatisation of the state media outlets has not led to greater transparency of ownership or funding sources. The

reports also highlighted the increased number of threats against journalists in Kosovo and the high number of defamation cases in Montenegro. Montenegro needs to achieve overall alignment with the case law of the European Court of Human Rights and resolve cases of attacks on journalists, including the trial for the murder of journalist Dusko Jovanovic in 2004. BiH needs to finalise the reform of its public broadcasting system, including ensuring its financial stability, harmonising relevant-entity broadcasting legislation with the state-level law, and securing the political neutrality of broadcasters' managing boards. In FYR Macedonia, which has the region's worst media freedom record, the situation of the media remains a serious challenge, especially in the current political climate. A lot needs to be done to meet the 'urgent reform priorities' identified by the Commission in 2015, among them the need to ensure balanced reporting and full transparency of government advertising.

Public administration reform (PAR) – uneven progress

Carrying out public administration reform and improving the functioning of democratic institutions is another shared challenge, addressed by the countries with varied success. Montenegro and Serbia adopted relevant strategic documents and programmes, and new laws on salaries and administrative procedures. Kosovo made good progress by adopting a comprehensive public financial management strategy and a law on general administrative procedures. However, the public administration continues to lack professionalism and efficiency due to non-merit-based recruitment practices. In BiH, the reform is at an early stage and has even seen some backsliding. FYR Macedonia is delaying the adoption of a comprehensive 2017-2022 PAR strategy. In 2016, EU financial assistance to this country was cut significantly due to the lack of political commitment to deliver on reforms in public financial management.

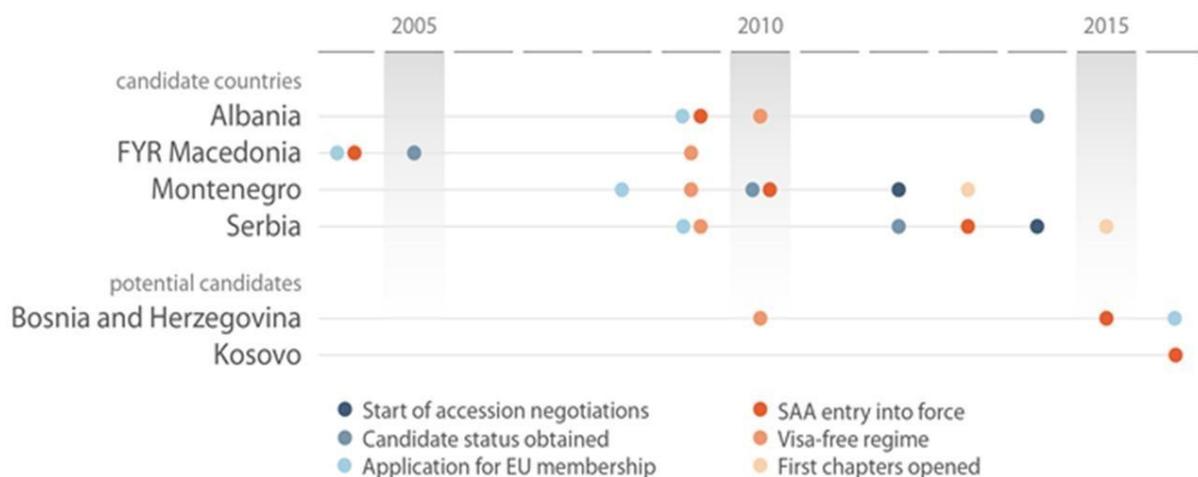
Economic situation – mixed results

The Western Balkans also face multiple structural economic and social issues, among them high unemployment (particularly among youth). In general, the economic situation was assessed as gradually improving, with stronger growth, higher investment and more jobs created by the private sector. The ongoing 'Berlin process' and the Western Balkans Six initiative created economic opportunities, mainly through connectivity projects, but challenges still abound and are directly affected by weaknesses in the rule of law, which degrade the investment climate and hamper the private sector.

FYR Macedonia scores best in this area, although it did not achieve any progress in 2016. Montenegro managed to strengthen its financial and labour markets and improve its business environment. Serbia also got a positive assessment, mainly for tackling the budget deficit and restructuring its state-owned enterprises. Kosovo and BiH were ranked as making the slowest advance to a functioning market economy. BiH made some progress on its reform agenda, and agreed upon a three-year reform programme with the IMF. However, its public sector remains inefficient and its private sector is developing slowly. Kosovo's economic landscape is defined

by trade deficits, a weak production base, reliance on remittances, a large informal economy and high unemployment.

Country highlights and expected developments



Each country has reached a specific point in its relations with the EU and has its own conditions to meet before it can move forward. Delivering on the priority reforms is closely interlinked with the domestic context.

Albania: pending launch of EU accession negotiations

Rule of law aside, in 2016 Albania achieved progress on all five of its key priorities, and created a board on European integration to improve coordination in view of the future opening of accession negotiations. It was commended for its full alignment with the EU's foreign policy positions, its constructive and proactive role in regional cooperation, and its positive economic steps. All of the above led the Commission to recommend opening accession negotiations with Albania, which the latter expects to happen in 2017. This move might, however, be delayed, as it is tied to tangible progress regarding justice reform and the fight against corruption, and to holding free and fair general elections in 2017.

Bosnia and Herzegovina – awaiting candidate status?

In 2014, the EU adopted a 'renewed approach' to BiH, which prioritised socio-economic issues over blocking factors like the Sejdić-Finci case, and thus gave BiH's accession efforts fresh impetus. Key developments ensued: the country's leaders committed to a socio-economic reform agenda; the stabilisation and association agreement (SAA) entered into force; and a Stabilisation and Association Parliamentary Committee was established in 2015, but is yet to adopt rules of procedures. The BiH 2016 report acknowledged some progress on the reform agenda, and noted that the country had come closer to receiving EU candidate status. It applied formally for EU

membership in February 2016, and in August its Council of Ministers approved a coordination mechanism on EU matters. The protocol on adapting the SAA to take into account Croatia's EU accession was initialled in July. This led the Council of the EU to ask the Commission for an opinion on BiH's membership application. In December 2016, BiH was handed over 3 000 questions on its policy, state of democracy and judiciary, which, in Commissioner Hahn's words, marked the end of a very successful year for the country's EU accession bid. This is the final step before the European Council grants BiH candidate status, which might happen by 2018.

Some less positive events took place as well, and the report has been criticised for only mentioning them briefly. Most notably, in defiance of the Constitutional Court, Republika Srpska held a referendum in September 2016 and stated it would hold another one on independence in 2018. Developments such as growing nationalism and related political rhetoric are counterproductive to the country's EU prospects.

The Former Yugoslav Republic of Macedonia – ongoing political crisis

While the country's active role in the migration crisis and in regional initiatives was seen as positive, its domestic political crisis was deemed 'disconcerting'. Parliamentary elections, postponed twice, took place in December 2016 after two tumultuous crisis-ridden years, yet uncertainty and volatility remain. In a joint statement, EU High Representative/Commission Vice-President, Federica Mogherini, and Commissioner Hahn said that the EU expects a new government to be formed swiftly and to press ahead with the urgent reform priorities⁴⁶.

The EP delegation to the International Election Observation Mission highlighted the need to provide support to the Special Prosecutor, improve the accuracy of the electoral roll and enhance the media climate in the long run. The Commission would renew its recommendation for a start of accession talks, provided the country acts on the urgent reform priorities, honours the Przino agreement and holds credible elections. It also needs to resolve its 'name issue' as a matter of urgency.

Kosovo – pending visa liberalisation

Kosovo's 2016 report shows that although many EU -related reforms are at an 'early stage', having been hindered by a generally polarised political climate, some important developments have nevertheless taken place. In April 2016, Kosovo's SAA entered into force, establishing contractual ties between it and the EU. As Kosovo had delivered on wide-ranging rule-of-law reforms, in May 2016 the Commission formally proposed its transfer to the Schengen visa-free list. For this to happen, Kosovo must overcome the political blockage, ratify the border deal with

⁴⁶ In the meantime, the President of Macedonia has refused to form a coalition government between the opposition parties, as the former governing party, VMRO, is not able to do so. The opposition parties are ready but are not asked to form a government. One of the issues is a. o. the plan of the opposition, to make Albanian second state language. There are 25-30% Albanians in the country, a higher percentage than in most of the bilingual countries.

Montenegro, and improve its track record in fighting corruption and organised crime. In December, the government offered the opposition to join forces, in order to end the deadlock over the contested border deal, by reviewing once more the work of the current government commission on the issue.

In November 2016, Kosovo also launched a European reform agenda to guide reforms as per the requirements of the SAA. The agenda outlines priority actions in three 'key areas': good governance and rule of law, competitiveness and investment climate, and employment and education. Kosovo remains committed to normalising its relations with Serbia and implementing the agreements reached in the EU-facilitated dialogue. There has been some progress regarding freedom of movement on the Mitrovica Bridge and the justice agreement. In December 2016, Kosovo also got its own telephone code.

Montenegro – steady progress and more chapters opened

In 2016, Montenegro continued to make steady progress on its key foreign policy priorities: EU and NATO accession. Following its 2015 invitation to join NATO, in May 2016 the country signed the accession protocol, which is being ratified by NATO members. The pace of EU accession negotiations continues to be driven by tangible results. Most chapters, the latest two in December, have been opened. In October 2016, credible parliamentary elections were held under a revised legal framework and the government allegedly improved its cooperation with civil society. Montenegro continued to be a constructive regional player and ratified its border agreements with BiH and Kosovo.

Serbia – overall positive assessment

The Serbian government is generally satisfied with the 2016 report, which acknowledges its efforts in handling its ambitious political and economic reform agenda. Serbia has already opened six negotiating chapters, including Chapter 35 on Kosovo, and rule of law chapters 23 and 24. In December 2016, it opened two instead of three new chapters, since that on education and culture had initially been blocked and later unblocked by Croatia. More chapters are expected to be opened in 2017. Serbia is commended for its constructive approach to the migration crisis and regional cooperation, and for its commitment to normalising relations with Kosovo. On the other hand, the report notes a drop in support for EU foreign policy, including for sanctions against Russia.

Challenges and prospects

The enlargement process will continue to evolve, but the Western Balkans face the daunting task of meeting complex requirements amidst domestic political challenges, unresolved bilateral disputes and public reluctance to enlargement both within the EU and the region. They have also to address the possibly detrimental long-term implications of an eventful 2016, when the UK referendum and that of the Dutch against Ukraine's association agreement created a new context,

further challenging their EU prospects. In these circumstances, as a London School of Economics article points out, the EU needs more than ever to 're-assert its commitment' to the integration of the Western Balkans and keep enlargement and its benefits visible. The region's security and stability is in the EU's own interest, as highlighted recently by former Commissioner Štefan Füle, who warned that a distancing of the EU might encourage other 'geopolitical players' to seek influence there. The 2016 Slovak Presidency programme recognised this need and sought to maintain the momentum of the accession process and achieve concrete progress in the candidate countries. The EU path of the Western Balkans is one of the points of focus for 2017, listed by the High Representative on her blog.

The EU is prompted to reconsider its strategy for the region and increase its efforts, while at the same time the difficult context requires ever stronger local ownership and political commitment, including more active engagement of civil society. EU integration is an overarching and unifying goal for the region. Thus, while nationalist rhetoric and refusal to cooperate tend towards instability, cooperation is the means not only to revive the region economically, but also to address the legacy of past conflicts and lingering bilateral issues. One recent attempt at enhancing regional cooperation for a mutually beneficial purpose is the set-up of the WB6 Advocacy Group, an initiative of regional think-tanks aimed at accelerating and facilitating EU integration. The group encourages advocacy efforts and ideas on how to highlight arguments for faster EU accession, address the EU 'enlargement fatigue' and contribute to developing a positive perception of the region.

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“White Book Sava” - a roadmap for a European River

The Sava is a Balkan river leading its waters to the Danube - and it is a common matter of the EU and third countries, i.e. Serbia and Bosnia-Herzegovina. As the EU accession talks of both countries make some progress, also EU environmental policy, in particular species protection, is of common interest. Also, the Sava region is of high interest for natural tourism in the relevant countries.



On the occasion of this year's World Wetland Day on February 2, 2017, the environmental organisations Riverwatch and EuroNatur presented the **“White Book Sava”**⁴⁷ – a comprehensive work about one of the ecologically most valuable but least known rivers of Europe. It must be one of the first White Books on a river system.

The “White Book Sava” depicts the ecological importance of this unique river system as well as the threats it is facing for the first time in an easy readable, condensed form. Furthermore, the book provides concrete suggestions of how flood protection can be improved and the Sava preserved as a life line. In cooperation with the campaign “Save the Blue Heart of Europe” and the SavaParks network, the Vienna consultant FLUVIUS collected data and facts about the Sava and her tributaries, analyzed satellite images and calculated areas in over a year's work. The results are presented in 57 maps in an extra **atlas part** of the study. This White Book provides an unprecedented, reliable basis for decisions about the future of the Sava and its residents.



The Sava is the longest river in the Balkans. On her course of 926 kilometers from her source in Slovenia to her mouth into the Danube at Belgrade, the river is lined with 170,000 ha of floodplain forests (40,500 ha softwood and 141,000 hardwood forests), as well as 25,000 ha wet pastures. This is without par in Europe. Taking a look at the biodiversity makes Sava's value obvious: amongst other species,

⁴⁷ See also the websites of Riverwatch and EuroNatur, Radolfzell, Vienna, 1 February 2017: https://www.euronatur.org/press-room/press-releases/news/white-book-sava-presented/?tx_news_pi1%5Bcontroller%5D=News&tx_news_pi1%5Baction%5D=detail&cHash=46c9d72b506ea9c99499cb798f9f8904

900 pairs of white stork nest in the villages along the Sava and over 80 pairs of white-tailed eagles breed in the extensive floodplain forests.

The White Book offers concrete suggestions for sustainable and natural flood protection. 143 areas suitable for relocation of dikes were identified along the Sava. This would allow a total of 185,000 ha of former floodplain forests and pastures to be flooded once again, creating capacities for an additional 3.1 billion cubic metres of water to be stored naturally in the event of a flood. This would decrease and slow down a flood wave considerably while at the same time increasing the ecological quality of the floodplains. Flood protection along the Sava is a dominant topic, not only since the historic 2014 flood. 80 per cent of former floodplain area – even forests and pastures – have been disconnected by dams and dikes in the past, exacerbating flood events.

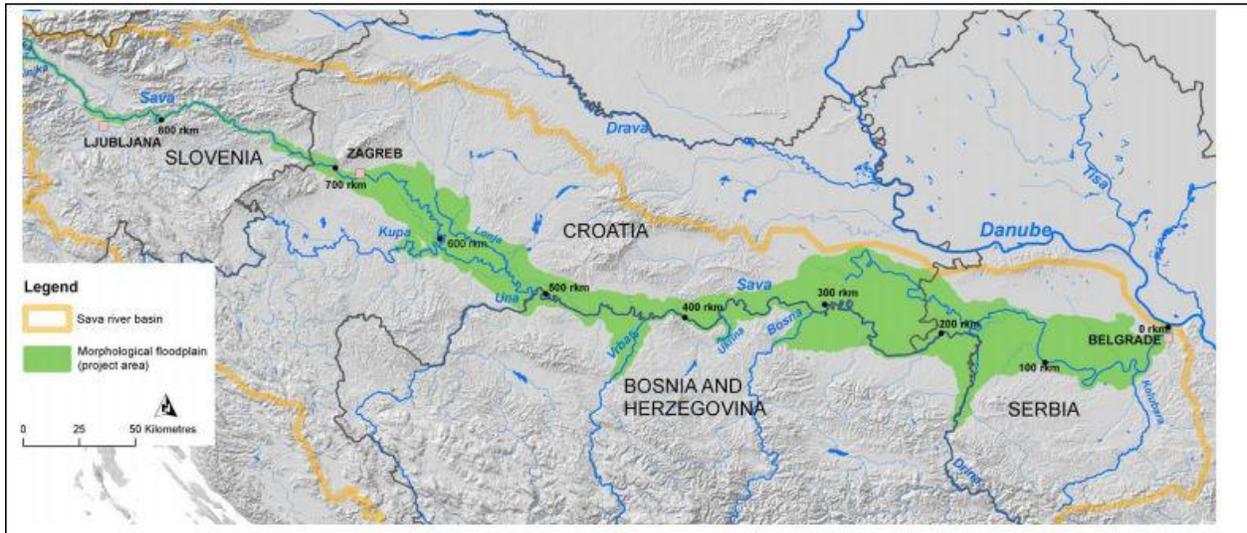


The best flood protection system: intact floodplain forests along the Sava

“Rather than relying exclusively on technical flood protection through more and more and increasingly high dikes, a more modern approach of flood protection needs to be implemented – in collaboration with nature rather than against it. This White Book shows how and where this is possible”, says Ulrich Eichelmann, coordinator of the “Save the Blue Heart of Europe” campaign at Riverwatch. Riverwatch.

Apart from the big opportunities for the Sava, the White Book also demonstrates the threats. Virtually the entire river course is threatened by projects which – if implemented as planned – would destroy the river along with its tributaries. 582 hydropower plants are projected in the Sava river basin: 20 of which on the Sava itself (mostly in Slovenia), the remaining ones on her tributaries. This would have devastating consequences. For instance, the upper reach of the Sava together with several tributaries such as the Una, Sana and Drina provide the last paradise for the Huchen – a globally endangered predaceous fish species, up to 1.5 meters in length. More than

half of its global population finds habitat here. If dams are being constructed within Huchen stretches, scientists predict a total collapse of the population.



The Sava River and its morphological floodplain within the Sava river basin

Extensive and illegal gravel removal from the river channel poses another threat: according to a survey, approximately 950,000 tons of sediments are being dredged annually from the Sava, and another 1.29 million tons from her tributaries, particularly the Vrbas and the Drina.



Middle Sava close to Lonjsko polje near Puska, Source: Goran Šafarek.

This is ten times the amount of sediments the Sava transports to the Danube each year. The effects are severe: the rivers dig deeper into their beds, causing a drop in groundwater level, protective constructions may collapse, and the flood risk increases downstream of extraction sites.

“The Sava is at a crossroad. We have the opportunity and the know-how to preserve this life line and improve flood protection at the same time. Now, the know-how simply needs to be implemented”, says Theresa Schiller, coordinator of the Balkan river campaign at EuroNatur.

Another Hope for Balkan Rivers:

EBRD withdraws from financing hydropower project in Mavrovo National Park, Macedonia

Another good news comes from Macedonia: Funding for the two large hydropower projects in Mavrovo National Park, Macedonia, has been axed. After the World Bank withdrew from financing the hydropower plant ‘Lukovo Pole’ already in December 2015, now also the EBRD (European Bank for Reconstruction and Development) in London declared to pull out of the project ‘Boskov Most’. This is another stage victory for the protection of Balkan Rivers from destruction by the hydropower industry.

“This step by the EBRD was long overdue. Hydropower plants are inconsistent with biodiversity conservation and have no place in protected areas like Mavrovo National Park”, says Gabriel Schwaderer, speaking for nature conservation foundation EuroNatur. The Boskov Most project already rested on shaky foundations:

The Standing Committee of the Bern Convention (one of the most important environmental agreements in Europe) called on the government of Macedonia in December 2015 to suspend all construction projects in Mavrovo National Park and to conduct a Strategic Environmental Assessment. “This assessment is still lacking. Further, in May 2016 the administrative court of Macedonia declared the licence for the construction of ‘Boskov Most’ void on the grounds that the Ministry of Environment had granted the licence in 2012 on the basis of an utterly inadequate and incomplete environmental impact assessment and has therefore violated national environmental law”, says Aleksandra Bujaroska for the Macedonian environmental organisation Front 21/42.

“After five years of intensive advocacy work, we welcome the decision by the EBRD to finally listen to our concerns and to withdraw from financing Boskov Most. Mavrovo National Park is one of the last areas where reproduction of the extremely rare Balkan lynx has been proven.



New hope for the Mavrovo National Park in Macedonia. The river Radika will stay free flowing.

Constructing hydropower plants and the associated infrastructure would destroy one of its last habitats”, says Ana Colović Lesoska for the Macedonian environmental NGO Eko-svest. The Balkan lynx is a subspecies of the Eurasian lynx and is considered critically endangered by the International Union for Conservation of Nature (IUCN). Apart from that, Mavrovo National park harbours far more than 1000 animal and about 1500 plant species and is one of the biodiversity hotspots in Europe.

While the EBRD’s decision means that the hydropower projects in Mavrovo National Park lost another major financier, this European natural treasure continues to be under threat. There are plans for 17 more plants – smaller, but no less dangerous. “Contrary to popular opinion, small is not beautiful, as small hydropower plants entail similarly disastrous ecosystem disruption as big ones. We will continue campaigning until these projects have been dropped, too”, says Ulrich Eichelmann, coordinator of the campaign ‘Save the Blue Heart of Europe’ at Riverwatch.



Présentation

Multipol est un réseau international et interdisciplinaire de chercheurs et d'experts en droit international et relations internationales, provenant de milieux professionnels tels que la justice internationale, la diplomatie multilatérale et bilatérale, la recherche et la formation, la fonction publique internationale.

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Vjosa River in Albania: Europe's last wild river - or a future sequence of dams?

NGOs uncovered: 33 hydropower plants projected - Austrian and Italian companies involved - New initiative supports national park idea



The Vjosa River is one of the last wild rivers in Europe, photo from: Bledi Hoxha

In March 2015, the international NGOs Riverwatch (Vienna) and EuroNatur (Radolfzell, Germany), together with their Albanian local partner EcoAlbania, were presenting a paper, which for the first time revealed the full extent of the threat to the Vjosa catchment area. According to this paper, the last big wild river of Europe was at risk of complete destruction. A total of 33 hydropower plants were projected along the Vjosa and its tributaries, six of which in Greece (where the Vjosa is called Aaos) and 27 in Albania. However, resistance against these projects increased and an alternative idea has found more and more popularity: the establishment

European Union Foreign Affairs Journal – N° 1 – 2017

of a Vjosa National Park. Read here the story of so far unknown protests, of bad governance and of hope.

The Vjosa in the South of Albania is one of the last intact wild rivers in Europe. Along its course of 270 kilometres it is free flowing – in some areas the riverbed expands over more than 2 km in width – and its tributaries are largely untouched as well. This is without par in Europe.

However, this treasure could soon be spoiled. An extensive analysis of the NGOs revealed that, in addition to the eight projected hydropower plants along the Vjosa, virtually all its tributaries are planned to be impounded and diverted. Three projects are already under construction. “If the tributaries are impounded, ultimately, the Vjosa will be destroyed as well. It is like cutting all the branches of a tree – the entire tree will ultimately die”, so Ulrich Eichelmann from Riverwatch, coordinator of the “Save the Blue Heart of Europe” campaign.

So far, Austrian and Italian companies are involved in the construction of the hydropower plants. One of them is the Austrian corporation ENSO Hydro. Financed by the Development Bank of Austria and the World Bank subsidiary IFC the river Langarica is being diverted and drained in midst of the Fir of Hotova National Park.

Gabriel Schwaderer, CEO of EuroNatur said: “We need to stop the dam tsunami along the entire Vjosa in order to save this European natural treasure. Together with local communities, we want to achieve the establishment of a national park instead – for the benefit of nature but also for the people of the Vjosa valley and their potential for sustainable socio-economic development in the future. For that, however, it needs to be kept free from dams.”

In order to support this idea, a new initiative was established in Albania, the “Friends of Vjosa” initiative. “We invite everyone to join our initiative. We need to promote the beauty and the value of the Vjosa and inform people about the threat it is facing. Many don’t even know about it”, so Olsi Nika, CEO of the Albanian environmental NGO EcoAlbania. Politicians, artists and scientists had promptly joined the initiative.



The campaign to protect the Vjosa River is part of an international campaign to save the most valuable rivers on the Balkan Peninsula. More than 630 new hydropower plants are currently projected between Slovenia to Albania. In order to counteract this spate of destruction, “EuroNatur” and “RiverWatch” have launched the “Save the Blue Heart of Europe” campaign in cooperation with local partners in the respective Balkan countries.

Even the European Parliament voted in favour of the naturally intact river

Some weeks later, in May 2015, nobody less than the European Parliament called upon the Albanian government to rethink the projected hydropower projects along the Vjosa River and its tributaries, “...since these projects would harm one of Europe’s last extensive, intact and near-natural river ecosystems”. In their Motion for a Resolution (Nr. 27) on the 2014 Progress Report (the so-called Progress Reports assess the EU accession performance of the relevant countries), the vast majority of the 751 EU parliamentarians demanded from Albania to abandon all large- and small-scale hydropower projects, particularly those in national parks.



Protest against the construction of a hydropower project. The Bence – a tributary of the Vjosa – is one of the most beautiful rivers in Albania. 95% of its water is to be diverted into pipelines. Photo: Ervis Loçe

On the same day of the EU decision, about 150 people protested against a hydropower plant on the Bence (a tributary of the Vjosa), which was already under construction. The water of the Bence – one of the most beautiful and ecologically most valuable rivers in Albania – was to be diverted into pipelines in order to generate electricity. The residents of the valley have been protesting the construction of this project for years. On this day, they received support from the entire country for the first time.

Almost a year later, in April 2016, again the European Parliament criticized the Albanian government for the planning of hydropower projects and called upon them to be more considerate of protected areas and other sensitive nature areas, especially national parks. In the current Enlargement Report that was adopted by the EP, the Vjosa River is specifically mentioned. The European Parliament “*calls on the Albanian government to control the development of hydropower plants in environmentally sensitive areas such as around Vjosa River as well as in protected areas and to maintain the integrity of existing national parks.*” (Nr 23 in the EU Enlargement Report).

The European Parliament has already prompted the Albanian government to think over their hydropower plans on the Vjosa and its tributaries in the previous EU report. However, in contrast to this request, the Albanian government under Prime Minister Edi Rama has invited tenders in Spring 2016 for a big hydropower plant on the Vjosa. Construction companies from all over the world were encouraged to apply for concession until mid of March, 2016. “The call for tender for another hydropower plant on the Vjosa comes as a surprise to us, since Prime Minister Rama had previously also suggested the protection of this unique river. Furthermore, no assessment of the massive impact this project would have on nature has been carried out, according to internationally recognized standards”, said Gabriel Schwaderer, CEO of nature conservation foundation EuroNatur.

Furthermore, the EU explicitly called in April 2016 upon Albania to improve Environmental Impact Assessments (EIA) according to EU standards and to better inform and include the public in the planning procedure. Ulrich Eichelmann, Riverwatch coordinator, demanded explicitly to **declare the entire Vjosa as a national park – the first Wild River National Park of Europe.** This vision was also **supported by local communities. Almost all mayors of the Vjosa valley** signed a petition for the national park and against the hydro dams.

More local, Albanian and international protests

The protests did not finish. Quite refreshing for Albania, more than 150 people – kayakers from all over Europe, Albanian parliamentarians, residents, artists, Albanian and international environmental organisations as well as the Vice President of the European Parliament, Ulrike Lunacek (Austria) – gathered at the banks of the Vjosa and called upon the Prime Minister to stop the projected damming of the Vjosa.

However, the Albanian government had decided before to have a large hydropower plant constructed and has already granted the concession to a Turkish company. The project “Poçem” will feature a 25 meter tall dam wall which will destroy one of the ecologically most valuable river stretches, characterized by gravel islands and alluvial forests. The bird population of this natural treasure has not even been explored yet.

The hydropower project Poçem would destroy this uniqueness in one scoop. “It is a miracle that a river like this still exists – it constitutes a huge chance for Albania and all of Europe. To block this river would be a crime on nature and evidence of the incapacity of European nature protection”, said Riverwatch

In its statement on the current Enlargement Report in April 2016, the European Parliament called upon the Albanian government “... to control the development of hydropower plants in environmentally sensitive areas such as around Vjosa River as well as in protected areas...”, to adjust the quality of Environmental Impact Assessments (EIA) to EU standards and to better inform and include the public in the planning procedure. So far, these demands have been completely ignored in regards to the Poçem project.



The last paddling day of the Balkan Rivers Tour in May 2016 ended at Europe’s queen of rivers: the Vjosa River in Albania. Photo from: Oblak Aljaz

“Albania is an EU candidate state and it would be disastrous if the most valuable natural treasures the country has to offer would be lost beforehand. At the very least, the government must assess the project Poçem according to EU standards before issuing a license for its construction”, so Ulrike Lunacek, Vice President of the European Parliament at that time. “While EU countries are required to comply with the guidelines of the EU Water Framework Directive, these criteria have so far been met or even exceeded in Western Balkan countries – first and foremost in Albania. This advantage must not be frivolously dismissed on behalf of the projected hydro boom.”

The campaigners demanded again the entire Vjosa – from the mountains to the Adriatic Sea – be declared as a **national park**, Europe’s first Wild River National Park. This would also be **the best solution for the economic future of the valley**. All mayors of the valley supported this demand as they recognized the potential of a national park for the development of eco-tourism.

From EcoAlbania it was pointed out that there was an absence of a proper energy concept in Albania: “**400 hydropower plants are planned in our country threatening practically every river, while the biggest potential – solar power – is left entirely unexploited**. There is no energy politics, only dam politics.”

Kayakers from Slovenia, Albania, Greece, Italy, Germany, Austria, Netherlands and the US participated in the activity. It was part of the “Balkan Rivers Tour” – an activity of kayakers from all over Europe against the looming dam tsunami in the Balkans. “We have been paddling rivers between Slovenia and Albania for 33 days. The grand finale of the tour is at the Vjosa – the queen of Balkan rivers. Damming her is unacceptable. We are here to take a stand against it”, said Rok Rozman, initiator of the tour. The tour ended in Tirana where the paddlers marched with their kayaks to the Prime Minister’s office to hand over a special gift: a kayak decorated with hundreds of signatures against the projected dams on the Vjosa - and for the establishment of a national park.

A month later, in June 2016, Leeway Collective's kayak documentary “One for the River - The Vjosa Story” was awarded the **first price at the Environmental Film Festival Albania**. The film was winner of the most significant category of the festival “long films”. The documentary about kayaking the Vjosa raised awareness about the beauty and value of this spectacular river as well as the threats it is facing.

At the same time, **scientists from Albania, Austria and Germany** demanded a **moratorium on dam construction plans on Europe’s last wild river as well as a 3-year research programme**. The international experts from Austria and Germany had met with scientists of the University of Tirana, Albania's capital, to discuss the future of the Vjosa River.

One of ecotourism activities may be climbing. “If you climb it, they will come, and with them ecotourism euros that could give the people of this area a much preferred alternative to the damming of their river”, had been stated in August 2016 by a Patagonia climbing team who explored **climbing possibilities** in Albania. They were awed by what they found: “From the top we had spectacular views all around with untouched limestone cliffs spanning the landscape as far as our eyes could see.” Hence, climbing is yet another opportunity for Albania to develop sustainable **eco/outdoor tourism**. However, many of these prime climbing spots are also threatened by hydropower development.

Again, a few weeks later in September 2016, just in time for the World Rivers Day on September 25, the Vjosa River receives prominent support from all over the world. In a joint memorandum,

228 scientists from 33 countries called upon the Albanian Prime Minister Edi Rama to protect the Vjosa and refrain from the construction of hydropower plants, at least in the coming three years. During that time period, a **proper Environmental Impact Assessment (EIA)** is to be carried out on the yet almost entirely unexplored river. Just a few months before, the Albanian government has commissioned a Turkish company with the construction of a first hydropower plant (Poçem). The licence, however, is still pending, just as the evidence for environmental compatibility (EIA).

Among the signees was the *crème de la crème* of international river scientists, such as Prof. Robert Naiman from the University of Washington (USA), who also holds the UNESCO Chair in Sustainable Rivers; Prof. Geoff Petts from the University of Westminster (UK), or the German Prof. Michael Succow, Alternative Nobel Prize laureate (Right Livelihood Award).

“This prominent support reflects the global significance of the Vjosa and the importance of responsible policies that do justice to the outstanding value of this river. An adequate EIA is required in order to reliably estimate the impact of the hydropower project Poçem”, Prof. Friedrich Schiemer from the University of Vienna, declared. Hence, the 228 scientists directed the following demands to Albanian Prime Minister:

A three-year-moratorium on any construction plans on the Vjosa and its tributaries.

An EIA procedure according to EU standards, which is to be conducted in this three-year period.

A systematic research and assessment of the Vjosa river, to be carried out by a team of Albanian and international scientists. The undersigned scientists pledge to seek funding for a 3-years interdisciplinary research programme.

With the Memorandum, the global science community supports their Albanian colleagues who also stand united against the imminent destruction of the Vjosa. “Environmental assessments in this country are generally not worth the paper on which they are written. On the Vjosa, our knowledge about flora and fauna as well as about sediment balance is far too limited to enable a reliable EIA. We need enough time to carry out an urgently required research programme on the Vjosa”, said Prof. Aleko Miho from the University of Tirana. And one of his colleagues added: “The Vjosa is of immense importance to science. Nowhere else is it still possible to investigate how natural dynamics of rivers work and provide us with multiple ecosystem services: productive fishing grounds, fertile soils, biodiversity, clean drinking water, retention of floods, or experiences of nature. The hydropower plant “Poçem” could destroy this uniqueness in a single blow”, so Dr. Martin Pusch from the Leibniz-Institute of Freshwater Ecology and Inland Fisheries in Berlin.

In December 2016, a lawsuit has been filed against the Vjosa hydropower project. The dam project was seen to be intended to be realised without adequate environmental assessment or

civic participation. This was also a legal precedent for rule of law in Albania, and a first court session was held on the 9.2.2017. This was just a date where it was stated that now the Ministry has completed all requested material for the trial, which was not the case before, and the court deferred the thing for several weeks. There is no hope that the ministries involved will cede their positions. On the other hand, the Albanian offices of OSCE, of UNDP and of the European Union are acting as watchdog in the judicial procedure.

Shortly before, at the end of December 2016, it was confirmed by a group of renowned scientists from Austria and Germany that the “Environmental Assessment for Vjosa hydropower is a farce”. What did they find?

The experts had analysed the Environmental Impact Assessment (EIA) for the hydropower project Poçem on the Vjosa River in Albania. The EIA attests the project to be environmentally sound. According to the scientists, however, the **EIA is a farce. It does not even meet minimum requirements and is thus not suitable to predict environmental impacts of the projected hydropower plant.** With this critique, the scientists back the assessment of their Albanian colleagues from the University of Tirana. **In particular, the scientists criticize that:**

- **flora and fauna were not surveyed whatsoever and data on rare species was not collected**
- **60 percent of the EIA text was simply copy-pasted from other documents and refers in part to completely different geographical regions**
- **hydrological, morphological and ecological processes were not evaluated and**
- **potential long-term effects of the project were not discussed**



Scientists from Albania, Austria and Germany at the Vjosa. From left to right: Prof. Sajmir Beqiraj, Prof. Friedrich Schiemer, Dr. Martin Pusch, Prof. Aleko Miho, Dr. Robert Konecny, Prof. Lefter Kashta. It must be hoped that these scientists shook sufficiently the Albanian bureaucracy...

In their letter to the Albanian Prime Minister Edi Rama, the Minister for Energy Damian Gjiknuri and to the Minister for the Environment Lefter Koka, the international experts called upon the government representatives to reject the EIA and instead facilitate a proper assessment according to EU standards.

“This EIA does in no way allow for a reliable prediction in regards to the impacts on biodiversity, groundwater conditions, as well as to the actual consequences for residents. The biological impacts of a dam are dealt with in just 10 lines, without mentioning a single fish species. This pieced up document does not deserve the name of an EIA”, says Dr. Martin Pusch from the Leibniz-Institute of Freshwater Ecology and Inland Fisheries in Berlin (IGB). Already this is heavy artillery against the Environmental Impact Assessment.

According to the EIA’s authors, the hydropower project Poçem is in accordance with the highest international standards. *“The positive and negative impacts of the proposed project are identified and calculated. (...) The whole project is in full compliance with the best international standards, and this increases the safety work level during the operation process reasonable scale as possible”*, the EIA praises.

The scientists vehemently oppose this position: “The conclusions of the EIA have been plucked out of thin air and are not based on comprehensible data. Unfortunately, the submitted EIA does not meet international standards and represents rather a caricature of an EIA than a serious basis for decision”, so the experts’ analysis states.

“This is not about supporting or opposing the project, but rather about the fact that policies require proper and comprehensible planning as a basis for decision. The highest possible legal standards must be applied to a river of such international importance. We are always willing to support the Albanian ministries in implementing a proper EIA”, so Prof. Friedrich Schiemer from the University of Vienna. The latter can be the solution for this case.

Like above all, the fact that the long-term profits of more high-end tourism e.g. in a national park would be higher than the one-sided energy recuperation - with no real solar energy exploited in Albania, and with no jobs created by tourism, a real job machine. But at present it can be doubted if the government understands this.

After this article had been written:

Albania: European Parliament demands National Park for Vjosa and stop to hydropower projects

Environmental assessments are inadequate

In the [current Enlargement Report](#) for Albania 2016 of the European Parliament, the Parliament explicitly criticizes the Albanian government in regards to its hydropower policies. In the centre of their criticism are the hydropower projects on the Vjosa – Europe’s last big wild river. The EU parliamentarians specifically demand not to go through with these hydropower projects and instead establish a national park along the entire course of the river (see below No. 32).

Such a “Wild River National Park” would be the first in Europe and would not only preserve the life line Vjosa but also provide economic prospects to local communities. The mayors of the region have previously already advocated for the establishment of a national park and against the construction of dams.



The Vjosa is one of the last free wild rivers of Europe outside Russia. The European Parliament demands her protection. © Gregor Subic

The report produced under the direction of the German parliamentarian Knut Fleckenstein also calls for adjusting the quality of environmental assessments to EU standards (see below No. 31).

Such assessments are frequently of poor quality in Albania. Particularly the impacts of hydropower plants – so the report – are commonly not being surveyed or misrepresented.

This is particularly true for the hydropower project “Poçem”, which is planned to be constructed on the Vjosa river. The Environmental Impact Assessment provided by the Turkish investor is a farce. 60% of the text was simply copy-pasted word-for-word from other projects. The impacts on affected species were not dealt with at all. Nevertheless, the project was approved.

“We filed a law suit against this project with the court in Tirana. This EU report is of help for us and supports the local communities”, said Ulrich Eichelmann, coordinator of the “Save the Blue Heart of Europe” campaign at Riverwatch.

And this is the full text of the European Parliament's Report on the current enlargement situation of Albania 2016: [Current Enlargement Report of the European Parliament](#) . Here are the two most relevant clauses:

- *31. Notes with concern the limited nature of the administrative capacities for enforcement of environmental law, as well as the poor waste management and water management, often resulting in environmental crime that threatens Albania's economic resources and constitutes a barrier to a resource-efficient economy; underlines the need to improve the quality of environmental impact assessments, as well as to guarantee public participation and consultation of civil society in relevant projects; stresses the crucial importance of meeting climate change objectives without negatively impacting on biodiversity, the landscape, water resources, flora and fauna, and affected local populations; is deeply concerned about the fact that, according to the Commission, 44 of 71 hydropower plant projects are under construction in protected areas;*
- *32. Highlights that the environmental impact of hydropower plants is often not properly assessed to ensure compliance with international standards and relevant EU nature legislation; advises the government to consider the establishment of a Vjosa National Park along the whole length of the river and to abandon plans for new hydropower plants along the Vjosa river and its tributaries; urges further alignment with EU legislation in the field of energy, particularly on the adoption of a national energy strategy, in order to increase energy independence and efficiency; welcomes the 2015-2020 national action plan for renewable energy sources (RESs);*

The Albanian government under Prime Minister Edi Rama is currently about to have a Turkish company construct a hydropower project within the ecologically most valuable stretch of the Vjosa.



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The EU follows a project: The Multilateral Investment Court

During the EU-US TTIP negotiations, but also the Canadian-European CETA talks before the acceptance of this agreement, there were, in particular in Europe, controversial discussions about the courts for investment protection. Should they be private, public, arbitration courts, how many instances, etc.

Since the Lisbon Treaty is in power, investment protection issues with third countries are a matter of the EU. Before, this was a Member States' affair. In its present trade agreement standards, the EU is pursuing a modern and reformed approach to investment dispute resolution. However, most of the more than **3200 existing investment agreements – including the over 1400 agreements concluded by EU Member States** – don't contain the innovations and improvements the EU has developed in its recent investment negotiations. The Multilateral Investment Court would have the potential to replace the dispute settlement provisions included in those older agreements.



Since 2015 the European Commission has been working to establish a Multilateral Investment Court. But even before this date, Brussels was active - and not only Brussels, but also the Canadian Government which is welcome as a partner to the EU, as being a country under the Rule of Law, too:

The idea of establishing a multilateral investment dispute settlement system is put forward by a number of stakeholders in the public consultation conducted at EU level in summer 2014, in the context of the development of the EU's policy on investment protection and investment dispute settlement in the Transatlantic Trade and Investment Partnership (TTIP) agreement. In May 2015, there was a Concept Paper “Investment in TTIP and beyond – the path for reform” which specified that work should start towards the establishment of a multilateral system for the resolution of investment disputes. Some months later, in October 2015 in the “Trade for all” Communication was set out that the Commission would – in parallel with its bilateral efforts – “*engage with partners to build consensus for a fully-fledged, permanent International Investment Court*”.

In the beginning of 2016, both the drafts of the Comprehensive Economic and Trade Agreement with Canada (CETA) and the EU-Vietnam Free Trade Agreement (EUVFTA) include provisions anticipating the transition from the bilateral Investment Court System (ICS) included in the

agreements to a permanent Multilateral Investment Court. To ensure policy coherence at EU level, similar transitional provisions are proposed in the context of all other on-going or future bilateral EU trade and/or investment negotiations., Since summer 2016, it is a EU - Canada project mainly: the European Commission and the Government of Canada co-chair a dedicated session in the margins of UNCTAD's World Investment Forum in Nairobi, Kenya. Already in October 2016 the European Commission and the Government of Canada co-chair technical exchanges at the OECD-hosted Investment Treaty Dialogue in Paris, France. To set an example, at the same time the EU and Canada agree in a Joint Interpretative Instrument to CETA to "work expeditiously towards the creation of the Multilateral Investment Court" and the EU Council states its support for the Commission's work on the establishment of the Multilateral Investment Court.

Next step was in December 2016 when the European Commission and the Government of Canada co-host an inter-governmental expert meeting of investment policy makers from over 40 countries in Geneva, Switzerland. In January 2017 finally, EU Trade Commissioner Malmström and Canadian Minister of International Trade Freeland (now Canadian Minister of Foreign Affairs) co-host an informal ministerial meeting at the World Economic Forum in Davos, Switzerland. Many countries are currently engaged in internal reflections on their policies on investment protection and investment dispute settlement.

The tasks of a Multilateral Investment Court

The overall objective for creating a Multilateral Investment Court is to set up a permanent body to decide investment disputes. It would build on the EU's groundbreaking approach on its bilateral FTAs and be a major departure from the system of investor-to-State dispute settlement (ISDS) based on ad hoc commercial arbitration.

A Multilateral Investment Court, like the approach in the FTAs, would bring the key features of domestic and international courts to investment adjudication.

The idea is that the Multilateral Investment Court would:

- have a first instance tribunal
- have an appeal tribunal
- have tenured, highly qualified judges, obliged to adhere to the strictest ethical standards and a dedicated secretariat.
- be a permanent body
- work transparently (i.e. with published judgments, also with possible public sessions)
- rule on disputes arising under future and existing investment treaties
- only apply where an investment treaty already explicitly allows an investor to bring a dispute against a State

- would not create new possibilities for an investor to bring a dispute against a state
- prevent disputing parties from choosing which judges ruled on their case
- provide for effective enforcement of its decisions
- be open to all interested countries to join.

For the EU, the Multilateral Investment Court would replace the bilateral investment court systems included in EU trade and investment agreements. Both the EU-Canada Comprehensive Economic Trade Agreement (CETA) and the EU-Vietnam Free Trade Agreement foresee setting up a permanent multilateral mechanism and contain a reference to it. The EU now includes similar provisions in all of its negotiations involving investment. This means that even if such an agreement is concluded, it could transfer to a multilateral investment court regime.

Why a Multilateral Investment Court?

The EU is the world's largest exporter and importer of foreign direct investment. Investment, both inward and outward, brings jobs, privileged trade relations and economic growth. That's why encouraging and retaining investments is vital for ensuring economic growth and jobs in the EU - but also in all other countries.

International investment rules and international investment dispute settlement have a role to play in encouraging and retaining investment. So it's in the EU's interest to ensure that the resolution of investment disputes operates effectively on an international level.

Where the EU is standing now

The Commission's objectives for the Multilateral Investment Court are based on the approach developed in the EU's bilateral free trade agreements and agreed by the other EU Institutions and all EU Member States. In the European Commission's 2014 public consultation on investment protection, some stakeholders already proposed reforming investment dispute resolution multilaterally as a more effective way to reform the ISDS system than bilateral reforms.

In its Concept Paper of May 2015 on 'Investment in TTIP – the path beyond', the Commission also indicated that work should start on setting up a multilateral system for resolving international investment disputes. This work would be carried out in parallel to the reform process undertaken in bilateral EU negotiations. This means it is not bound to TTIP only, which at present seems to be somehow frozen, with the US presidential transition Obama / Trump.

The European Parliament, too, has supported the proposal to work towards a multilateral solution (such as in its resolution of 8 July 2015 containing the European Parliament's recommendations to the European Commission on the negotiations for the TTIP). The Commission's Trade for All

communication of 2015 also sets the objective to engage with partners to build consensus for a fully-fledged, permanent Multilateral Investment Court so as to develop a coherent, unified and effective policy on investment dispute resolution.

With such a court, there would also be more confidence than into the judiciary of possible EU partner states. A highly professional court may be “the” solution in view of possible non-investment because of deficits in the legal environment of a destination country.

How stakeholders are involved

While in August 2016 an Inception Impact Assessment on the Establishment of a Multilateral Investment Court for investment dispute resolution was launched, with the publication of Inception Impact Assessment on “My Voice in Europe”, in December 2016 a public consultation was launched. This is a good example for inclusion of the citizens, or e.g. of small and medium enterprises, and for their audition. Every interested stakeholder can write to the EU Commission - under TRADE-F2-MULTILAT-INVEST-DS@ec.europa.eu

Holiday Island Bornholm for Serious Debates - Proposal by the Europe's People's Forum (EPF)

Europe's People's Forum - this is a new informal structure, where everybody can engage him(herself for Europe, in a time where this is not self-evident, but more and more necessary. EPF has been founded by two seasoned personalities: Bent Nørby Bonde, bnb@media-progress.net, and Niels Jørgen Thøgersen who was Director, Directorate General Communication, in the European Commission, niels4europe@gmail.com.



Thøgersen

Bonde

Every year two themes will be agreed between Europe's People's Forum and its European partners. These themes will be debated and the analyses and conclusions will subsequently be presented to European politicians.

Possible issues could be:

- Protecting the Labour Market while having international trade and collaboration agreements
- Creating better futures for the young Europeans through education and jobs
- How may the EU best help the world's refugees in a sustainable manner?
- Is it a priority for Europe to have an army
- How to modernise production, stimulate economic growth and create jobs?

Future projects:- and how the discussion should go, and where should take place the "real" debates?

1. Every year Europe's Peoples' Forum and its partners will define 2 themes which the citizens are already engaged in. These themes will be the focus of discussion in online debates and

activities in the 28 member states and will be based on the questions for debate and information material provided through Europe's Peoples' Forum.

2. Partner organisations building popular engagement in a democratic dialogue on future reforms and policies of the EU in the 28 countries will also take the lead in organizing national debates on the two themes through media, online debates and public meetings.
3. In each of the 28 countries the partner organisations will summarise the debates. They will use media and internet based platforms to invite candidates and subsequently organize a public election of two persons from each country to participate in thematic fora in Denmark to conclude on the online and national debates across Europe.
4. Twice a year 56 participants from 28 countries will meet in Denmark to debate the two defined themes and bring together perspectives and conclusions from all national debates. They will develop a coherent policy proposal for each theme based on the information and opinions expressed during the national debates.
5. During the annual large-scale Europe's Peoples' Forum in Denmark the participants in the



thematic fora will present the transnational conclusions of the debates. Their conclusions and the contributions from other European citizen-based initiatives will provide the basis for exciting discussions with politicians and civil servants from Europe's regions, member states, and the European Institutions will be invited to hear and discuss the strategies and visions.

What is the background for Europe's Peoples' Forum.

The Peoples' Political Festival in the Baltic Sea island of Bornholm in Denmark attracts more than 25.000 people every day for four days to discuss with 600 Danish politicians from national, regional and local level. More than 90 % of the members of the Danish parliament "Folketinget" take part in the Peoples' Political Festival that has existed since 2011. It was inspired by similar events in neighbouring countries such as the Swedish "Almedalsvecka", the Norwegian "Arendalsuka", the Estonian "Arvemusfestival", and the Finnish "Suomi Arena".

These national political events give average politically interested people, professional organisations, NGOs, members of political parties and many others direct and informal access to discuss with politicians when they do not participate in planned political debates. Politicians participating in the Danish event feel inspired and occasionally adjust their policies afterwards.

The Europe's Peoples' Forum targets the 28 member states in the European Union. Europe's Peoples' Forum shares the aims of the other political events to make the political discussion accessible to citizens and stakeholders alike. However, it is more ambitious because it aims to reverse the roles of the participants. In this forum, the citizens will present the results of solid analyses and conclusions of important political issues to the politicians and civil servants from national, regional and local levels of the 28 member states as well as to the civil servants and parliamentarians from the European Union. The European peoples will set the agenda and determine what policies and strategies should be discussed by the forum.

Europe's People's Forum is the culmination of a comprehensive preparatory process. The first phase in all 28 countries are national debates arranged by partner organisations in all 28 countries in order to prepare solid analyses and validated opinions. These debates will focus on the specific thematic issues to be debated by the Europe's Peoples' Forum that particular year. . The debates and the analyses will be carried out online and by working groups at national and European level. The outcome of the preparatory discussions will be discussed at the two thematic fora for representatives for all member states in Denmark, who will present them and proposed policy strategies for discussion with the hundreds of politicians, NGOs, associations, and average citizens at the large-scale Europe's Peoples' Forum.

It gets a lot of support by NGOs, media (also EUFAJ belongs here), former and active government members, and just simple persons who endorse it. All the people - and not only from the EU - who find it good that Europe integrates, instead disintegrates!, are welcome. The founders are grateful for all the personalities from all over Europe who have chosen to support the initiative of establishing a Europe's People's Forum (EPF) as a way to increase democracy in Europe and influence future policies.

The website is www.europespeoplesforum.eu. For example, the Danish Board of Technology Foundation, among others, became a technical partner, assisting in developing the Internet Platform across 28 countries.

From different countries a number of former and present ministers of foreign affairs and of European affairs have given their support to the EPF as a mean to strengthen European democracy, make up for a perceived democratic deficit and as a way for the 500 million Europeans to directly influence policies of the European Union. From Denmark alone all former ministers of foreign affairs since 1979 have supported EPF. The importance of their support is both that fund raising might become easier, but it is also that pressure from national politicians can help ensure that EU treats all the proposals from Europe's People and EPF seriously.

"At local level we have agreements on cooperation with some partners but are still looking for a lot of capable and interested operational partners. It can be European Movements, it can be

Youth NGOs, labour unions, farmers unions or other professional associations that are willing to stimulate the local debates and ensure inputs from all parts of the population in any of the countries", says a founder.



Way to the beach on Bornholm

Challenges to be answered

A key challenge for the Forum is to ensure that as many people as possible from as broad a part of the population as possible provides their opinions and visions through the internet platform. To do this a mixture of media, online and real debates, entertainment, public events and group work in educational institutions might be used. The methodology will be developed further in the next months.

Another key challenge is to ensure that when the policy proposals have been developed, discussed and agreed among elected representatives from all 28 countries the proposals will be presented to politicians and civil servants from EU and national levels. Further, agreements should be made with the political groups in the European Parliament and as far as possible with the Council and the Commission about a serious treatment of the policy proposals we provide based on inputs from the Europe's people. This will be a key task to accomplish in 2017.

Political advocacy:

EPF does not have its own political agenda except to ensure that Europe's people is heard in the political process of EU and if possible also of member states.

Fundraising:

The 3-years start-up phase for EPF is foreseen to cost 5 million Euros, including that two political themes are discussed each year and being agreed between the people in the 28 countries, before they will be put forward for politicians and civil servants.

How can you help EPF:



Rønne, the capital of Bornholm

Bent Nørby Bonde's and Niels Jørgen Thøgersen's appeal reads: "It is very important for us that you as a personal supporter recommend the initiative and the engagement of people in the discussion of EU and proposals for how to build and improve the future for EU and Europe.

- In more practical terms we would be very happy if you will help us identify and ensure that relevant local organisations in the 28 member states become operational partners for EPF.
- If you learn about foundations, associations or commercial companies who would consider funding EPF as a mean to stabilise EU and build a future in which all Europe's People are given a possibility to influence EU's policies, please tell them about us or put us in touch.
- If you have a possibility to convince either one of your former or present ministers of foreign affairs and European affairs (but also other ministers, of course) to give their personal support to EPF, we would be most happy. It helps us both when fundraising and when seeking to have influence for our policy proposals towards EU.

How Croatia "Took Off"

Ivan Šimek: Die vergessene Wahrheit. Der deutsche Einfluss auf die Staatsgründung Kroatiens (in German language: *"The forgotten truth. German influence on Croatia's state foundation"*). Baden-Baden 2013, Nomos Verlag. 237 pages; 44,00 EUR. ISBN 978-3-8487-0065-3

Well equipped with a foreword of Prof. Dr. Werner Weidenfeld, Director of C.A.P. - Centre of Applied Policy Research (Centrum angewandte Politikforschung) at Ludwig-Maximilians-Universität München, which rightly stresses the big changes for Europe following the disintegration of Yugoslavia, this book is an interesting segment of an autobiography, so to say a part of it, but an intensive one. For Croatia the separation out of the Serbia-led part - like a truncheon swung by a policeman at a demonstration in 1971 against the author. This marked his whole life, and being Croatian consul in Bavaria - a region particularly engaged as many Croats live there, he tells here the story how Croatia "took off". It is a packing book, as Šimek works like a good autobiographer: with documents in facsimile, with photos, and with a lot of personal memories. The author argues that Croatian politicians at least in the founding years, if they had a socialist-communist past, did not develop the same feeling for their fatherland as workers, peasants, intellectuals, and many emigrants from Croatia. Indeed, it took a lot of never-ending energy at that time to serve if possible every day to the objective of an independent state - the author of these lines worked for the EU between 1997 and 1999 in Slovenia, the northern neighbour, where the same kinds of problems and feelings could be observed.

The author, an economist and seasoned university professor in Zagreb, informs authentically about many aspects which never had been very clear for EU observers, like e.g. the privatisations, which had a much more wide basis than being only proposed by the then president, Franjo Tuđman. Details like the intention of an emigrant's daughter in the USA who worked for the George H.W. Bush government and wanted to buy a pharmaceutical company in the context of privatisations make the almost cozy mood, full of quasi gossip, of this book. This is high quality historiography, and it becomes evident why Weidenfeld pushed this publication. It is also interesting - and true - what the author writes about emigration and brain drain.

After this book, the German federal government was hesitating to recognise Croatia as independent state. However, the Bavarian CSU which at that time was probably the most sensibilised political party for South Eastern European affairs, under the former Bavarian Prime Minister Max Streibl pushed the bigger, governing CDU into the direction which brought the wanted result. If this could and would be the case again today - but history does not repeat itself -

may be written in the stars, in view of the strange Putin affinity of today's Bavarian Prime Minister Seehofer.

A wonderful book which compiles not only personal experience and remarks, but also many letters - some of them revealing - and other documents. This shows indeed the "fight for a lifetime" described in the book. It does not only recall the "forgotten truth" but also that Croatia should not be forgotten or neglected by their EU partners; this concerns more the civil society than the government level. At the same time, it shows the challenge for young people from Croatia to be more active in Europe.

Hans-Jürgen Zahorka



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