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**Security Sector Governance in the Western Balkans: Self-Assessment Studies on Defence, Intelligence, Police and Border Management Reform**


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# Security Sector Governance in the Western Balkans:

## Self-Assessment Studies on Defence, Intelligence, Police and Border Management Reform

### Introduction

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In setting the European Union's policy framework for engagement in security sector reform (SSR), the European Council called upon the future Presidencies and the European Commission to 'progressively translate [this framework] into operational actions... '[1] Activities commenced in this direction under the aegis of the Austrian Presidency of the EU, following the UK Presidency's efforts towards developing the EU's SSR strategy. The conference on Security Sector Reform in the Western Balkans, co-organised by the Austrian Presidency, DCAF and the EU Institute for Security Studies in Vienna from 13-14 February 2006, emphasised the need for the EU to mainstream SSR into its activities. It also presented an excellent platform for Western Balkan policy experts to express their views and describe their SSR needs.

In this context, several participants from the Western Balkan countries expressed anxieties that SSR was to be imposed as a new precondition, and therefore a new barrier, for their EU integration. However, much of what the EU already demands of candidates and potential candidates is SSR by another name. 'Repackaging' a wide variety of activities under their correct SSR label, is not merely a cosmetic exercise, nor is it designed to impose a new burden, but is rather a genuine attempt to facilitate prioritisation and impart focus to the EU's somewhat dispersed efforts. This will bring benefit to the partners as it will improve the consistency and coherence of the messages that the EU seeks to convey.

From 7-8 December 2006, DCAF assisted the Finnish EU Presidency in taking forward the work done under the Austrian Presidency by organising a one day conference to discuss, together with the Western Balkan policy community, the implementation of the finalised EU policy framework on SSR and the development of the pre-accession (democratic and *acquis*) conditionality in the area of security sector governance. The conference - entitled *Enhancing Security Sector Governance through Security Sector*

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[1] Council Conclusions on a Policy Framework for Security Sector Reform, 2736th General Affairs Council meeting - Luxembourg, 12 June 2006

*Reform in the Western Balkans- the Role of the European Union* - examined local needs and achievements in this field. In order to stress the need for increased regional ownership of SSR, the conference took place in the region, in the Croatian capital of Zagreb.

At the Zagreb conference, research articles written by regional experts (in the framework of a Swiss Partnership for Peace project) were presented and discussed regarding four aspects of SSR: democratic oversight and reform of defence, intelligence, the police and border management. The reader will find those studies reproduced in this volume, preceded by contributions from EU representatives, with the core aim of assessing progress in SSR in the region.

**Security Sector Governance in the EU Enlargement Strategy**

Security Sector Governance (SSG) refers to the structures, processes, values and attitudes that shape decisions about security and their implementation. SSR has as its purpose the enhancement of SSG, through the effective and efficient delivery of security in an environment subject to democratic oversight and control. SSR is a tool for optimising good governance of the security sector.

Democratic and capable governance of the security sector is of essential importance for the future of the Western Balkans. Without it, they will not succeed in establishing and maintaining the rule of law, ensuring that social development and economic growth proceed, and securing their fledgling democracies. The countries of the Western Balkans need, moreover, to have functional security sectors if they are to enjoy regional stability, contribute usefully to peace support operations and succeed in integrating into Euro-Atlantic and European institutions. They are the first countries seeking EU membership whose post-communist past has been characterised by grave conflict. This legacy sets special challenges and responsibilities for both the countries of the region and the European Union.

How can the EU best go about encouraging a culture of good governance of the security sector in the region? The answer is largely provided in the European Commission's *Enlargement Strategy and Main Challenges 2006-2007,* which called for the application of 'fair and rigorous conditionality' and the introduction of 'benchmarks' to support this process.

The use of benchmarks in EU enlargement policy can bring several benefits. First, it should facilitate efforts by candidate countries to meet EU requirements. Detailed indications on objectives for reform and standards for measuring performance in implementation will provide a better guide for policymakers and security sector practitioners in candidate countries than the largely un-restructured approach pursued hitherto.

Second, once candidate countries are subject to common benchmarks - assuming, of course, that performance results are made public knowledge - progress in meeting conditionality will become comparable. This should reduce the risk of enlargement decisions being subordinated to political considerations that are un-related to reform performance. If candidate countries successfully meet the benchmarks, it then becomes very difficult - if not politically impossible - for EU members to deny membership.

Third, benchmarks can be particularly useful in the area of SSG, and this should be therefore one of the areas for which a comprehensive range of performance indicators is elaborated.

**EU Support to SSR: Concept and Practice**

In 2005 and 2006, the Council and Commission drafted SSR concepts, and the EU developed an overarching policy framework in 2006. These documents outline the rationale for the involvement of the Council and the Commission in SSR, the areas of their engagement, the principles guiding this engagement as well as the modalities for SSR implementation, including the division of labour and bases for cooperation between the Council and the Commission.

The areas where the Council and the Commission envisage their involvement range widely. For the Council, SSR essentially concerns the enhancement of the effectiveness of activities undertaken under the Common Foreign and Security Policy (CFSP) and, specifically, civilian and military crisis management missions in the framework of the European Security and Defence Policy (ESDP).

For the Commission, there are several SSR-relevant policy areas: Enlargement and the Stabilisation and Association Process, of course, but also the European Neighbourhood Policy, Development Cooperation, Conflict Prevention and Crisis Management, Democracy and Human Rights as well as the External Dimension of Justice, Freedom and Security.

The Commission text makes several proposals designed to strengthen EU support to SSR. It calls for SSR to be mainstreamed into the dialogue with stakeholders on policy and programming. It advocates that SSR be integrated into EU Country and Strategy Papers and other documents deployed in the policy process. It is in favour of SSR being prioritised in the EU's new financial instruments, including those for Pre-Accession Assistance. At the same time, the Council and Commission documents make several recommendations with a view to strengthening the EU's personnel and planning capacity for SSR and enhancing its cooperation with the EU's international partners.

**SSR Priorities in the Western Balkans and Needs for Assistance**

At the conference that took place in Vienna in February 2006, several policy objectives were put forward as requiring priority action. These included the need to:

- put a premium on the democratic oversight of all the armed forces that are part of the security sector in the countries of the region;
- foster regional security cooperation, involving both countries of the Western Balkans and those of the Balkans as a whole;
- continue efforts focusing on border security in the region;
- reinforce the effort to combat organised crime and trafficking;
- take a holistic approach to the residual DDR challenges; and
- press for policies that encourage integrative processes in the countries of the region.

The Enlargement Strategy addresses a number of other issues relating to the performance of Western Balkans countries in security-related areas of priority importance to the EU. These include the capacity of the range of security forces in individual countries as well as the civil authorities responsible for managing them, the ability of these actors to work together effectively, the viability of judicial and legal institutions and the role played by civil society actors in the security sector. There are, in addition, frequent references to the need for candidate countries to contribute to the EU's anti-terrorism policies, to align with CFSP and to participate in ESDP missions. The importance of compliance with ICTY decisions also figures prominently in the report. This issue, as much as any other, points to the need for reform efforts to address the structural shortcomings - in this case, deficiencies in oversight, control, capacity and loyalty - that must be overcome if democratisation is to proceed.

**Security Sector Reform Status and Further Needs for Cooperation**

In order to better understand the current state of SSG in the region and to identify further SSR cooperation needs, DCAF, on a mandate from the Swiss Ministries of Foreign Affairs and Defence, initiated a stock-taking exercise on progress made in the fields of defence, intelligence, police and border management reforms. Working alongside DCAF's partners in the Partnership for Peace Consortium of Defence Academies and Security Political Research Institutes Working Group on Security Sector Reform, this exercise was based on a questionnaire developed by DCAF and the NATO Studies Centre in Bucharest. Similar studies are currently being implemented in the South Caucasus, Central Asia and Moldova (to be published in 2007).

In order to situate EU Security Sector Reform efforts within the larger context of European and Transatlantic Security Sector Reform, DCAF invited Mr. Kostas Panagiotopoulos (WEU) and Mrs Lucia Montanaro-Jankovski to provide

comprehensive and inspiring articles on European and International approaches to Security Sector Reform  and EU and NATO leverage in Security Sector Reform.

DCAF would like to thank the Finnish Presidency of the European Union for making the Zagreb conference possible, as well as the Austrian Defence Academy, both for co-convening a seminar in Cavtat, Croatia in October 2006 and for co-publishing this volume. Melissa George has painstakingly and diligently edited all the texts submitted by local experts. The fact that some of them may be found to lack comprehensiveness is a reflection not of her efforts but of authors' choices, and what remains to be done in the region.

It is understood that authors were invited to speak in a personal capacity. All choices were theirs, including the choice of how to call their home country (e.g. 'Macedonia' instead of FYROM). In order to structure and further assess the information presented, DCAF invited SSR specialists from its pool  of experts to write introductory chapters to each of the four parts of the book. Conclusions for each part of the book can be found in these introductory chapters.

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The Editors

# European and International Approaches to Security Sector Reform/Governance

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## Introduction

A country relies on a stable security sector as much as it relies on a strong government and a healthy economy. In fact the combination of the three creates the functioning state. The importance of Security Sector Reform (SSR) has grown immensely in the past decade globally speaking, and more specifically in the European neighbourhood. This has, in turn, created a security environment which has led the European Union and the international community to review their conflict prevention and peacekeeping approaches to include SSR and, in close cooperation with local organisations and governments, Security Sector Governance (SSG).

Nevertheless, the EU's focus on the concepts of SSR and SSG is relatively recent. As a result of the expansion of the Union, the EU neighbourhood today includes countries and regions which have recently undergone drastic political and economic change, experienced conflict and suffered under corrupt regimes. In an era of globalisation, the potential spillover effects of unstable borders cannot be underestimated. These concerns have their place in the European Security Strategy, which not only calls for well-governed borders and the extension of political and economic benefits beyond the EU but also for the Union's capabilities to be extended to include, *inter alia*, security sector reform.

This chapter briefly outlines the main characteristics of SSR and SSG and focuses upon European and international efforts to date to assist with the efficient organisation and management of the security sectors of fragile states in the EU's neighbourhood. Specific reference is also made to the OSCE's 1994 Code of Conduct and its importance in guiding SSR-related activities.

A single formula for SSR cannot exist, as each state or 'case' is handled in a unique way, with action being taken according to the needs of the specific situation. Three sets of circumstances in which a state may typically have need of SSR are: in a developmental context, principally where countries are in transition from underdeveloped to developed economy, where the security sector can benefit from socio-economic development – in this case, restructuring the security institutions is what is mainly required; in a post-authoritarian context where democratisation of a state's political system requires the promotion of transparency and good governance in the security sector before reform is carried into other sectors; and in a post-conflict

context, including states in urgent need of radical restructuring of their security sector, to tackle both security and democratic deficits and enable peace building.

**Security Sector: Reform and Governance**

A country's security system can be described as all the institutions and other entities with a role in ensuring the security of the state and its population. This system is divided into a number of sectors, each with specific relevance and importance to the state's stability. The *security oversight and governance bodies* are: the governments; the parliament; the defence, internal affairs and foreign affairs ministries and the national security advisory bodies. The c*ore security actors* are the state's law enforcement institutions: the armed forces, police, gendarmeries, paramilitary forces, intelligence services, coast guards, border guards, customs authorities and other local security forces. The *justice institutions* include all bodies under the authority of the justice ministries: prisons; courts and tribunals. Lastly, *non-statutory bodies* in the sector can be divided into (a) security-related forces including liberation armies, guerrilla forces, private military and security companies and (b) civil society actors encompassing the media, research institutions, NGOs, etc.

Reform of the security sector cannot be regarded as a single activity but rather as a number of actions aimed at bringing a country's security sector up to an acceptable operational environment in order to provide stability to the state, its political system and population. SSR can be defined as 'the provision of security within the state in an effective and efficient manner and in the framework of democratic civilian control'.[1] Three broad categories of SSR-related activities recommended and implemented by the relevant actors are: restructuring the security institutions, with, as a basic priority, the building of transparent, effective and efficient security forces; strengthening control mechanisms by promoting good governance of the security sector, thereby assuring the effectiveness of the security forces; and reconstruction of the security sector, by tackling the urgent problems posed by post-conflict situations. SSR activities in this category mainly include: peacebuilding, disarmament, demobilisation and reintegration (DDR) of former combatants, and action to prevent the proliferation of small arms and light weapons (SALW).

In addition to the categories outlined above, SSR is implemented in three distinct phases or 'generations' according to a country's needs. First generation SSR refers to the establishment of institutions and definition of the powers to be designated to appropriate actors. Second generation SSR builds on first generation reforms in order to increase efficiency of SSR-related activities and further completion of a security sector, and third generation SSR is concerned with greater effectiveness of national and international SSR cooperation and providing the relevant actors with the capabilities to address new security issues.

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[1] Timothy Edmunds. 'Security Sector Reform: Concepts and Implementation'.

In 1994, the UN Development Programme published its Annual Development Report focusing on the emerging concept of 'human security' which equates security with people rather than with the state. This led to evolution, in thought and action, of how to transform and stabilise a nation's security sector through good governance practices, since from an SSR perspective, in post-conflict and post-authoritarian states, it is often the security sector which has failed its population, and which is therefore the very sector in need of urgent reform before development can be secured and stabilised throughout a state. The concept of governance has recently been applied to the security sector and, from a political science perspective, 'denotes the structures and processes which enable a set of public and private actors to coordinate their independent needs and interests through the making and implementation of binding policy decisions in the absence of a central political authority'.[2] Security governance therefore refers to the organisation, management and oversight of the security sector by the relevant actors at substate, state and international levels. The first two levels – substate and state – concern public sector actors such as appointed officials, civil authorities, the executive government etc., responsible for the control and management of all security forces, whilst the international level comprises the international community and its organisations. Key aspects of SSG include civilian and parliamentary control of a country's security sector through good governance principles such as accountability and transparency.

When referring to governance in the security sector, a number of levels can be identified: namely global, regional, national and local. The global level involves international actors, such as the UN, which possesses the most effective structures for dealing with security issues. In recent years the role of multinational NGOs in dealing with security issues such as SALW has increased considerably. Regional security governance involves the principal regional actors, such as state governments and regional organisations, although global actors often contribute to SSG on a regional level as well. The national level refers to the management and organisation of the state's security sector and, lastly, the local level focuses upon internal security arrangements, which may be dominated by national security forces, rebel groups and so on.[3]

In 1994 the OSCE adopted a morally binding Code of Conduct on the Politico-Military Aspects of Security which addresses SSR-related issues. Even now the Code remains an important reference document for SSR. It focuses on SSG, defining the basic components of a democratic control of armed forces regime and outlining a number of good practices, including a constitutional and legal framework, civilian control,

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[2] Dr Elke Krahman. 'Conceptualising Security Governance', Cooperation and Conflict. Vol.34, No. 1.
[3] Alan Bryden and Heiner Hänggi. 'Security Governance in post-conflict Peacebuilding'. Part 1, Introduction: Approaching Peacebuilding from a Security Governance Perspective.

parliamentary control, and judicial and public control. These aspects will be discussed further in the section dealing with the OSCE Code of Conduct.

*Tailoring the European approach*

Although the EU approach to SSR/SSG has to date not been as well focused or as organised as that of other international organisations such as the UN and the OSCE, the Union has not shied away from playing a stabilising role and developing the powers and means at its disposal to implement SSR-related activities effectively. In recent years, various EU studies have shown that the Union is now determined to throw its full weight behind SSR and become a global player in this area.

The EU approach to SSR became more sharply defined following publication of the European Security Strategy in 2003. In 2005, the Council noted that although the EU has no concept for framing its activities in the field of SSR, it does posses a unique set of tools that could allow it to become a more effective actor. In addition, the EU should expect further requests for assistance from third countries and other international organisations and greater Union involvement in SSR would be welcomed by the international community.[4]

Particular attention has also been paid to defining how the ESDP can contribute to supporting SSR.[5] The principal advantages of the ESDP in SSR-related activities are its civilian and military crisis-management dimensions, its efficiency in both, and its focus on conflict prevention. Through the ESDP, the EU is able to bring together a wide range of instruments, allowing it to take a holistic approach in supporting SSR across the whole range of activities and in all three SSR contexts. Additionally, a number of principles have been identified:
- Local ownership of the security sector as the ultimate goal. This will gradually be strengthened by the EU's values and principles;
- Measuring progress against predefined and agreed benchmarks;
- A holistic approach which addresses the wider security and governance issues of the people, focusing especially on human security, long-term institution building and good governance;
- A tailored approach which addresses the specific needs of the situation;
- A coordinated approach between all state, regional and international actors so as to avoid duplication and ensure complementarity.

The EU has provided SSR-related support to over 70 countries through geographic and thematic programmes. The recent work done[6] on establishing a concrete SSR concept covers a number of areas, laying down guiding principles for SSR support and on how

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[4] 'Initial Elements for an EU Security Sector Reform (SSR) Concept.' Doc. 11241/05.
[5] 'EU concept for ESDP support to Security Sector Reform (SSR)'. Doc. 12566/4/05.
[6] 'A Concept for European Community Support for Sector Security Reform'. Communication from the Commission to the Council and the European Parliament. COM (2006) 253 Final.

to strengthen European Community action in this field. In brief, a number of recommendations made to date by the European Commission[7] deal with significant areas of SSR. These are designed to re-orient the way the EU tackles SSR-related issues in every respect, and in view of the increasing importance and world-wide recognition of SSR, they focus on improving pre-operational research objectives, developing planning and implementation capabilities, improving financial support and enhancing international cooperation among all the actors involved. Moreover, from an SSG perspective, the Commission reiterates the need to create SSR processes that are nationally and regionally-owned, with the help of the international community, so as to establish from the outset good governance practices based on transparency, and civilian and parliamentary oversight.

As the EU's external relations and security policies expand to respond to growing international challenges, so do the Union's instruments for coping with the new demands. To date a number of EU missions have contributed to global SSR-related actions. Though none can be described as purely SSR-driven, current activities are paving the way for a more focused future EU SSR concept. Several EU financial aid programmes, such as CARDS, PHARE and MEDA, to name but a few, have also boosted institution building and political reforms in the EU neighbourhood.

**EU and International SSR/SSG in South East Europe**

A number of actions taken by the EU and other international organisations in the western Balkans in recent years have been directed towards building stability in the region. Emerging from a period of prolonged conflict, most western Balkan countries provided both fertile ground for initial SSR/SSG responses in a peacekeeping/peacebuilding framework and countless challenges for international actors in the region. In June 2003, the Thessaloniki European Council meeting reaffirmed the western Balkans' prospects for integration and confirmed the region's high priority on the EU agenda.

The UN's activities in Bosnia and Herzegovina (BiH) began with the UN International Police Task Force (IPTF) and a UN Civilian Office in BiH set up by UN Security Council Resolution 1035 (1995). The operation was known as the UN Mission in Bosnia and Herzegovina (UNMIBH). It ended in December 2002. The Mission's

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[7] *Ibid*. 5.2. Recommendation to strengthen the EC contribution to overall EU support for SSR: '… strengthening policy and programming dialogue; integrating SSR in both country and regional strategy papers, action plans and programming tools; ensuring coordinated planning; strengthening the overall implementation of EU support; developing tools for planning and implementation; expanding the expertise and pool of experts for field missions and programmes; developing SSR-specific training for the mainstreaming of SSR; prioritising SSR under the new Financial Instruments; strengthening cooperation with international partners'.

mandate covered a broad range of issues which needed to be addressed after fighting in the country ended in October 1995. It did not concentrate directly on SSR or SSG as such but did address areas connected with the security sector. Thus, the main tasks of the IPTF included the monitoring, observation and inspection of law enforcement activities and facilities, including associated judicial organisations, structures and proceedings. In addition, it undertook training of law enforcement personnel and advised local government authorities on setting up and running law enforcement institutions. UNMBIH's successful mandate and completion of its activities paved the way for the further steps towards SSR undertaken by the EU to date.

The EU's first ESDP mission, the EU Police Mission (EUPM) in Bosnia and Herzegovina in 2003, had a bearing on the security sector as much as it aimed to establish a multi-ethnic, professional, sustainable police force. Additionally, the EUPM has concentrated on institution and capacity building, thereby laying the foundation upon which SSG can be implemented. The situation in the country subsequent to the Dayton Peace Agreements is, however, such that some aspects crucial for effective SSR and the promotion of good governance, such as local ownership, cannot be put into practice. In a country where three mono-ethnic armies and police forces co-exist, the establishment of the Office of the High Representative, charged with ensuring stability, is often regarded as a double-edged sword as far as the country's progress is concerned. On the one hand, the Office has pushed for the implementation of crucial reforms and its efforts have led to the arrest of war criminals. However, its lack of democratic legitimacy has been strongly criticised by the Parliamentary Assembly of the Council of Europe[8] which has stated that its role must be redefined. In addition, the OHR's strong presence and involvement has to some extent hindered the political and democratic development of BiH. Another factor causing problems for the country's political development is the high degree of decentralisation of its political system. At present, two regional governments co-exist, each with an equal number of ministries. Moreover, BiH still has no democratically approved constitution and consequently relies on that defined by the Dayton Peace Accords. Progress, although slow, is nevertheless noticeable, at least in human security terms, with more than a million displaced persons returning to their homes since the end of hostilities.

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[8] Resolution 1384 (2004) states: '12. The Assembly calls on: (…) ii. The international community to: (…) b. envisage a more coherent and specific strategy for transferring responsibilities and gradually withdrawing the OHR. 13. The scope of the OHR is such that, to all intents and purposes, it constitutes the supreme institution vested with power in Bosnia and Herzegovina. In this connection, the Assembly considers it irreconcilable with democratic principles that the High Representative should be able to take enforceable decisions without being accountable for them or obliged to justify their validity and without there being a legal recourse. The Assembly asks the Venice Commission to determine how far this practice complies with the Council of Europe's basic principles, and in particular with the Convention for the Protection of Human Rights and Fundamental Freedoms'. http://assembly.coe.int

The situation is graver in Kosovo where the province's unresolved legal status not only creates a massive void in the entire security sector but also leads to the province's total dependence on the international community. The EU's role in Kosovo – the EU Pillar – is part of the United Nations Mission in Kosovo (UNMIK) and is mainly geared to economic reforms with the aim of creating the basis for a competitive and efficient market economy. The most significant SSR-related activities in the area have been promoted through the UN – a daunting task as the situation in Kosovo was such that the requirement was for the creation of a security sector rather than its mere reform. UNMIK is led by the UN and made up of four pillars, the UN, EU, OSCE and NATO. Although the heightened international community presence in the area is an encouraging factor, it has at times led to concerns over operations and logistics. A significant amount of progress has, however, been achieved in several sectors, particularly in building a police force and in reforming the legal and judiciary systems.

UNMIK's primary aim in Kosovo's security sector was to build an impartial multi-ethnic police force that would operate successfully *vis-à-vis* the population. Despite ethnic and religious differences and deep-rooted mistrust between the various communities, this goal has now been achieved to a large extent through the creation and formation of the Kosovo Police Service (KPS). Officers are trained at the Kosovo Police Service School run by the OSCE; they follow a three-month police training programme that pays particular attention to democratic policing and human rights.[9] Another aspect of civilian protection in Kosovo was the creation of the Kosovo Protection Corps in 1999. UNMIK's aim was the demilitarisation and transformation of the Kosovo Liberation Army (KLA) into a civil protection mechanism. An agreement signed at the time between the KLA Commander and KFOR Commanders established the KPC (under UNMIK regulation 1998/8) as a 'civilian emergency service agency, the tasks of which shall be to: provide disaster response services; perform search and rescue; provide a capacity for humanitarian assistance in isolated areas; assist in demining; contribute to rebuilding infrastructure and communities'.[10] One of the main questions, however, particularly regarding the KPS, is its legal status in Kosovo. It tends to reflect the current situation, i.e. 'control' by international actors. It might be said in point of fact that it is simply another branch of UNMIK.

Further SSR-related activities in Kosovo have been implemented by the UN in a number of sectors, primarily, the judicial system and armaments and armed forces control. Regarding the judicial sector, the creation of a local judiciary supported by international judges and the initiation of training for new judges and prosecutors are underway. Cases related to ethnic strife or war crimes are allocated to panels of judges (on which local and international judges sit so as to guarantee impartiality). With regard to arms control, one of the biggest challenges is the existence of weapons in virtually every household.   Though their possession is illegal and citizens are

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[9] www.civpol.org/unmik/
[10] UNMIK Regulation 1999/8 www.unmikonline.org.

encouraged to surrender them to the peacekeeping forces – either during searches or through weapons-surrender programmes or activities – large quantities still remain unaccounted for. Kosovo is a unique case in terms of SSR. The international presence has undoubtedly initiated activities that have borne results. It is through such activities, and the greater involvement of local government and society, that SSR can advance.

Overall improvement in the security and defence sectors in Albania has been achieved in the past few years, thanks largely to significant input from the international community and bilateral relations. Following a lengthy Stabilisation and Association Process (SAP), Albania signed a Stabilisation and Association Agreement (SAA) with the EU in June 2006; an EU/Albania Consultative Task Force (CTF) was also set up to monitor reform, particularly in the political, security and justice sectors. CTF progress reports and regular meetings can be considered a key driving force towards the implementation of effective SSR/SSG.

A UNDP mission has been active in Albania since 1991; in 2003 it initiated a Small Arms and Light Weapons Control Project which evolved into the Support for Security Sector Reform (SSSR) project. SSSR evolves around two main components: police transparency/accountability and community safety/security. The project's success depends on its acceptance by local authorities and by the Albanian community. Regular high-level meetings between the project manager, field coordinators and government representatives together with public awareness and information activities have put it – at least to an extent – on a secure footing. At operational level, regular SSSR seminars and training courses to enhance community-based policing take place, directed towards enhancing SSSR's two main components. SSSR's future success depends on the continuing support of its major donors and contributors[11] as well as on broader relations with regional SSR actors such the OSCE, NGOs and the Kosovo Police Service School.

Although progress is noticeable in a number of SSR-related fields, Albania continues to face serious challenges, particularly with regard to its defence reform and democratic oversight of its armed forces – although the country's aspirations for NATO membership and joining the Partnership for Peace (PfP) programme have had a positive impact on Albania's defence sector, especially in terms of its modernisation. The absence of parliamentary scrutiny of the security sector and the lack of debate between government and parliament gives the military sector strong standing – so much so that it is often regarded as a separate institution.

For new EU members Bulgaria and Romania, the transition from state-owned to private economy, the achievement of stable political systems based on the principles of transparency and good governance and the transformation of the security sector, are merely a fraction of the reforms implemented over the past two decades that have made Euro-Atlantic integration possible for the two countries.

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[11] The EU, Finland, Norway, Ireland and UNDP Albania.

In seeking integration with the west, Bulgaria undertook a set of security sector-related reforms aimed at modernising the country's armed forces and defence system. Identified as the first of a two-stage programme, the dismantling of the totalitarian armed forces, democratisation of the country and cooperation with the international community brought Bulgaria to its present position. A second phase is directed towards integration at a number of levels within the Bulgarian political system, including not only security sector-related activities, such as integration between the defence and interior ministries, with greater focus upon civil-military governance, but also international integration.

In short, SSR in Bulgaria has mostly concentrated on modernisation, or rather 'westernisation', of the armed forces. Traditionally, the armed forces consisted not only of all the security and defence-related services – they were also part of every Ministry and most public services. Following the new Constitution of 1991 and subsequent decentralisation of security and defence, oversight was administered by all institutions of government: President, government, parliament, judiciary, defence ministry and society. Following the initial stages of SSR, it became apparent in the late 1990s that factors impeding further progress included minimal parliamentary scrutiny and debate on the sector (particularly on defence forces). As a result, difficulties surfaced in formulating future defence restructuring and modernisation programmes and defining a realistic defence budget.

Over the years, the international community has made a significant input to the Bulgarian state's work on modernisation. The prospects of joining the Euro-Atlantic community have led to what is largely an internally-driven approach to SSR in Bulgaria, as opposed to most other countries in the region, which have been bolstered by international efforts. Nevertheless, the EU has been quite active in guiding police sector reform (in 2003, a cooperation agreement was signed with Europol on the fight against organised crime) and to a greater extent judicial reform in the country by establishing accountability structures. There have, however, been difficulties with their implementation, a concern frequently raised in the years leading up to Bulgaria's entry to the EU. With European Commission support, a Judicial Reform Initiative for Bulgaria began in 1999. Its aim was to: develop a legal framework (stimulation of the legislative process in the field of the laws on Civil Procedure, drafting new Penal Code, a new Law on Penalties Execution, etc.); educate and train employees at all levels and in all fields of the judiciary; develop financial, organisational and logistical support to the reform of the judiciary; and make the latter more relevant to society to explain the reform effort to the public.[12]

Additionally, the United Kingdom, through its Department for International Development (DFID), initiated a two-year programme (1996-1998) to help the

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[12] A Judicial Reform Initiative for Bulgaria. www.csd.bg

Bulgarian National Police regain the trust of the local communities and support its efforts to become an effective, community-based, accountable police service.

Other SSR-related programmes being implemented by the Ministry of Interior include: strengthening control of the Bulgarian Black Sea maritime border and modernising border police equipment at the border with Turkey. Both these programmes focus on combating illegal trafficking of drugs, human beings and arms, and strengthening the EU's external borders. These latter activities commenced following publication of the EU's 2004 regular report on Bulgaria's progress towards accession which stipulated that a more proactive attitude was needed, particularly in the border control sector, and called for greater reform of both police and judiciary structures.

Romania's reform of its security sector shared many similarities with that of Bulgaria. The prospects of Euro-Atlantic integration and the consequent benefits 'packages' that went hand-in-hand with it were of course more than sufficient incentive to press on with the necessary reforms. And again, much like its southern neighbour and unlike many other countries in the region, Romania did not have to build its security sector from scratch. It has in fact had to significantly reduce (and reform) it.

The main challenges for Romanian SSR in the past 15 years have centred mainly on transforming an authoritarian security sector into a transparent and democratic one and modernising its defence forces. Although a number of challenges remain, it can be argued that in both the above areas significant progress has been made and the country has accordingly reaped the rewards. The implementation of good governance principles to – and particularly parliamentary oversight of – the security sector in Romania is commendable (possibly the most successful instance in the region). The Romanian Parliament's Defence, Public Order and National Security Committee has been very active in the oversight of SSR-related activities and the security sector as a whole. In addition, defence reform has also made progress. As explained earlier the defence forces have been significantly reduced in size to reflect the country's needs more realistically (from some 320,000 personnel in the early 1990s[13] to today's 97,000[14]) whilst the rewriting of the security and defence strategy and the reorganisation of the military training system have produced one of the most stable and advanced national defence planning systems in the region.[15]

Regarding police cooperation in the framework of adopting the Community *acquis*, Romanian police forces were restructured in 2003 and greater emphasis was placed on the fight against organised crime. Since then, codes of ethics and professional conduct

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[13] 'Defence and Security Sector Governance and Reform in South East Europe Self-Assessment Studies: Regional Perspectives. Chapter 16 – The Status of Security Sector Reform in South East Europe: An analysis of the Stability-Pact stock taking programme', by Timothy Donais.
[14] The Military Balance 2006.
[15] *Op. cit.* footnote 14 above

have been adopted, training programmes have been set up with a focus on human rights, a framework of cooperation between police and gendarmerie forces has been established, and a number of bodies have been created. They include a national witness protection office, an institutional cooperation, an intelligence and an anti-fraud department (established in 2001) for the purposes of customs cooperation, to name but a few. Romania has also been active in furthering judicial cooperation in both civil and criminal matters by adopting the relevant and necessary international and domestic legislation.

Bulgaria and Romania's SSR and defence reform success stories have now come to fruition with these countries' entry into the Euro-Atlantic community. Not only have they become regional security providers, they are also an example to their neighbours, today setting their sights on a similar course. Significant input and aid has of course been provided by the international community. NATO has helped transform and modernise the military structures of both countries through its partnership programmes and initiatives: Partnership for Peace (PfP), the Partnership for Peace Planning and Review Process (PARP) and the Membership Action Plan (MAP). The EU, on the other hand, has concentrated mostly on the judicial and police sectors. EU assistance to Bulgaria and Romania has taken the form of pre-accession aid (PHARE, ISPA, SAPARD) as well as aid from the European Investment Bank (EIB). Progress and Monitoring Reports, issued every year since 1998, have been a source of guidance and frequent criticism in the course of reform. While work in various areas of both countries' security sectors remains to be done, the results are plain for all to see.

SSR in Croatia is a relatively recent phenomenon. As with most countries in the region, greater emphasis has been placed on defence reform and modernisation and consequently, since 1999, the country's armed forces have been subject to progressive downsizing, training and adjustment of their structures, largely through aid and guidance from NATO (PfP, PARP, MAP). Through the regional offices of the United Nations Development Programme (UNDP), a number of SSR-related programmes are being carried out in the country, particularly in the justice and the human security areas, they include: control of Small Arms and Light Weapons and Transitional Justice issues. Here UNDP is promoting legitimate structures that uphold justice fairly, openly and legally and anti-corruption initiatives, through UNDP mechanisms. Initiatives are implemented and integrated into the existing programmes.

The EU, having granted Croatia official applicant status in June 2004, has provided extensive aid and input to the country. This follows a similar route to the assistance given to Bulgaria and Romania (pre-accession aid and progress reports). The EU's SSR-related activities to promote the Community *acquis* in Croatia currently include (a) judicial cooperation in civil matters (a new Act on assistance in criminal matters covering, *inter alia*, extradition, the enforcement of foreign judgments and international judicial assistance, which entered into force in July 2005) and (b) police, customs and judicial cooperation in criminal matters (the 2001 Police Act demilitarised the police and reforms are ongoing. Numerous pilot projects concerning local police have since

been successfully introduced. Croatia has also signed international police cooperation agreements with 20 countries). The creation in Croatia of the Office for the Suppression of Corruption and Organised Crime (USKOK) has facilitated international cooperation on crime issues.

Although SSR is making progress, there has been a lack of concentration on democratic oversight of the security sector – particularly defence and civil-military relations. With the army traditionally having considerable influence in domestic politics, although the armed forces are now under the control and scrutiny of parliamentarians, the challenge has been to shake-off old habits. The difficulty can largely be attributed to a lack of parliamentary experience in this sector, coupled with the prevalence of tradition.

Though relatively stable during the turmoil of the 1990s, the former Yugoslav Republic of Macedonia (FYROM) was not unaffected by the instability in the region and experienced its own crisis in 2001. It has since had to struggle *inter alia* with reforming its security sector, having set its sights on European integration. To date, the most important challenges in achieving that reform have been the reorganisation and modernisation of its armed forces, the institution of a system of democratic oversight and dealing with corruption and organised crime along its borders.

The OSCE's activities in the country through its Spillover Mission[16] to Skopje have mainly focused on border management issues and particularly on police reform. The Mission's original mandate to help prevent conflict spillover by border monitoring was strengthened in 2001 and has since included extensive police reform and training, strengthening the institutions of self-government to promote good governance and local ownership, ensuring equitable representation of non-majority communities in the police, judiciary, public administration and military and developing projects in the rule of law sector. A number of units created to promote the mission's aims and activities in the country include: a Police Development Unit (PDU), a Public Administration Reform Unit (PARU), a Rule of Law Unit (ROLU), a Confidence Building Unit (CBU) and a Media Development Unit (MDU).

NATO has been active in FYROM since 2001 through a number of missions. Its activities have traditionally concentrated on peacekeeping, enforcement of the ceasefire (Essential Harvest), protection of international monitors (Amber Fox) and facilitating the government's goal of taking ownership of security throughout the country (Allied Harmony). More recently the focus has been upon streamlining and downsizing the country's defence forces to reflect reforms implemented in the region and in neighbouring states.

The longstanding presence of the EU in the country has taken various forms, with targets of bringing about progress and reform in a number of sectors. Police reform has

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[16] http://www.osce.org/skopje/

been implemented under two EU missions: the Police Mission, Proxima (from December 2003 to December 2005) and the current Police Advisory Team EUPAT (from December 2005) which have focused mainly on building confidence in the police among the population, creating an effective border police, increasing police cooperation with neighbouring states and between the police and judiciary. Progress however remains slow. The conclusions of a recent report[17] published by the European Commission on FYROM's progress as a candidate country state that reasonable headway has been made in the areas of justice and border management, but that little has yet been done in the areas of judicial cooperation, police cooperation and the fight against organised crime.

**The EU and Security Sector Reform – Governance in Africa**

Africa, and specifically sub-Saharan Africa, is described as one of the major global challenges of the European Security Strategy. Particular emphasis and concern are given to a number of problems plaguing the continent since the early 1990s. These include the AIDS pandemic, poverty, political instability and violent conflict leading to the destruction of infrastructure, increased criminality and the inability of economies to function. The numerous and diverse challenges faced by many countries on the continent make it very difficult to tackle SSR/SSG. Their problems are linked, as conflicts tend to spill over and affect the country of origin and its surrounding neighbours; often there is no stable political system, the security sector is ineffective or has broken down completely and neither international nor regional organisations are present.

Discussions, in the framework of the EU-Africa dialogue, have until recently mainly dealt with the following key issues: (i) peace and security; (ii) governance; (iii) regional integration and trade; (iv) key development issues – including, debt, food security and HIV/AIDS; (v) effective multilateralism.[18] In October 2005, the European Commission published the EU Strategy for Africa 'Towards a Euro-Africa pact to accelerate Africa's development'. This examines how the EU can develop a comprehensive, integrated and long-term framework for its relations with Africa, the principal objective being to promote the achievement of the UN Millennium Development Goals (MDGs) on the continent by concentrating on two main prerequisites: peace and security and good and effective governance.

From a SSR perspective, the Strategy for Africa is intended to 'develop a strategy and capacity to foster security sector reform in Africa'. In order to promote development, however, democracy must prevail in African states. To this end, the EU strategy focuses on a number of security and governance-building actions which include: building effective and credible institutions; developing local capacities; launching a

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[17] European Commission Progress Report on FYROM (released 8.11.2006) http://ec.europa.eu/
[18] EU-Africa Ministerial (Troika), Dublin, 1 April 2004 http://ue.eu..int

governance initiative (by backing African-owned efforts); reinforcing respect for human rights and democracy; promoting gender equality; fighting corruption and organised crime; and promoting good governance in financial, tax and judicial areas.

Although the strategy is relatively recent, the actions it aims to promote are based on lessons learnt by the international community, governments and the relevant actors. This is not the first time the EU has promoted SSR-related activities in Africa. The long-standing relationship between Europe and Africa and the EU's commitment to boost development and cooperate with regional organisations has inevitably created an environment in which SSR and the promotion of governance have been on the agenda in the past.

Two EU missions which address SSR and the promotion of good governance in the Democratic Republic of the Congo (DRC) are the EU Police Mission in Kinshasa (EUPOL Kinshasa) and the Integrated Police Unit (EUSEC RD Congo). Specifically, Article 10 of the Common Position (2004/85/CFSP) concerning conflict prevention, management and resolution in Africa sets out a series of measures on promoting sustainable peace and reconstruction, including two which are to be implemented through the two abovementioned missions in the DRC. Thus, it proposes to:
'support security sector reform within the framework of democratic principles, respect for human rights, the rule of law, and good governance, in particular in countries in transition from violent conflict to sustainable peace; (…)
enhance its support for the disarmament and sustainable reintegration of demobilised ex-combatants (…)'.

The Integrated Police Unit (IPU) with a staff of 1,008 (20% of them women) acts as a 'police technology demonstrator' which could provide the model for the creation of a genuine DRC national police force (the current police force was set up in 2002 but lacks equipment and training).[19]
The IPU became operational in June 2005, with the active support of the EU (Council and Commission) and the EUPOL Kinshasa police mission offering two training courses (basic and specialised). The EUPOL Kinshasa mission launched in April 2005 has the following mandate:
*'The European Union shall conduct a police mission in Kinshasa (DRC) in order to monitor, mentor, and advise the setting up and the initial running of the IPU in order to ensure that the IPU acts following the training received in the Academy Centre and according to international best practices in this field. These actions shall be focused on the IPU chain of command to enhance the management capability of the IPU and to monitor, mentor and advise the operational Units in the execution of its tasks.'*
*(Article 3 of the Joint Action)*

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[19] 'EU missions in the Democratic Republic of Congo (DRC) – reply to the annual report of the Council', submitted to the WEU Assembly by Ignacio Cosidó Gutiérrez (Spain), Rapporteur, on behalf of the Defence Committee, December 2006. http://www.assembly-weu.org/

In parallel to EUPOL Kinshasa, another European Union mission, EUSEC RD Congo, was launched in order 'to provide advice and assistance for security sector reform in the Democratic Republic of the Congo (DRC)'. The practical purpose of that mission is to assist the Congolese authorities in setting up a Congolese national army that brings together the different armed factions that fought for the control of the regions during the internal and external strife from 1996 to 2002. Such an integrated army is necessary in order to do away with the armed groups, bring about political, regional and ethnic reconciliation and ensure that the armed forces, rather than being in thrall to one individual or region, adopt the classic principles of loyalty to the democratic institutions and defence of the country's territorial integrity and of national interests.[20] Its objectives are set out in Joint Action 2005/355/CFSP adopted by the EU Council on 2 May 2005:

*'The mission shall aim, in close cooperation and coordination with the other actors in the international community, to provide practical support for the integration of the Congolese army and good governance in the field of security, as set out in the General Concept, including identifying and contributing to the development of various projects and options that the European Union and/or its Member States may decide to support in this area.' (Article 2)*

In September 2005, six months after its launch, EUSEC submitted a report on armed forces reform to the DRC authorities. General Pierre-Michel Joana, the commander, underlined two particularly important aspects:

*'The findings indicate that the administrative system of the Congolese army, notably the status of the military forces needed to be built up from scratch. For if one does not know exactly the rights and duties of soldiers, it will be difficult to determine the wages they deserve. Another issue of concern is the evaluation of the strength of the forces. The contingents obviously over-assessed their strengths. The exact number of troops must be identified to allow the Minister to run his staff and plan an appropriate budget.'* [21]

The issue of strength is important, in view of the hundreds of thousands of combatants involved in the conflicts.

An estimated 70,000 combatants have not yet been through the armed forces reorganisation process, according to the National Commission for Disarmament, Demobilisation and Re-assignment (CONADER). Armed forces reform also depends for its success on international donors. Although the Congolese Government is theoretically liable for the costs of reform, the various demobilisation and reassignment programmes are in fact being funded through UN and EU aid. As long as the political stabilisation process is delayed, the two organisations will have to keep up the financial

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[20] *Ibid*.
[21] *MONUC News*, 'FARDC troops estimated at 100 000, says EUSEC', interview by Oscar Mercado and Michel Smitall. www.monuc.org

effort in order to avoid failure of the defence sector reform process. The success of the security sector reform operation in the DRC will depend in practice on what happens after the elections. If the stabilisation and peacemaking process continues, the problem will essentially be a financial one, and hence not insurmountable either for the United Nations or the European Union. But if the sharing of power between the new majority and opposition is not to the satisfaction of the main parties concerned, there is a risk of the 14 integrated brigades disintegrating into armed groups and militias, whose action will be all the more lethal for them having benefited from better training and new equipment.[22]

Assessing the work implemented in the EU Strategy for Africa framework one year on, a joint progress report by the European Commission and General Secretariat of the Council to the General Affairs and External Relations Committee (GAERC) on 12 October 2006 states that progress has been made in the area of post-conflict reconstruction and Disarmament, Demobilisation and Reconstruction (DDR) efforts are also being implemented (building on DDR activities since the early 1990s in 16 African states). The EC and the Council General Secretariat are also making progress in the areas of counter-terrorism (mainly by providing assistance to the AU African Centre for Study and Research on Terrorism; CAERT) as well as stopping the flow of SALW (by identifying main suppliers, recipients and trading routes). The EC has provided or is currently providing SSR support – including: capacity building of law enforcement agencies and key ministries in the areas of justice reform, rule of law and civilian oversight to 27 African states.[23]

The UN Peacebuilding Commission is also commencing work in Burundi and Sierra Leone (focusing on integrated strategies for post-conflict peacebuilding and recovery and help to ensure predictable financing for early recovery activities and sustained financial investment over the medium to longer term, extend the period of attention by the international community to post-conflict recovery, and develop best practices on issues that require extensive collaboration among political, military, humanitarian and development actors).

**The OSCE Code of Conduct and SSR-related activities**

The OSCE Code of Conduct on Politico-Military Aspects of Security was adopted in Budapest in December 1994. Broadly speaking, the Code addresses the wider aspects of security including terrorism, inter-state relations and cooperation and military capabilities. However, crucial to the work and development of SSR and SSG are sections VII and VIII of the Code which address the principles of control and use of

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[22] *Op.cit*. footnote 21 above.
[23] Angola, Benin, Burkina Faso, Burundi, Cameroon, Chad, DRC, Equatorial Guinea, Eritrea, Guinea Bissau, Guinea Conakry, Ivory Coast, Kenya, Liberia, Madagascar, Malawi, Mauritius, Mozambique, Niger, Nigeria, Republic of Congo, Rwanda, Sierra Leone, Somalia, South Africa, Sudan and Uganda.

armed forces by democratically elected institutions, complying with international law and fully respecting human and civil rights.

Although the more precise concept and term 'SSR' was coined a few years after the Code's adoption, it is the latter's focus on the security sector and its importance as a politically binding document – the first such document to address the security sector – that has helped guide and shape SSR to its present state. The Code embraces the whole security sector and considers its democratic control as central to a country's stability. Paragraph 20 states: 'The participating States consider the democratic political control of military, paramilitary and internal security forces as well as of intelligence services and the police to be an indispensable element of stability and security', therefore providing constitutionally established authorities with the power and means necessary to implement proper first generation SSR.

Democratic oversight of the security sector is further enhanced in the Code, which provides for the legislative approval of defence expenditures (para. 22), the political neutrality of armed forces whose role and obligations are to act solely within the constitutional framework (paras. 21 and 23) and the reflection through law of the rights and duties of armed forces personnel (para. 28). Provisions are also made to guard against the unauthorised use of military means (para. 24), the existence of forces which are not controlled by constitutional authorities (para. 25) and the undertaking of excess combat mission capabilities of paramilitary forces (para. 26).

Strong reference is also made to the observation of international humanitarian law and instructing armed forces that they are accountable under national and international law for their actions (paras. 29, 30 and 31) as well as to respect for international Conventions (para. 34). The Code also addresses the issue of human rights, both of civilians protected by the armed forces (para. 36) and of the armed forces themselves (paras. 32 and 33).
The Code can therefore be described as a 'manual' for governments and international organisations seeking to initiate, promote or further SSR in any form or phase of development. As SSR cases are unique to the country or region in which they are implemented, the Code combines the principal aspects of good governance and control to ensure that those implementing SSR, and therefore responsible for a country's stability and the security of its population, can work within a framework that enables efficiency.

Whilst reforms during the first decade of SSR concentrated mainly on newly emergent eastern European countries, nowadays traditional western democracies are obliged to oversee their security sector policy too. The ongoing significance of the Code was recently confirmed during the annual OSCE implementation assessment meeting in Vienna in March 2006. The European Union played an important part in the Code's

initial formulation[24] and more recently in its promotion through its human rights and democratisation policy and at international forums such as the UN Disarmament Commission.[25]

The Code has facilitated the course of the OCSE's activities in SSR, particularly as regards policing and police reform in a number of regions such as the Balkans, the Caucasus and Central Asia. Through a network of police advisers run by the Strategic Police Matters Unit (SPMU) set up in 2001 to improve the protection of participating states against the emerging new risks and challenges posed by transnational and organised crime, arms, drugs and other forms of trafficking, the failure to uphold the rule of law, and human rights violations, the OSCE is able to promote good policing and contribute to effective conflict prevention.

The OSCE's involvement in military reform is promoted through its Forum for Security Cooperation which has to date agreed numerous documents such as the Code of Conduct, the Document on Small Arms and Light Weapons (SALW) in 2000 and the OSCE Document on Stockpiles of Conventional Ammunition (SCA) in 2003 to name but a few. Practical military reform is promoted through the OSCE's Conflict Prevention Centre (CPC) which supports the Organisation's Chairman-in-Office and its other bodies in the fields of early warning, conflict prevention, crisis management and post-conflict rehabilitation. The CPC plays a key role in supporting OSCE field operations helping them fulfil their tasks in the fields of early warning, conflict prevention, crisis management and post-conflict rehabilitation.

### Recommendations

Although relatively recent, the EU's approaches to SSR and SSG and initial steps towards developing an EU SSR Concept show that it is determined to become a leading player in the sector by seeking to promote activities both in its own neighbourhood and beyond. A functioning security sector can be regarded as being as important as a country's political and economic system, the three coexist and without any one of them there can be no stability in the state.

The Commission's Communication of May 2006 'A Concept for European Community Support for Security Sector Reform' provides a dynamic introduction to the EU's current achievements and aims. Since it is likely that SSR/SSG needs around the world

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[24] CSCE/FSE/SC.21 (30 June 1993) (First version entitled 'Elements for a CSCE Code of Conduct Governing Mutual Relations between Participating States in the field of Security' (CSCE/FSC/SC.7) 16 Dec. 1992, the Participating States being: the EU, Canada, Iceland and Norway ('European Union Plus'). DCAF Document No.3. 'The OSCE Code of Conduct on Politico-Military Aspects of Security (1994): A Paragraph-by-Paragraph commentary on Sections VII and VII (Democratic Control of Armed Forces)', Victor-Yves Ghébali. Pg. 12.
[25] 'Promoting Security Sector Governance in the EU's neighbourhood', Heiner Hänggi and Fred Tanner. Institute for Security Studies, Chaillot Paper 80. Pg. 33.

will be there to stay, by creating a concept for its support the EU can become an effective SSR exporter, particularly for second and third generation reforms, and therefore gain a dominant position in this field.

Policy dilemmas however, such as different SSR approaches to different countries/regions and clarifying the roles of police, security forces and military to avoid overlap, need to be better approached and medium to long-term policies formulated and clarified. In addition, the international community's presence, particularly in the Balkans, has yielded not only country strategies and in-depth analyses for most countries in the region but also considerable expertise for the international organisations active in the area (each playing in integral part in SSR in its own way). Inter-organisation cooperation is therefore crucial in order to avoid duplication and added costs, and to achieve credibility and longstanding relationships.

Parliamentary scrutiny and local ownership, both key aspects in the promotion of Security Sector Governance, not only need to be firmly included in all SSR-related activities but also to be addressed from the initial SSR stages in order to avoid gaps in experience. Time and again, it has been emphasised that one of the main challenges to SSG is lack of parliamentary scrutiny, not because of lack of interest in the sector but because of lack of knowledge, since many emerging democracies find this area overly dominated by the military. The creation of parliamentary committees to monitor and discuss progress in the security sector through hearings – much like the work of the Interparliamentary European Security and Defence (WEU) Assembly for over 50 years – is therefore central in the promotion of parliamentary unity and expertise in the sector.

Judicial independence, with the integration of human rights norms into laws and proper training programmes, is also essential to the development of SSG, particularly in areas where ethnic tensions still exist below the surface. Active parliamentary scrutiny as outlined above must be implemented in this area too.

Lastly, as SSR/SSG continue to gain weight on the agendas of international organisations so will the need for a more coherent approach become more apparent. Greater coordination between the EU, NATO, UN and the OSCE will inevitably be addressed as necessary for streamlining the role and expertise of each organisation in particular circumstances/cases, as will cooperation with regional organisations and third actors in the sector. The current global security environment points towards the need for the EU to become a credible SSR/SSG exporter.

# EU and NATO leverage in Security Sector Reform

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Security Sector Reform (SSR) is a key tool, both for the transition from conflict to peace and for ensuring efficient and accountable state institutions[1]. The European Union (EU) and the North Atlantic Treaty Organisation (NATO) have managed to wield substantial pressure in the near neighbourhood, to reform armed forces, police, intelligence, border management and the judiciary. This policy has been supported by the conditional offer to certain countries to join these organisations. A holistic transformation of the security and justice systems in the near neighbourhood requires both a reflection on the changing nature of the threats and challenges to security as well as the transformative dynamics involved. Indeed, the effective usage of conditionality conducive to security sector reform varies, depending on the membership prospects for these countries. It is most effective when membership is clearly on offer to join the EU and/or NATO. It is moderately effective when governments aspire to that membership, even if it is not yet on the negotiating table. Finally, conditionality is least effective as a conducive tool for SSR in countries where there are no prospects for membership and therefore no obligation or pull to strive to Euro-Atlantic standards.

The European Union's geographical near neighbourhood implies the Balkan countries, but also covers the countries involved in the European Neighbourhood Policy (ENP), as carried out since 2004. These are the Eastern neighbours of the EU (Belarus, Moldova, Ukraine) and the three Caucasus republics (Armenia, Azerbaijan and Georgia) and the ten Mediterranean countries (Algeria, Egypt, Israel, Jordon, Lebanon, Libya, Morocco, Palestinian Authority, Syria and Tunisia). However, for the purpose of this study the main focus will be on the Balkan states that are currently candidates or potential candidates of the EU, and where membership is clearly on offer for NATO. This focus is due to the fact that ENP, or ENP plus, has limited impact in fostering reforms in the relevant countries. It is a policy that lacks the means to fulfil its ambitions. ENP suffers from being neither an enlargement nor a foreign policy proper: it cannot bear the full transformative power of the accession process, nor the joint resources and the overall political legitimacy of a truly common foreign and security policy[2]. However, the near neighbourhood and new frontier zone often have below average standards of security governance and it would therefore be of particular importance to focus more on SSR in these enlarged boundaries. Presently, the EU and NATO still have limited leverage in

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[1] *Lucia Montanaro-Jankovski, Security Sector Reform in the Balkans: a key to ending conflict, June 2006, European Policy Centre*
[2] *Antonio Missiroli, Threats facing the EU in its geographical neighbourhood, European Parliament, 2007*

these environments, but reinforced cooperation with these countries would be mutually beneficial.

In contrast, the EU's impact has been substantial in the Balkans and has contributed to state-building and better governance. This is due to the combination of the pull of EU membership, plus the package of actions and initiatives of the Community and the Council on security sector reform, strengthened by NATO's efforts. However, new threat assessments must be undertaken because the Balkan countries, just like the EU, no longer face the threat of large scale conventional conflicts. Therefore, SSR processes in the Balkans need to reflect the wide range of asymmetric threats, similar to those identified by the European Security Strategy: primarily terrorism, state failure and organised crime. These threats need to be addressed together with global challenges such as poverty, disease, energy dependence, illegal migration and the crucial link between security and development. Indeed, a major concern in South-East Europe is the inability of weak states to provide internal security and protection against economic crisis[3].

Effective security sector governance could reduce organised crime in the Balkans, which currently hampers socio-economic development. This could in turn soften the current scepticism in many EU member states towards enlargement, since the image of the Balkan countries remains tainted by perceptions of criminal activity. Moreover, the fight against organised crime and corruption are critical yardsticks in the justice and home affairs sphere of the EU enlargement process[4]. They are therefore necessary steps on the road to membership.

In Europe, both the EU and NATO have sought to promote democratic security sector governance and have placed this among the criteria for accession candidates. Both organisations have, in parallel, set required reform objectives, delivered coaching processes, and supported consolidated capacity building[5]. The concrete and strict targets for reform were set and confronted by numerous obstacles. Indeed, modernising defence structures in mainly under-paid, under-equipped, but sometimes over-staffed, territorial forces has proved particularly difficult.

This paper will analyse the role of the EU and NATO as drivers of transformation, the levers of conditionality, and finally highlight certain shortcomings of this approach.

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[3] *Susan Woodward, 'In whose interest is SSR: lessons from the Balkans', in Cawthra and Luckham (eds.) Governing Insecurity, P.10*
[4] *Lucia Montanaro-Jankovski, Good cops and bad mobs?, EU policies to fight transnational organised crime in the Balkans, Issue Paper N°40, October 2005, European Policy Centre.*
[5] *Marina Caparini, Security sector reform and NATO and EU enlargement, SIPRI Yearbook 2003, Armaments, disarmaments and international security.*

## I    Drivers of transformation

Both the EU and NATO have contributed substantially to the transformation of the Balkan region. The EU accession process acts as a device to reassure the countries of its commitment. Conditionality helps boost the countries' actual performance in adopting and implementing the reforms. The Community efforts are combined with those of the Common Foreign and Security Policy in their common goal to stabilise and consolidate the transition of these countries. Indeed beyond SSR, the EU has supported a full comprehensive transition process in the Balkans. The European Union has extended its norms and rules through enlargement, and it has made conflict in the Wider European region less likely[6].

Both the EU and NATO have played important roles in helping post-communist societies reform their security apparatus in line with democratic norms. Good governance in the rule of law and defence sectors is crucial for consolidating democracy and sustainable economic and social development. Indeed, the central link between development and security has proven to be a particular truism in the Balkans. When security bodies are poorly managed, have political and economic impunity, and tend to be professionally weak, they are left unable to protect adequately state and citizens from aggression, criminality and the array of other security challenges[7].

Since the disintegration of the former Federal Republic of Yugoslavia in the 1990s, the EU and NATO have been heavily engaged with the transition of the six successor countries (Slovenia, Croatia, Bosnia-Herzegovina, Montenegro and the Former Yugoslav Republic of Macedonia, Serbia, including a particular focus on Kosovo (under United Nations Security Council Resolution 1244)). These new states faced the challenge of organising their security structures to guarantee their independence, internal security and rule of law[8]. The EU and NATO have been particularly committed to supporting the defence sector and the rule of law in Bosnia-Herzegovina (BiH), the former Yugoslav Republic of Macedonia and Kosovo through the missions on the ground[9]. At the same time, their role has contributed to stabilising the area and ensuring

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[6] *Antonio Missiroli, Central European between the EU and NATO, Survival, vol 46, N°4, Winter 2004-2005, The International Institute for Strategic Studies.*
[7] *Nicole Ball, Reforming security sector governance, Conflict, Security and development, Vol 4, N°3, December 2004, Carfax publishing, Taylor and Francis Group.*
[8] *Philipp Flurri, George Katsirdakis (Eds.), Security Sector Reform in the new partnership for peace members: Bosnia-Herzegovina, Montenegro and Serbia, DCAF 2007.*
[9] Such as in BiH -SFOR, EUFOR-ALTHEA, EUPM-, in FYROM –CONCORDIA- and in Kosovo both the NATO operation KFOR and the upcoming ESDP mission in Kosovo; *Lucia*

a safe and secure environment. They have supported the reorganisation or respectively the creation of defence and security structures, as a crucial component of a functional independent state. Bosnia-Herzegovina has been faced with the obstacles of the constitutional arrangements and the necessity to transfer responsibilities from entity to state level. In Kosovo, NATO is planning to support the setting up of the Kosovo Security Force (KSF) and its civilian control. The EU is planning to provide support for the police, judiciary, administration, border security and penitentiary in Kosovo.

All Balkan states have benefited from EU and NATO support for SSR. The reform process has, however, taken significantly different forms in each of the successor Balkan states. In Slovenia and, to a lesser extent, the Former Yugoslav Republic of Macedonia, moves to downsize the security forces and establish parliamentary control did not run into any major difficulties. But in Bosnia-Herzegovina the implementation of SSR was delayed until after the 1995 Dayton Peace Agreement. In the Federal Republic of Yugoslavia (FRY) the reform process did not begin until after the fall of Slobodan Milosevic. Serbian Prime Minister Zoran Djindjic's courage in tackling the law-enforcement architecture led to his assassination in March 2003. Four years later there is still considerable opposition to defence and intelligence reforms, as demonstrated by the difficulties in arresting indicted war criminals Ratko Mladic and Radovan Karadzic. In other cases, the challenge has been to reconstruct existing forces, unify fragmented security structures or restore the tarnished reputation of the military and police, and win back the trust of some segments of society.

The region faces daunting political, financial, logistical and historical challenges in reforming the security sector. As this is a long-term process which involves transforming the balance of
power within societies, some resistance is inevitable. SSR processes have enormous political ramifications, which strengthen and enrich some and weaken and impoverish others. Therefore external actors must be conscious that it is not a neutral process and that it is certainly not perceived as such locally[10]. Often SSR is not regarded as a priority by governments in the region, caught as these countries are between acrimony, a legacy of past conflicts, and a deep-rooted nationalism that places the military on a pedestal and even, at times, makes heroes of indicted war criminals. Furthermore, local security forces are not politically neutral and tend to favour preserving the status quo, particularly as there are not enough incentives to encourage change. Resistance towards external pressure to reform the defence and security forces exists also because they are considered quintessential features of national pride and sovereignty.

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*Montanaro-Jankovski, The Interconnection between the European Security and Defence Policy and the Balkans, Southeast European and Black Sea studies, Vol. 7, N°1, March 2007, Eliamep and Taylor and Francis Group.*
[10] *David Chuter, Understanding security sector reform, Journal of security sector management, GNF-SSR, 2006.*

Nevertheless, the prospect of EU and NATO membership has been and continues to be an essential driving force for reform across the entire region. SSR is now one of the key conditions for the Balkan countries to begin EU accession negotiations, with conflict prevention, border management, police reform (especially in BiH) and reform of intelligence services (especially in Serbia) the over-riding priorities.

The efforts undertaken in Slovenia, Croatia and the Former Yugoslav Republic of Macedonia but also in Romania and Bulgaria in the 1990s to join the Partnership for Peace (PfP) or conclude EU Stabilisation and Association Agreements (SAA), as prior steps to membership, have stimulated other countries in the region to do the same. The recent NATO decision in Riga to invite Bosnia-Herzegovina, Montenegro and Serbia to join PfP will permit these countries to speed up reform, progressing on certain issues such as civilian oversight of the armed forces, which are necessary components of progress in EU negotiations. The added advantage of PfP is that it provides an opportunity to put formal pressure on the countries to adopt and implement reforms. Just like the EU's SAA and pre-accession stages, PfP encourages the process of reform because the golden carrot of full membership lies ahead. SAA and PfP can be considered as stepping stones.

Joining NATO is considered easier than meeting the very wide range of political, economic and legal demands set by the EU[11]. This makes the Balkan countries particularly keen on focussing and meeting NATO requirements. NATO has had long experience in SSR and is often perceived as the European security actor; however the EU is progressively acquiring its credibility in this sphere. The EU's power as a donor and its capacity to deploy a wide array of political, developmental and security tools actually gives it a comparative advantage as a proponent of SSR[12]. The EU is ideally placed to assume a higher profile in promoting SSR in the Western Balkans, as it can provide a fully comprehensive approach to the transformation of the whole spectrum of security sectors and ensure equilibrium in the criminal justice systems. Moreover, SSR is clearly rising on the EU agenda.

The prospect of accession into Euro-Atlantic structures constitutes one of the most powerful and convincing incentives for reform in this region. In order to keep this stimulus alive, the requirement to undertake SSR has to be understood as an integral element of the general accession process, avoiding the appearance of creating additional conditions. Furthermore, EU insistence on SSR and support for the relevant

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[11] *Marina Caparini, Security sector reform and post-conflict stabilisation: the case of the Western Balkans, SIPRI Yearbook 2004.*
[12] *Damien Helly, Developing an EU strategy for Security sector reform, ISIS Europe, February 2006*

efforts must be understood as geared towards accelerating the accession process through needs-oriented advice, as well as human and financial support. The benchmark system enables the countries to have a set of clearly identified goals, stimulates them to address the difficult issues at early stages in the process as they are often set as conditions to open certain negotiations. The more SSR becomes highlighted in benchmark processes and country progress reports the more transformative pressure will be applied. This policy was carried out, for instance, in the 2006 progress report on Serbia where the lack of civilian control of the security forces was highlighted. Therefore, a comprehensive but nevertheless flexible strategy for SSR in the countries concerned is an essential part of EU efforts to help enhance stability as well as social and economic progress in the Western Balkans[13].

Illustrations of the pressure exerted upon the Balkan countries on SSR issues can be clearly observed in EU relations with both BIH and Serbia. Efforts were bolstered to create state-level structures by the aspirations of certain BIH leaders to join PfP and sign a SAA[14]. Defence and intelligence reforms were undertaken, but the delayed implementation on the October 2005 Agreement on police restructuring in *Republika Srspka* subsequently delayed Bosnia and Herzegovina's (BIH) chances to seal a Stabilisation and Association Agreement (SAA). The EU made police reform in BIH a clear condition for a SAA, the gateway towards accession. The criteria imposed for police reform were a unified funding mechanism for the police from a state budget, removal of political interference, and efficiency. Originally there were 13 different services in the police forces, with substantial cooperation difficulties. This clearly impedes the efficiency of the fight against criminal activities.

The EU support of SSR through the enlargement process is highlighted in several documents, including the Copenhagen criteria, established in 1993, which defines the 'stability of the institutions guaranteeing democracy, rule of law, human rights and respect for and protection of minorities' as a precondition for EU membership. These principles have been enshrined in the Treaty on the European Union, and under Agenda 2000, the Commission established the need for enhanced legal accountability of the police, military and secret services. In 2006 the European Commission provided a more strategic overview with the Communication: 'A Concept for European Community Support for SSR' which clearly indicates that SSR is an integral part of EU enlargement, as regards pre-accession countries[15]. This concept promotes holistic, coordinated support for the different sectors of the SSR process. It sets out for the Community to focus more clearly on the governance aspects of SSR: parliamentary

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[13] *EU Presidency Paper on SSR in the Western Balkans, April 2006*
[14] *Heinz Vetschera & Matthieu Damian, SSR in BIH: the role of the International Community, International peacekeeping, Vol.13, N°1, March 2006, pp.28-42, Taylor & Francis*
[15] *Communication from the Commission to the Council and European parliament, A concept for European Community support for SSR, COM (2006) 253 final*

oversight, judicial independence and media freedom. Moreover, it suggests SSR needs to be clearly integrated into Country and Regional Strategy Papers and Action Plans. This communication also recommends prioritising SSR in the new financial instruments: the instrument of Pre-Accession Assistance, European Neighbourhood and Partnership, Development Cooperation and Economic Cooperation and the Stability Instrument.

Furthermore, the GAERC conclusions[16] on the concept for European Community Support for SSR declare that this concept complements the Council's Concept for ESDP support to Security Sector Reform, adopted in November 2005. Together, the two concepts constitute a policy framework for EU engagement in Security Sector Reform, stressing the importance for the EU to take a comprehensive and cross-pillar approach to SSR and recognising the fact that SSR is a holistic, multi-sector, and long-term process encompassing the overall functioning of the security system as part of governance reforms.

The EU action on SSR should be based on, among other points, political dialogue with each partner country, addressing human rights, development and security concerns, and be carried out in synergy with other instruments. The prospect of EU and NATO membership in the Balkans induces political moderation and reform, particularly supported by the carrot and stick approach of conditionality.

## II        Levers of conditionality

In broad terms conditionality refers to the use of fulfilment of stipulated political obligations as a prerequisite for obtaining economic aid or membership in a coveted regional or global organisation. It is a mechanism of interaction between an international and multilateral organisation and a state; however it requires the consent of the state to play by the rules of the game[17]. Conditionality serves as a harmonisation mechanism to European standards. However, one can pose the following questions: does it provide the multilateral organisations (in this case the EU or NATO) with sufficient leverage? Does the conditionality tool actually enhance these organisations' leverage? How efficient is this tool in attaining the targeted objectives? What conditions does it require to function, and finally is it a desirable tool to support certain policies?

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[16] *GAERC conclusions 12/06/06 2736*
[17] *Spendzharova, A., Bringing Europe In? The Impact of EU conditionality on Bulgarian and Romanian Politics, Southeast European Politics, Vol.IV, N°2-3 November 2003, PP. 141-156.*

Conditionality for EU membership provides incentives and sanctions for compliance or non-compliance with EU norms and rules, such as the 'Copenhagen criteria' and the transposition of the *aquis communautaire* into domestic law. It is therefore a tool that optimizes the effectiveness of EU policies and stimulates the targeted countries to perform. EU policies on SSR regarding the Balkans are embedded in the broader process of EU enlargement. The conditionality tool can be used to reach set objectives on SSR, but this tool is far from being exclusive to SSR. Conditionality constitutes a key link between the enlargement process and the transformation of European post-communist and post-conflict countries. Conditionality can be applied between a 'powerful actor' such as the EU, who defines goals and applies rewards or sanctions, to a 'weak actor', depending on its compliance. Günter Verheugen, the previous Commissioner for Enlargement considered that this strategy 'has supported the candidates in their drive to reach precisely defined goals at a number of staging posts. The most powerful motivation for achieving the necessary reforms was the clear and credible prospect of joining the EU.'[18]

For conditionality to be efficient, it must have a clear objective, strategy and road map. Moreover, for it to be credible and legitimate, it must be clearly benchmarked and applied with consistency. Furthermore, the commitment to conformity and compliance must be evaluated fairly [19]. However, given the nebulous nature of conditionality, in practice it is not always perceived as a coherent instrument in the pre-accession process. For example, progress in negotiations with Croatia was made despite the fact that it had not attained the benchmark of extraditing war criminal General Gotovina, whereas Serbia has so far been rigorously tied to its benchmark of extraditing General Mladic for SAA negotiations to proceed. On the EU side, even members of Commissioner Rehn's cabinet for EU enlargement have admitted that on several dossiers 'conditionality has operated as moving targets within an evolving process that is highly politicized'. The European Commission enlargement strategy 2006-2008 called for the application of fair and rigorous conditionality and the introduction of benchmarks to support this process.

The efficiency of conditionality in the SSR domain can be analysed through a three tiered approach: whether the prospects of membership are tangible, whether the leadership at the receiving end is convinced of the need for SSR, and whether there is a favourable environment. For SSR to be successful, it is crucial that the process is perceived as legitimate in the country and that the national leadership is committed to the reform process and willing to root these principles and policies into the legal

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[18] *October 2002: http//europa.eu.int/comm./commissioners/verheugen/speeches_en.htm.*
[19] *James Hughes, Gwedolyn Sasse and Claire Gordon, 'Europeanization and regionalization in the EU's enlargement to Central and Eastern Europe, The Myth of conditionality, Palgrave Macmillan, 2004, Pg85*

framework and institutions. Moreover, the reformed security bodies need to be affordable and democratically accountable.

But even within the membership category there have been marked differences regarding the effectiveness of conditionality. For example, in Poland, Hungary and the Czech Republic the initial conditions were favourable because the reforms required were not overly costly, ethnic homogeneity and traditions of democracy existed, and the environment was peaceful. In contrast, the unfavourable internal and environmental conditions slowed downed the reform processes in Bulgaria and Romania[20].

Therefore one could argue that where conditions are favourable, EU and NATO leverage is more effective but also more passive. In the post-1995 period, the EU has undertaken more active leverage involving overall strategies reinforcing policies and explicit thresholds.

Comparatively, the tool of conditionality is moderately effective in the case of Ukraine when the offer of membership is not completely ruled out for the future. Finally, conditionality is hardly effective if none of the above conditions apply.

Given that membership to both the EU and NATO has been clearly on offer for the Balkan countries, the levers of conditionality have proven to be powerful tools in shaping institutions and transforming the criminal justice systems, rendering them more efficient according to European standards. Indeed the levers of conditionality 'perform the vital task of enforcement of the admission rules to the Union club'[21]. The substantial requirements of membership set the stage for considerable EU leverage on domestic policy choices of aspiring member states.

How do countries react to the set requirements? External intervention into domestic agendas is made more acceptable through tangible incentives on the road towards membership to facilitate the reform process. By allowing concrete targets to be perceived as more attainable and for the political elites in the relevant countries to defend their choices of reform to their population, the reforms are coupled with intermediary rewards gained. These include concrete progress on the negotiations with the EU, on trade agreements, visa facilitations and last but not least financial assistance. The carrot is also financial: the New Instrument for Pre-Accession replacing CARDS from 2007 onwards will finance transition and institution building as well as regional and cross-border cooperation open to potential candidate countries and will be required

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[20] *Plamen Ralchev, The EU conditional assistance as a policy tool towards Southeastern Europe, 20 February 2004*
[21] *Karen Smith, The Making of EU Foreign Policy: the Case of Eastern Europe, New York, St Martin's Press, 1998.*

to address security challenges in the region. Subsequently, the EU, similarly to NATO, is permitted to have a pro-active verification role[22]. This carrot and stick also promotes the democratic consolidation of these countries.

External actors such as the EU and NATO progressively facilitate a momentum of reform in the targeted countries. However, given that the drive for membership needs to come from within the country and that security sector reform needs to be rooted by local ownership, the response to compliance or non compliance with EU/NATO requirements is mainly characterised by reactivity rather than pro-activity. For SSR to be sustainable it needs to be fully anchored in a sense of local ownership and instilled with democratic values.

## III      Shortcomings in approaches to SSR

The EU and NATO's conditional accession processes serving SSR goals in Central Europe have generally been successful. The modernisation and democratic control of the armed forces in Eastern and Central Europe produced rapid political results. The EU has considerable bargaining power focussing on key points. However, with regard to SSR, to optimize effectiveness, more momentum and pressure still needs to be exerted. But for this the European Commission needs to integrate disparate policies into a holistic approach before it tries to exert external pressure in this field on non-member states.

Levels of legitimacy and effectiveness were maintained. However, political distortions in the Balkans, the perpetration of animosities as legacies of the wars in the 1990s, the economic situation and Europe's mixed messages make SSR in the Balkans challenging and complex. But it is ever more important to ensure that the endless cycles of conflict finally come to an end and that sustainable peace is consolidated. The threat of large scale conflict has receded but the unreformed security institutions, in Serbia for instance, obstruct progress, undermine stability, perpetrate deficiencies in the rule of law and block regional cooperation. This in turn blocks integrated border management and the effective fight against organised crime[23]. The Euro-Atlantic community also needs these countries to undergo SSR for its own security and safety.

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[22] *Plamen Ralchev, Southeast Europe after the first eastern enlargement of the EU: Bulgaria's stake in regional and European security, Pecs, 22 October 2003; Plamen Ralchev, The EU conditional assistance as a policy tool towards Southeastern Europe, 20 February 2004..*
[23] *Lecture of Ambassador Kim Traavik, Why is security sector reform important? A global perspective and the case of Serbia, International and security affairs centre, Belgrade, 2007.*

The process of accession has shaped public policy-making through the EU's relative power and the weakness of these nations. It is a bilateral but asymmetrical relationship. So why do these countries comply[24]? What are the risks entailed in this asymmetry?

A weakness in the EU and NATO's SSR approaches in the Balkans is the risk that the security sector transformation is not sufficiently grounded and that there is not enough local ownership. The process is largely dependent on external support and pressure, and it is confronted with frequent local resistance to reforms. Moreover, there have been difficulties in adopting a holistic approach. This is clearly even more the case when crucial reforms have been pushed through by UNMIK in Kosovo or the Office of the High Representative in Bosnia and Herzegovina. Moreover, there is a need for the comprehensive reform of the security systems to be internalised by political parties across the political spectrum. Croatia and Serbia still need to depoliticize their security forces. The downsizing of the armed forces in the Balkan countries has triggered particular opposition due to the role of the armed forces in society and to the dependence on the army as a source of employment.

The choice in timing to progress on enlargement can either be more or less conducive to SSR. Reforms in Albania have been weakened by corruption, organised crime and democratic failings. However, Albania has been rewarded the SAA and will probably be given NATO membership in 2008. The national political discourse has facilitated such progress resulting in the diminishment of external leverage.

Moreover, it could be argued that the current cherry picking approach of the European Commission contradicts the concept of SSR, since horizontal and thematic desks in DG Enlargement have been dislocated to country desks. There are broad strategy declarations, setting benchmarks, but then no designated expert interlocutors on SSR. This is further weakened by a piecemeal approach and confronted with community competence limitations as well as competition with the Council. The European Commission and the Council were indeed unable to reach an overarching concept of SSR as was planned.

SSR has been faced with the dual challenges of limited economic capacities and national resistance due to the persisting animosities and frustrations rooted in the legacies of the Balkan wars. This has made the population vulnerable to nationalistic and populist rhetoric. However, one could also claim that the international community has contributed to creating this climate of resistance towards SSR in the region. It was the international community that conducted the 78 days of NATO bombings in 1999, that placed the embargo on Serbia and then further isolated it due to its failure to

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[24] *Heather Grabbe, The EU's transformative power, Europeanization through conditionality in Central and Eastern Europe, Palgrave, November 2005*

cooperate sufficiently with the ICTY, and finally it was the international community that supported Montenegro's and Kosovo's strive for independence.

To conclude, there are three dilemmas that should be highlighted. Although certain conditions favour leverage for SSR processes, it is fundamental to underline that there is no one-size-fits-all solution for security sector reform, even in the Western Balkans. The realities and political dynamics in each country differ considerably. External actors need to remain consistent, but have a tailored approach that is adapted to each contingency.

Moreover, the necessity to balance strategic objectives and tactical options poses a dilemma. A strategic objective in SSR is to downsize security forces, particularly in a post-conflict context and make them more accountable and transparent. However, the corollary effect is increasing the already high unemployment rates and make officials lose social status. This risk exists in Serbia for instance, where the army is requested to downsize from 45,000 to 26,500 by 2010. The temptation, in this environment of poverty and impunity, is to link up with organised crime groups. It is therefore crucial to take timely action to address the comprehensive challenges in the given context.

Finally, rivalry and transitional clashes between NATO and the EU should be avoided, as well as mixed messages from the Member states. These weaken their leverage in the transformative process. The strategic rationale and competences of the two organisations have evolved and can be characterised by an increasing convergence of purposes and complementarity. Moreover, their efforts are targeted to the same geographical areas. Even though tasks and chains of command operate separately, NATO and the EU clearly share common goals. The combination of NATO and EU efforts can substantially contribute to building sustainable peace and stability in the Wider Europe. The enlargement of NATO and the EU to the Balkans will consolidate and firmly anchor the security sector reforms undertaken, and serve as structural conflict prevention and peace building mechanisms.

# Security Sector Reform in the Western Balkans – a Self-Assessment 2006/07[1]

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## General strategic and political aspects

For the Western Balkan countries, the most stimulating factor regarding Security Sector Reform (SSR) is their progress in the European Union (EU) and North Atlantic Treaty Organisation (NATO) enlargement process. The implementation of the essential 'Ds' in SSR – de-politicisation, de-criminalisation and democratic control – still depends very much on external stimulus.

NATO underlined the importance of the enlargement perspective for the regional stabilisation process at its Riga Summit (28/29.11) by announcing the possible accession of the three Adriatic charter countries – Albania, Croatia and the former Yugoslav Republic of Macedonia (FYROM) – to the alliance in 2008 and also by inviting Bosnia and Herzegovina, Serbia and Montenegro to join the Partnership for Peace (PfP).

By gathering all the Western Balkan countries under the umbrella of PfP, NATO is creating better conditions for enhanced confidence building and co-operation between the security actors in South East Europe. Joint exercises based upon transparency and information exchange will contribute to the creation of a co-operative security climate for the whole region. This is an important precondition for progress in national SSR agendas. Seeing the connections that exist between the different security sectors and keeping in mind the fact that only a holistic approach can address the security challenges of the future, it is likely that besides its influence on the defence sector, complete PfP integration will also have a positive impact on the reform process in the areas of the police, border management services and the intelligence sector.

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[1] This paper reflects the ideas of experts on the actual challenges regarding Security Sector Reform (SSR) in the Western Balkan region, addressing general strategic and political aspects as well as the developments in the different security sectors. The latter were comprehensively discussed at the PfP Consortium Workshop 'Security Sector Reform in South East Europe – from a Necessary Remedy to a Global Concept,' held in Cavtat/Croatia in October 2006. The results of this workshop (including an extensive summary written by Alex G. W. Dowling, which gave important ideas for the second part of this paper) were published in: Anja Ebnoether/Ernst M. Felberbauer/ Mladen Staničić (ed.): Security Sector Reform in South East Europe – from a Necessary Remedy to a Global Concept, Vienna/Geneva 2007.

Further support for enhanced regional co-operation in the field of SSR will be provided by the transformation of the Stability Pact for South East Europe. It will change from a conflict prevention and confidence building initiative to a Regional (and most importantly also time regionally-owned) Co-operation Council, which should be fully operational by early 2008.

An upgraded regional body that - among others – will have competency in the field of security co-operation could positively influence international organisations in terms of the harmonisation of concepts that have been developed to support SSR in the Western Balkans.

Apart from NATO's PfP tools [e.g. the Individual Partnership Programme (IPP), the Planning and Review Process (PARP), the Partnership Action Plan for Defence Institution Building (PAP-DIP) and the alliance's Membership Action Plan (MAP)] and, besides the tools developed by the EU in the scope of the European Security and Defence Policy (ESDP) as well as the Stabilisation and Association Process (SAP), further organisations like the Organisation for Security and Cooperation in Europe (OSCE), the Organisation for Economic Cooperation and Development (OECD) and the United Nations Development Program (UNDP) have developed their own tools to support SSR. The OSCE's Code of Conduct on Politico-Military Aspects of Security, the broader 2005 OECD Development Assistance Committee guidelines on SSR as well as the UNDP's Justice and Security Sector Reform (JSSR) activities are examples of this broad engagement.

These initiatives include essential activities in support of the SSR efforts of Western Balkan countries, but they primarily reflect the priorities of each international organisation with regard to this subject. In light of the fact that the new Regional Co-operation Council, which will replace the Stability Pact, provides a chance to develop a system of co-operative security in the former conflict region, new efforts on the international side to establish a commonly accepted SSR concept with clear implementation guidelines would be desirable.

Despite better conditions to enhance regional co-operation in SSR, real progress in this field can only be achieved if the 'critical Balkan issues' are resolved. The fact that some of the leading war crime figures have not been placed under detention in The Hague has a negative impact on NATO and EU efforts to support the region's SSR efforts. For the chief prosecutor of the International Criminal Tribunal for the former Yugoslavia (ICTY), it is evident that Radovan Karadžić and Ratko Mladić are supported partly by extremist circles in the Serbian and Bosnian-Serb armed forces and police as well as the intelligence sector. The people in the security sector who are supporting the war criminals are, at the same time, trying to obstruct the reform process in their domain.

Certainly, the admission of Bosnia and Herzegovina, Serbia and Montenegro to the PfP could positively influence regional security co-operation in the Western Balkans as well as national SSR processes. However, with the Riga decision, NATO gave up an important 'carrot' when it compelled the governments in Belgrade and Banja Luka to become more active in finding war criminals. For that reason, it seems to be of essential importance that the EU, as far as the association and integration process is concerned, all the more adheres to its strict criteria for the Western Balkan countries regarding their co-operation with the ICTY.

Another issue of great relevance for regional stability and co-operation is the forthcoming resolution of the legal status of Kosovo. Every stable Kosovo solution must guarantee a secure life for Kosovo's non-Albanian communities. Otherwise, co-operative relations between the Belgrade government and the Kosovo authorities will prove untenable. For the ongoing SSR process in Kosovo, a maximum involvement of minority representatives is needed in order to avoid perceptions of the new Kosovo security forces as hostile and threatening.

It is likely that beside Kosovo and Serbia themselves, their neighbouring country Bosnia and Herzegovina will be affected by 'turbulences' caused by the resolution of Kosovo's future status. In its talks with the Belgrade and Banja Luka governments, the Western community must adhere to its position that any analogy of the Kosovo case with the status of the Republika Srpska is unacceptable. A new discussion about self-determination and the right for secession in Bosnia and Herzegovina could endanger the positive results that have been achieved in the last two years in SSR, especially in the field of defence reform.


**2. Looking at the security sector**

<u>Defence reform</u>

This field is generally regarded as the most advanced in SSR. The main challenge here seems to be the termination of the phase of removing redundant personnel and, in its place, concentration on building relevant and affordable armed forces. Armed forces should contribute to national as well as regional stability and also be operational for international peace missions.

Some of the armed forces in the region are still involved in phase 1, the phase of 'structural changes' and are yet to move into phase 2, the phase of 'modernisation.' For that reason, Western support in the area of SSR, especially in the NATO/PfP and ESDP context, apart from providing conceptual, educational and technical help could underline a holistic approach by providing aid to the respective governments to deal with the social consequences of reform. Regarding defence reform in the new PfP country Serbia, whose citizens still face difficult economic and social conditions, such

an approach is particularly needed. According to plans presented by the Serbian Defence Ministry in 2006, the current 45.000 personnel in the defence sector will be cut to 26.500 up until 2010.[2] Establishing well-balanced social programmes for the (re)integration of previous soldiers in civilian working life is of crucial importance for the success of SSR. Otherwise frustrated, unemployed former security providers could become sources of insecurity.

A significant obstacle to the process of modernizing the armed forces relates to the restricted defence budgets of the Western Balkan states. This fact has to be taken into account by the external supporters of the defence reform, who define the benchmarks for SSR implementation. Additionally, it has to be considered that limited local capacity can make absorbing international assistance in its entirety difficult, despite the fact that the countries of the region feel compelled to accept every offer of help.

On the other hand, it is also a big challenge for the countries of the region to move beyond expressing mere aspirations to actually undertaking concrete implementation. A clear set of measures to modernise the region's armed forces is lacking.

Capacity building in the region remains imperative. This is especially the case in the field of democratic control. Civil society expertise is limited and often underutilised, while the region's respective parliaments have insufficient expertise in defence and security issues. Every EU and NATO initiative aiming to support young experts by organizing training courses with the help of organisations like the Geneva Centre for the Democratic Control of Armed Forces (DCAF) therefore is important for changing the security culture in these transition countries. For the reform process to be effective, changing the mindsets of those in the defence sector, as well as those working in other fields of SSR, is a necessity. In order to reach broad social consensus on the main issues and to challenge the isolationist attitudes that hark back to the authoritarian era, parliaments, political parties and civil society organisations as well as local security actors must all be involved in the reform process.

Police and justice reform

While NATO has played the leading role in the field of defence reform, police and justice reform has mainly been the domain of the EU and the Stability Pact. Despite the Stability Pact's co-ordination role, which has led to the setting up of some very useful projects, such as the Stability Pact Initiative to Fight Organized Crime (SPOC) and the Stability Pact Anti-Corruption Initiative (SPAI), local actors have perceived that there is a lack of regional networking. Future projects should concentrate on enhancing regional harmonisation in certain areas of basic legislation and defining strategies to

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[2] See: Ministry of Defence of the Republic of Serbia (ed.): Strategic Defence Review. Belgrade, July 2006.

address the most severe security problems, for example the establishment of a regional network to fight terrorism.

The signing of the South Eastern Police Cooperation Convention in Vienna in May 2006 represented a significant development in the field of policing. Based on the EU's Schengen Treaty, it aims to give police co-operation in South East Europe a legal basis, and following ratification should provide the basis for future initiatives and projects in the field. In order to minimize duplication, international and local experts have proposed that the Southeast Europe Cooperative Initiative (SECI) play the role of regional coordinator for police co-operation in the future. EU standards could be applied to regulate coordination between law enforcement bodies (police, prosecutor offices, judges, etc.) within each country in the region.

According to expert opinions, substantial reform of the police forces is only possible when reform of the justice system is administered at the same time. This dual process of reform works to ensure sustained legitimacy, skilled professionalism and accountability. Besides the police and the civil service, the outcome of the reform process must be communicated also to the public, whose support is crucial. The three key tasks in the reform process are de-politicisation, decentralisation and de-militarization of the police forces. In determining the critical role which the police apparatus in Serbia is playing in the transition process, especially as far as the search for war criminals is concerned, the necessity for shifting from an emphasis on protection of (authoritarian or semi-authoritarian) state functionaries to a police force which protects citizens becomes evident.

The experiences gained by Central European EU members such as Hungary, which conducted similar reform processes in the 1990s, could be useful in anchoring the basic principles of democratic policing, the rule of law and police ethics. Moreover, by establishing parliamentary oversight mechanisms and initiating a process of dialogue with civil society actors and the media, the Western Balkan states could greatly benefit from lessons learned.

Border security reform

For the EU, reform of border security in South East Europe is of particular importance, due to its position as a natural transit route and the fact that security threats in the region invariably affect Western and Central European countries. Co-operation and co-ordination in this field have, however, proven to be difficult. The EU's Integrated Border Management (IBM) programme has not been fully implemented to date and there is little overall co-operation between the different institutions involved, such as the border guards and customs authorities. It is hoped that the establishment of the Regional Co-operation Council will help to overcome the psychological barrier which persists with regard to border co-operation issues. Otherwise, a split jurisdiction and

lack of co-ordination in the area of border management will only work to strengthen criminal networks in the region.

For the Western Balkan states and the international community supporting police reform and, in particular, border management reform, SSR strategic priorities are as follows: finalisation of a legal framework, transference of the role of border protection from the military to civilian security forces, consolidation and evaluation of the new organisational structures and inter-institutional co-operation between all services involved in crime fighting.

Intelligence reform

Across the region, the role of the international community in supporting intelligence reform has been most visible in Bosnia and Herzegovina. While there are only four international personnel leading the reform process, a single, civilian based, state-level and multi-ethnic intelligence agency has been established in Bosnia and Herzegovina. This agency operates within the necessary legal framework and in accordance with executive, parliamentary, judicial and internal oversight mechanisms. Unlike in the semi-protectorate Bosnia and Herzegovina, the issue of intelligence reform is highly politicised and rarely addressed in the other Western Balkan states. In view of the importance of international intelligence sharing, due to the development of asymmetrical threats, the EU's SAP will need to enhance co-operation between the different services in the region to combat global security threats and advance the formation of more efficient oversight bodies.

In Bosnia and Herzegovina, the international community and local actors alike have been working to differentiate the role of intelligence and that of the police services. An example of this is the right of the police to arrest and interrogate, which should be beyond the competences of intelligence services. Members of Parliament (MPs) who serve more than a single term have the capacity to play an important role in consolidating expertise and enhancing effective oversight of the intelligence sector.

## Part I - Armed Forces and the Defence Sector in the Western Balkans

## An overview of Armed Forces and the Defence Sector in the Western Balkans

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For a decade now, Albania, Bosnia and Herzegovina, Montenegro and Serbia, the Republic of Macedonia and Croatia have been undertaking historic steps in nation building and international integration, aimed at achieving self-sustained stability based on democratic and effective governance, viable free market economies and rapprochement towards European and Euro-Atlantic structures.

Known collectively as the Western Balkans, these states are just as diverse as when they emerged after the violent crisis of the second half of the nineties. What unites them as the Western Balkans in international policy documents and security studies is an array of common denominators in terms of their political, social and economic problems and identified solutions. Security Sector Reform (SSR) in general and defence reform in particular occupy important places in the state crafting efforts of the region and matters of significant interest for the international community.

Enis Sulstarova, Denis Hadžović, Mladen Staničić, Islam Yusufi and Svetlana Djurdjevic-Lukic have produced accounts on the current status and perspectives of security and defence sector reform in the countries of the Western Balkans. Their papers are intended to represent views from the public. Of course, these views offer informed perspectives, as the authors are valuable scholars and researchers in the field and in expressing their opinions they have applied a certain methodology. Nevertheless, it is important to stress from the beginning the significance of the public's perspective. Embracing public perceptions on security and defence should characterise the current status of democracy building in the Western Balkans. The observations and opinions presented in this study should be welcomed as an opportunity for officials from the respective governments to observe how the achievements and shortfalls of their efforts to improve the quality and effectiveness of the security sector have been perceived by their own constituencies.

The authors investigate existing arrangements for the democratic control of defence activities, as overarching conditions for success in any security and defence reform

endeavour. Their research takes into consideration the existing legislation and practices in the defence sector, as well as the legal and operational roles and responsibilities on defence matters shared by the key state institutions in the legislative and executive branches of government. They are also looking into the ability of governmental organisations to develop independent thinking on defence matters and to acknowledge and absorb public opinions into their policies and decision-making processes on national defence and security.

In this introductory note, I present some general considerations on defence reform followed by broad observations on the methodology and research methods that were used by the authors. In relation to each report, I summarise what I consider to be of significance and I round up these observations with comments that are applicable to the entire region.

**General considerations on defence reform in the Western Balkans:**

In general terms and in any democratic society, defence reform is a continuous process aimed at satisfying the demands of an ever-changing security environment, which includes the internal shift in security perceptions and aspirations of the people concerned.

This observation is also valid for the Western Balkan countries, despite the fact that democracy in the region has a rather short history. For the last ten years, these countries have made significant changes in their security and defence establishments. These changes have been appreciated by the people of the Western Balkans and by the international community, especially the North Atlantic Treaty Organisation (NATO) and the European Union (EU).

The main prerequisites for adapting the defence sector of the region to new internal and international security conditions are: the ability to clearly identify and understand the features of the regional security environment and to establish a defence planning system with the appropriate capacity to generate a military force that corresponds to the public interest, aspirations and concerns. It is also based on the need to develop adequate military capabilities which correspond to recognised risks, threats and challenges and to establish the political will to provide the required resources for the defence sector.

However, in the Western Balkans, defence and security reforms have been oriented towards fulfilling more fundamental goals than simply responding to threats, risks and opportunities.

The main objective of the reform process has been to establish a defence sector that is completely accountable to society, with sufficient constitutional, legal and procedural guarantees to ensure that the power the defence sector generates is justifiable to society and is not to be used against any segment of society.

As the objective of making the defence sector accountable to society is being fulfilled, another reason for reform has emerged: to enable the defence sector to promote national aspirations by assuming and satisfying international engagements such as the Partnership for Peace (PfP) programme and participation in peace-keeping missions. This has implied further revision of legislation to allow for democratic authorisation of force deployment and for hosting foreign troops, as well as doctrinal and training provisions on force readiness and interoperability for international missions.

As the democratic process matures in these countries, defence reform in the region will gain momentum to provide for good governance, enhanced civilian participation in defence policy formulation and implementation, greater transparency in defence management, including budgets, personnel and procurement policies, and accountability as to why and how national resources are being allocated for defence. At the same time, better governance is tied to strengthening the rule of law at all levels of government. A revision of constitutional and legal procedures is required to facilitate, encourage and enforce good governance. Moreover, this requires the introduction of functional procedures for defence policy formulation, review and implementation. This will provide the basic framework within which a comprehensive and transparent defence planning process can be established. This requirement is of paramount importance. Any endeavour aimed at finding better solutions for increased efficiency and effectiveness of the defence sector should be undertaken according to such practices.

Defence reform in the Western Balkans is contextual in many ways. This context results from the bitter lessons learnt in the aftermath of the use of military force by the government of Yugoslavia in its attempts to stop the separatist movements of the federal republics, and also by ethnic groups against one another, which provided the backdrop to the development of conflicting popular attitudes, involving pride and shame, towards the role and place of the armed forces in society. The emerging states rebuilt their military forces from the ashes of the federal army. This process incorporated both the will of the new political leadership including the top echelons in the military, and the new requirements established by the international community, especially NATO. Public support for defence sector reform was subsidiary to support for democratic reform. Public opinion on the place the nation should occupy in an evolving Europe was divided and was most fervently expressed in oscillating shifts of majority support from a nationalist trend to an internationalist one.

The actual context for defence reform is governed mainly by the commitment of the Western Balkan governments to European and Euro-Atlantic integration. In July 2003, the EU and NATO agreed to support a concerted approach towards the Western Balkans. NATO's North Atlantic Council subsequently met with the EU Political and Security Committee to discuss relevant issues on defence reform in the region. Their ensuing policy approach underlines that defence and SSR are key components for EU and NATO integration. On the other hand, the Western Balkan states have developed their own integrated approach to European and Euro-Atlantic integration.

The relationship between defence reform and European association requirements is mostly contextual. The EU has not developed any specific institutional or procedural requirements on defence sector reform for the states of the Western Balkans, as it remains committed to its own framework, leaving most of the defence reform aspects to be addressed by cooperation between the region's individual states and NATO. Nevertheless, the goal of integration into the EU implies that efforts must be made by the Western Balkan countries to further consolidate peace and to promote stability, democracy, the rule of law, and respect for human and minority rights, as stated upfront by the EU's Thessaloniki agenda for the Western Balkans of 2003. The Copenhagen criteria imply that political goals should also apply to the defence sector reform process. At the same time, the status of defence institutionalisation and democratic control over the security sector should be instrumental in attaining these goals.

The practicalities of the road map which were established by the EU, in its 2005 enlargement strategy paper dealing with pre-accession developments and the strategy for 2006 – 2007 of November 2006, touch upon some aspects of defence reform, such as alignment with EU declarations and other Common Foreign and Security Policy instruments related to foreign, security and defence policy, policies on arms control and the dual use of goods. These policy papers also support further stabilisation efforts in the region through a number of avenues which were established in the Common Foreign and Security Policy, including EU Special Representatives, an EU Monitoring Mission, EU Military Force in Bosnia and Herzegovina and EU Police Missions in Bosnia and Herzegovina and the former Yugoslav Republic of Macedonia.

On the other side, NATO is more instrumental than contextual in shaping defence reform in the Western Balkans. NATO's comprehensive outreach includes a large array of actions under the PfP Programme and the Membership Action Plan (MAP), as well as direct assistance in the field of defence reform. NATO involvement in defence reform in the Western Balkans is tailored for each country in the region. Albania, Croatia and Macedonia have been conducting MAP for some time, while Bosnia and Herzegovina and Montenegro and Serbia recently joined the PfP Programme.

Regional integration into European and Euro-Atlantic structures is a powerful driving force for defence reform. At the same time, reform processes are developed and

experienced in a much larger international context, with the involvement of organisations, such as the United Nations (UN) and the Organisation for Security and Cooperation in Europe (OSCE), which contribute substantially to different aspects of defence governance.

**Observations on research methodology**

In investigating security and defence reform in the Western Balkans, the authors accepted the methodological assumption that the success of their endeavours depended to a great extent on the normative and attitudinal aspects of each branch of the government on one side, and of the public on the other side. Both the government and the public provide varying degrees of input into the defence reform process according to their interests, aspirations and options. As a result, a fair amount of research was dedicated to the legal and organisational arrangements and procedures that facilitated the public interest to find its way into defence policy formulation and into the development of an effective, efficient and affordable defence system.

The authors tried to find answers to questions such as: what are the roles of the Parliament, the President, Cabinet or Government and the Ministry of Defence in preparing, proposing, endorsing and implementing defence policy decisions; what are the legal or customary provisions for higher authorities to issue formal guidance in the preparation of defence policies; what are the main sources of knowledge the government authorities use to fulfil their obligations in relation to the formulation of national defence policies; what is the role of civil society organisations in the preparation, implementation and revision of defence policies and decision-making, and other similar questions. The authors found their answers by examining the available resource material on the structure of the decision-making process at the general government level, as well as within the defence structures.

Another point of interest centres on the idea that constitutional and legal arrangements are thought to reflect a democratic reality which denotes that the people of Albania, Bosnia and Herzegovina, Montenegro and Serbia, Croatia and Macedonia are the supreme holders of power in their respective countries and that their will is exercised through freely elected representatives. The question that arises concerns the actual preparedness of Parliaments, from institutional and functional standpoints, to represent society on defence matters. The answer is to be found in the assessment of the constitutions, legislation, parliamentary staff structures and practices of each country.

Finally, in relation to methodological assumptions, the reader should be aware that the subject of security and defence reform is evolving at a fast pace. Researchers have to deal with a reality that might change rapidly, sometimes between the time of finalising

a report and the moment of its publication. In these circumstances, the only methodological solution is to avoid details which have little relevance in the future.

In November 2006, at the Riga Summit of the North-Atlantic Council of NATO, Bosnia and Herzegovina and Montenegro and Serbia were invited to join the Euro-Atlantic Partnership Council (EAPC) and the PfP programme. On 14 December 2006 in Brussels, the leaders of these states signed the PfP Framework Document, marking the date of accession to the Euro-Atlantic community. The authors did not reflect this important event in their papers, as their work was finalised prior to these developments. However, in their writings, very strong arguments were made in favour of the NATO decision. For example, in his opening statement at the meeting of the Council's signing of the PfP Framework Document and, in recognition of the fact that the event was taking place exactly 11 years after the signing of the Dayton Peace Agreement, Chairman of the Tri-Presidency of Bosnia and Herzegovina, the Secretary General of NATO, Jaap de Hoop Scheffer declared that the success of defence reform in Bosnia and Herzegovina was a major achievement and proof of the progress that could be obtained as a result of political will.[1]

**Quick overview of the reported findings on defence and security sector reform**

Let us now have a quick look at the observations made by the authors in relation to security and defence reform in the Western Balkans.

**Albania**

Enis Sulstarova provides an extensive account on the Armed Forces of Albania, from an organisational and institutional point of view. Sulstarova examines the legal framework and identifies the level of authorisation required for the main political actors to initiate defence policy formulation. Sulstarova further describes the way in which the defence sector is institutionalised in a democratic environment in Albania.

The Armed Forces of Albania are organised and operate under the provisions of the Constitution of 1998 and the corpus of legislation which directly or implicitly regulate defence. The Albanian Parliament retains the right to decide on all defence matters. The President of the Republic is the Commander-in-Chief of the Armed Forces and the President has executive control over the employment of the Armed Forces in case of

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[1] Jaap de Hoop Scheffer, Opening statement at the signing of the Partnership for Peace (PfP) Framework Document by Bosnia and Herzegovina, NATO Speeches, NATO Online Library, 14 Dec. 2006, available online: http://www.nato.int/docu/speech/2006/s061214b.htm

war or a state of emergency, with parliamentary approval. The National Security Council supports the decision-making process at the presidential level. The Cabinet of Ministers, the Prime Minister and the Minister of Defence are the main executive authorities entrusted to formulate defence policies, to decide on defence matters and to conduct the implementation of defence policies.

The Albanian Parliament is empowered by the Constitution and law to exercise parliamentary control over the Armed Forces. This implies approval of relevant laws on defence, defence policies formalised in the National Security Strategy, the Defence Policy and the defence budget. The Parliament approves the total number of personnel in the Armed Forces and its missions. It decides on the use of the Armed Forces and on matters of cooperation between Albanian forces and foreign troops, whether on Albanian territory or abroad. The Parliament is entitled to control the executive bodies in the implementation of defence legislation, defence policies and parliamentary decisions.

The use of armed forces in an international context, either when an external threat is present or in accordance with international obligations, is approved by the Parliament upon the proposal of the President. The use of military force for domestic contingencies is authorised by the Parliament upon the request of the Council of Ministers. The Council of Ministers also formulates the demand for a declaration of war, in case of an attack against Albania. However, this request is forwarded to the President, who issues a presidential decree which is submitted for approval by the Parliament within 48 hours.

The President exercises his/her prerogatives as Commander-in-Chief of the Armed Forces in times of war and exercises executive control over the Armed Forces in time of peace or emergency. The President decides on the force structure, readiness and positioning in times of peace. He/she also decides on the appointments of high-ranking officers and confers higher military ranks. The President retains the decision on the use of military force in cases of emergency, including the alert status of the armed forces and their repositioning, but does not retain operational command and control. In terms of force readiness and higher rank nominations, the President interacts directly with the Minister of Defence.

The Council of Ministers is central to defence policy formulation and implementation. The Council is also the key decision-making collective executive body, through drafting appropriate legislation, formulating defence policy documents, determining the total strength of the forces, allocating financial and other resources and deciding on defence planning and force generation at a strategic level. In times of crisis, the Council decides on the operational aspects of the use of military force, or makes proposals for decisions at the parliamentary or presidential level.

The Prime Minister is directly responsible for taking decisions and exercising command and control of certain aspects of defence, such as the nomination or appointment of high-ranking officers and senior positions on the defence staff, the organisational structures of the Ministry of Defence and General Staff, and airspace management. The Prime Minister is also the coordination and controlling authority on implementation of security and defence policy at the national level, and he/she initiates civil emergency operations.

Defence policy and decision making are generated at the level of the Minister of Defence who conducts the activities for their implementation, following endorsement by the legislative or executive bodies.

Albania has an extensive corpus of legislation governing the defence sector. With the exception of the Law on the Armed Forces of the Republic of Albania and the Law on Public Procurement, which predated the Constitution, all other laws are recent. Defence policy documents, including strategies and political and defence planning guidance are also recent and in the first cycle of their implementation. In these circumstances, it might be too early to evaluate the validity of legal or policy options.

From the account given by Enis Sulstarova, it seems that the formulation of draft legislation and defence policies, as well as the preparation of decisions are closed processes within the general government. The required knowledge and expertise for choosing the most appropriate options are based on internal sources of different governmental entities, especially the Ministry of Defence. Nevertheless, international expertise, especially from NATO, was welcomed and appreciated by Albanian government leaders. Moreover, little was revealed on the defence policy reviewing processes within the general government or the Ministry of Defence. The strategic planning documents are in a different framework. The National Security Strategy and the Military Strategy are subject to review every three and two years respectively. The Defence Planning Guidance is revisited every year.

While the legal arrangements and procedures presented by Sulstarova provide for a balanced distribution of authority and democratic control over Albania's legislative and executive entities, the Ministry of Defence is yet to address important managerial issues. The higher authorities lack the capacity to relay the process of decision-making independently. Commissioning independent studies, alternative policies and strategies has not become a part of defence culture. If the process was transparent, if the Ministry of Defence was seen to be acting in society's best interests, and if the outcome of defence management was seen to be preserving a system of values, these deficiencies in themselves might be a non-issue.

However, in terms of transparency, the account given by Sulstarova leads us to believe that there is room for improvement. At least one aspect justifies this assertion. The

Ministry of Defence has no specific public information policy. While policy documents are published for internal distribution and the distribution list includes foreign military advisors, the minister should ensure that the public is reliably informed and that civil society actors acquire information that is deemed valuable, particularly as a means of generating perceptions on defence issues. The best way to meet these goals is to develop a sound public information policy.

**Bosnia and Herzegovina**

Denis Hadžović studied defence reform in Bosnia and Herzegovina. Hadžović's research reveals the unique process of establishing a unified defence establishment at the state level in Bosnia and Herzegovina and the emergence of professional armed forces in this country. The results of this process are very recent in historical terms.

The legal framework for defence was established in October 2005 with the Law on Defence and the Law on Service in the Armed Forces. The Security Policy of Bosnia and Herzegovina, incorporating the defence policy was issued on February 2006, while the Defence White Paper and the Military Doctrine were published in 2005. The force structure was approved in the summer of 2006, and the resulting force, consisting of a brigade headquarters and its subordinate battalions, as well as the assigned regiments and other units are to be established during 2007.

The process of formulating, endorsing and implementing defence policies involves the Parliamentary Assembly, the Presidency, the Council of Ministers and the Ministry of Defence, with the Parliament in the controlling position. The Parliament has unrestricted authority in endorsing or amending defence policy decisions, including defence missions, resource allocation and force missions. The Joint Committee for the Oversight of Defence and Security is instrumental in preparing parliamentary opinion on defence issues. In fulfilling this task, the committee also relies on an independent advisory expert embedded with parliamentary staff. The Parliament uses the system of questions, hearings and interpellations for defence matters.

At the executive level, the Tri-Presidency is central in approving proposals of defence policies and decisions forwarded by the Council of Ministers or by the Minister of Defence directly.

The Standing Committee for Military Matters is the main forum for executive control over defence. The Chairman of the Council of Ministers participates in the process of making proposals on defence policy and is responsible for overseeing the implementation of decisions taken by the Council of Ministers. The Minister of Defence recommends defence policy options, proposes or decides on procedures, and issues directives and orders dealing with the organisation, administration, staffing, training, equipping and deployment of the armed forces.

To date, defence reform in Bosnia and Herzegovina has been based on the political will of the entities and the state government to overpass most of the politically sensitive issues. Hadžović stresses the important achievements in this field. As the transformational process evolves, further assessments should reveal the institutional capability of Bosnia and Herzegovina to develop an effective and efficient defence sector under proper democratic control.

The prospect of developing an effective and affordable armed forces in Bosnia and Herzegovina are very good, based on the policy and planning documents already adopted by the legislative and the executive branches of the republic. In 2005 and 2006, the Minister of Defence determined the documents needed for procurement, personnel, education and training, and public information policy, while the Chief of Joint Staff of the Armed Forces issued the Military Strategy in 2006.

The fact that Bosnia and Herzegovina joined the PfP programme in December 2006 should enhance the ability of defence institutions to perform appropriate defence planning functions, as exercised in the NATO/PfP Planning and Review Process and the Individual Partnership Action Plan (PAP).

Future attention should be given by the government to financial planning and resource allocation for defence, as well as to the management of defence budgets with a longer-term perspective. As Bosnia and Herzegovina decided to establish professional armed forces, it would be of paramount importance to introduce multi-annual programmes supported by appropriate funding for both force and capability development.

**Croatia**

Mladen Staničić discusses SSR in Croatia through a multifaceted approach, starting with defence, through to the intelligence services and the police and ending with a border police services. The security sector is governed by a corpus of legislation based on the Constitution of the Republic of Croatia. Parts of this legislation were recently revised, such as the Law on Security and Intelligence Services of July 2006. Seen from an institutional point of view, the main policy document for this sector is the National Security Strategy of 2002. However, it is difficult for a member of the public to assess the functionality of this strategy, as there are no accounts to suggest that it has ever been reviewed since its publication.

The future of the defence sector in Croatia is designed according to a Long-Term Development Plan that was adopted by the Parliament in 2006. The plan covers the main aspects of defence, including procurement, personnel and education and training policy for the next ten years. This plan came into life after a history of policy and strategy exercises at the executive levels.

The Parliament adopted a National Defence Strategy in 2002 and the President endorsed a National Military Strategy in 2003. Two iterations of Defence Policy 2003/2004 and 2004/2005 documents prepared the publication of the first Strategic Defence Review in November 2005. The NATO MAP framework was the main avenue for discussing and deciding on strategic defence matters and certainly enabled the production of such policy and planning documents.

Defence planning is based on annual defence budgets and Defence Planning Directives, which are issued by the Minister of Defence.

These arrangements allow for defence policy formulation and implementation in a close process, between the armed forces, the Minister of Defence and the higher executive government bodies, without the continual involvement of Parliament, other than approving the legislation and the long-term policy and planning documents. The public is not involved in this process, apart from informal consultations with some civil society organisations on broader issues of security and defence.

Both longer-term defence planning and public information need further attention within the defence reform process of Croatia.

**The former Yugoslav Republic of Macedonia (FYROM)**

Islam Yusufi presents a defence sector assessment of the Republic of Macedonia. The Parliament of the Republic of Macedonia (Sobranie), the President of the Republic, the Government and the Ministry of Defence are the legislative and executive authorities on defence matters. Parliamentary powers in the area of defence are regulated by the Constitution, laws and rules of procedure. The Parliament debates and adopts legislation and policies on defence, issues resolutions, declarations and others legislative instruments when fulfilling its function of oversight of the defence sector. The President is the head of state and Commander-in-Chief of the Armed Forces, and presides over the Security Council. The Government is the central governmental entity responsible for defence policy formulation and implementation.

The assessment presented by Yusufi creates a picture of the Macedonian defence sector based on constitutional and legal provisions and governed by defence policy documents enabling democratic control over defence activities and executive accountability.

The current status of defence development was envisaged in the Strategic Defence Review and the National Security and Defence Concept, both of 2003, as key policy documents issued by the Government and endorsed by the Parliament. The defence planning process is currently led by the Strategy for the Transformation of Defence and Armed Forces of the Republic of Macedonia of 2004, which was approved by the Government. In 1998, the President approved the Defence Strategy and the

Government approved the White Paper on Defence, which was produced by the Ministry of Defence.

All these documents are at their first issuance and there are no accounts of reviewing or reiteration, especially for the older ones. Nevertheless, the resource allocation system and the multi-annual budgetary system are based on a defence planning methodology requiring annual revisions of strategic priorities for the following three years.

The transparency of defence processes is ensured both at the legislative and the public level. The Parliament is well equipped to absorb and process defence and security information and to generate opinions and resolutions, based on the work of its Commission on Security and Defence and its permanent and temporary staff. The public may address unrestricted requests for information on defence matters.

**Serbia and Montenegro**

Svetlana Djurdjevic-Lukic addresses defence reform in Serbia and Montenegro at the very moment of dissolution of the former State Union of Serbia and Montenegro and the emergence of the independent republics of Serbia and Montenegro.

There was a clear necessity to look into the recent past and depict the main characteristics of the institutional base on which the new defence establishment is going to be built. Djurdjevic-Lukic pays thorough attention to numerous problems in the legal framework of defence reform in Serbia, both new and inherited, from the previous period.

At the time Djurdjevic-Lukic's report was written, the Serbian Parliament showed no desire to address upfront the pending issue of appointing a stable Minister of Defence instead of the current acting minister. There was an absence of security and defence policy formulation and the Government was slow in submitting to the Parliament the necessary acts to regulate defence. Furthermore, the positions of the Chief of the General Staff and the Head of the Military Intelligence were manned on a temporary basis. Djurdjevic-Lukic explains this situation by the fact that defence has not been a priority in either republic and, subsequently, the issue of defence was not in the spotlight during the debates that led to the separation of the two republics.

Djurdjevic-Lukic believes that during the short history of the State Union, the issue of SSR was neglected because of its low prioritisation in each republic, the advanced fragmentation of society and state and the absence of clear policy guidance from the international community, especially the EU. Moreover, the institutional framework for such a reform process in Serbia and Montenegro was missing.

However, significant developments in the field of defence have since been made in Serbia setting the course towards Euro-Atlantic integration. These developments have been appreciated by the international community. The transparency of the sector has improved and the Ministry of Defence and the General Staff are open to defence cooperation and foreign expertise.

**Comments**

When we discussed earlier the context of defence reform in the Western Balkans, we had to give much credit to the international influence that was being exercised over the countries of the region. Other significant contributions were even left aside, such as the bilateral assistance offered by different nations and the field work undertaken by international non-governmental organisations (NGOs). International involvement is fully understandable as the Western Balkans is a region that has captured the attention and concerns of the international community for more than a decade now. Significant security aspects are still making headlines, namely the political and administrative future of Kosovo and the activity of the International Criminal Tribunal for the former Yugoslavia (ICTY).

In this section, I would like to comment more on the significance of defence and security sector reform from a national perspective, as the papers in this collection capture national developments with less emphasis than the international issues. Moreover, a national approach is expected to be of more interest for the future of the countries of the Western Balkans, as there are encouraging signs that democracy is starting to make roots in each of them and that self-governance will continue to be enforced.

If, in the past, defence reform was important for acquiring peace and stability in the region and for accomplishing the requirements of European and Euro-Atlantic integration, in the future the reform process will gain more and more importance for society in many other ways. Apart from their obvious significance as essential sectors of the public domain, defence and security are well situated in the government and the public for exercising features of democratic governance such as civilian participation, transparency, accountability and the rule or law, and for spreading the experience gained during this exercise to other sectors of the public domain.

The democratic dialogue between the public and the government on defence and security issues, like on any other issue of public interest, should be exercised through the process of policy formulation and implementation. Institutionalising this process is an important democratic development in itself. The countries of the Western Balkans have already accomplished most of the institutional prerequisites for such a process. They have passed the appropriate legislation providing for a balanced distribution of responsibilities among the legislative, executive and judicial authorities, set the basic

requirements for decision-making procedures and for levels of authorisation and control of decision implementation, and elaborated policy documents, such as reviews and strategies, for the first time.

The time for giving more substance to this process of policy formulation and implementation will come very soon. Defence policies have a dual significance. They are significant for the security of the country, as they lay out the national aspirations and concerns on defence and security matters, as well as the national options for addressing these aspirations and concerns. If defence policies are transparent, as they should be, they will be validated by public opinion and will serve as confidence building instruments for the international community. At the same time, defence policies are significant in the establishment of an effective and efficient defence management, which defines goals, courses of action, desired outcomes, and expected resources the defence sector needs to properly accomplish its work.

Managing defence, like managing any other public sector, is a rather new exercise in the Western Balkans. More than effectively producing the expected level of military power, defence management implies debating strategic problems and solutions, setting priorities against other sectors and within the defence establishment, accommodating competing goals and interests, acquiring public acceptance and support for the preferred course of action, wisely allocating scarce national resources, motivating the personnel involved in policy implementation and reporting the results.

With so much international involvement, most of these requirements have been satisfied through a straightforward approach. Instead of debates on strategic problems and solutions, the governments of the Western Balkans have carried out negotiations with international organisations and absorbed international advice. The main argument for resolving competing domestic interests, as well as for obtaining public support came in the form of the advice and recommendations made by international organisations such as the EU and NATO. The allocation of resources, especially financial capital was done on an ad hoc basis, and reporting was exercised mainly for the international organisations, which adopted the task of assessing the effectiveness and efficiency of the results.

Nevertheless, one of the strategic goals of all the international assistance programmes and one of the main expectations of the people of the Western Balkans has been to enable self-sustained governance of the public sectors, defence and security included. Under these conditions, it is expected that the democratic process of developing national and sectoral policies in the Western Balkans will be enhanced.

I would now like to comment on the main reform issues in the Western Balkans that require further attention in order to enable these countries to enhance defence and security sector governance.

**Policy formulation and implementation cycles**

The countries of the Western Balkans have recently adopted strategic decisions in the area of defence. Incorporated in the strategies, reviews and long-term plans, these decisions are leading towards the establishment of an affordable and effective military force. Implementing these decisions requires departmental policies for key issues such as forces and capabilities development, procurement, personnel, education and training, logistics and public information. As the process of implementation is a lengthy one, appropriate reviewing and reporting instruments also have to be introduced in the practice of defence governance. At the same time, legislative and executive control should be facilitated throughout the implementation process.

In general terms, the current status of defence reform in the countries of the Western Balkans permits both the policy formulation and implementation processes. However, the governments and the public are still on a learning curve in practicing their roles and functions within these processes. In these conditions, the best way to gain experience is to reiterate the processes several times, in short cycles of policy decision-making, implementation, reviewing and reporting. Such an exercise would also permit the identification of institutional areas that require further reform and adaptation.

**Transparency and public information policies**

The governments of the Western Balkans made their defence and security reforms transparent in particular ways, distributing information on their actions to interested circles of national and international agencies, and, to some extent, to larger segments of the public. The type of defence establishment aimed by the current reforms should situate transparency as an important requirement for facilitating civilian participation in defence policy formulation and implementation, for obtaining public support for defence policy decisions, and for enhancing national and regional security through confidence building.

In well-established democracies, the public may influence defence policies through elected representatives and also directly, through a large array of instruments such as civil society organisations, the mass media, or opinion groups. It remains the government's responsibility to enable public participation by providing adequate information on intentions, decisions, plans and actions on defence matters.

The ministries of defence should particularly focus their attention on better organising their public information structures and guiding them through comprehensive public information policies.

**Defence planning**

Most of the countries of the Western Balkans are establishing professional armed forces. Apart from the political and security significance of such decisions, a professional army requires more comprehensive defence planning systems than the current ones. Programme based budget management, reviewed several times annually, is important for providing the forces with the necessary resources to train, equip and operate according to their missions.

Introducing more efficient and effective longer-term financial planning and resource allocation procedures should be a significant element of defence reform. These procedures would also make defence governance more accountable and transparent. Defence reform, in this sense, includes the introduction of comprehensive budget laws and openly available administrative rules governing the expenditure of public funds. It is very important to establish clear methods for the authorisation of defence expenditure within the approved budget and agreed programmes, such as the level of spending authorised at different levels of the system.

Defence and security reform in the Western Balkans are continuous processes. Over time the driving forces behind these reforms have changed. We may expect to see a shift from the impetus given by international organisations assisting the reform process to the internal incentives to enhance governance of the defence and security sector, particularly as democracy matures in the countries of the Western Balkans.

The authors of the papers presented here analysed the arrangements and procedures introduced by the reform process extensively at all levels of state power. The authors expressed their genuine appreciation for both the outstanding achievements and the shortfalls that are yet to be addressed by the parliaments, governments and, especially, the ministries of defence in Albania, Bosnia and Herzegovina, Croatia, the former Yugoslav Republic of Macedonia, Montenegro and Serbia.

# Survey on the Armed Forces in Albania

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This research has been conducted on the legal framework and practice of civilian control of the defence forces in Albania. The following is based on a study of the overall legislative framework. It is also based on consultations and interviews which were conducted with experts and officials from the Ministry of Defence. In the last decade, Albania's military forces, as well as its security forces in general, have implemented structural reforms linked to the processes of Euro-Atlantic integration. It is hoped that this research will illustrate the general atmosphere surrounding the reform process in Albania as the country moves towards NATO integration.

## A. Basic Defence Management Laws and Regulations

### 1. Government Structure, Reporting and Management Relationships

*Constitution*

The Constitution of the Republic of Albania was approved by Law No. 8417 on 21 October 1998. It determines the form of the Albanian state as a parliamentary republic. The Parliament approves the laws for the organization and functioning of the institutions, as foreseen by the Constitution. Articles 166-169 of the Constitution are the basis for the organization and functioning of the Armed Forces of Albania. The country's Armed Forces are composed of land, naval and air forces. The President of Republic is the Commander-in-Chief of the Armed Forces and the National Security Council is an advisory institution to the President.[1] In times of peace, the Armed Forces is led by the Prime Minister and the Minister of Defence.

*Parliament*

The Parliament of Albania stands at the top of the hierarchy and strategic command of the Armed Forces. The Parliament's role constitutionally includes the following:

1. Approves the documents on the Strategy of National Security and the Defence Policy of the Republic of Albania and other laws in the field of defence;
2. Approves the defence budget;
3. Approves the number of the Armed Forces of Albania and their mission;
4. Exerts parliamentary control on the activities linked to the Armed Forces;

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[1] Article 168 of the Constitution

5. Decides on the sending of forces and the mission of the Albanian Armed Forces outside the territory of Albania;
6. Approves by law the positioning of foreign forces on the territory of Albania or their transit pass, as well as determining their status;
7. Ratifies and denounces by law the international treaties and agreements that are associated with the territory, peace, alliances, political and military issues and the membership of Albania in international organizations.
8. In cases of foreign threats, or when the obligation of the collective springs from international agreement, by proposal of the President, the Parliament declares the state of war, the state of general mobilization, demobilization or partial mobilization of the country and the Armed Forces;
9. Declares the end of war and announces peace.
10. Declares, by demand of the Council of Ministers, the state of emergency, in cases of threats to constitutional order and public security, on the whole territory of Albania or in certain parts and determines the limitations in force during the emergency;
11. On declaring the state of emergency, it decides on the use of the Armed Forces to re-establish order, only when the police forces are not able to perform this task;
12. Determines the powers, authority , command and direction of the Armed Forces in times of peace, state of emergency and times of war[2]

One should note that in the majority of cases, the Parliament approves the position of the executive government on each of the abovementioned issues because decisions require a simple majority vote.

*President of Republic*

The President of Republic is the Commander-in-Chief of the Armed Forces of Albania. In times of peace, he exerts command through the Prime Minister and the Minister of Defence, while in times of war he directly commands the Armed Forces. In cases of armed attack against the Republic, the President, with the demand coming from the Council of Ministers, declares the state of war. The President submits the decree on the state of war to the Parliament within 48 hours from its signing. As Commander-in-Chief of the Armed Forces, the President has the following responsibilities:

1. Approves the organizational structure of the Armed Forces that is proposed by the Minister of Defence;
2. Approves the plan of actions of the Armed Forces in times of peace and in cases of emergency;
3. Approves the dispersal of the Armed Forces in times of peace and decides on the mobilization and exercises of readiness;

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[2] Law No. 8671, dated 26.10.2000, 'On Powers and Authorities of the Commanding and Strategic Direction of the Armed Forces of the Republic of Albania,' Article 4

4. In times of war, appoints the Commander of Armed Forces proposed by the Prime Minister;
5. Appoints and dismisses the Chief of General Staff of Armed Forces proposed by the Prime Minister;
6. Appoints and dismisses the commanders of ground, naval and air forces proposed by the Minister of Defence;
7. Gives the rank of General and rewards (decorates) the military of the Armed Forces;
8. Appoints, dismisses and relieves from duty high rank officers, on the proposal of the Minister of Defence;
9. Orders military action when the integrity of Albania is breached;
10. Approves the decisions taken by the Commander of the Armed Forces for the use of the Armed Forces in times of war;
11. Proposes to Parliament the end of the state of war and determines the process of negotiations of peace;
12. Orders the different levels of military alertness of the Armed Forces, under conditions of emergency;
13. Orders the movement, repositioning and use of the Armed Forces under conditions of emergency;
14. Delegates the authority of the operational command of military units composed of private-squad-platoon-company-battalion to allied command, in joint missions, according to agreements and treaties ratified by Parliament;
15. Approves the regime, rules of military alertness and war cry of the Armed Forces;
16. Presents the military flags to military units, according to the proposal by the Minister of Defence.[3]

*Council of Ministers*

The Council of Ministers determines the main direction of general state policies. The Council of Ministers enforces decisions that are proposed by the Prime Minister or the corresponding minister. The Council of Minister issues decisions and instructions. Its functions determined by law are as follows:

1. Prepares and submits for approval to Parliament draft laws on defence, the Strategy of National Security and the Document of Defence Policy of the Republic of Albania, and their implementation in times of peace;
2. Proposes to Parliament changes in the number of personnel of the Armed Forces;
3. Approves the plan of total mobilization in times of war of all human, material and financial sources of the country, upon the proposal of the Minister of Defence;

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[3] Ibid. Article 7.

4. Introduces to Parliament the budget and separate financial programs for the Armed Forces in times of peace and war;
5. Directs the activity of the organs of central power as well as those of the regions, and coordinates the work with other organs of the local government for partial and total mobilization of the Armed Forces and the sources for war;
6. Defines the wages and economic treatment of the military and civilian personnel of the Armed Forces;
7. Establishes the time limit for the use of arms and military technique;
8. Directs and coordinates with the local government the process of conscription;
9. Organizes and directs the civil protection of the country and decides on the establishment and functions of the protection headquarters at the regions;
10. Organizes the salvation operations at the country level;
11. Issues sub-legal acts on defence and the Armed Forces;
12. Demands from the Parliament the declaration of state of emergency in cases of disruption of order;
13. Demands from the Parliament the use of Armed Forces in times of emergency, when the order cannot be established by the police;
14. Establishes in a part of, or on all the territory of the country the state of natural disaster for no more than 30 days, and determines the measures to be taken;
15. Approves programs for the equipment and modernization of the Armed Forces;
16. Approves the military uniform and the badges of the Armed Forces.[4]

*Prime Minister*

The functions of the Prime Minister with respect to the command and direction of the Armed Forces are the following:

1. Proposes to the President the appointment and removal of the Commander of Armed Forces in times of war;
2. Proposes to the President the appointment and removal of the Head of Chief of the General Staff;
3. Proposes to the President the promotion or reduction in rank, dismissal or removal from the Armed Forces of high ranking officers;
4. Orders the use of Armed Forces for prevention, avoidance or erasure of consequences of natural or human disasters;
5. Appoints and dismisses the directors of departments in the Ministry of Defence and General Staff, with the exception of officers who hold the rank of General;
6. Approves the organizational structure of the Ministry of Defence and of the General Staff;

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[4] Ibid. Article 14.

7. Approves the list of military airfields that can be appointed as support airports of the civilian aviation;
8. Coordinates and controls the activity of the institutions that have obligations in implementing the law 'On Approving the Document of Security Strategy of Republic of Albania;'
9. Coordinates the work between the Ministry of Defence and the Ministry of Transport for the control of air space in Albania;
10. Coordinates the work between the Ministry of Defence and the Ministry of Local Government when announcing natural disasters, technological accidents or dangers of war to the public;
11. Directs the system of civil protection and salvation operations.[5]

*Minister of Defence*

The Minister, within the main direction of general state policies, leads under his/her responsibility the activities under his/her competences. The Minister, in implementing his/her competences, issues orders and directions. *Some* of his/her main competences on the Armed Forces defined by law are as follows:

1. Submits to the Council of Ministers the draft document on the Politics of Defence of the Republic of Albania and projects on the number, structure and organization of the Armed Forces;
2. Issues orders, regulations and directions for the Armed Forces.
3. Represents the state in international organizations with respect to issues concerning the Armed Forces;
4. Submits for approval to the Council of Ministers the annual defence budget, long term development plans and special programmes in the field of defence that require financial support;
5. Approves the distribution of the defence budget;
6. Approves the analytical organics of the Ministry of Defence, the Chief of General Staff and the Armed Forces;
7. Appoints and calls the military attaché at diplomatic representations of the Republic of Albania;
8. Upgrades and decreases by only one rank officers up to the rank of 'colonel' and 'first captain;'
9. Proposes the upgrading of high ranking officers of the Armed Forces;
10. Appoints and dismisses officers that serve at civil institutions, after the approval of the director of the institution;
11. Proposes to the Council of Ministers the model of military uniforms, grades and other signs that are worn on the uniforms;
12. Introduces to the President the units of the Armed Forces that will carry the military flags;

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[5] Ibid. Article 16

13. Organizes the system which protects classified information in the Armed Forces.[6]

*General Laws*

General laws that regulate the working of the administration are applicable to the functioning of the Ministry of Defence. The personnel of that ministry, as well as military forces, are subject to the laws on information that guarantee the right of citizens to be informed about official documents,[7] with the exception of classified documents,[8] and which guarantee the protection of personal information.[9] The classification of documents not for immediate public release is the competence of the President, the Prime Minister and other directors authorized by the Prime Minister in the State Register of Classified Information.[10]

The budget for the Armed Forces is drafted by applying the rules which were established for the state budget.[11] The Parliament approves the state budget for the next year,[12] in which the expenditure of the Ministry of Defence is included by law. The same laws of procurement as with other state institutions apply to the Ministry of Defence.[13] In cases when the Council of Ministers deems that procurement is an issue of national security, a separate procedure is applied.

## 2. The Defence Sector

The following are the main laws for the Armed Forces of the Republic of Albania.

The definition, organization, status and function of the Armed Forces is regulated by Law No. 7978, dated 26.07.1995, 'On the Armed Forces of the Republic of Albania.' The mission of the Armed Forces is the protection of sovereignty and territorial integrity of the Republic of Albania and its constitutional order. The Armed Forces can be used in peace-keeping, humanitarian or salvation operations inside and outside the country. In emergency situations, the Armed Forces help to restore public order.

A separate document is approved by the Parliament concerning the status of the military: The Status of the Military of the Armed Forces of the Republic of Albania.

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[6] Ibid. Article 19
[7] Law No. 8503, dated 30.06.1999 'On the Right to Information about Official Documents'
[8] Law No. 8457, dated 11.02.1999 'On Information Classified 'State Secret''
[9] Law No. 8517, dated 22.07.1999 'On the Protection of Personal Data'
[10] Law No. 8457, dated 11.02.1999, Article 4
[11] Law No. 8379, dated 29.07.1998 'On Drafting and Implementing of the State Budget of the Republic of Albania'
[12] For example, Law No. 9464, dated 28.12.2005 'On the State Budget for Year 2006'
[13] Law No. 7971, dated 26.07.1995 'On Public Procurement'

This document determines the judicial, financial and social position of military personnel in the Armed Forces, the general demands of acceptance within the force, rights and limitations in light of the particular character of duties and military service, as well as the legal guarantees for their implementation.

Military service in Albania is regulated by Law No. 9047, dated 10.07.2003, 'On the Military Service in the Republic of Albania.' This law defines regulations for military service in Albania, the rights and responsibilities of citizens, state and private subjects in regard to mobilization and military service. Compulsory military service and alternative service must be performed by all male citizens aged 19-27. Alternative service is performed by men who cannot carry arms for reasons of conscience. It consists of other public services such as fire fighting, environmental protection, humanitarian services and other positions in the Armed Forces for which arms are not necessary.

Among the main laws that regulate rank, career and discipline in the Armed Forces are Law No. 9183, dated 05.02.2004, 'On the Military Discipline in the Armed Forces of the Republic of Albania' and Law No. 9171, dated 22.01.2004, 'On Ranks and Military Career in the Armed Forces of the Republic of Albania.'

The strategic direction and command of the Armed Forces is regulated by Law No. 8671, dated 26.10.2000, 'On Powers and Authorities of the Commanding and Strategic Direction of the Armed Forces of the Republic of Albania.' The subject of this law is the determination of the powers, authorities of command and strategic direction of the Armed Forces. The law determines that the hierarchy of command and strategic direction starts with the Parliament, the President of Republic, the Council of Ministers, the Prime Minister and the Minister of Defence down to the Chief of General Staff of the Armed Forces and the Commanders of the Ground, Naval and Air Forces.

The establishment and functions of the military police are regulated by a separate law: Law No. 9069, dated 15.05.2003, 'On Military Police in the Armed Forces of the Republic of Albania.' The military police is a specialized structure within the Armed Forces. It is under the command of the Chief-of-Staff and its mission is to: preserve military order in the Armed Forces; discover, prevent and investigate criminal activities in the Armed Forces; combat terrorism; participate in peace-keeping and humanitarian operations; protect state property that is administered and used by the Armed Forces. The military police carry out the functions of the police investigating criminal matters and the judicial police.

Another body under the supervision of the Ministry of Defence is the Military Intelligence Service. Its functions are regulated by Law No. 9074, dated 29.05.2003, 'On the Military Intelligence Service.' This law defines the mission, organization, functions and field of operation of the Military Intelligence Service (MIS). MIS gathers, analyzes and administers data on activities that threaten national security,

possible threats or risks to the Armed Forces, coming from outside or inside the country, and presents them to the authorities of direction and strategic command of the Armed Forces. MIS support the commanding authorities during the exercise of their responsibilities. Another law determining the status of MIS employees is Law No. 9295, dated 21.10.2004, 'On the Criteria of Admission, Career and Its Interruption in the Military Intelligence Service.' The law describes employment in the MIS, the classification of personnel functions, the regulation of payment, ranks and careers within the service, the discipline and responsibilities of MIS employees and the disciplinary measures taken in cases of misconduct.

The dislocation of Albanian forces abroad and the positioning of foreign forces on the territory of Albania are regulated by Law No. 9363, dated 24.03.2005, 'On the Ways and Procedures of the Dislocation and Passing of Foreign Military Forces on the Territory of the Republic of Albania and on the Sending of Albanian Military Forces outside the Country.' This law regulates the participation of Albania's Armed Forces in international operations, exercises and humanitarian missions. It also regulates the temporary positioning of foreign troops in Albania. The Parliament approves the laws concerning the international operations of the Armed Forces and the Council of Ministers takes decisions according to these laws. The deployment of foreign troops in Albania is approved by the Parliament, or by the Council of Ministers acting on a previous law or through an agreement of international cooperation approved by the Parliament.

The use of firearms is regulated by Law No. 8290, dated 24.02.1998, 'On the Use of Firearms.' Firearms are used to prevent or paralyze the illegal actions of a person/s, when other means have failed to produce results, or when it is clear that the use of other means will not produce results. The law states that the Armed Forces, together with the different police forces of Albania which are not part of the Armed Forces, have the right to use firearms to protect the lives, health, rights, property and interests of personnel or of others, against unjust attack or danger, under the condition that the actions taken are not disproportionate to the attack or danger.

It should be mentioned that the Defence Ministry and the Armed Forces, due to clear NATO regulations and the monitoring of their applicability, are among the most consolidated institutions of the security sector.

**Defence documents**

The main political document on defence is the Strategy of National Security of the Republic of Albania, which was approved in 2004.[14] The defence policy document is considered an element of national power and an important and active part of the

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[14] Law No. 9322, dated 25.11.2004 'On Approving the National Defence Strategy of the Republic of Albania'

national security system. Albania's defence policy aims at the use of all political and military means for the protection of national interests and the carrying out of constitutional duties, through the threat of the use of force or the use of force. The defence policy document also aims at prepare the country for integration into Euro-Atlantic structures. Its implementation is the duty of all central and local institutions. It takes into consideration the strategic environment, advantages and challenges, dangers and threats against the country's national security. It develops concepts and determines objectives for the development of the defence capacities of the Armed Forces of the Republic of Albania.[15]

The main defence planning document is the Military Strategy of Republic of Albania, which was approved in 2005.[16] It reflects the procedures and methods for the realization of the main missions of the Armed Forces. The military strategy defines the means of transformation, organization, modernization and training of the Armed Forces. It aims to increase the operational capacities of the Armed Forces in an effort to realize the Constitutional mission and integrate into the Euro-Atlantic collective defence structures.

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[15] Law No. 8571, dated 27.01.2000, 'On Approval of the Defence Policy Document of the Republic of Albania'
[16] Law No. 9419 dated 20.05.2005 'On Approving the Military Strategy of the Republic of Albania'

**Structure of the Decision Making on Defence Policy**

| Topic of Document | Title of Document | Issuing Authority | Endorsing Authority | Frequency / Time span | Status |
|---|---|---|---|---|---|
| National Defence Policy | The Defence Policy of the Republic of Albania<br><br>(Law No. 8571 dated 27.01.2000) | Parliament | President | N/A | Incorporated in National Security Strategy as a separate chapter. (Law No. 9322 dated 25.11.2004) |
| National Security Strategy | The National Security Strategy of the Republic of Albania (Law No. 9322 dated 25.11.2004) | Parliament | President | Every 3 years | |
| National Defence Strategy or Concept | The Military Strategy of Republic of Albania Law No. 9419 dated 20.05.2005 | Parliament | President | Every 2 years | Ongoing process for reviewing |
| Other national level defence policy documents | Law No. 8671 dated 26.10.2000 'On the powers and command authority and strategic direction of the Armed Forces of the Republic of Albania.' | Parliament | President | | |

| Topic of Document | Title of Document | Issuing Authority | Endorsing Authority | Frequency / Time span | Status |
|---|---|---|---|---|---|
| White Paper | The White Paper<br><br>(Published in 2004) | MoD | MoD | | |
| Procurement Strategy | Law No. 7971 dated 26.07.1995 'On Public Procurement' | Parliament | President | | |
| Defence Planning Directive | Defence Guidance<br><br>(Based on PPBES Manual – 2004) | MoD | MoD | Every year<br><br>6 years | In reviewing process |
| Defence Budget | Law on State Budget for 2006 | Parliament | President | Every year | In implementation process |

With respect to Parliament's role in endorsing defence policy decisions, the Parliament of Albania has the power to endorse or reject policy defence documents that are submitted for approval. It has its own staff of experts that help to prepare opinions on defence matters. The Parliamentary Commission on National Security is comprised of 17 members. Three advisors undertake all the work on the defence, police and intelligence services. The Parliament also uses questions, hearing and interpellations to gather information relevant to the defence sector. There are no regular briefings except for cases that might arise on new legislation, pressing public or political debate issues, etc.

The Constitution states that the President of the Republic endorses defence documents submitted for approval by the Parliament, as with any other piece of legislation.[17] The President chairs the National Security Council (NSC), which is a consultative structure. The President has a limited staff of experts who work solely for him/her on security

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[17] Article 84 of the Constitution

sector issues. It is the Constitution that defines the NSC as a consultative institution to the President.[18] The NSC assists the President in all areas of national security policy, as well as in the direction, organization and mobilization of human and material sources for the security of the country. It does not take its own decisions and its meetings are closed to the public. Members of the NSC include the Chairman of the Parliament, the Prime Minister, the Minister of Foreign Affairs, the Minister of Defence, the Minister of Interior (under the present organization, the Ministry of Interior replaces the previous Ministry of Public Order and the Ministry of Local Government), the Minister of Finance, the Minister of Transport, the Chief of General Staff and the Director of State Intelligence Agency. According to the issues to be discussed at the NSC, the President invites to its meetings other persons as well as chairmen of permanent parliamentary commissions, other ministers, directors of central state institutions, etc.[19] The President can also ask for written opinions, data or information from the directors of relevant institutions. The NSC does not have any supporting staff of experts that work precisely for this constitutional institution, and there are no clearly defined regulations concerning its functioning.

According to the Constitution, the Council of Ministers discusses and endorses all defence documents issued by the Minister of Defence.[20] Besides the Minister of Defence, the Prime Minister has the right to propose to the Council decisions concerning defence policy.[21] The Prime Minister has one defence advisor that works solely for him. The Prime Minister establishes and Chairs the Committee of Policies on National Security. This structure is established upon the decision of the Council of Ministers as a consultative structure for the Prime Minister. Neither the NSC nor the Committee of Policies on National Security has any staff of experts solely working in support of these structures. On occasion, the Committee is perceived as a structure which has been established and led by the Prime Minister to overrun the NSC, which is led by the President.

These security sector structures and institutions are important. However, it is our understanding that they do not have any real leading capacity in formulating the country's security policies. We believe that this is an area that needs international assistance to better shape and help build the technical capacities and structure of the NSC in addressing the country's security challenges. IDM and DCAF have organised a national workshop of best practices in the functioning of the NSC, but this workshop until now has primarily helped in bringing some sensitivity to the issue. The need for

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[18]  The Constitution of the Republic of Albanian, Article 168, Paragraph 3
[19]  Law No. 8671, dated 26.10.2000, 'On Powers and Authorities of the Commanding and Strategic Direction of the Armed Forces of the Republic of Albania,' Article 13
[20]  Article 100 of Constitution
[21]  Article 100 of Constitution, Paragraph 2

reform encompassing the NSC was accepted by the technical advisory staff of the President and the Prime Minister. It remains an area that needs reform and international assistance to advise which might be the best model to be followed in the circumstances of the country. An effective reform of the national security structures cannot take place without deep analysis of the current situation by all institutions involved.

Although not explicitly defined in the Constitution, the practice is that the Minister of Defence formulates policies and decisions. The Minister also endorses all defence documents issued by the Chief of Staff and departments in the Ministry of Defence, and submits them to the Council of Ministers for approval. He reports to the Council of Minister and to Parliament on the implementation of policies and decisions concerning the defence sector. The Minister issues defence policy documents that are submitted to Parliament for approval after endorsement by the Council of Ministers. The Minister works with his body of experts on documents concerning defence matters. He chairs the Council for Defence Policies. The other members are the Deputy Minister of Defence, the Chief of General Staff, the Deputy Chief of General Staff, commanders of the ground, air and naval forces, the commander of doctrine and exercise, the commander of logistical support, the director of the judicial department and other persons of interest.[22]

Defence procurement is kept secret, while for other goods and services it is a transparent process, such as with the general government procurement system for goods and services. This does not mean that this aspect of procurement is not open for scrutiny to the Parliamentary Commission for National Security. For certain procurement levels, authorization is given by the Minister, whereas in some cases it is the Parliament that gives authorization. All contracts are authorized by the Minister of Defence.

The current defence budgetary arrangements are introduced simultaneously with those of the general government. The defence budget follows the same lines as the general government budget and it is approved at the same time. It is structured by programmes similar to those of the general state budget and the reporting system. The Council of Ministers allocates a portion of the defence budget to the general budget, while the distribution of budgetary allocations among the services, programmes and chapters is conducted by the Defence Minister.

At present, the Parliament of Albania is introducing the practice of budget control in the realms of the army, police and intelligence services by the Parliamentary Commission on National Security. This practice has met some resistance from

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[22] Law No. 8671, dated 26.10.2000, 'On Powers and Authorities of the Commanding and Strategic Direction of the Armed Forces of the Republic of Albania,' Article 20

ministers who are not satisfied with the sharing of the total budget 'since the Commissions are trying to provide a kind of opposition to the government.'[23]

For the formulation of national defence policies, the general government authorities rely on the documents, strategies and guidelines that have been endorsed by Parliament, as well as specific literature on the subject and their own expertise and training. Recommendations by international organizations, such as NATO, are closely taken into consideration.

The public institutes that exist in Albania on defence matters belong to the Ministry of Defence. They produce research papers and occasional papers. State and government authorities do not practice any form of commissioning research to either public or private institutes on any defence-related issue. International experts and NATO experts provide important contributions to defence issues and assist the Minister and other defence leaders in this respect. Private institutes organise national and international conferences on defence matters and NATO integration. In public debates, references are made to these products, but it is not the habit of decision-makers to publicly refer to or comment on research or recommendations from these activities.

Institutions do not consider private institutes as partner institutions to achieve reform or NATO integration objectives.

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[23] Neritan Ceka, MP. Cited in Miroslav Hadzic (ed.). *The Role of Parliament in Security Sector Reform in the Countries of the Western Balkans*, Centre for Civil-Military Relations, Belgrade, 2004, p. 126.

### B. Defence Institutions within the Defence Sector

Table 2 – Structure of Decision Making on Defence Policy at the Defence Sector Level

| Topic of Document | Title of Document | Issuing Authority | Endorsing Authority | Frequency | Status |
| --- | --- | --- | --- | --- | --- |
| | | | | Time span | |
| Procurement policy | Law No. 7971 dated 26.07.1995 'On Public Procurement' | Parliament | President | | |
| Personnel policy | Personnel Manual (Published in 2004) | MoD | MoD | | |
| Military education policy | The policies on education and training of military personnel | MoD | MoD | | |
| Public information policy | No specific document | | | | |
| Other defence | See the footnotes | | | | |

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[24] Law No. 7978 dated 26.07.95 'On the Armed Forces of the Republic of Albania'
Law No. 9047 dated 07.04.2003 'On the Military Service in the Republic of Albania'
Law No. 9074 dated 29.05.2003 'On the Military Informative Service'
Law No. 9069 dated 15.05.2003 'On the Military Police in the Armed Forces of Republic of Albania'
Law No. 9210 dated 23.03. 2004 'On the Military Status of the Armed Forces of the Republic of Albania'

| Topic of Document | Title of Document | Issuing Authority | Endorsing Authority | Frequency | | Status |
|---|---|---|---|---|---|---|
| | | | | Time span | | |
| policy documents[24] | | | | | | |
| Military Strategy | The Military Strategy of Republic of Albania Law No. 9419 dated 20.05.2005 | Parliament | President | Every 2 year | | |

All policy documents are published for internal distribution. The drafting or consultation of defence policies involves the following structures:

- All divisions within the Ministry of Defence and the divisions of the military staff of the Chief of Defence;
- Experts from military research institutes;
- Faculty members of the Military Academy;
- Foreign military advisors;

The process of establishing objectives for strategies, policies and directives within the defence sector is based on the following sources:

- Defence policy documents at the national level;
- Guidance from the Minister of Defence;
- Internal assessments of national values, interests and requirements;
- Conclusions and recommendations from research reports;
- Theoretical national and international literature;
- Similar documents published by the defence establishments of other countries;
- Advice and recommendations from international or bilateral experts.

The process of assessing security and defence risks and threats mentioned in strategies, policies and directives within the defence sector, is based on the following:

Law No. 9171 dated 22.01.2004 'On the ranks and military carrier in the Armed Forces of the Republic of Albania'
Law No. 9183 dated 05.02.2004 'On the military discipline of the Armed Forces'
Law No. 8374 dated 15.07.1998 'On the utilization of the airspace of the Republic of Albania'
Law No. 9363 dated 24.03.2005 'On the ways and procedures for permitting foreign military troops on the territory of the Republic of Albania and for deployment of the Albanian Armed Forces abroad'
Law No. 8875 dated 04.04.2002 'On the Albanian Coast Guard'

- Assessments made on defence policy documents at the national level;
- Assessments published by international organizations (NATO, the OSCE, the UN and the EU).
- Assessments made on similar documents published by the defence establishments of other countries;
- Assessments made by international or bilateral experts.

Decision-makers at the political level decide on defence requirements upon the request or advice from the top military echelons. If there is an internal debate at the military level, the results are forwarded to the civilian personnel in the Ministry. Debates at the military level are stimulated by inputs from the civilian sector, due to policy requirements (e.g. in the framework of NATO integration).

The main organizational documents that govern the military structure are:

- Organizational charts approved by the higher echelons;
- Mission statements for each structure;
- Job descriptions for commanding officers and their staff;
- Unified regulations for each service;
- A planning, programming, budgeting and evaluation system;
- A financial planning system.

The allocation system is a top-down arrangement (lower echelons issue requests to the higher echelons).

In order to perform the tasks of the defence planners the following elements are applied:

- The description of the end state of each program is made available;
- The costs of each program are established up front;
- The medium-term framework is determined;
- The spending allocations are maintained within the multi-annual budget.

The defence planning corps is predominantly made up of experts from the military sector.

# Defence reform in Bosnia and Herzegovina

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## Introduction

One could say that defence reform could be undertaken in almost every country for reasons which are common to all, first and foremost, to the changing geostrategic situation. Defence reform must reflect the changing nature of the threats and challenges to security which are common to all nations.

There is no current threat of large scale conventional conflict, but that does not mean that Bosnia and Herzegovina (BiH) are free from other forms of risks and challenges. Being part of the international community, Bosnia and Herzegovina should seriously take into account a wide range of asymmetric threats, primarily threats which arise from terrorism, the proliferation of weapons of mass destruction, organised crime and other related security challenges.

Bosnia and Herzegovina had to conduct defence reform in a political environment which was not always favourable to that process. Despite the political consensus that has been reached among all the political parties that the perspective of Bosnia and Herzegovina is to fully integrate into Euro-Atlantic structures the progress of the implementation of reforms was sometimes obstructed due to political reasons.

Nevertheless, Bosnia and Herzegovina pursued fundamental defence reform. Some of the major challenges were: the reorganisation of the armed forces, provision for state level executive direction and improving legislative oversight. Reforms in the early stage were mainly performed under the auspices of the international community, through the presence of international organisations in BiH, (NATO, OSCE, OHR and UN) and with limited influence from the local authorities.

Fortunately, in recent years, some of the political parties, supported by the local civil society organisations, played a significant role in the promotion of democratic values and international standards considering civil-military relations, as well as transparency and accountability of governmental structures in the security sector.

The defence sector in Bosnia and Herzegovina in comparison to other sectors that need to be reformed has reached a very advanced and satisfactory place. The State of Bosnia and Herzegovina is certainly very complicated, particularly concerning constitutional arrangements which are clearly reflected in the security field. This is why the reform of

the security sector is taking much longer in comparison to other states in South-East Europe. However, a number of positive changes have occurred recently and future reforms look promising.

Prior to 2001, Bosnia and Herzegovina suffered from a lack of state institutions dealing with the security sector. Five years later, BiH has established all the institutions at the state level that enable the proper functioning of the defence sector. Not all of them are running at full capacity in the performance of their role, but very positive changes can be detected and the intention is to reach international standards.

Bosnia and Herzegovina has not yet been invited to join NATO's Partnership for Peace (PfP) program due to one remaining obstacle. That is, full co-operation with the International Criminal Tribunal for former Yugoslavia (ICTY), basically meaning the Karadzic case. However, this does not mean that Bosnia and Herzegovina is regionally and internationally isolated when it comes to security and defence. Bosnia and Herzegovina participates in a variety of regional activities and structures which were established in recent years.

NATO has been deeply involved in the recent history of BiH and stays strongly committed to assisting BiH on its way towards democracy. After NATO completed the Stabilisation Force (SFOR) mission in BiH, the organisation decided to stay with the main purpose of assisting BiH in defence reform issues. Following the Istanbul Summit, cooperation with NATO member states was additionally strengthened with the initiation of the Tailored Cooperation Programme (TCP). This programme was tailored to fit BiH's needs and it consisted of numerous practical activities and allowed for a substantial level of cooperation. Moreover, through this programme, Bosnia and Herzegovina conducts more activities with NATO than some full PfP members.


**The effects of the Dayton Peace Accords on the defence system of Bosnia and Herzegovina**

The General Framework Agreement for Peace in Bosnia and Herzegovina[1] (better known as the Dayton Peace Agreement as it was agreed in Dayton USA and signed in Paris in December 2005) includes 13 annexes, Annex IV being the Constitution of Bosnia and Herzegovina.[2] In accordance with the Dayton Peace Agreement, the power of the central government (i.e. state government) is strictly limited to foreign affairs, trade, monetary policy and other areas related to the maintenance of the joint state. All other responsibilities, including defence, are vested in the entities of which the state is

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[1] The General Framework Agreement on Peace in Bosnia and Herzegovina ended almost four years of war in the country (from 1992 to 1995.).
[2] http://www.ustavnisud.ba/public/down/ustav_BOSNE_I_HERCEGOVINE_engl.pf

composed (Federation of BiH, Republika Srpska). Hence, each entity has its own army whose role is defined by the Constitution of Republika Srpska,[3] Constitution of the Federation of Bosnia and Herzegovina[4] and Laws of the Entities. The Parliamentary Assembly, the Presidency and the Council of Ministers of BiH did not have any responsibility over the defence and security structures. The Constitution does nevertheless give to the Presidency of Bosnia and Herzegovina a minimal connection with security structures, as stated in Article V of the Constitution BiH:

> *Each member of the Presidency shall, by virtue of the office, have civilian command authority over the armed forces. Neither Entity shall threaten or use force against the other Entity, nor under any circumstances shall any armed forces of either Entity enter into or stay within the territory of the other Entity without the consent of the Government of the latter and of the Presidency of Bosnia and Herzegovina. All armed forces in Bosnia and Herzegovina shall operate consistently with the sovereignty and territorial integrity of Bosnia and Herzegovina.[5]*

Amendments changing the Constitution can be made either by decree of the High Representative (OHR) or by consensus of the entities.

The Presidency of BiH is responsible for establishing the Standing Committee for Military Matters,[6] which then coordinates the two entity armies. Even though in the mentioned Article the Presidency BiH is entitled to effectuate the civilian control over the armed forces that actually never came into practice.

The position of the Entity Armies was also defined by <u>Annexes 1-A and 1-B</u> of the <u>Dayton Peace Agreement</u> which limited the actions of the Armed Forces (AF). Annex 1-A deals with the role of international forces in Bosnia and Herzegovina. According to

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[3] Article 68 of the Constitution of the Republika Srpska stipulates that Republica Srpska shall regulate and secure the defence of the Republica Srpska. Furthermore, Articles 80 and 106 of the Constitution task the President of the Republika Srpska with performing tasks related to defence and security. It specifies that during war and peace time, the Army of Republika Srpska is commanded by the President of Republika Srpska.

[4] Article 1 of Chapter III, Division of Responsibilities between the Federal Government and the Cantons of the Constitution of the Federation of Bosnia and Herzegovina states that the Federation has exclusive responsibility for organising and conducing the defence of the Federation and protecting its territory, including establishing a joint command of all military forces in the Federation, controlling military production, signing military agreements according to the Constitution of Bosnia and Herzegovina; co-operating with the Standing Committee on Military Matters and the Council of Ministers.

[5] Constitution of Bosnia and Herzegovina, Article V. Presidency, Paragraph 5a

[6] Article V of the Constitution of Bosnia and Herzegovina states that 'The members of the Presidency shall select a Standing Committee on Military Matters to co-ordinate the activities of the armed forces in Bosnia and Herzegovina. The members of the Presidency shall be members of the Standing Committee on Military Matters.

this Annex, international forces are stationed in Bosnia and Herzegovina for the purpose of assisting in the implementation of territorial and other military aspects of the Agreement. The multinational military forces are comprised of ground, air and maritime units under command of the NATO.[7] Annex 1-B specifically tasks the international security forces in Bosnia and Herzegovina with the establishment of an arms control regime. The establishment of progressive measures for regional stability and arms control is essential to create stable peace in the region. The general provisions of Annex 1-B, the Agreement on Regional Stabilisation, recognise the importance of devising new forms of co-operation in the field of security for the purpose of securing transparency and building confidence. To this end, an agreement was reached on the establishment of progressive measures for regional stability and arms control, under the auspices of the Organisation for Security and Co-operation in Europe (OSCE).[8] Some confidence building measures between the entity armies as well as with the armed forces of neighbouring countries were introduced.

**New objectives of the foreign and defence policy of Bosnia and Herzegovina**

The period prior to the 2001 defence reform process in BiH was slow and limited in scope. As a result of a lack of a common administrative or coordinating body over the armed forces, two separate armies continue to exist in BiH, with little or no control at the state level.

In July 2001, the Presidency of Bosnia and Herzegovina issued a Declaration on the readiness of BiH to become a member of the NATO's PfP. Based on that statement, NATO gave recommendations on necessary reforms to be pursued within the defence sector, among which the most important were: new legislation, establishment of an authority on the state level that would be responsible for defence issues, transparent process of defence planning and budgeting, development of democratic control and parliamentarian oversight of the armed forces, a common military doctrine and training standards and the creation of armed forces in accordance with NATO standards.

The Presidency of BiH undertook some measures to strengthen the Standing Committee on Military Matters by establishing the Secretariat of this Committee which had the role of assisting the Presidency in the fulfilment of its obligations and duties and, in this way, achieving BiH's aim of integrating into the Euro-Atlantic security structures.

Recognising the need to reform the defence structures, the High Representative in BiH who is also the final authority in theatre regarding interpretation of the Agreement on the Civilian Implementation of the Peace Settlement, established the Defence Reform

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[7] General Framework for Peace in Bosnia and Herzegovina, Annex 1-A
[8] General Framework for Peace in Bosnia and Herzegovina, Annex 1-B

Commission (DRC).[9] The DRC has the clear mission to: give guidelines for the establishment of a structure that is compatible with the expressed foreign policy and security goals of Bosnia and Herzegovina, notably membership in the PfP, NATO, and the EU.

**The way forward in achieving promising goals**

Towards the end of 2003, the Parliament of BiH adopted the <u>Law on Defence of BiH.</u> Without amending the Constitution, which was the recommendation of the Defence Reform Commission, this new law established stronger structures in the defence sector and gave a clear hint on the future direction of the reform process.

Therefore, the Law on Defence defines responsibilities in the defence sphere in BiH. The Presidency of BiH makes decisions by consensus concerning the questions of war, emergencies, deployment of armed forces abroad and empowering the Minister of Defence for the use and deployment of the armed forces in any military or humanitarian operations. Under the same law, the Support and Operational chain of command has been established. The support chain of command has the Presidency of BiH at the top, then the state level Ministry of Defence and then the entity level MoDs and General Staff at the bottom of the chain. The operational chain of command bypasses entity level MoDs and Supreme Commands (General Staff's of both entities) and is linked directly with operational units for the execution of operations.

With the final goal to implement the recommended Law on Defence BiH, the High Representative made a <u>Decision on the Establishment of the Joint Committee for Security and Defence Policy in the Parliament BiH.</u> At the same time, the Parliament adopted the recommended amendments in the <u>Law on the Council of Ministers BiH</u> and the <u>Law on Ministries and Other Governance Bodies</u> which were initially used to establish the Ministry of Defence.

Article 54 of the Directive of Internal Procedure of the House of Representatives of the Parliamentary Assembly of BiH describes the tasks and responsibilities of the Joint Committee for Security and Defence Policy as follows:

a) considers and monitors implementation of the Security and Defence Policy of Bosnia and Herzegovina;
b) monitors the work and considers reports of the Standing Committee on Military Matters of the Ministry of Defence of Bosnia and Herzegovina and other executive bodies working on issues of security and defence, and reports to the Parliamentary Assembly of Bosnia and Herzegovina, with a special emphasis on reports, short-term

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[9] Decision Establishing the Defence Reform Commission – OHR, 8 May 2003 (http://www.ohr.int/dwnld/dwnld.html?content_id=29840

and long-term plans concerning the structure of the Armed Forces of BiH, personnel policy and recruitment, salaries and benefits, education and training of the BiH Armed Forces, professional  and ethical code of conduct for civilian and army personnel, equipment of the Army, work of the military industries, procurement of goods and import and export of weapons and military equipment, assistance in goods and contracts with foreign companies working for defence institutions on a commercial basis, combat readiness, military exercises and operations including international obligations and international peace keeping support missions;

c) considers laws and amendments to laws in the jurisdiction of the Committee;

d) considers and gives judgments and recommendations, changes and amendments to the draft defence budget;

e) considers reports on execution of the defence budget, as well as revision reports of institutions from the Defence and Security Policy of BiH;

f) considers issues of cooperation between Bosnia and Herzegovina with the United Nations (UN), OSCE, NATO, the Stability Pact for South-Eastern-Europe and other organisations and countries concerning issues of security and defence;

g) considers the activities of standing and temporary delegations of Bosnia and Herzegovina to international and inter-parliamentary institutions in security and defence issues;

h) considers and gives judgments to the Parliamentary Assembly of Bosnia and Herzegovina on the ratification and implementation of international treaties on security and defence issues;

i) cooperates with relevant parliamentary commissions on entity levels in Bosnia and Herzegovina, in other states, as well as with international organisations and other bodies on defence issues.

(2) The joint committee considers other relevant questions on security issues of Bosnia and Herzegovina.


The Ministry of Defence of BiH as well as its competences and structure were established with the amendments to the Law on the Council of Ministers BiH and the Law on Ministries and Other Governance Bodies,


With the 2003 Law on Defence, the Presidency BiH was granted the responsibility of civilian command over the armed forces which meant that the Presidency could decide on the use of the Armed Forces while administrative responsibility over the Army of the Federation and the Army of Republic of Srpska was still held by the entity institutions.


The Security Policy of BiH and the Defence Policy of BiH were initiated together with the changes in the defence sector in 2003. One has to bear in mind that these two documents were developed before the Law on Defence of BiH which, in many respects, overrides these two documents.

The excellent implementation of this law in 2004 resulted with the continuation of work of the Defence Reform Commission with the clear mission to show the need to introduce changes into the Constitution of BiH and the Entity Constitutions as well as into the state and entity laws in order to establish a single Armed Forces in BiH.

**The final phase in the transformation of the defence sector in Bosnia and Herzegovina**

Alongside the implementation of the regulations of the new Law on Defence further steps were negotiated in order to remedy specific inconsistencies. Firstly, control over the day-to-day running of the Armed Forces, however, remained at the entity level, which retained the majority of personnel, logistics, and training functions. Furthermore, the state's authority in administrative areas was limited to setting standards. By the end of 2004, it had become clear that attempts to exercise even this limited authority were meeting considerable institutional inertia.

This situation, coupled with unrelated evidence that elements of the operational and support chains of command were not fully under either state or entity control, resulted in the Defence Reform Commission's new mandate to consolidate the two chains of command under full state-level control, to transfer remaining entity defence competencies to the state, and to close entity defence institutions.

The recommendations of the Defence Reform Commission[10] led to assurances of full state-level command and control over the Armed Forces; efforts to develop Armed Forces that are commensurate with legitimate defence and security needs; and, to establish a structure of the Armed Forces that would allow future integration into the PfP programme and, later, the NATO Alliance.

As the result of the recommendations of the DRC, the Law on Defence of BiH and the Law on Service in the Armed Forces of Bosnia and Herzegovina were adopted on 5 October 2005.

By provisions of the new Law of Defence one single Armed Forces (AF) was created and the competences of institutions and bodies at the state level in managing, commanding and controlling of the defence sector and Armed Forces were clearly defined. Before this law was adopted the entity parliaments made the decision to pass the competences in the field of defence from the entity to the state level.

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[10] The full DRC 2005 report titled 'AF BiH: A Single Military Forces for the 21st Century' can be found at: http://www.afsouth.nato.int/NHQSA/2005%20DRC%20Report/Report2005-eng.pdf

The Defence Law of BiH envisages the establishment of the structure, size and tasks of the Armed Forces, the competences of the institutions BiH (the State, the Presidency, the Ministry of Defence and the Standing Committee for Military Matters) as well as the competences of the institutions of the Armed Forces (Joint Headquarters, Operational Command and the Support Command). The Structure of the Armed Forces was established by this law as well as the responsibility of the institutions in the declaration of war or the state of emergency and the use of the Armed Forces in the case of natural or other disasters or catastrophes.

This law also established the grounds for the control of conflict of interests and limited the political and public activities of the members of Armed Forces. The institution of the General Inspector was established in order to control the behaviour and the professionalism of the members of Armed Forces. Other regulations and codes of conduct initiated by the Ministry of Defence enforced this law. The transitional legal provisions of this law determined the ways and dynamism of the transformation of the Entity Armies and Ministries of Defence to the Armed Forces of BiH and the BiH Ministry of Defence.

Conscription was abolished leaving the Defence Ministry and the Armed Forces with 10 000 professional military personnel, 1000 civilians and 5000 members in active reserve.

The Law on Service in the Armed Forces of Bosnia and Herzegovina regulates the status of the professional members of the Armed Forces.

After the adoption of the new laws regarding defence matters as of 1 January 2006 entity MoDs and commands were taken over by BiH defence institutions. The new single defence budget also came into effect. The Law on Budget for the Institutions of Bosnia and Herzegovina and International Obligations of Bosnia and Herzegovina 2006**,** finally put the budgeting and financing of the Armed Forces under the full control of the Parliament and civilian governing bodies.

The Presidency approved the new force structure, size, and distribution of the Armed Forces in July 2006.

  he next task related to the transformation of the defence sector considers that by 1 July 2007 the new brigade headquarters, their assigned infantry battalions, the new infantry regiments, and the regimental headquarters should have been established and in their stations. By 31 December 2007, all other branches should have established their regimental headquarters and be in their new stations.

Defence reform is one of the crucial aspects of political, economic and social reform in Bosnia and Herzegovina and it is one of the most political sensitive issues. Bosnia and

Herzegovina has made important strides in the area of defence sector reform and these reforms must be continued, not only to achieve PfP/NATO membership, but also to strengthen the country's long term stability and security.

*Part A: Basic Defence Management Laws and Regulations*

### 1. Government Structure, Reporting and Management Relationships

The Dayton Agreement includes 13 annexes, Annex IV defining the Constitution of Bosnia and Herzegovina. In accordance with the Dayton Peace Agreement, the power of the central government is strictly limited to foreign affairs, trade, monetary policy, and other areas related to the maintenance of the joint state. All other responsibilities, including defence, are vested in the entities of which the state is composed (Federation of BiH, Republika Srpska). Hence, each entity has its own army. The Constitution does nevertheless identify the Presidency of Bosnia and Herzegovina as the civilian commander of the Armed Forces, as stated in Article V (see above). They exercise control over the Standing Committee on Military Matters, which then coordinates the two entity armies. Amendments to the Constitution can be made either by decree of the High Representative (OHR) or by consensus of the entities.

Nevertheless, the Constitution of Bosnia and Herzegovina provides the legal basis for the new Defence Law of Bosnia and Herzegovina and the Law on Service in the Armed Forces of Bosnia and Herzegovina. This basis is contained explicitly and implicitly within its provisions. From an explicit perspective, Article III.5 envisages the state competency for the preservation of sovereignty, territorial integrity, political independence, and international personality. Additionally, this article provides that the state can assume such responsibilities as are necessary to fulfil these tasks. Furthermore, Article III.5 also envisages that additional institutions may be established as necessary to carry out such responsibilities, which provides the basis for the recommendations to expand state-level institutions to fulfil the assumption of defence competencies. The commitment to the preservation of the sovereignty, territorial integrity and political independence is also found in the preamble of the Constitution.

From an implicit standpoint, in Article III.1 of the Constitution it is determined that foreign policy is the responsibility of the institutions of Bosnia and Herzegovina. The conduct of foreign policy also includes consideration of a state's ability to defend its borders and to project force abroad. Consequently, the conduct of foreign policy and the full command and control of the Armed Forces are both necessary elements for preserving the sovereignty, territorial integrity and political independence of the State of Bosnia and Herzegovina. Furthermore, clearly an expressed goal of Bosnia and Herzegovina's security policy is collective security – primarily through Euro-Atlantic

organisations. Accordingly, an integral part of the foreign policy of Bosnia and Herzegovina is its quest to integrate into NATO, its processes, and the EU. The Armed Forces of Bosnia and Herzegovina is an instrument of the state and therefore must be capable of supporting and sustaining these policies. Thus, the state must have the full capacity to exercise command and control over these forces.

- **Constitution of Bosnia and Herzegovina**; Annex IV, Dayton Peace Agreement, ArticleV.5.
- (http://www.ustavnisud.ba/public/down/USTAV_BOSNE_I_HERCEGOVIN E_engl.pdf).

*Laws regulating the terms of reference, mission statements, structures and obligations for all governmental entities involved in formulating, implementing, reporting and overseeing defence policies.*

**The list of the related laws:**

- **Law on the Council of Ministers of Bosnia and Herzegovina**, 18 July 2003 (http://www.vijeceministara.gov.ba/bosanski/zakon_o_vm_b.pdf - in Bosnian);

- **Law on Amendments to the Law on the Council of Ministers of Bosnia and Herzegovina**, 2 December 2003 (http://www.vijeceministara.gov.ba/bosanski/zakon_o_di_zakon_o_m in.pdf - in Bosnian);

- **Law on Ministries and Other Governance Bodies in Bosnia and Herzegovina**, 13 February 2003 (http://www.vijeceministara.gov.ba/bosanski/zakon_o_ministarstvima _b.pdf - in Bosnian);

- **Law on Amendments to the Law on Ministries and Other Governance Bodies in Bosnia and Herzegovina**, 2 December 2003 (http://www.vijeceministara.gov.ba/bosanski/zakon_o_di_zakon_orga ni.pdf - in Bosnian);

- **Law on Amendments to the Law on Ministries and Other Governance Bodies in Bosnia and Herzegovina**, 23 May 2006 (**'Official Gazette of BiH' 45/2006**)

- **Article establishing the Joint Committee for Defence and Security Policy of Bosnia and Herzegovina of the House of Representatives**

**of the Parliamentary Assembly of Bosnia and Herzegovina** (Rules of Procedure of the House of Representatives of Bosnia and Herzegovina – Article 54, 16 January 2006, http://www.parlament.ba/bos/pd/poslovnik/poslovnik_pd_bosanski_jezik.pdf - in Bosnian).

*Laws of general nature with direct application to defence governance (such as budgeting, protection of classified information, public information, statutes for civil servants and dignitaries, procurement etc.)*

Among the general laws that have direct influence on defence management the Law on Budget for the Institutions of Bosnia and Herzegovina and International Obligations of Bosnia and Herzegovina 2006 should be mentioned. This law finally put the budgeting and financing of the Armed Forces under the full control of the Parliament and civilian governing bodies.

 **List of the other related laws:**

- **Budget for the Institutions of Bosnia and Herzegovina and International Obligations of Bosnia and Herzegovina 2006**, (http://www.parlament.ba/bos/budzet/Budzet_2006_bos.pdf  - in Bosnian)

- **Law on Protection of Secret Information** ('Official Gazette of BiH' 54/2005)

- **Freedom of Access to Information Act, 28 November 2000, ('Official Gazette of BiH' 28/2000),** (http://www.vijeceministara.gov.ba/bosanski/zakon_o_slobodi_pristupa_informacijama_b.pdf - in Bosnian),

- **Law on Civil Service in the Institutions of Bosnia and Herzegovina** (http://www.ads.gov.ba/en/laws);

- **Law on Amendments to the Law on Civil Service in the Institutions of Bosnia and Herzegovina - March 2003** (http://www.ads.gov.ba/en/laws/March);

- **Law on Amendments to the Law on Civil Service in the Institutions of Bosnia and Herzegovina - April 2004** (http://www.ads.gov.ba/en/laws/April%20Herzegovina.pdf)

- **BiH Law on Public Procurement** ('Official Gazette of BiH' no. 49/04; Amendments: 'Official Gazette of BiH' 19/05; 52/05; 92/05)

- **Law on Conflict of Interest in Governmental Institutions of Bosnia and Herzegovina** ('Official Gazette BiH' 13/02) (http://www.ohr.int/ohr-dept/legal/oth-legist/doc/LAW-ON-CONFLICT-OF-INTEREST.doc)

## 2. The defence sector

*Key laws referring solely to the Armed Forces (organisation of the Ministry of Defence, mobilisation, military service, acquisitions, requisitions in time of war, territorial defence etc.)*

The new Law on Defence of Bosnia and Herzegovina reflects the recommendations of the Defence Reform Commission to meet the objective of securing full state-level command and control over all elements of the Armed Forces of Bosnia and Herzegovina and the creation of a single military force. This law aims to integrate the existing operational and administrative chains of command by transferring the remaining entity defence competencies to the state level; together with the creation of a new institutional framework in order to exercise these exclusively state-level competencies. In particular, this law prescribes augmented state-level competencies that now incorporate the previous administrative command functions of the entities. Furthermore, this law assigns competencies and functions to state-level institutions and officials that would be necessary once the entities' role in defence is eliminated.

- **Defence Law of Bosnia and Herzegovina, 5 October 2005,** (http://www.mod.gov.ba/bos/dwn/bos_zakonoodbrani.pdf - in Bosnian)

The new Law on Service in the Armed Forces of Bosnia and Herzegovina will facilitate state-level command and control over the Armed Forces. It is an essential accompaniment to the proposed new Defence Law of Bosnia and Herzegovina as it provides for the state to assume the administrative competencies from the entities that relate to personnel. In particular, it allows the Ministry of Defence of Bosnia and Herzegovina to assume responsibility for the development, establishment, and maintenance of procedures and structures appropriate to the management of the Armed Forces. Furthermore, the Law on Service provides the overarching framework for the development of a common pay, human resources and personnel management system.

- **Law on Service in the Armed Forces of Bosnia and Herzegovina**, 5 October 2005

- (http://www.mod.gov.ba/bos/dwn/bos_zakonosluzbi.pdf - in Bosnian)

*Political documents stating the defence policy (Governmental programme, national security strategy or concept, white papers on security and defence, etc.)*

Among the important political documents that are related to the defence sector we should mention the Security Policy of BiH which was adopted in February 2006 and the Defence Policy, which is part of the abovementioned Security Policy. With these documents, it became possible to implement the Defence Law of BiH the regulations of which were overriding the previous Security Policy of BiH. With these documents, BiH has clearly declared its will to join NATO and the EU.

The White Book on Defence (2005) is the document that clearly corresponds to the recommendations of the Defence Reform Commission, but it was surpassed by the regulations in the Defence Law.

Keeping in mind that participation in peacekeeping missions is one of the main duties of the BiH Armed Forces, the Law on Participation of BiH Armed Forces Personnel in Peace Missions gives the competence to the Presidency BiH to decide on sending Armed Forces to peacekeeping missions as well as the competence of the Parliament to discuss and decide upon the conclusions of the Presidency in this field. Parliament BiH can block the fulfilment of the decision of the Presidency to send Armed Forces to a peacekeeping mission.

**The list of other related local and international laws and decisions**:

- **Security Policy of Bosnia and Herzegovina** (8 February  2006);

- **Defence Policy of Bosnia and Herzegovina** (part of the Security Policy of BiH)

- **Decision Establishing the Defence Reform Commission – OHR**, 8 May 2003 (http://www.ohr.int/dwnld/dwnld.html?content_id=29840);

- **Decision Extending The Mandate Of The Defence Reform Commission – OHR**, 3 February 2004 (http://www.ohr.int/decisions/statemattersdec/default.asp?content_id=31761);

- **Decision Amending the High Representative Decision Extending The Mandate of The Defence Reform Commission As Published**

**In The Official Gazette Of Bosnia And Herzegovina No. 4/04 – OHR**, 11 May 2004 (http://www.ohr.int/decisions/statemattersdec/default.asp?content_id=32476)

- **White Paper on Defence of Bosnia and Herzegovina,** (http://www.mod.gov.ba/eng/dwn/engwhitebook.pdf)

- **Report of the Defence Reform Commission 2003 - The Path to Partnership for Peace,** (http://www.ohr.int/ohr-dept/pol/drc/pdf/drc-eng.pdf

- **Defence Reform Commission - 2005 Report - AFBIH: A Single Military Force for the 21st Century,** (http://www.ohr.int/ohr-dept/pol/drc/pdf/drc-report-2005-eng.pdf)

*Defence planning documents made public or with unrestricted access (military strategy, procurement strategy, doctrines, defence planning directives, budgets, programmes etc.)*

In the field of defence planning, the Ministry of Defence BiH made public (in the official languages of BiH and in English) the Military Doctrine of the Armed Forces, the Doctrine of Training of the AF BiH and the Military Strategy. Bearing in mind that the established structure and size of the Armed Forces will have to be implemented prior to the end of 2007, the Presidency made a Decision on the Rationalisation and Downsizing of Personnel in the Defence Sector.

**The list of other related local and international laws and decisions:**

- **Law on Participation of BH Armed Forces Personnel in Peace Missions** (http://www.mod.gov.ba/bos/dwn/bosucesce.pdf - in Bosnian)

- **BH Armed Forces Military Doctrine**

- **BH Armed Forces Training Doctrine** (http://www.mod.gov.ba/bos/dwn/doktrinaobuke/doktrinabih.pdf - in Bosnian;

- **Decision of the Presidency of Bosnia and Herzegovina on the Rationalisation and Downsizing of Personnel in the Defence Sector in 2005** ('Official Gazette of BiH' 66/2005).

*Part B: Defence Institutions within the General Government*

Table 1 – Structure of General Government Decision Making on Defence Policy

| Topic of Document | Title of Document | Issuing Authority | Endorsing Authority | Frequency | Status |
|---|---|---|---|---|---|
| | | | | Time span | |
| National Defence Policy | Defence Policy of BiH | Ministry of Defence of BiH | Presidency of BiH | Every two years | Adopted |
| | | | | 2006 | |
| National Security Strategy or Concept | Security Policy of BiH | Council of Ministers of BiH | Presidency of BiH | Every four years | Adopted |
| | | | | 2006 | |
| Other national level defence policy documents | Strategy for fighting a terrorism | Ministry of Security of BiH | Council of Ministers of BiH | N/A | Adopted |
| | | | | 2006 | |
| White Paper | White Paper | Ministry of Defence of BiH | Council of Ministers of BiH | Every four years | Adopted |
| | | | | 2005 | |
| Defence Planning Directive | Directive for Defence Planning | Ministry of Defence of BiH | Ministry of Defence of BiH | Every year | Adopted |
| | | | | 2006 | |
| Procurement Strategy | Strategy for procurement and equip of Armed Forces of BiH | Ministry of Defence of BiH | Council of Ministers of BiH | | Not Adopted |
| | | | | | |

| Topic of Document | Title of Document | Issuing Authority | Endorsing Authority | Frequency / Time span | Status |
|---|---|---|---|---|---|
| Defence Budget | Budget of the Ministry of Defence of BiH | Council of Ministers of BiH | Parliamentary Assembly of BiH | Every year / 2006 | Adopted |

During the process of establishing BiH's security and defence policy, the competences of the Parliament, the Presidency, the Council of Ministers and the Ministry of Defence were clearly divided.

The BiH's Parliamentary Assembly is responsible for identifying the defence strategic aims, changing the mission of the Armed Forces, as well as the defence law and other laws that are directly connected with the defence and security sector. Parliament prepares its opinions on defence matters with the help of the Joint Committee for Oversight of Defence and Security, and an independent advisory expert within the Committee (DCAF assistance with Parliamentary Staff Advisors Programme in South East Europe). To improve its insight into the security and defence situation and with the final aim of making quality decisions, the Parliament uses the system of questions, hearing and interpellations.

The role of the Parliament in endorsing defence policy decisions is unrestricted. The Parliament is able, without the consent of the executive powers, to amend strategic objectives on defence (reformulate, introduce new objectives, delete objectives), to vary defence expenditures, to revise defence forces missions, etc.

The Presidency approves all documents in accordance with the constitutional competences, laws and regulations. The Presidency approves the Defence and Security Policy recommended by the Council of Ministers and/or the Ministry of Defence with the approval of the Standing Committee for Military Matters. The decisions of the Presidency on defence matters are prepared by the Ministry of Defence and the Standing Committee. Each of the three members of the Presidency has his own advisers on military matters and they participate in the construction of the position of the Presidency.

The Chairman of the Council of Ministers participates in policy making in the area of security and defence (i.e. the budget) according to the procedures established by the Law on Ministries and other governmental bodies. The Chairman oversees the

fulfilment of the decisions made by the Council of Ministers, without independent analysts.

The Minister of Defence recommends defence policies and participates in the development of security policy. The Minister is a member of the Standing Committee on Military Matters. According to the law, he/she suggests and decides upon procedural directives and orders dealing with the organisation, administration, staffing, training, equipping and deployment of the Armed Forces. Positions in the field of defence policy are prepared by the sectors and departments of the Ministry of Defence as well as by the Chief of the Joint Staff BiH and without independent analysts.

Before strategic positions related to the defence policy are approved, the Presidency produces a number of documents that affirm the determination of BiH to integrate into Euro-Atlantic structures and to ensure interoperability within the Armed Forces BiH and with the Armed Forces of the NATO members. The decisions of the Presidency and recommendations of the Defence Reform Commission (2003 and 2005) have considerably influenced the content of the Defence and Security Policy.

The defence sector's system of procurement for all goods and services is a transparent process as is the case for the whole system of procurement in BiH. The purchase of armaments, however, is under the control of Parliament BiH through the Joint Committee for Oversight of Defence and Security. The Law on Public Treasury establishes that all contracts for purchase or services for the security sector are signed by the Minister of Defence according to the approved budget. Without the approval of the Council of Ministers, the Minister cannot allocate funds from one chapter of the expenditure to another. The defence budget is a part of the general State budget and its realization is achieved through the Treasury as is the case for all other sectors.

In terms of defining defence strategies and formulating the Guidelines of Defence Planning, the following documents and organisations were particularly helpful: the OSCE Code of Conduct from 1994, the Instructions of the World Bank, the Office of the High Representative in BiH, requirements and recommendations of NATO, the EU Mission in BiH and the position of the Peace Implementation Council in BiH. Special assistance came from NATO's Headquarters in Sarajevo and the OSCE Mission in Sarajevo.

In BiH, many institutes and centres work on defence matters. Many of them are public, but there are also private centres. Public institutes are mostly academic institutions, while private institutes are independent and they gather a range of researchers. The basic results of their work are: research publications, conferences, seminars and debates in the field of defence policy. The governmental institutions (the Parliament, the Presidency, the Council of Ministers and the Ministers of Defence and Security) apply

the results of this work during the process of decision making. They also participate in the activities of certain institutes. In the public debates, they use the results of the research produced by the institutes/centres.

There are only privately commissioned surveys on defence issues. The results of these surveys are published in the media.

*Part C: Defence Institutions within the Defence Sector*

Table 2 – Structure of Decision Making on Defence Policy at the Defence Sector Level

| Topic of Document | Title of Document | Issuing Authority | Endorsing Authority | Frequency | Status |
|---|---|---|---|---|---|
| | | | | Time span | |
| Procurement policy | Procurement policy of MoD of BiH | Minister of Defence | Minister of Defence | Occasional | Adopted |
| | | | | 2005 | |
| Personnel policy | Personnel policy of MoD of BiH | Sector for personnel | Minister of Defence | Occasional | Adopted |
| | | | | 2005 | |
| Military education policy | Doctrine of education | Training and Doctrine command | Minister of Defence | Occasional | Adopted |
| | | | | 2004 | |
| Public information policy | Public Information Policy of MoD and AF BiH | | Minister of Defence | Occasional / 2004 | Adopted |
| | | | | 2004 | |
| Other defence policy documents | | | | | |
| | | | | | |

| Topic of Document | Title of Document | Issuing Authority | Endorsing Authority | Frequency / Time span | Status |
|---|---|---|---|---|---|
| Military Strategy | Military strategy of AF BiH | | Chief of Joint staff AF BiH | Every year / 2006 | Adopted |
| Force planning directives | Strategic planning directives | Sector for policies and plans | Minister of Defence | Every year / 2005 | Adopted |
| Training doctrine | BH Armed Forces Training Doctrine | | Minister of Defence | Occasional / 2006 | |

All policy documents are published for internal distribution. The Minister of Defence has the authority to decide which documents may be made public on a case-by-case basis. Members of the public may obtain a copy of the certain policy documents.

Authorised divisions within the MoD (sometimes all of them), and members of the Joint Staff of the Armed Forces usually participate in the drafting of defence policies. Foreign military advisors are often included in the development and evaluation of a draft policy.

The process of establishing the objectives for strategies, policies and directives within the defence sector is based on BiH security policy, directives and guidance from the Minister of Defence, advice and recommendation from international or bilateral experts and institutes. Lessons learned by other Armed Forces and MoDs are also welcomed.

Assessments of security and defence risks and threats is based on defence policy documents at the national level, assessments published by international organisations (the OSCE, NATO, the EU and the UN), as well as theoretical debates at national and international conferences. NATO's headquarters in Sarajevo established an expert team which supports the MoD in its assessment of defence and security risks and threats.

The MoD, the Defence Reform Commission and other decision makers at the political level have organised several internal debates on defence requirements. There was an internal debate at the military level and the results were forwarded to decision makers at the political level who consequently decided on the defence requirements upon the requests and advice from the top military echelon. Debates on defence requirements with other security agencies have also been conducted.

There is no public debate on defence requirements. The main organisational documents governing the military structures are as follows: the decisions of the Presidency on the structure, size and location of the Armed Forces, terms of reference for each structure, job descriptions for all members of the Armed Forces and procedures for the Army's operational systems.

There is a planning, programming, budgeting and evaluation system in place. The MoD has established a strict annual agenda of workshops and debates on the defence budget, and gives its proposal to the Council of Ministers.

The resource allocation system is of a top-down nature. The higher echelons allocate resources which are considered appropriate for the lower echelons.


**Conclusion**

BiH represents an excellent example of the convergence of theory and practice in the realm of security sector reform. The complexity of the challenges associated with transforming its security institutions in the post-conflict and post-communist period clearly demonstrates the difficulties associated with undertaking such a task. The State has required long-term engagement with international actors equipped with well-developed assistance programs.

Nation-building and reconciliation processes in post-conflict societies are very difficult to accomplish, particularly in fragile democratic environments which are beset by ethnic and political division. The fragmentation of the existing security sector in BiH, which was imposed by the Dayton Peace Agreement, presented a huge barrier to the establishment of a democratic and accountable security system.

Nevertheless, BiH successfully implemented democratic principles and imposed a democratic system of control over the Armed Forces. The political decision to join European and Euro-Atlantic structures, combined with international assistance had a significant influence on the development of BiH's present day security architecture.

The specific benefits that BiH has gained through the process of transformation of the defence sector have been crucial to the stabilisation and consolidation of the State.

Despite some obstructions during the process of defence reform, political support has been consistent and important goals have been achieved as a result.

The global plan for defence reform was established in the recommendations of the Committee for Defence Reform. Some elements have already been incorporated into the terms and acts of BiH's defence law, such as the deadline for the decision on the size, structure and location of commands and units of the Armed Forces.

The Transition Implementation Experts Team (TIET) is the specific body working under the direct authority of the Minister of Defence who is responsible for the creation and proposal of defence policy and its implementation. The Minister works to provide solutions to possible problems that might arise during the implementation of approved plans, regulations and decisions. NATO's headquarters in Sarajevo is the leading advisory agency of TIET.

The reform process is producing not only one, unified defence system but also a system which will be compatible with the Euro-Atlantic security architecture. The Ministry of Defence has engaged an American company, MPRI, to assistant in the establishment of a new MoD structure as well as a new structure for the Armed Forces. In coordination with the US and NATO, the Tailored Cooperation Program assists in the training of personnel.

Existing problems and issues that might arise in the future during the reform process are as follows:

- The rearrangement of a large number of personnel from one command to another unit or brigade. For example, Bosniacs and Croats who were not working in the command or brigades in the town of Banja Luka will, after the reform process, constitute over 50% of the personnel in the Operational Command, Personnel Command and the Command of the Infantry Brigade which will be based in Banja Luka.

- The largest part of the budget structure (over 80%) covers personal expenses, with almost nothing left for the modernization of the Armed Forces. It is necessary to assign funds to modernization efforts in order to ensure interoperability with members of PfP and NATO;

- A small number of military personnel speak English, which is crucial for ensuring interoperability and involvement in peace-keeping operations.

Moreover, given BiH's inadequate military education system, English proficiency among BiH officers and non-commissioned officers is particularly beneficial.

-   The **reintegration of redundant defence personnel** (approximately 2300) will be partly resolved with the NATO Trust Fund. However, there are still not enough number donations to accommodate for the planned activities associated with the pre-qualification of redundant employees.

It would be very positive if these problems were acknowledged by the international community and proper solutions created for their resolution. It is imperative that assistance is given in support of the continued education and training of personnel, which represents the main actor in the process of BiH's involvement with PfP. The establishment and nomination of the units which should participate in the peace-keeping operations should not be difficult to accomplish. However, equipping these units would prove to be a very difficult task without the support of the international community.

Discussions on the implementation of defence reform in BiH primarily stem from attempts by retrograde forces to dispute the rapidity of the reform process. Defence reform has always been taken as an example of successful reform in BiH and as the driving force for reforms in other sectors, especially for police reform. It is unlikely, however, that these discussions will jeopardize the implementation of the stated results in the defence sector. On the contrary, the joint headquarters of the Armed Forces has established the Transition Road Map whereby activities have been planned for the period until the year of 2010, when BiH expects to enter the NATO associations.

# Security Sector Reform in Croatia

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There are two main problems facing law enforcement sectors in Croatia: the country's weak economic situation and a kind of exclusivity or special approach dedicated to these sectors by Croatian society at large which might be explained by the credibility and merit attributed to them during the Homeland War. In other words, law enforcement sectors are expected to occupy a special position in Croatia and, accordingly, should not be shaken too much by overly radical inward transformations or changes.

Nonetheless, the Croatian authorities are quite aware that failing to overcome the abovementioned problems, Croatia will be unable to meet international standards and criteria. Both problems should therefore be approached in a much more harmonized way, keeping in mind the sensitivity of the issue given Croatia's specific conditions.

Due to the legacy of armed conflict in the region, reforms of this kind are perceived mostly in terms of downsizing. When the conflict was on Croatian soil, the problem of outsizing was not on the agenda. Each soldier, volunteer, policeman or agent was welcomed, which by the end of the conflict, resulted in an overmanned law enforcement sector. In the current era of peacetime, such a state of affairs is longer appropriate. Therefore, the first prerequisite for effective reform is downsizing, notably in the military. How successful it might be, particularly in comparison to other transition countries, remains to be seen.

Keeping in mind the turbulent recent history of South Eastern Europe, the mutual compatibility of these sectors gains special relevance. The agents of these sectors were often, by their very nature, on the frontlines of conflict, fighting each other. With the situation now completely changed, cooperation is expected. The rationale for that cooperation is not only enhancement of the stability in the region. Successful cooperation of this kind would also contribute to global stability. The stability of the region is of great consequence, particularly in light of its geographic positioning at the crossroads between East and West. Through the so-called Balkan route, any kind of unconventional threat (terrorism, WMD, illegal trafficking of people and drugs, etc.) can be transported into the territory of the European Union (EU). Cooperation in law enforcement alone works to establish some kind of regional protective shield against such threats. Hence, the only way to sustain cooperation between the parties that fought against one another in the recent past is through the legal harmonization of activities and, moreover, effective civilian control.

References of respective Croatian web sites are as follows:

National Security Strategy   - www.morh.hr/dokumenti1.asp

National Defence Strategy   - www.morh.hr/dokumenti2.asp

Act on Defence                  - www.morh.hr/dokumenti3.asp

Act on Police                      - www.mup.hr/131.aspx

Act on State Border Control - www.mup.hr/134.aspx

**Basic Defence Management Laws and Regulations**

The main regulations concerning basic defence management are based on the Constitution. These regulations are implemented through key laws referring solely to the Armed Forces (organisation of the Ministry of Defence, mobilisation, military service, acquisitions, requisitions in time of war, territorial defence etc.) as well as political documents stating the defence policy (governmental programme, national security strategy or concept, white papers on security and defence, etc.).

In Table1, the structure of the general government decision-making process on defence making policy is illustrated:

Table 1 – Structure of General Government Decision Making Process on Defence Policy

| Topic of Document | Title of Document | Issuing Authority | Endorsing Authority | Frequency / Time span | Status |
|---|---|---|---|---|---|
| National Defence Policy | Strategic Defence Review | MOD | Government | | Adopted 2005 |
| National Security Strategy or Concept | National Security Strategy | Government | Parliament | | Adopted 2002 |
| National Defence Strategy or Concept | National Defence Strategy | Government | Parliament | | Adopted 2002 |
| Other national level defence | | | | | |

| Topic of Document | Title of Document | Issuing Authority | Endorsing Authority | Frequency | Status |
|---|---|---|---|---|---|
| | | | | Time span | |
| policy documents | | | | | |
| White Paper | | | | | |
| | | | | | |
| Procurement Strategy | Long-Term Development Plan | Government | Parliament | | Adopted 2006 |
| | | | | 10 years | |
| Defence Planning Directive | Annual Defence Planning Directive | MoD | Minister of Defence | | |
| | | | | One year | |
| Defence Budget | Defence Budget | MoD | Minister of Defence | One year | |

The roles of the Parliament, the President, the Prime Minister and the Defence Minister are not explicitly defined in the Constitution or in the relevant legislation. The Parliament alone has the power to endorse or reject defence policy documents submitted for its approval. It follows the ruling party or coalition lines in deciding on defence matters. The President chairs a national defence council or similar body where all defence decisions at the presidential level are taken. The President issues defence policy documents that are submitted for approval to the Parliament, after the endorsement of the national defence council. All four authorities have an independent body/staff of experts working on defence.

The Head of Government (the Prime Minister) observes the decisions taken by the Council of Ministers without independent analysis. The Minister of Defence endorses

all defence documents issued by the Chief of Defence and the various departments in the Ministry of Defence, according to legal provisions. The Minister of Defence issues defence policy documents that are submitted for approval to the Parliament, after the endorsement of the Council of Ministers. The Minister endorses defence policy documents issued by the Chief of Defence and the departments within the Ministry without independent analysis.

Before any strategic document on defence policy is issued for endorsement, there is no form of provisions for guidance from a higher authority. The defence procurement system for weapons is secret, while for other goods and services it is transparent. The general government procurement system is transparent for all goods and services. All contracts are authorised by the Minister of Defence. The current financial/budgetary arrangements for the government were introduced simultaneously with those for the defence sector. The defence budget is approved at the same time as the general government budget. The allocation of the portion of the defence budget from the general budget is settled at the executive level (the Cabinet) with the participation of the Minister of Finance, while the distribution of budgetary allocations among the services, programmes and chapters is undertaken by the Defence Minister.

Concerning the main topics addressed, there is no form of provisions for guidance from the higher authority.

There are approximately 30 public institutes in Croatia and none of these are specialized in defence and military issues or civil-military relations in particular. Due to the fact that civil and democratic criteria are gaining relevance in the NATO accession process, which is Croatia's strategic goal, some scientific institutes dealing with social studies, also started to analyze these questions. A good example is the Institute for International Relations (IMO) in Zagreb, which develops and recruits experts, starting from youngsters to experienced experts, who are dealing with security and military issues, but mainly within the scope of research on various segments of international relations and the role of Croatia in this sphere. The adjustment to civil and democratic criteria is another critical issue, in the sense of compatible standards with the EU's and NATO's so-called Euro-Atlantic structures, which cannot be avoided while scrutinising the position of Croatia in international relations.

IMO has developed substantial cooperation in this field with the most prominent European institutions, such as the Geneva Centre for the Democratic Control of Armed Forces (DCAF), the Centre for European Security Studies (CESS) in Groningen, the George C. Marshall European Centre for Security Studies in Garmisch Panterkirchen and the International Institute for Security Studies in London. That means cooperation

in carrying out joint projects, organizing conferences, seminars and workshops, especially in the field of civil-military relations. All actors were faced with the fact that Croatia's general public, including its top politicians and MPs, were not initially aware of the relevance and sensitivity of security sector reform which had so much influence on the internal political situation, not to mention the urgent demand for reform of the Armed Forces in concert with the standards and criteria of the Euro-Atlantic structures.

The Centre for Strategic Studies as an informal unit of the Institute for Applied Social Research organizes conferences on strategic issues, mainly from the point of view of the position of Croatia and the Croatian diaspora in international relations. Such events are mostly financed by the Croatian diaspora or the Catholic Church.

At the Faculty of Political Science, there is group of experts dealing with security issues and civil-military relations. Centres, which might be considered as a component of civil society, have been established within the faculty. These are the Defendological Association, the Croatian Association for International Studies and the Croatian Atlantic Council. Although all these experts and professors belong to the faculty, which is a part of Zagreb University, they can be regarded as independent experts. In the broader sense, one can also say that the defence aspects are analysed by other social science faculties.

The influence of independent institutions and analysts is facilitating the informal preparatory phase of the decision-making process. Although there are some positive signs, public policy institutes, academics and independent experts are informally accepted as provisional advice-givers on security and military issues. There is no feasible system of permanent consultation, no hearings by Parliament or relevant committees and no request for special independent reports.

The Government, most notably the Ministry of Science and Technology, partially finances public institutes on a contractual basis. There are regular three year tenders, which define conditions for the application of all concerned institutes and also for independent experts. On the other hand, institutes are allowed to apply for projects and activities, which are offered by businesses, companies, and foundations within the country and abroad. There is also the possibility to apply through other Government bodies. There are no restrictions in applying to foreign foundations or to any international or multilateral organizations. There are no restrictions in cooperating with international organizations on joint projects or in any kind of joint activity. This kind of support is invaluable. For some public institutes, such financial support may represent half of a total budget. The activities of these institutions might entirely depend on this kind of funding. With this kind of support, these institutions are able to co-organise domestic or external events, e.g. conferences, seminars. They can issue publications, even in foreign languages.

There are not many private institutes dealing with this issue and their activities are mainly focused on a more general scope (security, international relations, transparency etc.). On occasion, they might deal with defence issues. Official and private surveys on defence issues are conducted. Members of the public may obtain a copy of certain policy documents, while others are restricted. An approval authority decides what documents may be made public on a case-by-case basis.

### *Defence Institutions within the Defence Sector*

Main documents regarding the defence sector are shown in Table 2:

Table 2 – Structure of Decision Making on Defence Policy at the Defence Sector Level

| Topic of Document | Title of Document | Issuing Authority | Endorsing Authority | Frequency / Time span | Status |
|---|---|---|---|---|---|
| Procurement policy | Long term development plan (LTDP) | Government | Parliament | 10 years | Adopted 2006 |
| Personnel policy | LTDP | Government | Parliament | 10 years | Adopted 2006 |
| Military education policy | LTDP | Government | Parliament | 10 years | Adopted 2006 |
| Public information policy | | | | | |
| Other defence | National Security | Government | Parliament | | both strategies |

| Topic of Document | Title of Document | Issuing Authority | Endorsing Authority | Frequency / Time span | Status |
|---|---|---|---|---|---|
| policy documents | Strategy National Defence Strategy | | | | are adopted in 2002 |
| Military Strategy | National Military Strategy | President | President | | adopted 2003 |
| Force planning directives | Annual Defence Planning Guidance | MoD | MoD | annually / one year | regular practice |
| Training doctrine | | | | | |

Several institutions are consulted or involved in drafting defence policies. First, there are some authorised divisions within the Ministry of Defence, which means all divisions within the Ministry of Defence and the divisions of the military staff of the Chief of Defence. Foreign military advisors have been temporarily brought into play to assist in the development of defence policy documents at the national level, such as the National Security Strategy, guidance from the Minister of Defence, advice and recommendations from international or bilateral experts, assessments at the national level and internal assessments.

Decision-makers at the political level decide on defence requirements without any debate. The main organisational documents governing military structures are organisational charts approved by the higher echelons. The planning system is based on a planning, programming, budgeting and evaluation system. A top-down resource allocation system (higher echelons allocate resources they consider appropriate for lower echelons) is in place. Each service programme is based on existing defence policy. There are no regulated requirements for defence planners to develop planning assumptions, recommendations and alternatives for the commanding officer or civilian dignitary before they decide on a certain course of action. Most military experts serve as defence planners.

**Basic Intelligence Management and Regulations**

The main regulations concerning basic intelligence management are based on the Constitution. These regulations are worked out through laws regulating the terms of reference, mission statements, structures and obligations for all governmental entities involved in formulating, implementing, reporting and overseeing defence policies. There are also political documents stating the role of intelligence within defence and security policy (governmental programmes, national security strategy or concept, white papers on security and defence, etc.)

There are two intelligence agencies in Croatia: The Security and Intelligence Service is responsible for Intelligence and Counter-Intelligence tasks; and the Military Intelligence Services is responsible for Intelligence and Counter-Intelligence tasks in the defence and military area. The main executive organs of the state, which are formally answerable are:

    A.   President of Republic of Croatia (Predsjednik Republike Hrvatske)

    B.   National Security Council (Vijeće za nacionalnu sigurnost)

    C.   Council of Ministers (Vlada Republike Hrvatske)

    D.   Croatian Parliament (Hrvatski Sabor)

    E.   Office of National Security Council (Ured Vijeća za nacionalnu sigurnost)

    F.   Council for Coordination of Intelligence Services

    G.   Security and Intelligence Agency (Sigurnosno-obavještajna agencija)

    H.   Military Intelligence and Security Agency (Vojno sigurnosno-obavještajna agencija)

    I.   Council for Civilian Oversight of Security and Intelligence Agencies (nominated by the Croatian Parliament)

**1. Coverage and Coordination**

In the Croatian Law on Intelligence Services of 2002, Croatia had three services: the Intelligence Agency, the Counter-intelligence Agency and the Military Intelligence Agency. The most recent Law on Intelligence reduced the services to two agencies: civilian (Security and Intelligence Agency) and military (Military Intelligence and Security Agency). The Council for Coordination of Intelligence Agencies coordinates the different forces, services and agencies. The main constitutional provisions that authorise activities of these various organizations are:

A. Croatian Constitution

B. Law on Security and Intelligence System

C. Defence Law

## 2. Accountability

### - to the executive

The Croatian Intelligence Agencies are formally accountable for policy and operations to the Head of State and the Government. The President and the Government for management of Intelligence use National Security Council which is responsible for making guidance for Intelligence work. Operational accountability is also the responsibility of the Council for Coordination of Intelligence Agencies. Financial Accountability is in the hands of the Government and Parliament. In 2006, Croatia adopted a new Law on Intelligence whereby accountability issues from the former law were not changed.

In the Constitution (Article 102), the President of Croatia and the Government are responsible for the work of the intelligence services. The management of the intelligence community is defined in the Law on the Security and Intelligence System. Parliamentarians and governmental bodies are still unable to perform all their legal duties. Parliamentary bodies do not have a professional staff capable of offering expert support to MPs on issues related to national security. The same situation exists within the Government whereby some groups within the intelligence system are taking on the role of expert and advisory groups.

### - to elected representatives

With respect to the issue of domestic transparency, the whole security sector is obliged to make information available to elected representatives. Everybody is obliged to send information to elected representatives as per request and regularly in the form of an annual report. Some information is made available for the general public. However, information is accessible to all privileged persons in the special committees of Parliament and to executive officials. Hence, there is a clear public/privileged distinction. There were some cases in the past where people obtained information they were not privy to. The present situation in Croatia is different and the Government has established an effective system for the protection of secret information.

There is also an existing public/privileged distinction in relation to access to information on the budget. The specific information on the budget is only available to

senior executive officials. Nevertheless, information on operations is accessible to authorised persons and top state officials (not all, by request or by special report on critical issues). Some information in this regard is accessible to the special parliamentarian committee on national security issues and the Council for Civilian Oversight of Security and Intelligence Agencies but in more general terms.

Information about the nature of operations and planning are reserved only for senior state officials and parliamentarians from special committees (privileged persons).

There is a Law on the protection of secret information, data and documents. Based on this law, declaration of the secrecy of documents is a decision of the body that has produced the information. This body has the authority to revoke the secrecy status of the document/data. The Government also makes decisions on secrecy. The law on the protection of secret documents is undergoing modifications.

The only individuals who receive every report, classified or non-classified, are the President of Croatia, the Prime Minister and Parliament's special committee members. Some statistical information is available for the media and the public and it is published on the web pages of the various services and agencies. There is no official publication or reports, but there is a possibility to obtain free information that is published on the Internet (mostly information on the work and activities of the police forces work and activities). Information on Croatia's security and intelligence agencies is not accessible.

Modalities are based on annual and periodic reports. In the Annual Report on Security and Intelligence, agencies are expected to explain their activities, to determine whether or not they followed guidance in their activities, to deduce how they managed the system, and they should prepare financial reports for the Government and Parliament. There is no space for evading formal obligations in this respect, but there are possibilities for evading the writing of an all-inclusive report for the parliamentarians. The Agencies are directly accountable to elected representatives through the Internal Policy and National Security Committee. Agencies should send annual reports to Parliament. The Parliamentary Committee has to give approval for the nomination of Agency's directors, and also for making hearings during special investigations.

The Croatian Parliament nominated a special Council for Civilian Oversight of Security and Intelligence which is a non-MP body and its responsibility is to citizen complaints. This system is based on the Law on Security Services (2002) and it is proofed in the new Law on the Security and Intelligence System. Formal procedures and responsibilities are regularly fulfilled by the Committee, but there is still a lack of fulfilment of all possibilities which are in the hands of parliamentarians. Once again, there is no space for evading formal obligations, but there are possibilities for evading

the writing of an all-inclusive report for the parliamentarians. There were some complaints from MPs concerning a lack of information.

### - to other institutions

The intelligence and security community in Croatia are also monitored in some cases by the courts. The judges of the Supreme Court are included in the approval of special measures to agencies. On the request of Human Rights Commissioners, agencies are also obliged to respond to and submit reports. There are no security and intelligence agencies responsible to municipal authorities, but there some police forces are responsible to the local community. There are no specific intelligence/security services which have such powers.

### - to the media and society at large

There are some possibilities for the media and individual citizens to have the right of access to state information, but there is still a very strong culture of secrecy within the government. However, the media is finding a way to undisclosed information. Based on Croatian law, individual citizens and the media are permitted to obtain information from the Government. There is no protection for 'whistle-blowers' in Croatian law. There were some examples of 'whistle-blowers,' all of whom lost their jobs. Journalists have a right to protect their sources based on Croatian law. All in all, the media's coverage is at a high level and the media does succeed in exerting effective pressure on the Government. However, a public poll on security services in Croatia has yet to be conducted.

The Council for Civilian Oversight of Security and Intelligence Agencies is empowered to receive and investigate complaints from individual citizens. In cases of violations of human rights and citizen liberties, this body is obliged to send reports to the President of Croatia, the Prime Minister, the President of Croatian Parliament and the State Attorney. All international obligations in such cases are supposed to be respected.

### International transparency

All international codes or conventions to which Croatia subscribes impose 'transparency' obligations, be it signed with the UN, the Council of Europe or any other organization. The services and agencies used to offer some general or statistical information. The authorities comply with their obligations and there are no complaints. Croatia is in the process of EU integration and, as such, it is required to fulfil its obligations with respect to international co-operation between police forces, other

internal security forces, security services and intelligence agencies. Accessibility to more general information on international co-operation is typically provided only the successful completion of operations.

## Recent changes 2004/5 and general appeal

11 September 2001 had no direct impact on the behaviour of Croatia's security and intelligence agencies. Some organisational changes have been implemented to foster greater coordination between the security structures. However, all these changes were based on the rule of law.

## Oversight and Guidance

According to Croatian law, at the national level, there are the following requirements:

- National Security Strategy: Government prepares the documents; parliamentarian acceptance required.

- National Defence Strategy: Government prepares the documents; parliamentarian acceptance required.

- Annual Guidance for Intelligence Services: National Security Council acceptance required.

The role of the Parliament is restricted. Parliament is permitted to make amendments only in consent with the executive powers. Parliament applies the established system of questions, hearings and interpellations to make decisions on defence matters. The President chairs a national defence council or similar body where all intelligence decisions at the presidential level are taken. The President has an independent body/staff of experts on intelligence working solely for him/her.

The Head of the Government (the Prime Minister) endorses all documents issued by the relevant minister (of defence, interior, justice, etc.), according to constitutional provisions. The Prime Minister observes the decisions taken by the Council of Ministers without independent analysis. The Minister of Defence is responsible for the Military Intelligence Agency and he is engaged in formulating intelligence policy decisions through the Council of Ministers. In Croatian law, the Minister of Interior is Head of the Government body for the Coordination of the Intelligence Services. Members of this body are: the Minister of Interior (President), the Croatian President National Security Advisor (Vice-President), the Head of the Intelligence Service, the Head of the Military Intelligence Service and the Head of the Office of the National Security Council. This guidance is made public. There is a process for the

subordinating authority to comment and/or advise on the guidance they receive from a higher authority. The main topics addressed in that guidance are threat assessments, national objectives and national interests.

The tasks of Croatia's National Security Council are as follows: approval of the Annual Guidance for the Intelligence Services; discussions on relevant security and defence issues; making recommendations for executive powers in the security and defence area.

The intelligence budget is confidential for the public, but under the scrutiny of the Parliament, while the general government system is transparent for the public and under the scrutiny of the Parliament. International contacts are authorised from the National Security Council and the Office of National Security Council is responsible for coordination, development and oversight.

The main sources of knowledge the general government authorities' use for fulfilling their obligations for formulating national intelligence policies are internationally accepted codes of conduct and codes of good practices on governance and/or intelligence planning, such as NATO's expert programmes and other activities within the framework of EAPC.

There are several public and private institutes dealing with intelligence matters in Croatia. They belong to the academic community. Private institutes are, in part, dependent on public funding. They are of a more general scope (security, international relations, transparency, etc.) but occasionally deal with defence issues. Both types of institutes produce research and occasional papers and organize national and international conferences on intelligence matters. The results of their work are published by the media.

**Intelligence Institutions within the Security Sector**

The structure of Decision Making on Intelligence Policy is shown in Table 1

Table 1 – Structure of Decision Making on Intelligence Policy

| Topic of Document | Title of Document | Issuing Authority | Endorsing Authority | Frequency / Time span | Status |
|---|---|---|---|---|---|
| Intelligence Planning | Annual Guidance | Office of National Security Council | National Security Council | Once per year | Adopted 2005. |
| Personnel policy | Decision on Internal Structure | Agencies | Government | | Not yet adopted by new law |
| Intelligence Education | | | | | |
| Public information policy | | | | | |
| Other intelligence documents | | | | | |
| Intelligence Strategy | National Security Strategy | Government | Croatian Parliament | | Adopted 2002. |

| Topic of Document | Title of Document | Issuing Authority | Endorsing Authority | Frequency | Status |
|---|---|---|---|---|---|
| | | | | Time span | |
| International Cooperation | Law on Security and Intelligence Services | Office of National Security Council | National Security Council | | Adopted in July 2006 |
| Interagency Cooperation | Law on Security and Intelligence Services | Council on coordination of Security and Intelligence Agencies | National Security Council | | |

It needs to be pointed out that all policy documents are published for internal distribution. There are several points in drafting intelligence policy such as authorised divisions within the relevant Ministry, experts from the research institutes, even faculty members from education institutions including foreign advisors. Their work and results are based on policy documents at the national level, such as the National Security Strategy, guidance from the Minister, as well as advice and recommendation from international or bilateral experts. The process of assessing security is also based on assessments made on policy documents at the national level, such as the National Security Strategy, assessments published by international organisations such as the OSCE, the UN, the EU and NATO, internal assessments and assessments made by international or bilateral experts.

In the debate on intelligence requirements, decision-makers at the political level decide on requirements upon the request/advice from the top echelons. There is also an internal debate at the service level and the results are forwarded to the political decision-makers. The main organisational documents are organisational charts approved by the higher echelons, as well as terms of reference for each structure. The intelligence planning system is in place and is based on an intelligence management system. A resource allocation system is based on a top-down allocation system (higher echelons allocate resources they consider appropriate for lower echelons). The spending allocations are within the multi-annual budget. There is not a regulated requirement for defence planners to develop planning assumptions, recommendations and alternatives for the commanding officer or civilian dignitary before a certain course

of action is adopted. Mostly civil servant experts are participating in the corps of intelligence planners.

**Basic Police Management Laws and Regulations**

The main regulations concerning basic police management are based on the Constitution. These regulations are implemented through the Act on Defence, Act on the Armed Forces, Act on the Police, Act on the Structure and Competences of Ministries and State Organisations, Act on the State Budget, Act on Protection Secrecy Data, Act on the Media, Act on Civil Servants and Act on Public Procurement.

Key laws referring solely to the various police services are the Act on the Police, the Personal Data Protection Act, Ordinance on Safety and Protection of Official Data of the Ministry of Interior, Regulation on the Internal Organisation of the Ministry of Interior, Ordinance on the Internal Order of the Ministry of Interior, and Ordinance on Police Proceedings. .

The main political documents stating the role of the police within defence and security policy (government programme, national security strategy or concept, white papers on security and defence, etc.) are the Defence Strategy and the National Security Strategy. The main police planning documents, which are made public or are released with unrestricted access (police strategy, doctrines, planning directives, budgets, programmes etc.), are the Community Policing Action Strategy, the Ministry of the Interior Guidelines 2004 - 2007, the National Programme for the Suppression of Drug Abuse, and the National Programme for Combating Organised Crime.

**1. Coverage and Co-ordination**

The country's principal *national* police agency (only one) is the National Police, which is a public service of the Ministry of the Interior. The National Police performs certain tasks prescribed by law. The police force provides protection of the fundamental constitutional rights and freedoms of citizens, and the protection of other values protected by the Constitution. The police tasks determined by the Law are as follows: protection of life, rights, safety and inviolability of a person; protection of property; prevention and revealing of criminal acts, misdemeanours and offences; searching for perpetrators of criminal acts, misdemeanours and official and their taking to the competent authorities; control and regulation of the road traffic; tasks relative to the movement and stay of aliens; control and securing of the state border and other tasks defined by law. There is no body for coordination because there are no other forces,

services and agencies. For coordination between Ministry of the Interior and Ministry of Defence, responsibility lies with the Government.


## 2. Accountability

The Ministry of the Interior is formally accountable to the Prime Minister and to the Parliamentary Council for Internal Policy and National Security. In the past decade, there have not been any significant changes made to these arrangements. The provisions of the Police Act underpin these arrangements and they work very well.

The Minister of the Interior is obliged to submit reports to the Government on regular basis, to the House of Representatives of the Parliament at least once a year and upon request and regarding particular cases even more frequently to the Parliamentary Council for Internal Policy and National Security. The forces, services and agencies cannot evade any of their obligations in this respect. The police force is directly accountable to elected representatives through the Parliamentary Council for Internal Policy and National Security. The legislature's formal power is prescribed by the Police Act. There have not been any significant changes made to these arrangements in the past decade. This arrangement is underpinned by the provisions of the Police Act.


- *to other institutions*


There is an existing system of investigation and, accordingly, some specific powers have been designated to the police forces (in the area of crime scene investigation, investigation, conducting specific measures and actions). The provisions of the Criminal Procedures Act underpin this arrangement.


*- to the media and society at large*


The print and broadcast media and individual citizens formally have the right of access to information about the police. This has been secured by the Constitution, by the Act on Media, the Act on the Right of Access to Information, and it can be judicially enforced. Procedures whereby irregularities can be revealed by serving personnel and 'whistle-blowers' are formally guaranteed anonymity. The authorities acknowledge the right of journalists to protect their sources. There is an Ombudsman's office empowered to receive and investigate complaints.


Though the Croatian media is free, diverse media segments lack adequate experts for police and security matters. This is especially the case in the field of security and

defence sector reform and, moreover, in the field of civil-military relations. Generally, each media segment is assigned only one reporter. Furthermore, the media tends to pursue the path of tabloid press seriously neglected the need for quality research. There is no reliable poll/data on public attitudes to the security services or police agencies with particular reference to accountability.

### - to codes and conventions

Croatia is not a member of relevant international codes and conventions (the UN, the EU and the OSCE etc.) in this field, but it is respectful of them. Croatia has not yet subscribed to the 1995 Europol Convention, because it is a candidate country for full-fledged membership in the EU. Croatia did not subscribe to the 1999 Interpol Seoul Declaration, but it is a member of Interpol. International co-operation between the security services and police agencies does not affect the accountability of the country's forces.

## 2. Transparency

### - Domestic transparency: dimensions

The authorities are obliged to make annual reports on the work of the police force. On the request of the Parliamentary Council for Internal Policy and National Security Ministry of the Interior, the authorities have to prepare information about concrete cases. This obligation is imposed by the Police Act. Information about the organisation of the police force is a state secret according to the Act on Protection Secrecy Data. This information is not made public and only selected persons have privileged access to it (the Government, the Parliamentary Council for Internal Policy and National Security, and officials from the Ministry of the Interior). Information about the personal strength of the police is a state secret according to the Act on Protection Secrecy Data. This information is not made public and only selected persons have privileged access to it (the Government, the Parliamentary Council for Internal Policy and National Security, and officials from the Ministry of the Interior).

Information on the police force budget is made available and published in the Official Gazette annually, as a part of the whole state budget. This information covers what the money is spent on (inputs) and what the funds are used for (outputs). Information about the nature of operations conducted is made available in the most general terms in the public domain. Information about planning in police service is not made available and it is subject to privileged access.

Secrecy or confidentiality criteria and clauses are defined by the Act on Protection Secrecy Data and by the Ordinance on Safety and Protection of Official Data of the Ministry of Interior. Documents can be declared as secret or confidential by the head of the specific organisational unit of the police in which the document was created, used or stored. Regarding the other relevant documents, the Ministry of the Interior is issuing Guidelines for 2004-2007. Activity reports are submitted but they are not published. Police statistics are available in the public domain. All official publications are available on the official website of the Ministry of the Interior.

### International transparency

Within the current negotiation process, the EU requires certain data which is classified as secret by the Act on Protection Secrecy Data. According to the requirements of the EU, it is necessary to amend this Act to fulfil Croatia's obligations in the negotiation process. International co-operation between the police forces, other internal security forces, security services and police agencies (SECI Centre, Interpol, Europol) does not affect domestic transparency regarding these bodies.

### Recent changes 2004/5 and general appeal

After the events of 11 September 2001, the Criminal Code was amended in relation to the specific article which defines international terrorism.

### Oversight and Guidance

Ordinances and some decisions are issued by the Minister of the Interior. Decisions and regulations are issued by the Government. Acts are proposed by the Government and issued by the Parliament and finally declared by the President. The role of the Parliament in endorsing police policy decisions is unrestricted. The Parliament is able, without the consent of the executive powers, to amend strategic objectives on police (reformulate, introduce new objectives, delete objectives), to vary defence expenditures, to revise defence police missions etc.  It is able, without the consent of the executive powers, to amend strategic objectives on the police (reformulate, introduce new objectives, delete objectives), to vary defence expenditures, to revise defence police missions etc. The Parliament has an independent body/staff of experts on police matters working solely for the parliamentary commissions.

According to the Constitution in relation to the matter of the security intelligence services, the responsible body for the coordination between the President and the Government is the National Security Council. The President runs the National Security Council.

The role of the Prime Minister in formulating and endorsing police policy decisions is to define objectives and give general directions and guidance. The Prime Minister prepares his/her opinion on defence matters based on the reports prepared by the Ministry of Defence and the Ministry of the Interior and in coordination with the National Security Council.

The Minister of the Interior has a key role in proposing police policy decisions. All of the police policy decisions are prepared by the Ministry of the Interior and the General Police Directorate. The Minister subsequently proposes these decisions to the Prime Minister and the Government. The International Relations Department within the Minister's Cabinet is responsible for authorising international contacts and cooperation, and overseeing the development of such contacts.

There are no research institutes on police matters.

**Police Institutions within the Security Sector**

Structure of Decision Making on Police Policy is demonstrating in Table 1:

Table 1 – Structure of Decision Making on Police Policy

| Topic of Document | Title of Document | Issuing Authority | Endorsing Authority | Frequency | Status |
|---|---|---|---|---|---|
| | | | | Time span | |
| Police Planning | Ministry of the Interior Guidance 2004-2007. | Minister | Minister | | valid |
| | | | | 2004. – 2007. | |
| Personnel policy | Police Act Act on Civil Servants | Government | Parliament | - | valid |
| | | | | - | |
| Police Education | Training and education program | Police academy | Minister | Each year | valid |
| | | | | 1 year | |
| Public information policy | Act on Media Police Act | Government | Parliament | - | valid |
| | | | | - | |
| Other police documents | National Programme for Road Traffic Safety 2006 – 2010. | Ministry of Interior | Government | 4 years | valid |
| | | | | 2006. – 2010. | |
| Police | Community Policing | Ministry of | Ministry of | - | valid |

| Topic of Document | Title of Document | Issuing Authority | Endorsing Authority | Frequency / Time span | Status |
|---|---|---|---|---|---|
| Strategy | Action Strategy | Interior | Interior | - | |
| International Cooperation | - | - | - | - / - | - |
| Interagency Cooperation | Cooperation agreement between Custom Service and General Police Directorate | Ministry of Interior / Ministry of Finance | Ministry of Interior / Ministry of Finance | - / - | valid |

All policy documents are published for internal distribution. Members of the public may obtain a copy of certain policy documents, others are restricted. An approval authority decides what documents may be made public on a case-by-case basis. The authorised divisions within the relevant Ministry participate or are consulted in the drafting of defence policies as well as the police commanders down to the unit commander, high-ranking officers and, according to their rank, civilians with higher responsibilities within the Ministry and faculty members from higher education institutions.

The process of establishing objectives for strategies, policies and directives within the police sector is based on following sources:

a. Policy documents at the national level, such as the National Security Strategy.

b. Guidance from the Minister

c. Internal assessment of national values, interests and requirements.

d. Conclusions and recommendations from research reports.

e. Theoretical national and international literature.

f.   Similar documents published in other nations' defence establishment.

g.   Advice and recommendation from international or bilateral experts.

The process of assessing security risks and threats mentioned in strategies, policies and directives within the defence sector is based on following sources:

h.   Assessments made on policy documents at the national level, such as the National Security Strategy.

i.   Assessments published by international organisations such as the OSCE, the UN, the EU or NATO.

j.   Internal assessments.

k.   Independent research reports.

l.   Theoretical debates at national and international conferences.

m.   Assessments made on similar documents published by defence/security/police establishments in other countries.

n.   Assessments made by international or bilateral experts.


Concerning debates on police requirements (such as forces, equipments or resources): Decision-makers at the political level decide requirements without a debate, but upon requests and advice from the top echelons. However, there are internal debates at the service level and the results are forwarded to the political decision-makers. There is also an internal debate at the political level with military input and on defence requirements with other security sector agencies.

The main organisational documents governing police structures are the following:

o.   Organisational charts approved by the higher echelons.

p.   Terms of reference for each structure.

q.   Mission statements for each structure.

r.   Job descriptions for commanding officers and their staffs.

A bottom-up allocation system (lower echelons issue requests to the higher echelons) is also in place. All programmes are listed with their order of priority. There is also a regulated requirement for defence planners to develop planning assumptions, recommendations and alternatives for the commanding officer or civilian dignitary before they decide on a certain course of action. Experts from the services primarily participate in the corps of police planners.

**Basic Border Management Laws and Regulations**

The main regulations concerning basic border management are based on the: Act on Defence, Act on Armed Forces, Act on Police, Act on Structure and Competences of Ministries and State Organisations. They are implemented through the: Act on Police, Personal Data Protection Act, Ordinance on Safety and Protection of Official Data of the Ministry of Interior, Regulation on the Internal Organisation of the Ministry of Interior, Ordinance on the Internal Order of the Ministry of Interior and Ordinance on Police Proceedings.

Following the drafting of the State Border Control Act, which was adopted by the Croatian Parliament on 15 October 2003 (Official Gazette No. 173/03), the following subordinate legislation was drafted related to the State Border Control Act:

> ➢ Regulations on the terms and conditions to be fulfilled by the border crossings for the purpose of safe and economical performance of border control (OG No 141/03);

> ➢ Ordinance on the method of performing state border control (OG No 164/04);

> ➢ Ordinance on the conditions and method of establishing border crossing territories (OG No 150/04);

> ➢ Ordinance on the procedure of establishing and solving violations of border crossings (OG No 141/04) and

> ➢ Ordinance on the procedure of establishing temporary border crossings (OG No 150/04), and which are mainly harmonised with the EU norms.

The basic political document stating the role of border management within defence and security policy (governmental programme, national security strategy or concept, white papers on security and defence, etc.) is the National Strategy for Integral Border Management (IBM). Along with this document, there is the Strategy of Border Police Development which regulates all remaining issues within the competence of the Border Police. Both strategies were adopted by Government on 21 April 2005 and are currently in the implementation phase. Both strategies represent the main strategic documents for border police tasks.

The Parliament adopted the National Security Strategy of the Republic of Croatia in 2002. It is directed against security threats such as terrorism and organised crime. It recommends measures such as efficient border control, police and intelligence cooperation with neighbouring countries, regulation of the status of immigrants and asylum seekers, alignment of extradition procedures and links with relevant databases in other countries.

In accordance with the Programme of the Government of the Republic of Croatia for 2003 – 2007, and the Operational Implementation Plan for 2004, the Ministry of Interior of the Republic of Croatia has prepared the Border Police Development Strategy. This Strategy defines the way in which the Croatian Border Police will perform its reorganisation with the view of accepting and implementing EU norms, which will guarantee the ability of the Croatian border police to keep safe the future external EU borders. This Strategy envisages the activity plan from 2005 – 2009.

In addition to this Strategy within the framework of the CARDS 2001 Project 'Integrated Border Management – Interagency Cooperation' the 'National Strategy for Integrated Border Management' has been drafted. All services working on the border (border police, customs, phyto-sanitary inspection, veterinary inspection) participated in the drafting process. In addition to this National Strategy for Integrated Border Management, the Action Plan for the implementation of the aforementioned Strategy has been prepared.

On 21 April 2005, the Government of the Republic of Croatia adopted both strategies: the National Strategy for Integrated Border Management and the Action Plan for the implementation of the Strategy, as well as the Border Police Development Strategy that establishes important activities to be taken in achieving European standards in controlling the state border.

### 1. Coverage and Co-ordination

Referring to the reinforcement of border management the new organisational – personnel concept is being implemented. It defines the Border Police as an integral part of General Police Directorate. At the regional level, all organisational parts are equalised with the police and criminal police, which implies a strict vertical 'commanding line' from the national to the local level.

The State authorities involved in border management include the Ministry of the Interior (in particular the Border Police Directorate), the Ministry of Finance (in particular the Customs Administration), the Ministry of Agriculture, Forestry and Water management (in particular the Phytosanitary and Veterinary Inspection), the Ministry of Health and Social Welfare (in particular the Department for Border Sanitary Inspection) and the State Inspectorate. In addition, the Navy assists the police in tasks of border surveillance at the blue border; however, the police maintain the command of all operations.

An inter-ministerial working group has been established to ensure the coordination between these services. The overall framework for the coordination is the Integrated Border Management Strategy.

The Ministry of Interior was constituted in two acts: the State Administration Act and the Act on the Structure and the Scope of Ministries and Other Administrative Organisations. Its sphere of competence includes, among other things, the state border protection, the movement and stay of foreigners and their reception, as well as travel documents for crossing the state border. The activities of the state border protection reside exclusively within the competence of the Ministry of the Interior of the Republic of Croatia where they are performed by the Border Directorate, which is part of the General Police Directorate. The Border Directorate was constituted for the purpose of setting up the effective system of control and surveillance of the Croatian state border and for the purpose of establishing cross-border transnational co-operation, as well as for the purpose of achieving security standards required by the European Union within the framework of protecting the existing and future external borders.

The Ministry of the Interior, that is, the Border Directorate, co-operates with other state administration bodies – the ministries, as well. Co-operation with the Ministry of Foreign Affairs is conducted by means of a regular exchange of information in the procedure of defining the visa regime. Co-operation with the Customs Administration of the Ministry of Finance is conducted through working meetings where border activities are planned and arranged and then jointly implemented. The new State Border Protection Act which has been drawn up in the framework of the 'Integrated Border Management – Border Police' within the Twinning Project, and which is expected to come into force on 1 January 2004, contains an article that regulates co-operation between the police and the customs. In the framework of the Twinning Project, the model of the Agreement on Police and Customs Co-operation has been designed and its conclusion will contribute to more effective co-operation between these two agencies in the near future. The integration of mutual legal and realistic possibilities of co-operation between these two agencies represents a significant step towards the integrated border management concept.

Co-operation with the Ministry of Health has been organised in the form of conducting health inspections at the crossing of the state borders.

Co-operation with the Ministry of Agriculture and Forestry has taken the form of performing veterinary and phytosanitary inspection.

The Ministry of Defence renders its assistance to regular services and, among other things, assists in the activities of the state border surveillance at land, at sea and in the air. This assistance primarily refers to co-operation with the radar-observatory stations of the Ministry of Defence that supplies the information necessary for border surveillance at sea. Such information is also exchanged in the domain of air traffic, with the involvement of the Croatian Air-Traffic Control. The aforementioned information is also used in the area of security. Moreover, it should be mentioned that

the new radar systems intended for civil and military components are being installed at four locations. They will contribute to better protection and surveillance of the state border at sea.

For the purpose of harmonising the activities of the state administration bodies at sea, the Headquarters for the Harmonisation of the Activities at Sea of the State Administration Bodies has been founded at the state and local levels in which representatives of the above-mentioned ministries participate. At its regular meetings, the members of the headquarters plan their activities and analyse the results of their joint actions, whereby each member deals with the matter in question according to the regulations in the sphere of competence of his/her Ministry.

## 2. Accountability

### - *to the executive*

The Ministry of Interior is formally accountable to the Prime Minister and to the Parliamentary Council for Internal Policy and National Security. These arrangements are underpinned by the provisions of the Police Act. These formal arrangements work very well *in practice*. The Minister of Interior is obliged to submit reports to the Government on a regular basis, to the House of Representatives of the Parliament at least once a year and upon request and regarding particular cases even more frequently to the Parliamentary Council for Internal Policy and National Security. There is no possibility of evading obligations in this respect.

### - *to elected representatives*

The police force is directly accountable to elected representatives through the Parliamentary Council for Internal Policy and National Security

The legislature's formal power is prescribed by the Police Act. The Minister of Interior is obliged to submit reports to the House of Representatives of the Parliament at least once a year and upon request and regarding particular cases even more frequently to the Parliamentary Council for Internal Policy and National Security. There have not been any significant changes to these arrangements in the past decade or so.

This arrangement is underpinned by the provisions of the Police Act and these formal arrangements work very well. There is no possibility of evading these obligations in this respect.

*- to other institutions*

Concerning specific powers in this respect there is am existing system of investigation and, accordingly, specific powers have been designated to police forces in the area of crime scene investigation, investigation, conducting specific measures and actions. Human rights commissioners, municipal authorities, the specific border management/security service, and some internal boards (internal accountability) have no specific powers in this respect. Provisions of the Criminal Procedures Act underpin this arrangement. The implementation of these arrangements work very well and there is possibility for evasion.

*- to the media and society at large*

The print and broadcast media, as well as individual citizens, have the right of access to information on the police. This has been secured by the Constitution, by the Act on Media, Act on Right of Access to Information, and it can be judicially enforced

Irregularities can be revealed by serving personnel and anonymity is guaranteed. There is an Ombudsman's office empowered to receive and investigate complaints. Nevertheless, border management forces consider the level and quality of media coverage of the activities of other internal security forces to be high. There is no data on public attitudes to security services and border management agencies with particular reference to accountability.

*- to codes and conventions*

International codes and conventions are respected although Croatia has not subscribed to them. Croatia is not a member state of the EU (it is candidate country), so it has only operational agreement with Europol ratified by the Parliament. Croatia is a member of Interpol. Along these lines, Croatia respects the European Convention on Human Rights, the requirements of the EU and all concerned institutions. Within the area of international cooperation, the Croatian border management services cooperate with the SECI Centre, Interpol and Europol.

Croatia participates as an observer at the Centre for Information, Discussion and Exchange on the Crossing of Frontiers and Immigration (CIREFI). In order to prepare for full participation in this venture, Croatia will need to change its provisions relating to sharing information. This is foreseen for the end of 2006.

➢ In order to strengthen international police cooperation a total of 26 agreements on cooperation in the fight against international illegal trade in narcotic drugs and psychotropic substances, international terrorism and organized crime have been concluded. The agreements were concluded with all neighbouring countries and with most countries in the region. On the basis of the concluded agreements, as well as through cooperation via INTERPOL, the police of the Republic of Croatia maintain intensive operative cooperation with countries of the region, especially with neighbouring countries, and likewise with several countries members of the EU.

➢ Apart from intensive operative cooperation, intensive bilateral cooperation in the field of education and exchange of work experience is realized with several EU member states (FR of Germany, France, Great Britain, Austria etc.), and it is especially intensive with the US Government and its agencies.

➢ Likewise, the Republic of Croatia is active in regional police initiatives such as: Initiative for Cooperation in SE Europe (SECI), Stability Pact, Central-European Initiative (SEI), Quadrilateral (Hungary, Italy, Slovenia and Republic of Croatia), Adriatic-Ionian Initiative, United Nations Development Program (UNDP), International Organization for Migration (IOM) and South-European Police Chiefs Association (SEPCA). In order to establish and strengthen regional cooperation, the regional CARDS project 'Strengthening Police Capacities Against Serious Crime in JE Europe' is currently being implemented by the Council of Europe.

➢ Through the regional CARDS Project: 'Interpol/Balkan,' the supply of the equipment and installation of the network which enables the use of Interpol communication system I 24/7 together with the possibility of direct use of Interpol database for the great number of users inside the Ministry of Interior in the Republic of Croatia was realised (connection of certain border crossings, all police districts and certain operative communication centres within the greater police districts to the Interpol global communication system I 24/7 was established).

International cooperation with the Ministry of the Interior is conducted on the basis of the bilateral agreements on police cooperation, which have been concluded with 26 countries. 20 agreements are currently in preparation. Equally active cooperation is developing at the regional level through the membership in the international regional police organisations and initiatives (Stability Pact, SECI, Adriatic-Ionian Initiative, association of chiefs of police of the South-Eastern Europe-SEPCA, the Central European Initiative – SEI and others).

With regard to regional cooperation, it should be noted that the general police Directorate of the Ministry of Interior is actively participating in the work of the South-

Eastern Police Chiefs Association (SEPCA). The Croatian police started in October 2002 by implementing the  community programme which embraces all six SEPCA projects. During the implementation of the new model of work at the national level, the force held ten training sessions in accordance with the Training Programme for Police Officers. 595 officers completed the training, which included 506 police officers and 89 high-ranking officers and managers. The new work model has been implemented in 15 police districts and 83 police stations and has involved 471 policeman and 36 police officers in the preventive field. By the end of 2006, over 692 police officers will have completed the course.

The main aims of this strategy have been to enhance communication between the police and the public, strengthen the public's trust in the police, prevent repression, transform the police into a public service for the citizens and, ultimately, to democratise the police organisation.  These aims are completely harmonised with the Programme Guidelines of the MOI for the period 2004-2007.

It is important to stress that this model of reform was evaluated by OSCE representatives as the best model of police reform in this part of Europe. The representative of the Royal Canadian Mounted Police, Mr. Paul Joliceaur, sent an initiative to the Ministry of Interior, which involved police training in other SEPCA state members. The initiative was accepted in a seminar on the subject of 'Police in the Community,' which was held at the Police Academy in Zagreb from 21 - 26 February, 2005. Within the framework of SEPCA, the MOI presides over the Board for police in the community.


## 3. Transparency

### - Domestic transparency: dimensions


The authorities are obliged to make annual reports about the work of the police force. Upon the request of the Parliamentary Council for Internal Policy and National Security Ministry of the Interior, authorities are required to prepare information on concrete cases. This obligation is imposed by the Police Act.

Information about the organisation of the police force is a state secret according to the Act on Protection Secrecy Data. This information is not made public and selected persons have privileged access to it (the Government, Parliamentary Council for Internal Policy and National Security, and officials from the Ministry of the Interior).

Information about the personal strength of the police force is a state secret according to the Act on Protection Secrecy Data. This information is not made public. Selected persons have privileged access to it (the Government, Parliamentary Council for Internal Policy and National Security, and officials from the Ministry of the Interior). Information about the police budgets is made available and it is published in the

Official Gazette annually as a part of the whole state budget. This information contains details covering what money is spent on (inputs) and what funds are used for (outputs).

Information about the nature of operations conducted is made available in the most general terms in the public domain. Information about the strategic outlook of the police service is made available in the most general terms in the public domain. On the other hand, information about planning in the police service is not made available. It is subject to privileged access.

Secrecy or confidentiality criteria and clauses are defined by the Act on Protection Secrecy Data and by the Ordinance on Safety and Protection of Official Data of the Ministry of Interior. Documents can be declared as secret or confidential by the head of the specific organisational unit of the police in which the document was created, used or stored.

Regular *policy* statements are issued within the Ministry of the Interior Guidelines 2004. - 2007. Activity reports are submitted but they are not published. However, police statistics are available to the public. Otherwise, there are no other regular publications. All official publications are available on the official website of the Ministry of Interior.

**International transparency**

In the current accession process, the EU requires the supply of certain data which is classified as secret by the Act on Protection Secrecy Data.

*According to these requirements, it is necessary to amend the Act on Protection Secrecy Data to fulfil obligations which came out during the negotiation process, in a sense to be able to deliver the required data. International co-operation between border management forces, other internal security forces, security services intelligence agencies does not affect domestic transparency regarding these bodies.*

**Recent changes 2004/5 and general appeal**

After the events of 11 September 2001, the article which defines international terrorism in the Criminal Code was amended by Parliament. Perhaps there have some undeclared changes, but this is not very likely.

**Oversight and Guidance**

The structure of the Government's decision-making process on Border Management is based on ordinances and some decisions which are issued by the Minister of the Interior. Decisions and regulations are issued by the Government. Acts are proposed by the Government and issued by the Parliament and finally declared by the President. The role of the Parliament in endorsing border management policy decisions is unrestricted. The Parliament is permitted, without the consent of the executive powers, to amend strategic objectives on border management (reformulate, introduce new objectives, delete objectives), to vary defence expenditures and to revise defence border management missions. The Croatian security services may co-operate with foreign institutions with the approval of the Council for National Security on the basis of proposals from the Council for the Co-ordination of the Security Services.

The working group of the Government, the Crisis Staff, meets irregularly and carries out the co-ordination of activities among the different bodies of state administration during all crisis situations. The role of the Prime Minister in formulating and endorsing police policy decisions is to define objectives and give general directions and guidance. The border management service is subordinate to the Minister of Interior. Before any strategic document on border management policy is issued for endorsement, there are customary provisions for formal guidance from a higher authority and that guidance is made public. The main topics addressed are threat assessments, national objectives, national interests and medium and long terms for attaining national objectives. The International Relations Department within the Minister's Cabinet is responsible for authorising international contacts and cooperation, and overseeing the development of these contacts.

**Border Management Institutions within the Security Sector**

The Structure of Decision Making on Border Management Policy is demonstrated in Table1:

Table 1 – Structure of Decision Making on Border Management Policy

| Topic of Document | Title of Document | Issuing Authority | Endorsing Authority | Frequency | Status |
|---|---|---|---|---|---|
| | | | | Time span | |
| Border Management | Border police strategy | MOI | Government | | valid |

| Topic of Document | Title of Document | Issuing Authority | Endorsing Authority | Frequency / Time span | Status |
|---|---|---|---|---|---|
| Planning | | | | | |
| Personnel policy | Police Act Act on Civil Servants | Government | Parliament | - | valid |
| Border Management Education | | | | | |
| Public information policy | Act on Media Police Act | Government | Parliament | - | valid |
| Other Border Management documents | IBM Strategy with Action plan | MoI | Government | | Valid |
| Border Management Strategy | | | | | |
| International Cooperation | Bilateral agreement | | | | |
| Interagency | | | | | |

| Topic of Document | Title of Document | Issuing Authority | Endorsing Authority | Frequency | Status |
|---|---|---|---|---|---|
| | | | | Time span | |
| Cooperation | | | | | |

All border management policy documents are published for internal distribution. Members of the public may obtain a copy of certain policy documents, others are restricted. An approval authority decides what documents may be made public on a case-by-case basis.

The authorised divisions within the relevant Ministry decide on the process of consultation and drafting of defence policy. Also involved are: the border management commanders down to the unit commander, high-ranking officers, according to their rank, civilians with higher responsibilities within the Ministry and faculty members from higher education institutions.

The process of establishing objectives for strategies, policies and directives within the border management sector are based on the following:

- s. Policy documents at the national level, such as the National Security Strategy.
- t. Guidance from the Minister.
- u. Internal assessments of national values, interests and requirements.
- v. Conclusions and recommendations from research reports.
- w. Theoretical national and international literature.
- x. Similar documents published by other national defence establishments.
- y. Advice and recommendation from international or bilateral experts.

The process of assessing security risks and threats mentioned in strategies, policies and directives within the security sector are based on the following sources:

- z. Assessments made on policy documents at the national level, such as the National Security Strategy.
- aa. Assessments published by international organisations such as the OSCE, the UN, the EU or NATO.
- bb. Internal assessments.
- cc. Independent research reports.

dd. Theoretical debates in national and international conferences.

ee. Assessments made on similar documents published in other nations' defence/security/Border Management establishments.

ff. Assessments made by international or bilateral experts.

Decision-makers at the political level decide requirements upon requests and advice from the top echelons. There is an internal debate at the service level and the results are forwarded to the political decision-makers.

The main organisational documents governing border management structures are the following:

gg. Organisational charts approved by the higher echelons.

hh. Terms of reference for each structure.

ii. Job descriptions for commanding officers and their staff.

jj. Standing operating procedures for each structure.

There is a border management planning system in place. There is also a resource allocation system in place based on a bottom-up allocation system (lower echelons issue requests to the higher echelons). The border management planning system is organised according to departmental and service programmes, and the planners have all the necessary information about each programme in light of existing border management policy in order to perform their tasks. All programmes are listed with their order of priority. Each authority issues guidance comprising his/her intentions. The description of the end state of each programme is available and the costs of each programme and the medium-term framework are set. The spending allocations are within the multi-annual budget.

There is a regulated requirement for defence planners to develop planning assumptions, recommendations and alternatives for the commanding officer or civilian dignitary before a certain course of action is adopted. Mostly experts from within the services are participating in the corps of border management planners.

# Republic of Macedonia: Defence sector assessment[1]

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## Introduction

The Army of the Republic of Macedonia was established in 1992 following the withdrawal of JNA (Yugoslav National Army) forces from the country. The Republic of Macedonia was accepted as a Member State of the United Nations (UN) on 8 April 1993. Today, the country is a candidate for membership in the European Union (UN) and the North Atlantic Treaty Organization (NATO), a member of the Council of Europe, the Organization for Security and Cooperation in Europe (OSCE), NATO's Partnership for Peace (PfP) and the Euro-Atlantic Partnership Council, as well as other international and intergovernmental organisations. A number of amendments have been introduced since the adoption of the Constitution. The Constitution defines the defence of the Republic as 'the right and duty of every citizen' based on the overall principle that the sovereignty of the country derives from, and belongs to the citizens.

This report is divided into two sections. The first section provides an assessment of the current system of functioning of the defence sector in Macedonia and the second section assesses future prospects in the sector.

## I. Assessment of current functioning of the defence sector

Defence sector management

Macedonia's defence sector is managed by the Parliament of the Republic of Macedonia (Sobranie), the President of the Republic, the Government and the Ministry of Defence.

*Parliament*

The powers of the Parliament in the area of defence are regulated and defined by the Constitution, by relevant sectoral laws, including the Defence Law and by the rules of procedure of Sobranie. Sobranie adopts the highest legal acts, including the laws, strategy documents, resolutions, declarations and others in the area of defence and other legal instruments. Every deputy has a right to propose a bill in the field. This right is also given to the Government and to groups of at least 10,000 voters. Although the

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[1] This report has been written by Islam Yusufi, who is former Deputy National Security Adviser to the President of the Republic of Macedonia and a founder of Analytica, a think tank in Macedonia. Views expressed are those of the author and do not represent the views of the organizations that he works for.

powers of the Parliament in the area of defence are defined in the Constitution and the Defence Law, the Parliament is able, without the consent of the Government as executive power, to amend strategic objectives on defence (reformulate, introduce new objectives, delete objectives), to vary defence expenditures, to revise defence forces missions, etc.

The parliamentary legislative process starts with the proposal of an authorised body for the adoption of a law. The proposal is submitted to the President of the Sobranie who sends the proposal to the working bodies (commissions) of the Sobranie. If the proposal is submitted by an authorised body other than the Government, the President of the Sobranie is obligated to send it to the Government for an opinion. All parliamentary and government commissions participating in this process may comment on the proposal and the bill. Following this, the Sobranie decides on the need for adopting the proposed law. If the vote is positive and the sponsor has submitted a bill, the Sobranie opens its readings of the bill. Adopted bills are then promulgated by the President of the Republic, who also has the right of veto.

The Parliament undertakes the following activities in the area of defence:
- Supervises the realization of the authorities of the Government in the area of defence and monitors its preparations;
- Announces immediate military threats to the Republic;
- Declares the beginning and end of the state of war;
- Decides on the extent of funding necessary for the defence sector;
- Approves the wartime budget of the Republic;
- Decides on joining and withdrawing from collective security and defence systems;
- Ratifies international agreements which pertain to entering, transiting through or the presence of armed forces of foreign countries on the territory of the country for exercise and training activities, participation in peacekeeping and humanitarian operations, as well as participation of the units of the Republic of Macedonia's Armed Forces in similar activities abroad;
- Approves a national security and defence concept of the republic;
- Declares Armed Forces' Day and the Civil Protection Day;
- Passes resolutions regarding the defence system, plans for defence development, equipping and combat readiness of the Armed Forces.

In order to become acquainted with the activities of the Armed Forces, a Minister of Parliament may visit army units, command posts and headquarters organized by the Ministry of Defence.

There are various instruments in the hands of the Parliament that assist in the preparation of parliamentary opinion on defence issues. It may request that the President and the Government, as the principal bearers of the implementation of defence policy, provide their opinions on various defence issues. Parliament also has

permanent and temporary working bodies in the field. At present, the following permanent commission exists in the area of defence: Commission on Security and Defence. The Parliament may set up commissions of inquiry for any domain or any matter of public interest.

In addition, the Parliament has a permanent and temporary staff of defence experts working solely for the parliamentary defence commission. Moreover, it is using the system of questions, hearings and interpellations to make decisions on defence matters. It is also applying and receiving external and donor assistance from various foreign governments or defence related organizations providing necessary technical assistance. The OSCE and DCAF have been providing joint advisory support to Parliament's defence commission.

In the finalization process of its decision-making on defence issues reflected in the adopted laws, strategy documents, declarations or resolutions, the Parliament typically follows party or coalition lines. The practice of commissioning research to public or private defence research institutes in the country or from abroad has not been initiated by Parliament.

The Government is obligated to provide information to the Sobranie and to respond to its questions. If the Sobranie asks for the Government's opinion on a certain matter, the response has to be provided in written form. Alternatively, an authorised representative can deliver the Government's response orally during a parliamentary session. However, the Government has the right to refuse to answer questions raised by the Sobranie or a deputy if the question falls outside the Government's competence.

*The President*

The role of the President in formulating and endorsing defence decisions is defined by the Constitution. The President of the Republic is the Head of the state and Commander-in-Chief of the Armed Forces. The President appoints the Chairman of the Chief of Staff and other top generals. He grants decorations, honours and pardons to members of the defence establishment. The President, at the same time, presides over the Security Council of the Republic, which plays an advisory role in the formulation and implementation of defence policies. He may propose to declare a state of war or state of emergency to the Sobranie. During a state of war or emergency, if the Sobranie cannot meet, the President may appoint or discharge the Government. The President is expected to be in continuous consultation with the relevant defence bodies, including the Prime Minister, the Minister of Defence and the Chairman of General Staff.

In accomplishing his duties in the area of defence, the President also undertakes the following:
- Approves the Defence Strategy of the Republic;
- Approves the Defence Plan of the Republic;

- Issues measures for readiness and orders their execution;
- Issues the organization and formation of the Armed Forces;
- Approves documents for use in the Armed Forces and orders their deployment;
- Approves documents for the development of the Armed Forces;
- Determines measures aimed at an increase in combat readiness and orders their execution;
- Orders the mobilization of the Armed Forces;
- Issues rules for commanding the Armed Forces;
- Approves regulations regarding combat readiness, armed combat and mobilization;
- Appoints officers to the formation positions of generals, promotes and discharges generals;
- Appoints and dismisses military representatives in foreign countries.

For the purpose of performing functions in the area of the defence, the President also approves supplementary legal documents. The President endorses defence documents in the same manner as any other piece of legislation, according to constitutional provisions. The President may issue defence policy documents that are submitted for approval to the Parliament, after the endorsement of the Security Council.

The President has a staff of defence experts working solely for him, including units in the Presidential Cabinet that cover defence issues headed by the National Security Adviser to the President. The Presidential Cabinet also has a unit which organizes the meetings of the Security Council and follows decisions taken by the Council. To date, there has not been one case of defence research being commissioned to the public or private defence institutions in the country or abroad. However, NATO's defence advisory missions play a major role in assisting the President in his deliberations on defence matters.

*The Prime Minister*

The Government (or Council of Ministers) headed by the Prime Minister is the central defence policy-making body. It propose defence laws, the defence budget of the Republic and other Acts adopted by Sobranie and is responsible for their implementation. Adopts decrees and other Acts necessary for the implementation of laws; provides appraisals of defence bills and other defence Acts submitted to Sobranie by other authorised bodies; and performs other defence duties determined by the Constitution and law. The Government and the President oversee the work of the Ministry of Defence. The Government appoints defence counsellors at the country's embassies abroad, provides defence policy advice and assists in the inter-ministerial co-ordination required for the preparation of Government meetings in the area of defence.

The role of the head of government (the Prime Minister) in formulating and/or endorsing defence policy decisions is defined in the Constitution and in the relevant

sectoral laws, including laws on defence and government. The Head of the Government issues defence policy documents that are submitted to Parliament for approval, after endorsement by the Council of Ministers. The Head of the Government does not have exclusive powers in the defence area. All its authority is related to the promulgation of what has been decided by the Council of Ministers.

The Head of the Government exercises powers and responsibilities on the basis and within the framework of the Constitution and the law. The President of the Government may propose the dismissal of the Minister of Defence as a member of the Government. The Sobranie reaches a decision on this proposal.

The Prime Minister, through the Government or Council of Ministers, has the following authorities in the area of defence:
- Recommends the extent of the funds necessary for defence;
- Recommends the war budget of the Republic;
- Provides recommendations for the Defence Strategy of the Republic;
- Determines proposals for the Defence Plan of the Republic;
- Decides on the entering, presence of armed forces of foreign countries on the territory of the Republic and their transiting through it for exercises and training activities and participation in peacekeeping and humanitarian operations in accordance with previously ratified international agreements;
- Decides on accepting and donating military-technological assistance;
- Decides on the deployment of Civil Protection Forces established by the Republic in foreign countries for participation in humanitarian and exercise activities;
- Decides on the deployment of the Civil Protection Forces established by the Republic;
- Decides on the introduction of working obligations;
- Decides on the evacuation of the population;
- Orders the use of the police forces in missions during a state of war as support to the Armed Forces;
- Decides on exercising activities carried out by the agencies of the Government, local self-management units, trade companies, public enterprises, institutions and services;
- Approves regulations on the following:
  - Carrying out of measures for readiness;
  - Providing reserves for the needs of the defence in state of war;
  - Defence planning;
  - Defence training;
  - Criteria for assignment and priorities in assignment of citizens for defence;
  - Criteria for equipping the agencies of the Government for work in state of war;
  - Arranging the territory for the needs of the defence;

- o Organization and functions of the system for surveillance, informing and alerting in the Republic;
  - o Organization and functions of communications for command;
  - o Organization and functions of the system for crypto-protection;
  - o Anti-electronic security;
  - o Procedures for use of data and information which are processed within the communications information system in the defence area;
  - o Criteria for evacuation of the population.
- Decides on the following:
  - o Methods for accomplishment of the defence preparations;
  - o Establishing Civil Protection units and commands;
  - o Establishing training centres for defence;
  - o Determining facilities and areas of importance for the defence sector as well as restricted areas.

The Prime Minister has a staff of defence experts under his/her authority and headed by the Security Adviser. To date, defence research has not been commissioned to either public or private defence institutions in the country or abroad. The Head of the Government examines the decisions that are taken by the Council of Ministers without independent analysis. The international community's defence advisory missions play a major role in assisting the Prime Minister in the preparation of his/her opinions in defence matters.

Inter-ministerial co-operation is also invaluable to the Prime Minister in his/her decision-making as reflected in the formation of the inter-ministerial working bodies. These working bodies are established on a permanent or temporary basis. While reviewing issues within the area of competence of the Government, the working bodies co-operate with ministries and other administrative bodies. The Government's commissions and special commissions are permanent working bodies. The permanent inter-ministerial working body (commission) in the area of defence is the Foreign Affairs, Defence and Security working body. Membership is restricted to ministers from the relevant ministries and, where appropriate, high-ranking officials. The commission meets at least once weekly, before the meeting of the government. The commission is serviced by officials from the office of the Government under the supervision of the General Secretary. The commission's deliberations and reports feed directly into decision-making at the centre. The special commission in the area of defence is the Defence Production and Services commission.

*The Minister of Defence*

In the area of defence, the Minister of Defence endorses all defence documents issued by the Chairman of the Chief of Staff and the departments in the Ministry of Defence. It issues defence policy documents that are submitted for approval to the Parliament, after endorsement by the Council of Ministers. Moreover, the Minister of Defence may

issue defence policy documents that are compulsory to the entire defence establishment under his/her authority without parliamentary endorsement, after approval by the Council of Ministers. In addition, there are occasions where the Minister of Defence can issue defence policy documents that are compulsory to the entire defence establishment under his/her authority without the endorsement of the Parliament or the Council of Ministers.

In its formulation of the Defence Strategy of the Republic, the Ministry of Defence makes an assessment of possible military and other threats which threaten the sovereignty, independence and territorial integrity of the Republic. The Ministry also organizes and prepares the system of defence. Its other duties include: proposing measures for the development and improvement of the defence system; establishing the Defence Plan of the Republic; performing evaluations of the combat readiness of the Armed Forces; appointing military officers to initial rank; appointing, promoting and discharging officers to positions from the rank of major upwards to colonel; managing the construction of military and other facilities of importance, such as investment facilities, to accommodate the needs of the Armed Forces; organizing and preparing command communications for defence needs during a state of war or a state of emergency; manning the Civil Protection Forces; developing personnel policies; supporting the ethnic structure of key leaders and other personnel in the Armed Forces while maintaining the necessary level of expertise; approving regulations for the recruitment and manning of the active component of the Armed Forces, training employees of the Armed Forces and conducting other regulations which pertain to the service; approving regulations on the education and advanced training of defence employees; approving instructions in the area of defence, etc.

The Minister of Defence has a permanent staff of defence experts and advisers working solely under his/her authority. The Minister is also responsible for commissioning research to public and private defence research institutes under his/her authority. Moreover, the Ministry receives external assistance from public defence research institutes from abroad.

The Ministry of Defence is hierarchically organised into sectors (*sektor*) and units (*oddelenie*), all of which act as advisory units to the Minister.

Defence guidance and consultations

Before any strategic document on defence policy is issued for endorsement, there are legal and customary provisions at various levels for formal guidance from a higher authority. The highest authority is the Security Council of the Republic of Macedonia. The Security Council is composed of the President of the Republic, the President of the Assembly, the Prime Minister, ministers heading state administration bodies in the fields of security, defence and foreign affairs and three members appointed by the President of the Republic. The Council considers issues relating to the security and

defence of the Republic and makes policy proposals to the Assembly and the Government. Guidance issued by the Security Council depending on the decision of the Council itself, can be made public.

At the Government level, there is also a strategic planning methodology according to which the Government reviews and adopts its strategic priorities on an annual basis and integrates the strategic priorities in the fiscal strategy and the budget. According to the Budget Law, the Ministry of Defence is required to develop a three-year strategic plan that reflects the strategic objectives of the Government in the field of defence and adequately supports the objectives through the ministry programmes and budget submissions.

Reform of the General Secretariat of the Government has established new capacities for the coordination and monitoring of the strategic planning process as well as capacities for policy analysis and coordination in the General Secretariat. Significant progress has been made in establishing policy analysis and coordination mechanisms. A Methodology on Policy Analysis and Coordination has been developed identifying the key players in the policy-making system and their responsibilities. The Government's Rules of Procedure promotes a system that ensures that well-developed and coordinated policies are presented to the Government for review and adoption.

The Law on the Government and the rules of procedure provide for two expert councils - the legal council and the economic council - as permanent consultative bodies to the Government. Both councils, on the request of the Government, other administrative bodies or on their own initiative, examine legal, economic and other questions and offer expert advice. Both the legal council and the economic council consist of a chairperson and six members. The Government determines membership from among well-known academics and other experts. The Government may also establish ad hoc councils or committees. The Government decides on their remit and membership.

At the level of the Ministry of Defence, the Minister himself/herself issues guidance for the implementation of defence policies. Prior to submitting a proposal to the Government, the Ministry is obliged to consult with other ministries or administrative bodies that are interested in the respective issue. Unless the opinion of other relevant ministries and administrative bodies has been sought, the Government may not consider a proposal.

There are no specific processes in place for the subordinating authority to comment and/or provide advice on the guidance they receive from the higher authorities.

Main topics addressed include: threat assessments; national objectives and interests; strategic missions for the Armed Forces; instances when the military power may be engaged; intended level of ambition for the size and the structure of the Armed Forces needed to accomplish the strategic missions and other relevant issues.

Defence procurement

The defence procurement system is different from the system that is in place for the Government's general procurement system. The defence procurement system for weapons platforms is secret, while for other goods and services it is transparent. The general procurement system is transparent for all goods and services. The defence procurement system is also under the scrutiny of the Parliament. All defence contracts are authorised by the Ministry of Defence in cooperation with the Ministry of Economy and in consultation with the Prime Minister and the President.

Defence budgeting

Financial/budgetary arrangements for the defence sector are integrated into the general Government arrangements and legislation. The current general financial/budgetary arrangements for the Government were introduced simultaneously with those for the defence sector. The defence budget follows the same lines as the general budget and is approved at the same time. Both the general budget and the defence budget are structured by chapters of revenues, expenditures and programmes. The reporting system on the defence budget is similar to that of the general budget system.

The legal bases for the regular executive budget-making process and the main rules governing this process are contained in the Law on Budgets. According to the law, the budget must be prepared on the basis of macroeconomic policy and aggregates and upon an assessment of the likely development of global parameters of macroeconomic policy for the following years. The budget must be balanced and the budgetary process must be transparent. Every July, the Minister of Finance prepares a report on the fiscal situation of the current year, and proposes directives and targets for fiscal policy as well as the main categories for estimated revenues and expenditures for the upcoming year. In July, the Minister of Finance prepares a circular outlining the main directions for the preparation of budgets. This letter is distributed to budget-holders and local self-governments. They must prepare proposals for their budgets, containing information about estimated expenditure in the current financial year and for the next financial year. Their proposals must also include a review of the necessary funds for personnel and proposals about future obligations and expenditures. On the basis of these budget proposals, the Ministry of Finance coordinates with budget-holders. The Minister prepares the budget proposal and submits it to the government in October. The Government must submit the consolidated budget proposal to the Sobranie in November. The Finance Minister is obliged to present the budget to the Sobranie. The Sobranie adopts the budget and the balance of payments no later than 31 December. The allocation of the portion of the defence budget in relation to the general budget, as well as the distribution of budgetary allocations among the services, programmes and chapters is settled at the executive level (the cabinet) with the participation of the Minister of Finance.

<u>Formulation of defence policies</u>

The main sources of knowledge used by the Government authorities in the fulfilment of their obligations for formulating national defence policies include the following:

- National literature on the theory of governance and related well-established practical mechanisms, including the following: *'Process 2002: Security of the Republic of Macedonia, Skopje: Sv. Kliment Ohridski Press, 2002'*; *'Aspects of National Security of the Republic of Macedonia, Skopje: Institute for Sociological Legal and Political Research, 2001.'*
- Literature, models and examples from other nations with a recognised success in good governance and/or sound national defence planning, including the following nations: *EU member states, Norway, Switzerland, the United States and Turkey.*
- Internationally accepted codes of conduct and codes of good practices on governance and/or defence planning, including the following:
  - *Council of Europe (2001 European Convention on Mutual Assistance in Criminal Matters; 2005 Convention on Action against Trafficking in Human Beings; 2005 Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism; 1950 Convention for the Protection of Human Rights and Fundamental Freedoms; 1972 European Convention on the Transfer of Proceedings in Criminal Matters; 1981 Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data; 1987 European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment);*
  - *OSCE (1994 Code of Conduct on Politico-Military Aspects of Security; country specific recommendations);*
  - *EU: European Partnership and Stabilization and Association progress reports.*
- Specific recommendations of international organisations: *EU, NATO, OSCE, IMF, World Bank, Stability Pact for Southeast Europe, and other recommendations directed to the country.*
- NATO expert programmes and other activities within the framework of the Euro-Atlantic Partnership Council and the PfP.

There are a number of private and public research institutes working on defence matters in Macedonia. Public institutes consist of military, ministerial and academic organisations. Private institutes are independent. They are, in part, financially dependent on public funds. Private institutes are of a more general scope (security, international relations, transparency etc.) but occasionally cover defence issues. These institutes produce research papers, occasional papers, review series, commissioned reports, alternative strategies and national conferences on defence policy matters. They organise international conferences on defence policy matters.

The Government (the Prime Minister's Office and the Minister of Defence) publicly comments on their findings, which are often published by independent research institutes. Public debates on defence policy make reference to the work produced by research institutes.

Parliamentary commissions are yet to contract independent research on defence policy to public or private institutes. The Government is also yet to commission research on specific issues of defence policy to research institutes.

There are officially and privately commissioned surveys on defence issues. Results are published by the media and official bodies which issue defence policy statements in response to the outcomes of the surveys.

In accordance with the Constitution, the Law on the Government, the Law on Administrative Organs and the rules of procedures, the Government co-operates with companies, organisations, chambers and other associations on matters of mutual interest. The Government has the right to ask institutions to draft legislation and provide their responses to important policy issues. The Government may form commissions and other working bodies in agreement with such institutions to prepare legislation and other policy initiatives and to facilitate co-operation in general. Initiatives produced by research institutions are considered by the Government and research institute representatives may be invited to participate in the meetings of the government and its working bodies.

Publishing defence policies

Members of the public may obtain a copy of all policy documents upon written request. Approval for the release of copies is pending on the decision of an authority. The applicant must pay a fee for each copy.

Members of the public may obtain a copy of certain policy documents, while others are restricted. A list of policy documents which may be released to the public should be made public. An approval authority decides what documents may be made public on a case-by-case basis.

The Government's defence related organs inform the public through press releases, bulletins, press conferences and statements. The Head of the Government is obligated to publicise the actions of the government. The secretariat for information is responsible for informing the public about the Government's activities in accordance with directions from the Government. The Government has a spokesperson. Electronic tools (e-mail and Internet) are used for communication with the media and the public. The website of the Parliament, the President, the Government and the Ministry of Defence are located at the following addresses: http://www.sobranie.mk; http://www.president.gov.mk; http://www.gov.mk and http://www.morm.gov.mk,

respectively. Information is posted about the general defence policies of the Republic of Macedonia.

Drafting of defence policies

The following groups and ministries are consulted in the drafting of defence policies: the authorised divisions within the Ministry of Defence and the divisions of the military staff of the chief of defence; the military commanders down to unit commander; high-ranking officers; staff officers in various echelons down to the division (equivalent) level; civilians with higher responsibilities within the Ministry of Defence as well as the President's and the Prime Minister's Cabinet; experts from the military research institutes; faculty members of military education institutions; independent research institutions; foreign military advisors and others. Sources upon which the process of establishing defence objectives and of assessing security and defence risks and threats mentioned in strategies, policies and directives within the defence sector are based include: defence policy documents at the national level, such as the National Concept for Security and Defence; guidance from the Minister of Defence; internal assessments concerning national values, interests and requirements; conclusions and recommendations from research reports; theoretical national and international literature; similar documents published in other national defence establishments; advice and recommendations from international or bilateral experts.

There is a wider public debate on defence requirements. However, there are also occasions where decision-makers at the political level decide on defence requirements without debate. There are occasions where decision-makers at the political level deliberate on defence requirements upon the request and advice from the top military echelons. In general, there is an internal debate at the military level with input from civil servants. The results are forwarded to the political decision-makers. There is also an internal debate at the political level with military input. Moreover, there is a debate on defence requirements with other security sector agencies. In addition, there is a public debate on defence requirements.

Main organisational documents governing military structures

The main organisational documents governing the military structures include organisational charts approved by the higher echelons; terms of reference for each structure; mission statements for each structure; job descriptions for commanding officers and their staff; standing operating procedures for each structure and unified regulations for each service.

Macedonia's administrative legal framework is clearly defined. All laws and by-laws ensure that the administration as a system functions in line with generally accepted principles, e.g. the rule of law, transparency, accountability, and legal certainty. This

implies that the administrative legal framework includes general administrative laws (such as the Law on Administration, Law on Administrative Procedures and legislation covering redress and appeal), as well as laws regulating the 'general management systems' of the public administration. The most important of these laws are: the law on civil/public service, the organic budget law, laws on financial control, internal and external auditing. In addition, it encompasses such laws as freedom of information, data protection legislation, law on the ombudsman, law on conflict of interest, i.e. 'annex' legislation to ensure the implementation of accepted administrative principles. A basic element of the normative framework is the so-called 'rule book.' The 'rule book' specifies the internal arrangements of the State and Government bodies (including the ministries). Each body has its own rule book, which has to be approved by the Government. The rule book defines the bodies' workplaces, job descriptions, professional and other requisites for job placement, numbers of civil servants and employees, as well as other issues arising from the specific or general laws. Where a civil service law is in place, the rule book usually specifies which positions are to be occupied by civil servants. The Law on Administration or the Civil Service Law forms the legal foundation for the rule book.

The defence planning system

There is a defence planning system in place. It is a multi-year planning, programming and budgeting system. There is also a defence management system. There is no results-oriented defence planning system. There is also a force planning system and a separate resources allocation system. In addition, there is a financial planning system. A hybrid resource allocation system is also in place. It is both a bottom-up allocation system (lower echelons issue requests to the higher echelons) complemented by a top-down allocation system (higher echelons allocate resources they consider appropriate for lower echelons).

The defence planning system is organised through departmental and service programmes. The defence planners acquire the necessary information about each programme in order to perform their tasks. Each programme is developed in light of the existing defence policy. All programmes are listed with their order of priority. Each decision maker issues guidance comprising of his/her intentions. The description of the end state of each programme is available. The costs of each programme are established from the outset. The medium-term framework is developed and spending allocations remain within the multi-annual budget.

There is no regulated requirement for defence planners to develop planning assumptions, recommendations or alternatives for the commanding officer or civilian dignitary before they decide on a certain course of action. Military experts in general make up the corps of defence planners.

**II. The Way Ahead**

The problems that need to be tackled

The signing of the Ohrid Framework Agreement in August 2001 marked the end of conflict in Macedonia. The country has since enjoyed stable governments which have invested in the development of a reform process that has facilitated Macedonia's efforts to integrate into the Euro-Atlantic structures.

This has provided the country with an important base for defence restructuring and reform initiatives. However, economic and political constraints have made the reform process a lengthy affair. Preventing the influence of these constraints on the reform process in the future depends on the degree to which political stability can be sustained, and on the country's ongoing ability to avoid being drawn into potential conflicts.

Economic, political and social difficulties have made it difficult to easily consolidate control over the defence sector. The country has been unable economically and socially to meet the demands of the defence sector, particularly in relation to conscripted soldiers, maintenance of the barracks and other responsibilities.

The recent challenges faced by the country with regard to the defence sector, such as, the shortage of competent civilian specialists in defence policy, economic threats, insecure and inefficient borders, organized crime and corruption, etc., have shown that the reform process has not been effective in sustaining democratic governance in the defence sector and that it is governance itself that has emerged as a weakness.

Therefore, defence sector reform is not capable of consolidating good governance. Overall reform undertakings in the most significant public spheres, including the political, economic and judicial sphere, will ultimately consolidate the reform process.

The defence sector reform environment suffers from several problems. First, there is a lack of public trust in state institutions. Second, there are widespread tendencies for the politicization of the state administration structures. Third, the transition that has been experienced since 1989 has not been able to provide a model of how the country might evolve as a consequence of the structural reforms which have been undertaken as there has been a lack of continuity in the reform process and in policy-making.

A frequently neglected aspect of the defence sector reform process in Macedonia is whether the country is actually competent enough to decide on and implement a defence policy and direct the future course of defence reform. Thus, it is in this context that the significance of civilian governance arises, particularly in light of its role in evaluating and defining the security interests and threats to the country.

At the beginning of the reform process, the lack of expertise on defence reform and governance was a major problem. Politicians wanted to initiate a reform process but they lacked clear visions about the possible scenarios. Problems in the defence sector have persisted, in part, as a result of the scarcity of legitimate defence experts, whether civilian or military, who are capable of making a case for defence sector reform to their legislatures and the broader public. Though efforts have been made to overcome the difficulties and existing problems by training corps of civilian defence professionals, little progress has been made in developing a viable civilian defence community which is able to adequately conduct oversight of the military establishment.

Budgetary control of the defence sector which in Macedonia, as in other Southeast European countries, remains a legislative issue, despite the fact that theoretically it is the main pillar of oversight. In practice, it is not functioning as a crucial part of defence sector control. Despite the general expectations, the legislature has not been improving its budgetary oversight capabilities.

The country has sought to overcome the overall gap that exists in the above-mentioned system of accountability through relevant oversight institutions such as ombudsman and auditor general offices, civil society institutions and the media. However, they have not yet produced the desired results.

<u>The role to be played by the international community in addressing these problems</u>

The conditions established by the international community, including governments, institutions, programs and advisers, have the capacity to exert a strong influence on defence reforms in Macedonia. The 'NATO factor' represents an important source for reform beyond mere cosmetic improvement. In the process of approaching NATO, Macedonia can assume many new defence obligations and actively participate in the NATO-led international peace support operations. Adopting NATO standards and participating in peace missions can facilitate Macedonia's defence sector reform process whereby international oversight has the capacity to trigger additional defence reforms.

In the years to come, the country is expected to come closer to NATO and EU integration and there is a growing expectation that the commitment of the international community to Macedonia's reform process will only increase. The international community, consisting of major bilateral donors such as the UK and the US and international organizations such as the EU, NATO, the OECD, the OSCE, the Stability Pact for South East Europe (future Regional Cooperation Council), Western European Union, and the World Bank, can play a significant role in pushing the reform process forward.

The transformation in 2008 of the Stability Pact for South East Europe into the Regional Cooperation Council can further stimulate thinking about how to advance the reform process. Furthermore, the new regional structures can effectively strengthen the climate of reform throughout South East Europe.

The EU can also be instrumental in furthering defence sector reform in the country. Although EU assistance to Macedonia has not included in its realm the Ministry of Defence, its current CARDS assistance programme as well as the upcoming IPA assistance programme, will undoubtedly become key instruments in addressing deficiencies in the development of civilian governance and oversight mechanisms.

NATO has played a prominent role in the reform process. NATO's programs such as the PfP, the Membership Action Plan and the South East Europe Initiative have advanced the pace of defence reform processes. The decision to invite Macedonia to become a member of NATO can be seen as another reason to speed up the reform process.

With regard to the involvement of the international community, it may be concluded that international organizations have provided substantial support and certainly assisted in the development of Macedonia's defence reform policies. However, in view of past experience and current defence needs, the willingness to quickly implement the defence reform agenda needs to be sustained and the international community should support this process by applying suitable conditions wherever appropriate.

Status of the internal discussion on defence sector needs

Domestic discussions on defence reform in the country are far from over. Issues relevant to good governance are still unresolved, particularly with regard to transparency and accountability, sustaining political will, difficulties in changing old mentalities and factors that hinder the establishment of sustainable governance. Defence sector reform is a permanent and multi-dimensional process and, as such, it is affected by changes in various spheres.

The 16-year long process of defence sector reform in Macedonia has exposed the country to interactions between defence structures and the overall democratization process. The transformation of the defence sector underscores the importance of good governance in ensuring stability and prosperity.

Defence sector reform is still an area where considerable progress is lacking. The challenges still stand and the key to successfully facing these challenges rests on the degree to which political stability in the country can be sustained.

Looking ahead, there are many obstacles to the country's defence reform progress, not the least of which is the absence of efficient, effective, legitimate and accountable civilian governance structures. Whether there is progress in this regard or not, the absence of strong civilian governance will continue to have negative implications on the overall reform process.

Some of the obstacles to the reform process include: obsolete mentalities; a lack of decisive action on the part of the Government and the Parliament; a lack of political vision, will and initiative; the right people not being at the right places; the decreasing importance of the defence profession in the public eye which has led the Government to focus on more daunting problems, such as unemployment. The inability of the Government to synchronize and coordinate the numerous reform efforts targeted at every element of the defence sector and unwillingness of the Government to take responsibility for this weakness also needs to be remedied.

**Annex I**

**Sources for Government Structure, Reporting and Management Relationships**
- Constitution.
  - *Constitution of the Republic of Macedonia – 1991 (Articles 122-7, relevant to defence policy). Last accessed 22 August 2006: (http://www.morm.gov.mk/english/Constitution/constitution7.htm).*
- Laws regulating the terms of reference, mission statements, structures and obligations for all governmental entities involved in formulating, implementing, reporting and overseeing defence policies.
  - *Law on organization and work of the state administration – 2000 (available in Macedonian)*
  - *Law on government – 2000 (available in Macedonian)*
- Laws of general nature with direct application to defence governance (such as budgeting, protection of classified information, public information, statues for civil servants and dignitaries, procurement etc.)
  - *Law on access to public information – 2006 (available in Macedonian)*
  - *Law on elections – 2006 (available in Macedonian)*
  - *Law on crisis management – 2005 (available in Macedonian)*
  - *Law on working relations – 2005 (available in Macedonian)*
  - *Law on civil servants – 2005 (available in Macedonian)*
  - *Law on budgets – 2005 (available in Macedonian)*
  - *Law on personal data protection – 2005 (available in Macedonian)*
  - *Law on arms – 2005 (available in Macedonian)*
  - *Law on public procurement – 2004. Last accessed 13 September 2006: (http://javni-nabavki.finance.gov.mk/ppwww/en/ppPolicy/ppLaw.html).*
  - *Law on classified information – 2004 (available in Macedonian)*
  - *Law on protection – 2004 (available in Macedonian)*
  - *Law on medals – 2002 (available in Macedonian)*
  - *Law on arming – 2002 (available in Macedonian)*
  - *Law on special rights of people belonging to security institutions – 2002 (available in Macedonian)*
  - *Law on military invalids – 1996 (available in Macedonian)*
  - *Law on military families – 1994 (available in Macedonian)*

3. The defence sector
   - Key laws referring solely to the armed forces (organisation of the Ministry of Defence, mobilisation, military service, acquisitions, requisitions in time of war, territorial defence etc.)
     - *Defence Law. Last accessed 22 August 2006 - http://www.morm.gov.mk/english/defencelaw.htm*

- o *Army Service Regulation Law. Last accessed 22 August 2006 - http://www.morm.gov.mk/english/armylaw.htm*
  - o *Law on Air Force – 3 February 2006 (available in Macedonian)*
  - o *Law on control of export of technologies with dual usage – 2005 (available in Macedonian)*
  - o *Law on amnesty of the citizens who have not performed military service – 2003 (available in Macedonian)*
  - o *Law on Military Academy – 1995 (available in Macedonian)*

- Political documents stating the defence policy (Government programme, national security strategy or concept, white papers on security and defence etc.)
  - o *Annual National Program (NATO MAP) – 2004–2005. Last accessed 13 September 2006 - http://www.morm.gov.mk/english/annualnational.htm.*
  - o *National Security and Defence Concept of the Republic of Macedonia –2003. Last accessed 22 August 2006 - http://www.morm.gov.mk/english/nationalconcept.htm.*
  - o *Adriatic Charter – 2003. Last accessed 22 August 2006 - http://www.adriaticcharter.gov.mk/thecharter.htm.*
  - o *The Strategy of Defence of the Republic of Macedonia - 1998 (available in Macedonian).*
  - o *White paper on defence – 1998. Last accessed 22 August 2006 - http://www.morm.gov.mk/english/Assets/whitebook.pdf.*
- Defence planning documents made public or with unrestricted access (military strategy, procurement strategy, doctrines, defence planning directives, budgets, programmes etc.)
  - o *Strategy for the transformation of the defence and the Army of the Republic of Macedonia – 2004. Last accessed 22 August 2006 - http://www.morm.gov.mk/assets/transformation.doc.*
  - o *Strategic Defence Review – 2003. Last accessed 22 August 2006 - http://www.morm.gov.mk/english/strategicdefencereview.htm.*
  - o *Structure of the Army of the Republic of Macedonia. Last accessed 22 August 2006 - http://www.morm.gov.mk/english/organization.htm.*

*Part B: Questions on Defence Institutions within the General Government*

1. Please provide the latest openly available data on the structure of the general government decision making process on defence policy: what are the defence policy documents required by law or national level regulations to be issued by the Head of state, the Head of the Government, the Minister of Defence, the Parliament, with what frequency, what higher authority is supposed to endorse each of them, and the current status of such documents. Please fill in Table 1 with the existing information where applicable:

Table 1 – Structure of General Government Decision Making on Defence Policy

| Topic of Document | Title of Document | Issuing Authority | Endorsing Authority | Frequency / Time span | Status |
|---|---|---|---|---|---|
| National Defence Policy | **Strategic Defence Review** | **MoD** | **Govt and Parliament** | **Once so far** / **Unlimited** | **Valid as strategy document** |
| National Security Strategy or Concept | **National Security and Defence Concept** | **MoD** | **Govt and Parliament** | **Once so far** / **Unlimited** | **Valid as a Strategy document** |
| National Defence Strategy or Concept | **Strategy of Defence** | **MoD** | **President** | **Once so far** / **Unlimited** | **Valid as a Strategy document** |
| Other national level defence policy documents | **Annual National Program (NATO MAP)** | **MoF** | **Government/Council of Ministers** | **Annual** / **2005-2006** | **Valid as a Strategy document** |
| White Paper | **White Paper of the Republic of Macedonia** | **MoD** | **Government/Council of Ministers** | **Once so far** / **unlimited** | **Valid as a Strategy document** |
| Procurement Strategy | - | - | - | - / - | - |
| Defence Planning Directive | **MoD Transitional Organisation and Systematisation** | **MoD** | **Government/Council of Ministers** | **Once so far** / **unlimited** | **Valid as strategy document** |

| Topic of Document | Title of Document | Issuing Authority | Endorsing Authority | Frequency / Time span | Status |
|---|---|---|---|---|---|
| Defence Budget | - | - | - | - | - |

*Annex II*

***Part C: Questions on Defence Institutions within the Defence Sector***

2.  Please provide the latest openly available data on the existing policies within the defence sector: what are the policy documents required by law or defence level regulations to be issued by the Minister of Defence, the Chief of Defence and the services, with what frequency, what higher authority is supposed to endorse each of them, and the current status of such documents. Please fill in Table 2 with the existing information where applicable:

Table 2 – Structure of Decision Making on Defence Policy at the Defence Sector Level

| Topic of Document | Title of Document | Issuing Authority | Endorsing Authority | Frequency / Time span | Status |
|---|---|---|---|---|---|
| Procurement policy | National Logistic Defence and ARM Support Concept | MoD | Government/Council of Ministers | - / - | Strategy document |
| Personnel policy | Human Resources Management Strategy | MoD | Government/Council of Ministers | Once so far / - | Valid as doctrine |
| Military education policy | Military Education, Science, Military and Defence Training and Expert Advancement Strategy | MoD | Government/Council of Ministers | Once so far / - | Valid as doctrine |
| Public information policy | Military Diplomacy Concept | MoD | Government/Council of Ministers | - / - | - |
| Other defence | Resolution on Security and | MoD | Parliament | Once so far | Guidance document for |

| Topic of Document | Title of Document | Issuing Authority | Endorsing Authority | Frequency | Status |
|---|---|---|---|---|---|
| policy documents | Defence Transformation | | | Time span | military transformation |
| | | | | | |
| Military Strategy | Strategy for Transformation of the Defence and of the Army | MoD | Government/Council of Ministers | Once so far | Valid as strategy document |
| | | | | - | |
| Force planning directives | Timetable for Transformation of ARM HQs and Units | MoD | Government/Council of Ministers | - | - |
| | | | | - | |
| Training doctrine | Military Education, Science, Military and Defence Training and Expert Advancement Strategy | MoD | Government/Council of Ministers | Once so far | Valid as doctrine |
| | | | | - | |

**Annex III**

<u>Overview: Country key facts</u>

- Official name: The former Yugoslav Republic of Macedonia
- Independence: 8 September 1991
- Country status in EU enlargement process: Candidate country since December 2005.
- Country status in NATO enlargement process: Candidate country (Membership Action Plan) since April 1999.
- Population (2002 Census): 2.022.547
- Ethnic composition: Macedonian 64.18%, Albanian 25.17%, Turk 3.85%, Roma 2.66%, Serb 1.78%, Bosnjak 0.84%, Vlach 0.48%, Other 1.04%
- GDP per capita (2006): 3.208 USD
- Percentage of defence budget in GDP terms: 2.3%
- Size of the army: 7.696
- Staffing of the Army: End of conscription by end of 2006.
- Key defence reform challenges: Development of long term defence policies commensurate to the country's security requirements over the longer term, which will ensure that the defence sector is of the right size, structure and capability with the appropriate personnel, equipment and training.

# Defence Reform in Serbia and Montenegro: Hampering Exceptionalism

*Svetlana Djurdjevic-Lukic, policy-oriented researcher and analyst, Belgrade, Serbia.*

Any assessment of defence reform in the State Union of Serbia and Montenegro (2003-2006) and its current status in Serbia implies a difficult choice: to judge the achievements starting from an extremely low level in the 1990s, before Slobodan Milosevic's departure from power on 5 October 2000, or according to general standards of good governance criteria, the rule of law, transparency, accountability, domestic ownership, democratic parliamentary control, and regional integration. The choice is not merely an issue of a half full or half empty glass, but rather involves a long list of exceptions when compared with other post-communist and even former Yugoslav republics, which should be addressed in a comprehensive way, in relation to the synergy of domestic and international actors, and under circumstances which are not yet favourable.

Defence reforms in Serbia and Serbia/Montenegro have been marked by important achievements in the past few years. Since 2003, these reforms have resulted in the establishment of the Ministry's leading role over the military, the development of various mechanisms for bilateral and international cooperation culminating in the Partnership for Peace (PfP) membership, increased knowledge, and the opening of the armed forces to parliamentary oversight. However, there has not been a substantial leap in 2006 as was expected. Alongside the highly complex legacy of the past, the main reasons for lack of action might be grouped around the low prioritization of defence issues, insufficient cooperation of the political actors (primarily the Prime Minister and the President), and the inadequate response by the Government of Serbia to its international obligations, in terms of full cooperation with The Hague Tribunal.

The first part of this paper will provide an overview of the institutional setup which illustrates numerous problems in the legal framework for defence reform in Serbia. The second part will focus on the political background, where developments in defence reform up to the demise of the State Union of Serbia and Montenegro will be analyzed. Broader problems inherited from that period will also be highlighted. Current trends and priority areas for future work will be discussed at the end.

**Institutional Set-Up**

An overview of current basic defence management laws and regulations, the position of defence institutions within the general government and the defence sector, illustrates weak or even an absent institutional framework for reform.

Following the Decision of the National Assembly of the Republic of Serbia on 5 June, 2006, the Republic officially became an independent state and the defence sector was transferred from the level of the deceased State Union of Serbia and Montenegro to the jurisdiction of the Republic of Serbia. The team which was dedicated to defence reform within the Ministry of Defence, as well as outside experts, expected the following scenario for the institutional setup of defence reform in Serbia: First, after the proclamation of Serbia as an independent state (practically the first time since the First World War), Serbia would elect a Minister of Defence and firmly integrate defence issues into the agendas of the Government and the Parliament of Serbia. Second, soon after the appointment of a minister, a kind of 'defence day' would be held in the Serbian Parliament, where Strategic Defence Review (SDR) would be discussed and passed, in addition to changes to the current legislature, which would provide for the implementation of the SDR. Third, the Constitution would be adopted, and immediately following this, the Strategy of National Security, followed by three basic laws on defence, the Army and intelligence services would also be passed. In addition, parliamentary approval of the deployment of officers and a medical team for the mission in Afghanistan was expected.

However, the situation six years after the end of Milosevic's regime stands as follows: the position of the Minister of Defence has not been fully established within the Government – there is an acting minister (the minister from the period of the State Union) and the Serbian Parliament has not yet led a discussion on the appointment;[1] the position of the Head of the Military Intelligence Service is only in acting capacity, as was the case with the Chief of the General Staff over a period of six months. Of the approximately 43 laws which have been submitted to the Parliament by the Government, none are defence related.[2] The optimistic scenario is that these issues will only be discussed in Spring 2007.

Namely, while the formal separation of the Army and its assets was largely pre-arranged keeping in mind the territorial organization of the Army (Podgorica Corp based solely in Montenegro) and previous real estate agreements (surplus Army assets were sold separately, by the Republic on which territory were based), there had not been serious preparations within the Government or the legislature for the

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[1] Note: acting minister Zoran Stankovic is a former general, unlikely in the other countries seeking EU and NATO membership.
[2] As of October 2006

establishment of a clear institutional setup and the appropriate legal framework for defence reform in Serbia.


**Defence management laws and regulations**

Serbia experienced six years of democratic rule based on an old constitution which dates back to the time of Milosevic. According to that Constitution, the President of Serbia had the authority over defence matters, although these were conducted on the level of the federation. Also, the Constitutional Charter of the State Union of Serbia and Montenegro served as the supreme legal act (2003-2006), with the accompanying law on its implementation and the amendments.[3] As will be elaborated later, the Charter did not provide a framework for security sector reform, nor even for efficient defence reform, parliamentary oversight or budgetary control.

Negotiations among the leadership of the key parliamentary parties in Serbia resulted in the development of a new proposal of the Draft Constitution only at the end of September 2006.[4] A draft which had been earlier proposed by the Government was combined with solutions proposed by experts who were summoned by the President of Serbia Boris Tadić, which also accompanied the amendments that enabled the Serbian Radicals and the Socialist Party to participate in a referendum on the Constitution. Defence related issues were not highlighted in the discussions (non-transparent in any case); the Minister of Defence confirmed only in early September that the Ministry had been recently included in the preparations of the new Constitution.[5] Support for the Constitution was confirmed by a small majority on the referendum held on 28 and 29 October, and after the proclamation of the Constitution. Parliamentary elections will be held in January 2007, delaying further the preparation and adoption of laws related to defence. In particular, the Constitution provides only basic guidance in relation to

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[3] The Constitutional Charter of the State Union of Serbia and Montenegro and the Law on the Implementation of the Constitutional Charter available in English at www.ccmr-bg.org/zakoni/acts.htm

[4] The agreement was reached only after the resignation of several ministers and on the eve of the decision about the status of Kosovo; there was no public discussion on the final version of the Draft Constitution prior to its adoption by the Parliament on 30 September, 2006.

[5] 'Army representatives participate in the drafting of the new Serbian Constitution. The fact is that we had no activities in this respect until a few weeks ago, when we offered to help and suggest our framework and plan for the army within the body of constitutional regulations,' Serbian Defence Minister Zoran Stanković stated on 5 September. 'I hope that the Serbian Army will be much more active, especially that conditions for faster reforms will be created, and that we will manage to fully implement our plans in the next year or two.' The minister was convinced that the bulk of army reforms would be completed during the year and that they would be 'properly' incorporated into the new constitution.' *Danas*, 6 September, 2006

defence issues, the jurisdiction of the Armed Forces and the role of the President, leaving all concrete procedures and solutions to be defined in law. The power to decide on war and peace, declare a state of emergency, oversee the security services, adopt a defence strategy, budget and other legislative affairs lies with the Parliament. The President of the Republic commands the military and appoints, promotes and dismisses officers of the Army of Serbia.[6]

In terms of other key laws related to government structure, reporting and management relationships, there is a Law on Defence of the Republic of Serbia from Milosevic's time (1991, amendments from 1994)[7] as well as the Law on Defence related to the Federation (the period of the Federal Republic of Yugoslavia - FRY) with the last amendments made in 2002.[8]

With respect to laws governing the defence sector, the Law on the Army also dates back to the period of the FRY (as of 1994), with numerous amendments, the last being passed in the State Union in 2005.[9] There is the more recent Law on Security Services of the FRY, from July 2002, the first of its kind related to defence reforms and parliamentary control after Milosevic's era, covering military intelligence and contra-intelligence as well as services related to the Ministry of Foreign Affairs.[10]

In relation to political documents stating defence policy, within the short lifetime of the State Union, the Defence Strategy and the White Paper of Defence were passed.[11] The Strategic Defence Review, prepared in spring 2006, was expected to be the first defence related law in the Parliament of Serbia.[12] The document includes the plan of

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[6] The President commands the Army and decides on top-brass appointments according to the law (Article 112). The law on the President of the Republic should be passed. (Art. 121) The Army defends the country from external aggression and performs other missions and tasks in accordance with the Constitution, laws and the principles of international law. (Art. 139). The Army of Serbia may be used outside the state's borders only on the decision of the National Assembly of Republic of Serbia. (Art. 140). The Army is under democratic and civilian control. The law on the Army should be passed.(Art. 141).
http://www.srbija.sr.gov.yu/pages/article.php?id=56753
[7] Available in Serbian at the Centre for Civil Military Relations (CCMR) website www.ccmr-bg.org/zakoni/zakoni.htm
[8] Available in Serbian at Centre for Civil Military Relations, www.ccmr-bg.org/zakoni/zakon002.htm
[9] Available in Serbian at www.ccmr-bg.org/zakoni/zakon_o_vojsci_2005.pdf
[10] Available in English at www.ccmr-bg.org/zakoni/acts.htm. Other security services were at the level of the republics, so excluded from the reemit of the law.
[11] The Defence Strategy of the State Union of Serbia and Montenegro was adopted in November 2004, while the White Paper was presented to the public in April 2005. www.mod.gov.yu/000english/01%20index-e.htm
[12] Adopted by the Collegium of the Ministry of Defence, in English www.mod.gov.yu/01aktuelno/indexs.htm

reform (to be completed by 2010), as well as the vision for 2015. It has already been widely promoted by the Ministry of Defence and presented abroad. The White Paper, the Defence Strategy of Serbia and Montenegro and the Strategic Defence Review are posted on the website of Serbia's Ministry of Defence.[13] The basic defence planning document is the Ministerial Instruction, which has been passed for the year 2006.

**Defence institutions within the general government**

In the absence of clear guidelines on key issues such as the division of power between the President of the Republic and the Prime Minister, it is impossible to write about the decision-making process on defence policy with great clarity at this point. There are different views on the setup and chairmanship of the National Security Council by the two key political actors.[14] The drafting of a National Security Strategy is conducted by two separate teams: one within the Government, lead by the experts from the Ministry of Interior, and one by the President, who has already presented a Draft National Security Strategy prepared by his experts' team.[15]

The Defence Strategy and the White Paper were issued by the Ministry of Defence of Serbia-Montenegro (SMN) and endorsed by the Parliament of the State Union. The Ministry hoped that the Strategic Defence Review would be endorsed by the Serbian Parliament by the end of 2006, and it is envisaged that the Review will be revised every four years. In terms of defence planning directives, the Minster of Defence issues Ministerial Instructions annually, which are endorsed by the Government. The decree on confidential procurement is issued by the Government. The annual defence budget and defence procurement are part of the general laws on the budget and public procurement, issued by the Government and endorsed by Parliament. The amount for the fiscal year 2006 was defined by the Finance Ministry and the parliamentary procedure for budget approval was conducted virtually without debate. The Parliamentary Defence Committee received copies of the draft budget too late to be able to enter into any serious review. Subsequent interventions in financing were done outside the framework of the legislative authorities by the Finance Ministry, such as the financing of the program to overhaul and upgrade Serbian Air Force aircrafts which the Finance Ministry supports directly through the National Investment Plan.[16]

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[13]  http://www.mod.gov.yu/000english/01%20index-e.htm

[14]  The composition of the Council was not agreed on by the Government and the President who did not want to participate in the newly-established body which denies his supreme authority on security issues.

[15]  The main goals are securing NATO membership and becoming a security provider. Danas, 12 October, 2006. It is interesting that the new Constitution does not mention a national security strategy, but only that a defence strategy should be passed by the National Assembly.

[16]  'Armed Forces Waiting for Legal Regulations,' *Defense & Security*, No. 167, 26 October 2006. It was the last budget adopted by the joint state with Montenegro.

Within the State Union, Parliament's role in endorsing defence policy decisions was restricted and amendments were practically made only in consent with the executive power. It is not yet clear how the situation might change, but to date the Committee for Defence and Security has not opened any discussion on defence related laws in the Serbian Parliament. At the Union, parliamentary decisions on defence matters were guided by party or coalition lines. Given that Serbian MPs are elected on party tickets, without direct electoral bases to hold them accountable, the available system of questioning, hearings and interpellations has rarely been used and it is not realistic to expect substantial changes.[17]

Keeping in mind the extent to which a proper legal framework is lacking, an encouraging development is the signing of the Memorandum of Understanding between the Institute of Comparative Law and the Ministry of Defence, envisaging cooperation in the preparation of laws related to the defence system and harmonization with European Union (EU) regulations.[18] Experts groups within the non-governmental sector have already prepared numerous models and working versions and drafts of defence related laws.[19] For example, the Committee on Defence of the SCG Assembly, supported by the Organization for Security and Cooperation in Europe (OSCE) Mission to the SCG, delegated the preparation of the first version of the Working Paper of the Law on Democratic and Civil Control of the Serbia and Montenegro Armed Forces to experts from the non-governmental sector.[20] A model of the law was updated and subsequently completed during several sessions. The draft was adopted at the Committee session's on 1 March 2006, as its legislative proposal.[21]

The authority of the President derives from the old Serbian Constitution and direct elections. Although such election methods were confirmed in the new constitution, the President's overall position has been weakened. The cohabitation of a strongly pro-Western President, Tadić, from the Democratic Party, which did not participate in the Serbian Government 2004-2006, and the Prime Minister, Vojislav Kostunica, who headed the coalition minority government which was dependant on the support of the

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[17] Such a 'partocratic' concept of the legislature is protected also by the new Constitution.

[18] According to the website of the Ministry of Defence, 25 October, 2006.

[19] All of which are available, along with all previous legislative documents, at the commendable website of the Centre of Civil Military Relations, www.ccmr-bg.org/zakoni/zakoni.htm and also printed in B. Milosavljevic, M. Hadzic (ur.) *Modeli zakona o bezbednosti i odbrani*, CCVO, Beograd, 2006.

[20] Miroslav Hadžić, Bogoljub Milosavljević, Ilija Babić, representing the Centre for Civil Military Relations.

[21] The text is available in Serbian www.ccmr-bg.org/nacrt/nacrt_zakona.pdf. Due to the dissolution of the State Union, it was not passed, but hopefully it will be used as a draft law in Serbia.

Socialists, has been fragile.[22] During the State Union, the President of Serbia was a member of the Supreme Defence Council, together with the President of Montenegro and President of the Union. At that time and at present, the key power lies with the Government of Serbia, particularly with the Ministry of Finance. The President endorses defence documents in the same manner as other legislation, and has a staff of experts working solely under his authority.[23] He promotes defence cooperation abroad, and decides on the appointments of the General Staff. As Serbia's former Minister of Defence, Tadić is knowledgeable, motivated to lead the process of defence reform, and committed to cooperation with the North Atlantic Treaty Organisation (NATO) and the United States. Taking credit for the invitation from the NATO summit in Riga to join the PfP program without any formal conditions, President Tadić made a bold move to strengthen his influence on the armed forces. On 12 December 2006, Tadić signed a decree to define the formation posts for general officers in the Defence Ministry and Army of Serbia, to promote leading military officers, and to determine the new insignia for the armed forces for the first time since Serbia became an independent state. This was determined during an electoral campaign, without consultation with the acting government and without waiting for the adoption of new laws which should regulate those issues in detail. Critics of the President's decision argued that the decisions taken by Tadić were illegal.[24] Conservative circles particularly attacked the extraordinary promotion of General Zdravko Ponos to the position of Lt. Colonel General and Chief of Staff.[25]

The Prime Minister has an independent staff of experts working on defence.[26] He issues defence policy documents which are submitted for parliamentary approval after their endorsement by the Government. He also issues documents that are not endorsed by Parliament but are approved by the Government and these documents are enforced by the entire defence establishment under his authority.

The Minister of Defence endorses all defence documents that are issued by the Chief of Defence and the departments in the Ministry of Defence. He issues defence policy documents that are submitted for approval by the Parliament, after the endorsement of

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[22] At the time of writing, Kostunica's government was acting, as parliamentary elections were called, but the cooperation between Kostunica and Tadić will be the key for the formation of any future Serbian Government.

[23] Although his Military Cabinet has been transferred from the level of the State Union, i.e., appointed by its then President Svetozar Marovic.

[24] 'New Serbian Military Chiefs,' *Defense & Security*, No. 171, 21 December 2006.

[25] The argumentation used in the attacks is both professional and ideological: that Ponos has no troop command experience, that it was his 4th extraordinary promotion, that he did not support Serbs in Croatia in the 1990s although he was born in Knin, and that his only competence is the promotion of cooperation with NATO. The most notable reaction came from the Association of Retired Generals and Admirals.

[26] They keep a low profile, but are mostly his associates from the period when Kostunica was the President of FRY (2000 – 2003), which was not characterized by the defence reforms.

the Council of Ministers. He also issues documents without parliamentary endorsement that are enforced by the entire defence establishment under his authority, after approval by the Council of Ministers. The Minister has an independent staff of experts working solely under his authority. He commissions research by public defence research institutes. He endorses defence policy documents which are issued by the Chief of Defence and departments within the Ministry without independent analysis.

In relation to the issuing of a strategic document on defence policy for endorsement, guidance related to legal and customary provisions from a higher authority is not made public. There is no process in place for the subordinating authority to comment or provide advice on the directives which he/she has received from a higher authority.[27]

The general government procurement system is transparent for all goods and services. The defence procurement system for weapons is undisclosed, while for other goods and services it is transparent. Within the Union, defence procurement contracts are submitted for authorization by the Council of Ministers. The previous minister, Pravoslav Davinic, was forced out from his post for failing to do so in two cases which are now before the court.[28] All defence contracts are authorized by the Minister of Defence.

The defence budget is approved at the same time as the general government budget. Both are structured by programmes and the reporting systems are similar. The allocation of the portion of the defence budget from the general budget is settled at the executive level, with the strong involvement of the Minister of Finance, while distribution of budgetary allocations among the services, programmes and chapters is conducted by the Defence Minister. The Minister of Finance's recent involvement in the Defence Reform Group has resulted in a revision of previously projected reductions of the defence budget from 2.4% to 1.9% GDP, with a guarantee that this level would be maintained until 2010. However, over 75% of the defence budget is allocated to salaries and pensions. When asked about priorities, the Minister of Defence listed funding as the principal concern. [29]

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[27] In the preparation of this paper, the Ministry of Defence provided its views and clarifications with regard to numerous issues. The author is grateful for this assistance. Such support for an independent assessment is commendable.

[28] The development related to so-called 'Satellite Affairs' is classified. On procurement policy and embezzlement, there is quite an open interview with the Head of the Inspectorate General, Jovan Grbavac, available in *Odbrana*, No. 24, 15 September 2006, pp. 8-11. However, the legal position of the Inspectorate has not been confirmed with the new set-up of defence in Serbia.

[29] The three working groups which the MoD established with the Government are concerned with the funding and selling of surplus military assets, and housing. Interview with Minister Zoran Stankovic, *Odbrana,* 15 October 2006.

The Serbian Ministry of Defence views the United States, Norway and Romania as models of sound national defence planning. The Planning, Programming, Budgeting and Evaluation System (PPBES) is also perceived as a code of good governance and defence planning. Additional sources of knowledge are recommendations by international organizations and particularly NATO via the NATO-Serbia Defence Group.[30] In terms of the reform of the armed forces, the basic model is based on that of Great Britain.[31]

Public research institutes work on defence issues concerning the military, the Ministry or relevant academic organizations.[32] The Government utilizes commissioned research on specific defence policy issues from the various research institutes to assist in its decision-making processes. Private institutes occasionally provide input of a more general scope.

Official surveys on defence issues are undertaken regularly each year within the Ministry, but mostly for internal use only. For two years (2003-2005), there were seven rounds of detailed surveys on defence reforms conducted by the Centre of Civil Military Relations, the results of which were widely publicized in both print and electronic form.[33]

**Institutions within the Defence Sector**

There is no openly available systematized data on existing policies in the defence sector, probably due to the fact that Serbia is experiencing a complicated transition process marked by the establishment of a new state and defence structures. The website of the Ministry of Defence (MoD) is limited in scope, particularly in terms of the availability of documents. However, a bi-monthly magazine, *Odbrana (Defence)*, which is published by the MoD Public Relations Department is informative. All policy documents are published for internal distribution, though the public may obtain a copy of certain policy documents; others are restricted. An approval authority decides which documents may be made public on a case-by-case basis.

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[30] The Defence Reform Group was established in February 2006 and its 15 working tables present a mechanism for the guidance and synchronization of the defence reform process. www.mod.gov.yu/drg/index.htm

[31] According to the then Acting Chief of Staff, Gen. Maj. Zdravko Ponos; interview in the weekly *NIN*, 25 August, 2006

[32] A presentation of several institutes which are associated with the Armed Forces and the Ministry is available at the website of the MoD www.mod.gov.yu/05prezentacije/05-index-s.htm. The Institute of Military Crafts and the Military-Historical Institute were recently integrated.

[33] The Serbian and Montenegrin Public on Military Reform, www.ccmr-bg.org/javnost/public.htm and J. Glisic, M. Hadzic, M. Timotic, J.Matic, *The Serbian and Montenegrin Public on Military Reform* I-VII, 2003-2005

In terms of the structure of decision-making on defence policy, weapons and defence procurement policy is regulated by a document that was issued in 1996. However, updated policy regulations are being drafted. Military education policy is defined by the Order on Education, which is issued by the Assistant MoD for Human Resources annually and endorsed by the Minister. The key document is the Ministerial Instruction, which is issued by the MoD and endorsed by the Government annually.

Serbia's military doctrine, a programme for the development (by 2010) of Serbia's Army Development by 2010, and a training doctrine to be issued by the Chief of General Staff are also in the process of being drafted. The military doctrine will be endorsed by the President of the Republic. It is expected that both the development programme and the training doctrine will be completed by the end of 2006 for endorsement by the Minister.

The drafting of defence policy is conducted with the participation or consultation of all divisions within the Ministry of Defence, the military staff of the Chief of Defence, civilians with higher responsibilities within the MoD, experts from military research institutes, faculty members of military education institutions and foreign military advisers.

The process of establishing objectives for strategies, policies and directives within the defence sector is based on guidance from the MoD, internal assessment of national values, interests and requirements, theoretical national and international literature, similar documents published in other nations' defence establishment as well as advice and recommendations from international and bilateral experts.

The process of assessing security and defence risks and threats mentioned in the strategies, policies and directives of the defence sector are based on assessments that are published by international organizations, such as the OSCE, the United Nations (UN), the EU or NATO. Internal assessments are made on similar documents which are published by the defence establishments of other countries.

In terms of the debate on defence requirements, there is an internal debate at the military level, the results of which are forwarded to politicians. There is also an internal debate at the political level on military input, a debate on defence requirements with other security sector agencies, and limited public debate on defence requirements.

The main organizational documents governing military structures are organizational charts approved by the higher echelons. Terms of reference and mission statements are produced for each structure, and job descriptions are drafted for commanding officers and their staff.

The defence planning system that is in place might be described as a financial planning system, with the allocation system combining a bottom-up and top-down allocation system. Defence planners are required to develop planning assumptions, recommendations and alternatives for the commanding officer or civilians before a certain course of action is decided on. Defence planners are mostly military experts.

**Complex Legacy**

This review of basic defence management laws and regulations, as well as issues related to institutions within the defence sector, illustrates the complexity of the institutional set-up. Virtually all these regulations were drawn from either Milosevic's time (the Federal Republic of Yugoslavia), or from a democratic but unworkable State Union of Serbia and Montenegro. A rare situation of simultaneous transitions: post-communist/authoritarian reforms, privatization of the economy, and post-conflict recovery, in the case of the FR Yugoslavia /Serbia and Montenegro/Serbia is further burdened with the unresolved issue of statehood, and an additionally complicated past of long-standing conflicting relations not only within the region but also with the West.

The concept of security sector reform includes post-authoritarian (post-communist), developmental and post-conflict aspects. Hence, it is ideally placed to provide the framework for strengthening the rule of law (institutional capacity), economic sustainability and budgetary transparency (development and modernization), legitimacy (of security forces and the entire state), and confidence-building within the country and with its neighbours. Defence reform, as the core of security sector reform, has the capacity to provide for a modern, affordable and legitimate defence system that is integrated in regional cooperation networks and open to NATO membership.

However, there have been substantial obstacles to reform implementation, particularly in relation to the structural problems of the Serbia–Montenegro defence system and Armed Forces in particular.[34] The next section of this paper will elaborate on the political reasons for the absence of a comprehensive defence reform programme prior to the establishment of an independent Serbia in June 2006.

**The absence of prioritization**

Many observers, both within the country and abroad, believed that the fall of Milosevic in October 2000 would kick-start the process of deep structural changes in society, starting with reform of the Army of Yugoslavia and the entire complex of security sector reforms. However, the changes have been less substantial than expected: not only have the most important strategic documents and basic laws on security related

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[34] Milan Jazbec, *Defence Reform in the Western Balkans – The Way Ahead*, DCAF Policy Paper, Geneva, April 2005, pp. 12-14

matters not been passed, but the inability to find and extradite the former military commander of the Republika Srpska, General Ratko Mladic, (and other persons indicted by The Hague Tribunal) also blocks enhanced cooperation with the EU. Following the activities of key domestic and external actors and changes in the institutional framework, some explanation for the delay in defence reform can be offered.

First, the aftermath of the event of 5 October 2000, suggests that 'the police and Army's non-intervention in the regime change was bought with the promise of a 'soft' approach to military and police reform by the new government.'[35] The approach was too soft, even compared with similar transitions: for almost two years there were no substantial changes within the defence and security apparatus. Although the Yugoslav Army was burdened with heavy communist baggage stemming from its role in the wars of the 1990s and its support for former President Milosevic, the VJ avoided a serious shake-up of its ranks by its command's timely declaration of loyalty to the then Yugoslav President, Vojislav Kostunica. Kostunica insisted that such a large and sensitive organization needed stability and continuity, especially in the context of the rebellion by ethnic Albanians in the south of Serbia. General Nebojsa Pavkovic retained his position as Chief of General Staff. The Head of the State attempted to resolve the issue of a lack of social cohesion within the state supporting an unreformed Army in a way that prolonged its weakness.

Furthermore, the Army of Republika Srpska (VRS) received financial support up until March 2002. Logistical support for the high officers indicted by The Hague Tribunal persisted even longer. Kostunica considered The Hague tribunal a political court and opposed the adoption of legislation that would seek the extradition of Yugoslav citizens arguing that the VJ as such did not commit crimes, while those VJ members who committed individual crimes were being prosecuted by Yugoslav military courts. The President also made clear his opposition to handing over sensitive military documents.

Substantial parliamentary and democratic oversight was absent. Kostunica adopted Milosevic's approach to the rather loosely defined laws regulating the command of the VJ, rarely calling Supreme Defence Council meetings and, in practice, deciding on VJ matters more or less alone. The General Staff often declared itself in favour of civilian control of the Army, but considered the matter to have been resolved given that the Commander-in-Chief they obeyed, President Kostunica, was a civilian. Kostunica and the VJ commanders insisted that the Army had, in fact, been modified more than any other part of society and that it was perfectly capable of carrying out reforms without

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[35] Timothy Edmunds, 'Civil-military relations in Serbia-Montenegro: An Army in Search of a State,' *European Security*, Vol. 14, No.1, pp. 115-135, March 2005

external interference. Its partial reorganization, which was prepared by the General Staff, was presented as the key element of the reform process.[36]

The other key actors, notorious pragmatists, had their reasons for neglecting the pressing issue of defence sector reform.

Montenegrin President Milo Djukanovic, who advocated Montenegro's independence and, by default, questioned the legitimacy of all institutions at the level of the Federal Republic of Yugoslavia, did not seem to be troubled by an unreformed army. It reinforced his pro-independence case inasmuch as it enabled him to point the finger at what he claimed was the continuity between the new Belgrade authorities and the Milosevic regime. On the other hand, since Milosevic's demise, Djukanovic no longer felt threatened by the VJ, so his government maintained a rather relaxed attitude toward the VJ units in Montenegro.

Zoran Djindjic, the Serbian Prime Minister, was reluctant to address the problem of army control in an effort to avoid opening yet another battlefield with Kostunica, with whom Djindjic had clashed over a number of key issues. The control of the VJ was just about the only concrete power that Kostunica was able to exercise, and his doing so did not directly affect the areas which Djindjic and his allies had taken hold of, such as fiscal and Serbian domestic affairs. It is also believed that Djindjic had little against Kostunica's links with General Pavkovic, because he believed they compromised Kostunica in the eyes of the liberal part of the electorate.

DOS's partner in the federal government, the Montenegrin opposition Coalition for Yugoslavia, was led by the Socialist People's Party (SNP), which remained loyal to Milosevic until 5 October 2000 and could hardly be expected to initiate reforms in the Army. The SNP rightly saw the VJ as the only remaining federal institution functioning on the whole territory of Yugoslavia, and avoided criticizing the VJ, even when the Chief of General Staff ignored the SNP position. General Pavkovic demonstrated his superiority when, in December 2001, he forced four close aides of the then Defence Minister, a SNP member, into early retirement, failing even to inform him.

The Federal Parliament hardly discussed the defence budget. In December 2001, for example, the budget (of only two pages) was delivered late to the deputies, lacking any detailed explanation, even though the 43.7 billion dinars ($700 million) defence budget amounted to two thirds of the entire federal budget. The General Staff was not required to submit a report to the Parliament on the previous year's expenditure, regulations did not oblige the Army to hold public tenders for its purchases, nor was the Chief of

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[36] As of 1 March 2002 the commands of three armies, as well as those of the Yugoslav Air Force and the Yugoslav Navy were abolished. The establishment of a new corps is being established.

General Staff obliged to appear before the parliamentary Defence Committee to explain VJ purchasing.[37]

The events surrounding Pavkovic's dismissal, including his apparent willingness to defy the orders of the President, and Kostunica's attempt to bypass even the Supreme Defence Council in that matter, highlighted how easily civilian control could be held hostage to domestic political disputes, and the fact that proper civilian control as the very first, basic step in defence reform, had not been consolidated by June 2002.[38]

Since Pavkovic's departure, some steps have been made in the direction of first generation security sector reform and cooperation with NATO: the Government of FRY decided to open procedures for membership to NATO's PfP programme on 25 April, 2002. The first reformist law, the Law on Security Services, was prepared by a group of federal MPs, with the assistance of civilian experts. It was passed in July 2002.[39] The Dayton Peace Agreement was ratified in December 2002. However, negotiations over the future of the FRY led to the reluctance of policy-makers to adopt necessary federal laws, i.e. a legal framework for defence reform.

**Conformity costs**

The EU was the key external actor in the establishment of the State Union. Negotiations over the constitutional framework for a common state between democratic forces in the Serbian and Montenegrin Government were heavily influenced by the EU. The High Representative Javier Solana was not only involved in brokering a deal, but acted as its official co-signatory. Hence, the State Union of Serbia and Montenegro could be seen as a state-building endeavour of the EU, and yet also an illustration of a failure to create domestic consensus. Although the main issue concerning the FRY/State Union was security, security sector reform was not part of the deal. The absence of pressure to introduce mechanisms for strengthening legitimacy, the rule of law, transparency and accountability in the defence sector was a missed opportunity.

There are many possible reasons for such an outcome. First, defence reform had not been part of the various mechanisms used in the process of enlargement and integration by the EU. As a consequence, the EU did not exercise pressure with respect to the subject of security sector reform, with the exception of the demand for Gen. Ratko Mladic's apprehension and the introduction of integrated border management. Other

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[37] Detailed elaboration in: S. Djurdjevic-Lukic, The President's Army, *Transition Online*, March 15, 2002

[38] Edmunds, 2005, p. 120

[39] The Military Intelligence and Military Security Service were subordinated to civilian authorities - the Federal Prime Minister instead to the VJ Chief of Staff. However, the law was not fully implemented.

post-communist states, now EU members, were accepted into NATO before entering the Union. These states were principally concerned with post-authoritarian transition, not with simultaneous post-conflict and identity/ social cohesion /legitimacy problems, as with the FRY. Alongside the lack of expertise and instruments required for effective security sector reform as a mechanism for state-building, the EU wanted primarily to freeze and postpone the issue of the further dissolution of the FRY, particularly keeping in mind the question of Kosovo, hence avoiding issues which might be related to status and sovereignty.[40] Finally, the EU and its negotiator might not have been aware of the level of fragmentation of state and society, the inability and/or unwillingness of local political actors to accept certain conformity costs and build consensus. As a result, in spite of the expectations that the EU brokered deal on the State Union in early 2003 would produce a workable state, the Constitutional Charter left many loopholes[41] and strategic questions unanswered[42] and did not offer the basic grounds for defence reform.

According to the institutional setup, the relationship between the branches of government responsible for defence remained unclear and, in reality, did not allow for democratic control of the Armed Forces.[43] The General Staff was placed both under the Supreme Council of Defence (including three state presidents and unanimity) and the Ministry of Defence, with accountability in each case unclear. Legal ambiguities included a lack of proper control over defence budget spending by a very weak Parliament of the Union. The General Staff report for 2003 stated that because of the lack of the most important documents on defence, the reorganisation of the Army had been tackled at a tactical level rather then as part of strategic reform.[44] In short, there were so many constitutional and practical obstacles embedded in the system as a consequence of the construction of the state, from (almost) separate and very different entities, that no framework existed to speed up the process of defence reform. Additionally, agreement regarding a possible referendum on independence in 2006 produced a sense of temporality. There was no strong motivation to conceptualize or

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[40] Such an approach of the international community is labelled as a policy of containment. Susan Woodward notes that in the absence of external security there cannot be local demands for reform, and the international community actually promotes 'controlled insecurity.' Susan Woodward, 'In Whose Interest Is Security Sector Reform? Lessons from the Balkans,' in Gavin Cawthra and Robin Luckham (eds), *Governing Insecurity: Democratic Control of Military and Security Establishments in Transitional Democracies*, Zed Books, London – New York, 2003, pp. 276-302. Such views are widely held in Serbia.
[41] In-depth analysis of the Charter with regard to defence issues in Miroslav Hadzic, *New Constitutional Position of the Army,* DCAF Working Paper No 112, Geneva, February 2003
[42] More at Miroslav Hadzic, 2003 (also www.ccmr-bg.org/analize/rec/word13.htm,) and Amadeo Watkins, *PfP Integration: Croatia, Serbia and Montenegro*, Conflict Studies Research Centre, UK, April 2004
[43] Watkins, 2004
[44] General Staff Report, 2004

implement defence reform over such a short period when the situation at that stage might be substantially changed.

As in the case of the FRY, the issues related to the Army were not a priority by default: the Army was a joint Serbian and Montenegrin institution, while all the most important issues, for both politicians and citizens, were dealt with separately within each republic. Direct elections were held only at the level of the republic and tax incomes were raised separately by the republics. Each republic had its own public police, security services, custom and finance police and special forces. There was no State Union Ministry of Interior, 'nor [did the] police and secret service have any obligation to co-operate.'[45] Montenegro was against the formation of a State Union border security agency, so even border control was conducted separately: the Army was responsible for Serbian borders, while that role was transferred to police in Montenegro.

Furthermore, the single most important step to embark on in comprehensive defence reform at the level of the Union, drafting and passing a new national security strategy, was blocked. The Constitutional Charter did not provide grounds for its adoption – it mentioned only 'defence strategy' instead of 'security strategy,' leaving the Union and the Army in limbo. Alongside the absence of interest and/or pressure from the EU, the reason for such a solution was domestic politics. As Miroslav Hadzic pointed out, security strategy is broad and modern but

> ...*Would require at least co-ordination of the work of the Army, the police forces in both republics, military and civilian secret services, as well as paramilitary forces, and this is what the power holders of Serbia and Montenegro would like to avoid at all costs*.[46]

## Spaces, threats and concepts

To be efficient, security sector reform should be based on consensus regarding security threats and the scope of reform, performed at the same time and the same pace within all security organisations. However, this was not the case in Serbia and Montenegro where reforms started in three different political, security and economic spaces: the Republic of Serbia, the Republic of Montenegro, and the third, more virtual[47] one: the

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[45] Miroslav Hadzic, 'Zamisao reforme sektora bezbednosti', *Vojno delo* 1, 2004, pp. 9-33
[46] Hadzic, DCAF WP 112, 2003, p. 21-22
[47] Vankovska and Wiberg use term: *hyperreal* in Biljana Vankovska and H. Wiberg, *Between Past and Future: Civil-Military Relations in the Post-Communist Balkans,* Taurus: London, 2003, p.246

State Union (in theory including Kosovo as well). The Army of Serbia and Montenegro was the only institution which existed in all three spaces and depended on each of them in different ways. It was dependent on Serbia in relation to conscripts and funding, on Montenegro for the provision of at least some legitimacy, and on Kosovo in terms of security threats.

Furthermore, there were evident differences between Belgrade and Podgorica even in terms of the concept of Army reform. The concept presented by Tadić as Minister in 2003, centred on numerous organizational changes within the Army and MoD by 2010, with substantial force reductions to around 50,000 soldiers (at that point the number stood at over 70,000), Air Force and Navy. Although the Deputy Defence Minister Vukasin Maras, who was from Montenegro, publicly supported the concept, an additional model was prepared by General Blagoje Grahovac, the State Union President Svetozar Marovic's advisor on military issues.

The 'Montenegrin plan' was rather unorthodox - Grahovac envisaged a professional army with as little as 25,000 members (or even less), including only 3,000 in Montenegro. Compulsory military service would be abandoned, all generals and other high-ranking officers would be sacked and new officers would be educated according to NATO standards. Western Balkan countries should build a Joint Defence System, starting with a joint battalion, created in accordance with the demographic parity of states. Because of the low degree of mutual confidence, command personnel at the company and battalion levels should be NATO officers. After training and equipping, personnel would be subordinated to the Kosovo Force (KFOR) command. The idea was to enhance confidence in the region and reduce the number of personnel in the Armed Forces.[48]

Although difference between public opinion in Serbia and Montenegro was minimal,[49] the elite in the smaller republic held different perceptions with respect to the issues of security threats and integration. Governing circles in Montenegro did not consider Kosovo as a security problem. By distancing itself from Serbia as of 1997, Montenegro managed to ignore the issue of its involvement in the wars of the 1990s and cooperation with the International Criminal Tribunal for the former Yugoslavia (ICTY). As it was not in a position to use the Army for state-building (as was the case in Croatia in 1991-1995[50]), the Montenegrin Government at the end of the 1990s militarized its police force, and remained suspicious of the Army as an institution. Furthermore, Montenegro was reluctant to introduce a legislative framework in that area because any discussion

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[48] Blagoje Grahovac, *The Montenegrin Reform Strategy*, www.ccmr-bg.org/analize/istrazivanja/research6print.htm
[49] J. Glisic, M. Hadzic, M. Timotic, J. Matic, *The Serbian and Montenegrin Public on Military Reforms*, I – VII, Centre for Civil Military Relations, Belgrade, 2003 – 2005
[50] Alex J. Bellamy and Timothy Edmunds, 'Civil-Military Relations in Croatia: Politicisation and Politics of Reform', *European Security* Vol. 14, No.1, March 2005, pp. 71-93

of the Army's future involved making a clear assumption about the future status of the Union itself.[51] Instead, the Government positioned Montenegro as a virtually threat-free society, on that basis rejecting work on defence reform which would contribute to cohesion in the State Union, as well as its legitimacy. In addition to a shorter period of isolation and a proportionally far greater level of Western (particularly US) aid to Montenegro, all these elements made the position of the two republics quite different. Hence, it was doubtful as to whether SMN presented an agreed political community.

Nevertheless, the Montenegrin authorities demanded reciprocity in appointments to all key posts within the MoD and the General Staff.[52] The competition over personnel policy illustrated the continuing practice of political appointments, meaning a lack of transparent criteria for promotions and appointments, i.e. a delay in strengthening professionalism.

On the other hand, the unresolved status of Kosovo left Serbia without definitive borders or a clear idea of security threats. The insecure position of Serbs in Kosovo made many Serbs in Serbia proper reluctant to raise the issue of the treatment of Kosovo Albanians before and during the bombardment – there has been a fear that revealing the crimes committed by Serbs would justify past and current attacks on Serbs in Kosovo. Several important parties are deeply rooted in socialistic and nationalistic legacies and, due to a decade of bloody conflicts, they have failed to modernize to the extent that is typical of post-communist countries. With frequent elections at all levels and minority governments in Serbia, the stability which is needed for the conceptualization and implementation of reform has been lacking. The highly fragmented political scene in Serbia has been both the cause and consequence of the local elite's 'inability to place the reform process at the forefront of political thinking.'[53] Political leaders follow traditional expectations of the masses, instead of shaping them. Demagogy has been dominant:

> *the new authorities have not yet told the Serbian citizens the main reasons for urgent and radical reform: to provide constitutional-systemic solutions to finally prevent any ideological and political abuse of the army, police and secret service ... to abolish their clientelistic status ... and to provide democratic civil control by reverting political power to the institutions of the system.*[54]

Public opinion revealed an ambivalent, almost hostile attitude toward the external actors, outdated perceptions about maintaining an independent position, dependence on

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[51] Edmunds, *European Security*, 2005

[52] *Defense and Security*, Editorial, April 15, 2004, p.2

[53] International Crisis Group (ICG), *Serbia's U-turn*, Europe Report No. 154, March 2004

[54] Miroslav Hadzic, 'Original Reasons for Reform,' at Hadzic (ed*.), Armed Forces Reform – Experiences and Challenges,* Centre for Civil Military Relations, Belgrade 2003, p.119

national defence forces, a lack of will to compromise, and vague perceptions of security providers and democratic control.[55]

In addition, many democratic institutions have not been fully aware of their designated role in a democratic system, their tasks and responsibilities, and tended not to demand their share of control. Members of the State Union Parliament were delegated from the parliaments of republics, meeting rarely and without major initiatives, with no individual platform and constituency, hence no motives for gaining expertise. Parliamentary committees were more formal bodies, with no weight or proper logistical support, almost sinecures.[56] Political parties typically lack specialists for security and defence issues (which stems from the socialistic period when defence affairs were handled mostly by the military alone).[57]

Initial key steps were taken in 2003, when Tadić was appointed Minister of Defence. The Team for Reforms within the MoD, established through official agreement with the United Nations Development Program (UNDP), focused on initial functioning analysis.[58] The General Staff finally became subordinate to the Ministry of Defence, which was opened to civilian staff and foreign experts. The Intelligence Administration was restructured into the Military Intelligence Agency and both agencies worked for the Ministry of Defence. Public tenders for procurements in the Ministry of Defence were made obligatory. Several arrests were made and criminal charges filed for corruption and embezzlement. The shadow Commission of General Staff for Co-operation with the ICTY believed to be passing information to Milosevic at The Hague was abolished.[59] All the VJ members were ordered to report any contact with a person indicted by the ICTY. The civilian service for conscientious objectors was introduced. The National Centre for Peacekeeping Missions was established.[60] The Council of

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[55] J. Glisic, M. Hadzic, M. Timotic, J. Matic, *The Serbian and Montenegrin Public on Military Reforms*, I – VII, Centre for Civil Military Relations, Belgrade, 2003– 2005; and Svetlana Djurdjevic-Lukic, 'Obstacles to transnationalism in the Balkan security co-operation' paper presented at the conference 'Transnationalism in the Balkans,' LSE, 26-27 November 2004, London

[56] S. Djurdjevic-Lukic, Kritička analiza rada obora za odbranu i bezbednost u parlamentima Srbije i SR Jugoslavije, in Jovan Teokarevic (ur), *Parlamentarna kontrola sektora bezbednosti,* Beograd (*Parliamentary Control over Security Sector,* forthcoming)

[57] S. Djurdjevic-Lukic, 2002

[58] Col. Miroslav Mladenovic, Reform of the MoD and the Army of SMN, Expert's Opinion, Centre for Civil Military Relations, www.ccmr-bg.org/analize/rec/rec41.htm

[59] 'The Commission was packed with conservative Yugoslav generals, and its brief was to search through the army's archives for evidence in support of those indicted by the tribunal, but only those who surrender to The Hague. But it appeared that the commission was feeding information to Milosevic, who does not fall into this category,' Aleksandar Radic, The Anti-Hague Commission Abolished,' *Institute for War and Peace Reporting*, London, 17 April, 2003

[60] The General Staff Report for 2003, with a view towards the end of reforms in 2010, according to the state agency Tanjug, 4 January 2004 (also BBC Monitoring 5 January, 2004)

Ministers decided to prioritize endeavours to join the PfP and an official letter was submitted in June 2003.

However, the initial enthusiasm vanished towards the end of 2003, when new indictments handed down by the ICTY in The Hague and corruption affairs toppled the reformist government in Serbia. By May 2005, the conclusion regarding the course of defence reform was that:

> *The programme which is to end in 2010 is simply not radical enough, not flexible enough and not broad enough. It simply does not take into account the reality of urgency with regards to the whole state of affairs within the country and some of its strategic policy objectives.*[61]

In sum, instead of undertaking rapid reforms, Serbia and Montenegro confronted real difficulties in approaching issues involving the first generation of security sector reform problems. The reasons for the neglect of the reform process within the State Union were threefold: low prioritization by the internal actors, advanced fragmentation of the society and state, and the absence of clear EU policy in that area. The institutional framework for security sector reform in Serbia and Montenegro was lacking, as well as the pressure and expertise of the main external actor – the EU and keeping in mind the previous period of separate development, (i.e. the level of fragmentation of state and society, inability and/or unwillingness of local political actors to accept certain conformity costs and build consensus), there was hardly any ground to expect the establishment of a viable state, including a comprehensive defence reform program.

**Recurrent Problems**

While the lack of basic defence management laws and regulations is understandable to some extent, bearing in mind that the Republic of Serbia became formally independent only as of June 2006, vagueness regarding the timeline for passing the necessary legislation, politicization, and the absence of broad public discussion are the basic features of current developments regarding defence institutions.

With respect to the issues of transparency, military-to-military cooperation and regional integration, the achievements of defence reform in Serbia are assessed quite differently. The fact that 'it cannot be overlooked that the Armed Forces have become increasingly

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[61] Dr. Amadeo Watkins, Defence Reform in SMN after Istanbul: The view from NATO, presentation at DRINA Seminar in Belgrade, on 13 May 2005.

more transparent and integrated into society, but things can be still improved'[62] has been stressed. In a recent letter to US President G.W. Bush, for example, five members of the House Armed Services Committee commended the Armed Forces of Serbia for their ongoing reforms in the field of defence:

> *In a remarkably short time, Serbia managed to bring its defence sector in line with its new-found democratic and Euro-Atlantic orientation… As a direct result of these reforms, the armed forces of Serbia are strongly set toward Euro-Atlantic integration and full partnership with the United States.*[63]

The openness of the Ministry of Defence and the General Staff on matters of defence cooperation, foreign expertise, the endeavours within the Army to develop a more flexible organization and encourage intensive cooperation with NATO through the Defence Reform Group as a mechanism for guidance and synchronization of the defence reform process, are quite a change, especially when compared with the FRY era.

However, the lack of established procedures in governing defence related matters, which was illustrated in the first part of this paper, and the inability of all political actors in Serbia to cooperate efficiently in establishing a strong democratic institutional set-up ever since the demise of Milosevic, signal serious problems for security sector reform. The fact that the only act which is used to introduce changes in the Ministry of Defence is the Ministerial Instruction, and that the Army is still in the process of transferring control of the state's borders to the police, illustrate just how long the road ahead really is. Furthermore, negotiations on the future status of Kosovo are surrounded by turmoil.[64] Negotiations with the EU are also at an impasse on the basis of Serbia's inability to extradite General Mladic. This problem underlines the inadequate response by Serbia's Government to its international obligations in terms of full cooperation with The Hague Tribunal.

In relation to the involvement of external actors, the selection of the US, Norway and Romania as role models in defence planning, while commendable, points to the absence of the EU in the process. The EU should make additional efforts to integrate security sector reform in its policy approach towards potential candidates. Conditionality regarding both the EU negotiations and PfP membership – with the demand to extradite General Mladic - has not produced desirable results. Negotiations

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[62] Maurizio Massari and Vladimir Bilandzic, speaking notes at the opening of a seminar, 'The Role of Civil Society in Security Sector Reform.' Kanjiza, 18 February, 2005
[63] Letter to US President G. W. Bush, 16 June, 2006,
http://news.serbianunity.net/bydate/2006/July_17/files/1153136019_b699pfufqa4_HASC_Letter.pdf
[64] A military response is not likely, but several political parties will request the severing of ties or even a boycott of those states which recognize Kosovo as an independent state at some point.

with the EU have been blocked with potentially serious consequences for the democratic forces in Serbia. NATO cooperation has continued nevertheless via the Tailored Cooperation Process and Serbia was eventually invited to join the PfP program. The increasing bilateral military-to-military cooperation[65] and intensive advisory role played by NATO with the simultaneous absence of EU negotiations are not easily understood by the broader public.

Persistent polarization and the politicization of defence related issues among the political elite (such as, the size of the Armed Forces, pro-NATO or anti-NATO stance, professional or conscript personnel, participation in peacekeeping missions abroad or non-involvement, etc.), does not leave adequate room for a sound assessment of real national interests in the area of defence. This is largely due to an absence of qualitative dialogue within Parliament (hardly relevant in the decision-making process), and inadequate expert dialogue in the public realm.

Any reform ultimately depends on reaching consensus among the political leadership. However, despite one of the basic features of defence reform – that it should not be the topic of ideological or daily political arguments or depend on the will of an individual or his/her party – priorities change according to personal and situational circumstances. The political scene has not reached a stage of maturity that would enable the Government to reach consensus on very basic questions such as how the reform process should proceed.[66] There is both the absence of an agreement on values and on action. In addition, in spite of the intensive efforts made by international donors to enhance understanding of defence related issues among the broader elite, there are still few independent people who are both willing and authoritative enough to ignite sound discussion on the pressing issues related to defence reform.

**Conclusion**

Defence reform has not been at the centre of public opinion or government interest in the State Union of Serbia and Montenegro, or in recently independent Serbia, despite its importance and the level of financing involved. Fragmented political leadership has failed to reach consensus on the scope of reform that is needed or to reconcile the public and the majority of the elite with the demands associated with facing up to the legacies of war. Democratic institutions have not been fully aware of their designated

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[65] For example, there are numerous initiatives conducted in cooperation with the Belgrade Bilateral Relations Office of the US European Command. Serbia's President Boris Tadić and the US Secretary of State Condoleezza Rice signed an agreement regulating the status of forces and use of military infrastructure in Serbia, the Status of Forces Agreement (SOFA) on 7 September 2006. Serbia-Ohio State Partnership Programme has been established. The US President G. W. Bush has abolished the ban on military assistance within the International Military Education and Training Program-IMET, etc.
[66] Edmunds, 2005

role in a democratic system, their tasks and responsibilities, and tended not to demand their share of control. The focus on status issues has conveniently obscured other questions, including the lack of substantial democratic control over the security sector. Although there are no indications that irregular forces still exist, the incidents regarding public support for General Mladic[67] and the dismantled Unit for Special Operations[68] and, above all, the inability to integrate security structures in a way that would lead to the arrest of Mladic, demonstrate that a part of Serbian society still fails to come to terms with its recent past.

The turmoil associated with the establishment of an independent Serbia (achieving that status mostly by the choice of others), and current negotiations on the future status of Kosovo (with the increasing prospect of an imposed amputation of that part of the territory from Serbia), intensify frustrations and perceptions of growing security threats. It also makes support for integration by the majority of citizens questionable.[69] Prolonged ambivalence over Euro-Atlantic integration and the repeated questioning of various steps of the process, such as, full cooperation with The Hague, the downsizing of the Armed Forces and bilateral cooperation with former rivals such as the US (by the Radicals, Socialists and their supporters), makes the entire process appear as one that seems to be mostly imposed on the country from the outside.

Despite increasing international cooperation, the commitment to defence reform by expert circles within the Ministry, the non-governmental sector, and the President, as well as the expectation that the Army could become a key instrument of support for foreign policy goals, coupled with the strengthening of international credibility via participation in peacekeeping missions,[70] the short-term predictions are not rosy. Keeping in mind that elections are scheduled for the forthcoming period and that a distancing on the part of Serbia from the international community with respect to a decision on the future status of Kosovo is a possibility, a prolonged period of politization, an incapacity to establish a firm legal framework for defence reform and further delays are more than likely.

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[67] Even within the Army – the case of a cadet saluting to Mladic's poster during a graduation ceremony for military officers in September 2006.
[68] Para-military formation involved in the assassination of Prime Minster Zoran Djindjic.
[69] For example, the statement that since May 2006, 385 former Yugoslav Army officials have been paid to organise a Serbian civil defence force in Northern Kosovo. Tim Judah, 'Diplomats Plan Mission for Independent Kosovo,' *Balkan Insight,* 26 October 2006, www.birn.eu.com/insight_56_5_eng.php
[70] Nedjo Danilovic and Stanislav Stojanovic, Politicke osnove za strategijsko planiranje odbrane Republike Srbije (Political Foundation for the Strategic Planning of Defence of Serbia), *Medjunarodna politika* No. 1122, April-June 2006, pp. 35-42

## Part II - Intelligence Reform and Oversight in the Western Balkans

## An Overview of Intelligence Reform and Oversight in the Western Balkans

*Major General (Ret) Alain Faupin, former Deputy Head of DCAF Think Tank, Director of Saint Philippe Consulting (SPC), France*

The purpose of this foreword is to introduce, consider and weigh up the views expressed in the five following papers and to assess their relevance to the current geopolitical reality. Several recommendations for improved international cooperation have also been proposed.

Intelligence, in the broader sense of the term, is the main focus of these reports. The five countries concerned, namely Albania, Bosnia, Croatia, Macedonia[1] and Serbia, have addressed this topic following a common scheme in order to cover the broadest ground and its major aspects.

However, in light of the variations in their national experiences and history, the authors have approached the subject in different ways. One point is common: the experience of the communist regime under which each country lived or served until the disruption of the Yugoslav Federation and/or the Albanian revolution.

Intelligence in the Federal Republics of Bosnia, Croatia, Macedonia, Serbia and Montenegro under the Yugoslav Federation, was limited to internal and police aspects. At the same time, Albania had established an intelligence system of its own, that of a sovereign state. Following their accession to independence, the five republics had to establish and develop intelligence systems from scratch.

Those responsible for the establishment of intelligence systems in each republic worked to develop innovative systems and an intelligence sector that accommodated each country's needs. Despite the fact that a few specialists and resources in the framework of the 'Yugoslav heritage' had been retained, national priorities and country-specific cultural characteristics ultimately inspired the cultivation of something new.

In the case of Albania, this issue was even more complicated. While resources and specialists were available, the political focus of the country had totally changed and experience had shown that it was far easier to build from scratch than to rebuild through reform.

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[1] FYROM

As far as Montenegro is concerned and according to Saša Janković, *'The recent (May 2006) dissolution of the State Union of Serbia and Montenegro has, among other consequences, resulted with the need for the two resulting independent states – the Republic of Serbia and the Republic of Montenegro – to build their own full-scale intelligence/security systems….'*

Serbia has been tasked with the responsibility of restructuring and redefining its intelligence policy and services, which reflects a kind of reorganization of its state union policy and services as opposed to a creation of a new system. This process, though in its early stages, is quite advanced. As far as the nascent Republic of Montenegro is concerned, time has not permitted the creation *ab initio* of a complete system. Therefore, the case of Montenegro will only be discussed very marginally.

A word should also be said about Kosovo, which is still in search of international status. Sooner or later this former Serbian territory could become *de jure* independent. While it does not yet have full sovereignty, it has begun to develop state administration and, in all likelihood, state intelligence. Accordingly, this study on intelligence in the Western Balkans will have to be complemented in the coming years by updates on developments in Montenegro and Kosovo.

The scheme under which the authors were invited to introduce the current status of the intelligence policies, systems and resources of the respective countries is the following:

**An optional introduction** to depict briefly and in general terms the overall situation, to present the problems that are being addressed, the shortcomings and the strong points, the solutions that have been adopted and plans for the future.

**Part One** focusing on Basic Intelligence Management and Regulations should include a description of government structures as well as all the reporting and management relationships, namely:
- The Constitution and the different laws which deal, as closely as possible, with the intelligence sector:
  - laws regulating the terms of reference, mission statements, structures and obligations for all governmental entities involved in formulating, implementing, reporting and overseeing defence policies;
  - laws of a general nature with a direct application to intelligence governance such as budgeting, protection of classified information, public information, status for civil servants and dignitaries, procurement, etc.,
  - key laws referring solely to the various intelligence services.

- Coverage and Coordination
  - The state's national intelligence agencies, roles and functions
  - Bodies coordinating the different forces, services and agencies

- Accountability
    -to the executive
  -to the elected representatives
   -to other institutions
  -to codes and conventions

- Transparency
  -domestic
  -international

- Recent changes during the period 2004/2005

**Part Two** deals with the specificities of oversight and guidance, (e.g., the role of the Parliament, the head of government, the Department of Defence, the Secretary of Defence, funding systems, research institutes working on intelligence matters, etc.).

**The third section** deals with intelligence institutions *within* the security sector, (e.g., communication of documents, intelligence planning systems, drafting of intelligence policies, etc.).

**An optional conclusion**

This analytical framework was applied in a similar study that was conducted by the Geneva Centre for the Democratic Control of the Armed Forces (DCAF), together with the Centre for European Security Studies (CESS) of Groningen, the Netherlands, in 2003/2004.[2] The study evaluated several countries (Bulgaria, France, Italy, Poland, Sweden, the United Kingdom and the United States).

Although the different systems which are described in this study appear to be comparatively alike, probably due to the common reporting format, they differ in their scope and also in the ways in which they are applied in reality. For various reasons, this point is quite difficult to evaluate.

Firstly, for transparency reasons: obfuscation of intelligence related topics was the rule during the communist era. Intelligence services were in reality *secret* services and mentalities have not yet evolved completely on this point.

Secondly, intelligence has always been centralized at the highest level of the state alongside the belief that 'information is power' and should be known to only a select few; this has not evolved to a great extent.

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[2] Transparency and Accountability of Police Forces, Security Services and Intelligence Agencies, ed. David Greenwood and Sander Huisman – Sofia 2004

Thirdly, most of the new knowledge in the field of intelligence and the security sector, particularly developments in the area of good governance is developed in the United States, through courses, outreach seminars and conferences that are conducted by a variety of centres, such as the Marshall Centre in Garmisch, and also by other institutes and specialized colleges throughout Europe, including the Geneva Centre for Security Policy (GCSP) and DCAF.

It is only with the longer practice of democratic control that these nations will become attuned to the correct implementation of the new tools they are in the process of acquiring.

The case of Albania, though extreme, is self explanatory as revealed in the following statement:[3]

*'There is no national literature on the theory of governance as far as intelligence services are concerned. However, well-established practical mechanisms when time and political changes were resisted are sometimes consulted in intelligence practice. National literature that has been published recently by practitioners refers to the nostalgic practices of the old Sigurimi structures of the late 40s and 50s of last century. Books on intelligence models and activities especially from the US but not only, are being published as readable literature by publishing houses, but they may not be considered as relevant for the models of other countries.'*

Now that the stage has been set, it might be interesting to review the main specificities of the different countries which are assessed in the current study, in accordance with the various themes that are detailed.

**Albania** is the most specific case specifically in light of the fact that a state intelligence system was in existence before the revolution. Recalling that the new Albanian Constitution 'determining the form of the Albanian state as a parliamentary Republic' was issued and approved by law in October 1998, the authors[4] list the main laws which were passed between 1998 and 2005 by detailing mission statements, structures, policies, programming, budgeting, personnel management and public information. A number of earlier laws remain valid, such as the law on public procurement dated 26.07.1995.

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[3]  See Chapter re: Survey on Intelligence Services – Republic of Albania – Enis Sulstarova and Sotiraq Hroni

[4]  Sotiraq Hroni and Enis Sulstarova, both from the Institute for Democracy and Mediation

This set of laws establishes and defines the role, missions and reporting channels of the two Albanian intelligence services, namely the State Intelligence Service (SIS)[5] and the Military Intelligence Service (MIU).[6] In a very classical type of arrangement, the Strategy of National Security, which was approved by a law dated 25 November 2004, is to be implemented by the National Security Council. The law *requests from the intelligence community 'the securing and exchange of the necessary information for the prevention of crime and internal crises. The existence of criminal groups and public disorder cannot be excluded. A basis for their discovery and prevention in time is the functioning of a modern system of the State Intelligence Service.'*

The reporting lines of the service directors are strictly directed to the upper part of the executive, the President, the Prime Minister and, for the SIU, the Minister of Defence. The Council of Ministers, upon the request of the Prime Minister exerts occasional controls (mainly budgetary) through an Inspector General who is subordinate to the service director, whereas the Minister of Defence is only requested to make a report once a year. The authors recognize that *'there have not been significant changes in the past decade in the Intelligence Services with regards to its institutional organization and function, while there has been a reduction in the number of staff.'*

Under the current laws, parliamentary oversight of the intelligence services has been established, at least in theory. A sub-commission on intelligence services has been designated but it is regrettably very formal and almost non-existent. Once a year, by law, the director of SIS is expected to brief the sub-commission. However, to date, parliamentary investigations appear to have been solely motivated by political squabbles. For instance, in 2002, a bi-partisan investigation committee took place with no security process for its members and to no avail. The authors attribute this unlawful lack of oversight to the fact that it is not explicitly defined in the State Constitution and also to the inaction of parliamentary leaders who are responsible for conducting duties in this field.

In Albania, the *'State Intelligence Service performs its tasks in compliance with the procedures designed by the Prosecutor General of Albania. The Prosecutor General is authorised to check on the application of the procedures that determine: the means for acquiring counterintelligence and foreign intelligence, the use of physical and electronic surveillance, the appropriate forms of protecting methods and sources of counterintelligence/ foreign intelligence from unauthorized access, the ways of verifying and corroborating sources of information and the collection of intelligence on individuals viewed as potential sources of information.'*

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[5] Shërbimi Informativ Shtetëtor
[6] Shërbimi Informativ Ushtarak

An Ombudsman is responsible for determining flaws and abuses of power by the intelligence services, but reports of such a nature have yet to be produced. Though the media and individual citizens have the right to access state-owned information, they seldom use it. The press does not frequently deal with intelligence related topics and civil society has not yet shown a great desire to do so, probably because of a lack of incentives and funding.

Legal provisions for improved transparency have been made, but being either too restrictive or unsolicited, they remain theoretical. However, as a consequence of September 11, a new directorate was set up. Dealing with anti-terrorism, its intelligence and information needs have compelled the services to establish greater transparency and cooperation, even in the international arena.

The respective roles of the President, towards whom the flows of intelligence and information are directed by the services, and of the Prime Minister, are fundamental in terms of the functioning of Albania's highly centralized intelligence system. Chairing the National Security Council, the President deliberates with the assistance of personal advisors and members of the Council. The Prime Minister's role is not defined in the State Constitution. While the Minister of Interior remains very close to the Prime Minister, the latter does not have a personal staff of advisors working solely on intelligence related issues. The police cooperate very closely with the intelligence services and one might think that any future reform process could well invest the Minister of Interior with the Prime Minister's responsibilities in the field of intelligence.

To summarise this very informative, clear and frank presentation, the two authors have created a list of the current shortcomings of the Albanian intelligence community. Lack of funding and a lack of commitment from parliamentarians and civil society might explain the on-going problems, though a big step forward has been made with the vote of the constitutional laws on intelligence. Time, funding, ideas and international cooperation (the European Union (EU), the Organisation for Security and Cooperation in Europe (OSCE) and the North-Atlantic Treaty Organisation (NATO) through bilateral measures) might well, in the short-term, improve the overall picture.

Let us now consider the case of **Bosnia and Herzegovina (BiH)**, which is probably the most complicated.

The General Framework Agreement for Peace in Bosnia an Herzegovina, better known as the 'Dayton Peace Accords,' put an end to the protracted war between three national

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warring parties in this former Federal Republic of Yugoslavia. It also provided for the current State Constitution of BiH.

This new state was comprised of two Entities, namely the Federation of Bosnia and Herzegovina (Bosnians and Croats) and the Republica Srpska. Both Entities were permitted to retain their authority in terms of security, defence and intelligence until a very serious incident, in addition to numerous previous ones, led the international community, which was still heavily present in BiH, to reform the intelligence sector as well as the respective responsibilities of the Entities and BiH.

The incident was nothing less than the violation by the Republica Srpska of the UN embargo on arms sales to Iraq. The EU Authority imposed, through the Office of the High Representative, the creation of a Commission for Intelligence Reform which aimed to suppress the Entities' intelligence services which paralleled that of the state. It was a *sine qua non* (condition) to start with the negotiation of the 'Stabilization and Association Agreement.'

Denis Hadžović, Secretary General of the BiH Centre for Security Studies, recalls that the *'Parliamentary Assembly of Bosnia and Herzegovina endorsed the Law on the Intelligence and Security Agency of Bosnia and Herzegovina in March 2004. It did so with the assistance of the international community, and particularly the Office of High Representative in Bosnia and Herzegovina as the final authority in interpreting the aforementioned Agreement on the Civilian Implementation of the Peace Settlement.*

*Civil intelligence sector reform was underway. The two intelligence sectors, formed at the time of signing the Dayton Peace Accords, were transformed and, on July 1ˢᵗ 2004, they merged into one body - the State Intelligence Security Agency.'*

Most of the key laws referring solely to the intelligence services, which were quoted by Hadžović, date back to 2004, 2005 and 2006.

Alongside these laws, the role of the Intelligence Security Agency (OSA), which has exclusive jurisdiction over every part of the BiH state, is comparable to any other national intelligence service or agency. It is obligated to take internal and external threats into account and to gather, elaborate and disseminate intelligence to the competent bodies for the sake of national security. Such threats are comparable to those defined by EU and NATO countries and include terrorism, organized crime, drugs, arms and human trafficking, proliferation of WMD, espionage and sabotage directed against vital infrastructure.

Another 'classical' aspect of the OSA's role is reflected in its cooperation with the intelligence and security services of other states and foreign institutions to meet threats and perform its tasks. This is done daily through ongoing cooperation with the EU and

NATO forces that are deployed on its territory. More specifically, the OSA also cooperates with the International Criminal Tribunal for the former Yugoslavia (ICTY), a very specific institution dedicated to finding and trying 'war criminals' who have managed to escape and are still on the run, by providing it with information concerning individuals who are responsible for serious violations of international humanitarian law committed on the territory of the former Yugoslavia since 1991.

In addition to the OSA, the Military Intelligence Unit (VOR) operates as a branch of the BiH Armed Forces. VOR reports to the Minister of Defence but is expected to cooperate closely with the OSA, which is responsible for the collection and collation of strategic military intelligence as well as the conduct of counter-intelligence activities. As Hadžović states, '*The elimination of the defence competencies of the entities required the state to undertake all military intelligence activities. This happened with the provisions of the new Law on Defence of Bosnia and Herzegovina endorsed in October 2005, which prescribes the competency for military intelligence as an exclusive state-level function.*'

Reading through Hadžović's paper and in light of his depiction of the new intelligence services in their different aspects, one might have the impression of a perfect world. Everything is organized 'by the book' and is in keeping with the recommendations made by on-site EU and NATO forces, but also according to the handbooks published by DCAF and other institutes.[7]

The provisions made for ensuring accountability and the transparency of the services could be cited as examples of clarity and good governance.

For instance, in the field of accountability to the executive, three state institutions share, with different degrees of involvement, the responsibility of overseeing the work and the budget of the OSA:

-The Presidency of Bosnia (comprised of a Croat, a Serbian and a Bosnian who share the presidency as co-presidents) approves the annual policy platform as well as the annual report on activities and the budget;

-The Council of Ministers prepares the policy platform and its guidelines, approves the annual activity program of the OSA, in liaison with several ministries (Treasury and Foreign Affairs) and considers the annual report on activities and expenditures;

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[7]  The author refers mainly to the handbook entitled 'Making Intelligence Accountable: Legal Standards and Best Practice for Oversight of Intelligence Agencies' by Hans Born and Ian Leigh, published jointly by the Geneva Centre for the democratic Control of the Armed Forces (DCAF), the Human Rights Centre, the Department of Law, University of Durham and the Norwegian Parliamentary Intelligence Oversight Committee – 0slo 2005

- The Prime Minister (or Chairman of the Council of Ministers) coordinates OSA activities, provides guidance on intelligence/security policy, supervises OSA operations, verifies their lawfulness, provides an annual briefing to the Presidency and to the Parliament, and submits the budget to the Council of Ministers, in cooperation with the Intelligence Security Committee.

As far as military intelligence is concerned, the BiH Minister of Defence has full authority, in terms of rights and responsibilities, over the operations and the budget of the VOR.

With regards to accountability, the same exemplary provisions exist for the elected representatives. While the tasks of the Intelligence Security Committee are detailed the author recognizes that '*the responsibility of performing oversight has been mainly directed towards following up the process of institution building of the new organization and assisting the newly elected leadership of the OSA to implement the provisions of the law.*'

All the elements needed for effective oversight of the intelligence sector are in place, including the Ombudsman, laws regarding freedom of access to information, laws to ensure the procedure for serving personnel to report irregularities, even if, due to its complicated governmental structures, BiH has not yet ensured that its institutions are in full compliance with international codes and conventions.

Through different channels and at different levels, provisions have been made to make information available to the elected bodies and to the public (the Prime Minister, the Director General of the OSA and the Inspector General of the OSA).

Internationally, BiH has striven to cooperate fully: '*In recent years, Bosnia and Herzegovina has been a regular provider of information on the international level. It has done so through its involvement in international organizations: the OSCE Code of Conduct on Politico-Military Aspect of Security, the OSCE Document on Small Arms and Light Weapons, and the UN Program of Action Combating Illicit Trafficking of Arms. Alongside those obligations, the presence of the EU military forces and especially the NATO HQ in Sarajevo provide an additional form of transparency, which is based on close cooperation of these forces with local security institutions. Although European integration is a priority for most of the officials in the government, Bosnia and Herzegovina is not yet in the negotiation process with the European Union for its membership. Therefore, under international law Bosnia and Herzegovina is not obliged to follow the EU guidelines, but the state strives to adjust its internal regulation with the EU acquis.*'

Despite this fairly good picture, the reality is grimmer due mainly to a lack of resources, commitment and funding. The reform process has been conducted as a consequence of the pressure that has been exerted by the international community. BiH

is the only sovereign country in the Western Balkans to host a stabilization force on its territory and its very existence is due to a recent peace accord that was established between three warring factions. The reform of the intelligence agencies, ending in the unification of the different services, might have succeeded in terms of institutional development, but it remains to seen if personnel have reformed accordingly.

The general scheme proposed is amongst the best possible and might be applied in the presence of the UN and NATO forces, but will it be possible to stay the course after their departure?

Let's cross the border to **Croatia** and briefly review what Mladen Staničić,[8] a reputed connoisseur of defence issues in the Balkans has said about the Security Sector Reform (SSR) process in Croatia and, more specifically, on the intelligence business. Croatia won her independence through a long protracted battle against different foes and under very difficult conditions. Intelligence played a major role in this fight and especially in the last battle of the war, Operation Tempest. Moreover, with the ensuing democratic developments and the subsequent regime change, the will of the Croatian government and population was to ensure that Croatia became a member of the EU and NATO. For that purpose, it was necessary to adapt national institutions to EU and NATO standards. In the first place, Dr. Staničić describes at length the structure of the general government decision making process on defence policy and points out the respective responsibilities of the President, the Prime Minister, the Council of Ministers, the Minister of Defence and the Parliament. Staničić clearly states that before any strategic document regarding defence policy (and intelligence) is issued for endorsement, there is no form of provisions for guidance from a higher authority. Such is also the case for the main topics addressed in the report. Staničić emphasizes the role of public institutes which, at first, were not engaged in the defence sector but progressively showed greater interest in defence issues.

*'A good example is the Institute for International Relations (IMO) in Zagreb, which develops and recruits experts, starting from youngsters to experienced experts, who are dealing with security and military issues, but mainly in terms of research on various segments of international relations and the role of Croatia in this.*

*Adjustment to the civil and democratic criteria is also a very important issue, in the sense of compatible EU and NATO standards and the so-called Euro-Atlantic structures, which cannot be avoided while scrutinising the position of Croatia in international relations. The IMO develops very substantial cooperation in this field with the most prominent European institutions, such as the Geneva Centre for the*

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[8] Paper edited by Dr. Mladen Staničić, PhD, Director, Institute for Foreign Relations (IMO - Zagreb assisted by Dr. Vlatko Cvrtila, PhD, professor at the Faculty of Political Science (Defence and intelligence) - Zagreb

*Democratic Control of Armed Forces (DCAF), the Centre for European Security Studies (CESS) in Groningen, the George Marshall Centre in Garmisch Partenrkirchen and the International Institute for Security Studies in London, etc.*

*That means cooperation in carrying out joint projects, organizing conferences, seminars and workshops, especially in the field of civil-military relations. By doing this, all actors were faced with the fact that Croatia's general public, including top politicians and MPs, were not aware of the relevance and sensitivity of this issue, which has a lot of influence on the internal political situation, not to mention the urgent demand for reform of the armed forces and the security sector in concert with the standards and criteria of Euro-Atlantic structures.'*

This statement describes perfectly and truthfully the relationship between the defence and intelligence communities of Croatia with both internal and external (foreign) institutions. The concern of transparency is fully taken into account and dealt with properly.

As far as intelligence is concerned, Croatia has merged her three intelligence services and agencies into two, one civilian and one military: the 'Security and Intelligence Service' (SOA)[9] and the 'Military Intelligence Services' (VSOA).[10] Both are answerable to the main organs of the state, namely the President, the Parliament (to include the Council for Civilian Oversight of Security and Intelligence Agencies), the National Security Council and the Council for Coordination of Intelligence Services.

Accountability to the executive is achieved in a very classical sense and does not require exhaustive changes although it appears that the obstacles faced by the government and parliamentarians centres on the inability of the latter to fulfill their responsibilities due to the shortage of professional staff capable of bringing their expertise to parliamentarians. Accountability to the courts is mandatory.

Regarding the media and society at large, '…*there are some possibilities for the media and individual citizens to have the right to access state information, but there is still a very strong culture of secrecy psychosis inside the government. The media is finding a way to locate secret information and they used to publish almost everything.*'

With respect to the issue of oversight and guidance, it should be noted that, in Croatian law, the Minister of Interior heads the government body for coordination of the Intelligence Services. The Minister's guidance is made public after having been elaborated by the members of this body, which is comprised of the President of the National Security Council, the head of the Security and Intelligence Service (SOA), the

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[9] Sigurnosno-obavjestajna agencija
[10] Vojno sigurnosno-obavjestajna agencija

head of the Military Intelligence Service and the head of the Office of the National Security Council.

This text gives an impression of serenity tempered with slight anxiety regarding the lack of resources and experts needed to run the machine swiftly.

Croatia's Intelligence Services maintain a close relationship with their international colleagues, take part in operations, and have an intelligence planning system in place, which is rather top down as opposed to the other way around.

**Macedonia**, also known under the internationally recognized acronym of FYROM,[11] is another example of a state in transition with the triple ambition of becoming a member of NATO, a member of the EU and to establish peace inside its borders and with its neighbours. Without any hesitation, the country initiated its formal quest for government institutions as early as September 1991, the date of Macedonia's independence. The author of the chapter on Macedonia, Islam Yusufi, begins his paper by reporting on specific data through which it appears clearly that, with a very limited population of circa 2 million inhabitants, this new state is made of a variety of ethnic origins, the largest being Macedonians, followed by Albanians which account for one quarter of the whole population and who mainly reside along the Albanian and Kosovo borders.

Macedonia has always been at the crossroads of ground lines of communications (rail and highways) of traffic lines and, more recently, of organized crime (weapons, human, drugs and dangerous materials). Threatened in the early stages of its existence by a highly disruptive situation in southern Serbia, Albania, Bosnia and Kosovo, Macedonia managed to remain isolated from external problems thanks to stabilization plans and the deployment of foreign forces, which served as a buffer until the country was capable of assuming the responsibility of maintaining its own defence.

Paralleling the deployment of this force, which indeed prevented the spread of external conflict into Macedonia, the country began to develop its own defence and security system and, among other things, an intelligence organization.

The State Constitution was voted on in 1991. Many articles of law managed to regulate the terms of reference, the missions and the structures of the state administration. As the annex to Yusufi's paper details, other laws of a general nature (with direct application to intelligence governance) were also passed, mainly between 2002 and 2005.

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[11]  Former Yugoslav Republic of Macedonia

The system in place has been created from scratch and built up progressively, inspired in part by the former Yugoslav system, in part by the genius of Macedonians, and in part by foreign institutions, organizations and countries, such as NATO, the US and DCAF. There are currently three intelligence agencies in the country, the roles and missions of which are described in detail:

- The Intelligence Agency of the Republic of Macedonia is tasked with providing information to the President, the government, other ministries and state bodies. '*The Constitution of the Republic of Macedonia is the initial statutory basis for the work of the Intelligence Agency. The National Security and Defence Concept and the Defence Strategy define the position of the Intelligence Agency in the national security system. The Law on the Intelligence Agency of the Republic of Macedonia, adopted by the Assembly of the Republic of Macedonia in 1995 is another source.*'

- The Security and Counterintelligence Administration is part of the Ministry of the Interior. Prior to independence, this security organ's name was the 'State Security Service.' It has continued to work to identify and prevent activities directed towards undermining or disrupting the system established by the Constitution. The Law on Police (1995) is the statutory basis of this administration: '*In 1995 with the reorganization of the organs of the state administration, the State Security Service was renamed the Directorate for Security and Counterintelligence, but with the change of the law on organization and work of the state administration in 2000, the Directorate was renamed and restructured into the Security and Counterintelligence Administration continuing its work on state security.*'

- The Service for Security and Intelligence of the Ministry of Defence was created and regulated by the 2001 'Law on Defence.' Its role is reviewed in great detail in this chapter and includes such missions as monitoring foreign military intelligence, detecting and preventing all forms of terrorist activities, taking counter-intelligence protection measures in relation to the defence of Macedonia.

All three services are accountable to the government or the Council of Ministers, which are the main coordinating bodies in charge of approving the major organizational documents of the state organs. They also report to the Directorate for Security of Classified Information which is entitled to exchange classified information with various international organizations, NATO included. Two newly established organs also exert control on the intelligence bodies: the Management Committee for Crisis Management and the Group of Assessment for Crisis Management, both responsible for the evaluation and coordination of the government's responses to crises.

However, one point remains: the question of inter-cooperation between the organs involved in intelligence related activities. Laws on the intelligence services stress but do not provide enough detail on the process of cooperation between the agencies and

the ministries. Therefore, when a situation of inter-agency (and/or ministry) clash or conflict arises, the risk of an insufficient exchange of information is high.

Despite some minor points, Yusufi seems satisfied with the principle of accountability to the executive and the respect it receives: *'Macedonia has instituted the principle of the accountability of the intelligence services to the executive within a legal framework that includes the Constitution, laws, national security concepts and intelligence doctrines. The country has succeeded in establishing legal structures that subordinates the intelligence sector to executive organs. Looking to the actual practice of accountability to the executive, the legacy of the communist era norms of behaviour is influencing the course of post-socialist intelligence institutions in the country. Macedonia has made progress in establishing executive control of the intelligence services. However, it is not immune from the problems of gaps in the legislative framework, and an unclear division of responsibility between the Government, President, and Ministers of Defence and Interior.'*

On the subject of accountability to elected representatives, Macedonia is seemingly right on target insomuch as the theory is concerned: the Assembly of the Republic of Macedonia[12] through its 'Commission for Control of the Work of the Security and Counterintelligence Administration and the Agency for Intelligence (and partly on the service for Security and Intelligence[13]) oversees the work of the services. However, in practical terms, according to Yusufi, shortcomings seem to be numerous: *'Particularly important is that there are no procedures clearly defining how the Committee's decisions and recommendations take effect. The Commission does not function sufficiently, as it has happened not to receive regular reports from intelligence services and their work to a great extent depends on the attitudes of the MPs who tend not to act as professional MPs, but rather as political deputies not wishing to criticize the intelligence agencies, which might be headed by somebody from the same party.'*

A similar remark can be made regarding transparency: all the provisions are in the texts and in the laws, but when it comes to the execution, mentalities, habits and lack of experience, if not bad will and calculus, make it difficult to apply, as Yusufi's remark underscores: '*Communication with the Sobranie is an issue that has to be an integral part of the working culture of intelligence sector actors.'*

The remainder of the chapter is dedicated to describing the Macedonian specificities in the field of oversight and guidance. Under this heading, Yusufi reviews, in great detail, the role of the *Sobranie* in endorsing intelligence policy decisions, as well as the way in which decisions on intelligence matters are made. The role of the President, the National Security and Defence Council, the Prime Minister and the Minister of Defence is also reviewed in this respect. Yusufi also reviews the guidance on intelligence policy

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[12]  Also called *Sobranié*
[13]  The Assembly does not have clearly defined authority over this service.

and the funding system without bearing judgment or assessment on their relevance and effectiveness.

With respect to the main sources of knowledge that are employed by the national authorities, Yusufi simply quotes the different documents and details the different international institutions and conventions which are taken into account by the Macedonian intelligence community, (the Council of Europe, the OSCE, the EU and NATO).

In fine Yusufi acknowledges that, *'the parliamentary commissions to date have not contracted independent research on defence policy to public/private/both public and private institutes. The government (the Prime Minister's Office, the Minister of Defence) to date has also not used commissioned research on specific issues of intelligence policy to the subordinate research institutes in their decision-making process. There are no officially or privately commissioned surveys on intelligence issues.'* This point is an important one given the quality of the think tanks, institutes and NGOs working on defence and security related issues.

Let us focus now on the case of **Serbia** exposed herein by Saša Janković, a legal adviser at the democratization department of the OSCE mission to Serbia. Dealing exclusively with the mechanics of SSR, including the intelligence business, Janković commences with the recent dissolution of the State Union of Serbia and Montenegro (May 2006). However, it remains difficult to perceive the complexity of the reform process without referring to the past decade, from the Dayton Peace Agreement on.

The events that have occurred in Serbia and the lack of democratic control of the different (and numerous) intelligence and security services, have heavily impacted on this domain, which is still in the early stages of reconstruction. Janković's introduction in an article titled 'The Status of Serbia's Intelligence Reform and its Challenges' of January 2007[14] reads '… in order to remind us of the brutal past and deep, dark legacy of today's Serbian services and to convince us that the continued reform of the intelligence/security services is the crucial condition for democratic progress of Serbia, and not only a result of democratization:'

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[14] In 'Security Sector Reform in South East Europe- from a Necessary Remedy to a Global Concept,' minutes of the 13th Workshop of the Study Group 'Regional Stability in South East Europe' in cooperation with the Working Group 'Security Sector Reform,' eds., Anja H. Ebnoether, Ernst M. Felberbauer, Mladen Staničić. Publishers: Study Group Information, Vienna and DCAF, Geneva, January 2007

*'During the past decades, the intelligence/security agencies of Serbia and various incarnations of the former Yugoslavia have been the key tool of autocratic governments, helping them to remain in power at any cost ...'*

*'The so-called 'secret services' have always had links reaching to the other side of the law. However, the nineties in Serbia saw an unprecedented 'pact' between the secret services, autocratic and corrupted politicians, and organized crime. This pact was sealed during the time of international sanctions, when the governments of Serbia, Yugoslavia and Montenegro asked respective services to supply the country with strategic goods (oil above all) through illegal channels- the only ones available. Once established, these secret ventures resisted closure even after the 'state's reasoning' for their existence was terminated...'*

*The symbiosis of corrupted politicians, perverted services and organized crime slowly but overwhelmingly shook the country, annulling the rule of law, destroying the economy, suspending democracy and wiping away every aspect of human security.'*

This severe situation, added to the progressive disruption of the former Federal Republic of Yugoslavia which resulted in an isolated, pauperized and humiliated Republic of Serbia from which Kosovo is to be severed any time soon, explains the difficulties met in reorganizing the intelligence and security services.

Janković emphasises the element of 'continuity' in Serbia as the current reform process still involves the **four** federal intelligence/security agencies that were established in 2002 during the Federal Republic of Yugoslavia, and which continued to function under the 'State Union' and now in the Republic of Serbia. An additional service was created to operate at the level of the republic during the existence of the federal state. Indeed, a very complicated situation highlights the reluctance of Serbia to acknowledge its current international posture.

Where most nations of comparable size function with one or two intelligence and security services, Serbia operates five, obviously redundant services:

-The Security-Information Agency of the Republic of Serbia (BIA),[15] the strongest agency of its kind in Serbia, inherited the staff and assets of the state's security sector of the Serbian Ministry of the Interior in 2002

- The Military Security Agency (VBA),[16] which is subordinate to the Ministry of Defence, has been responsible for counter-intelligence and counter-terrorism since 2002. The VBA investigates and documents military offences against the constitutional

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[15] Bezbednosno-informativan agencija
[16] Vojno-bezbednosno agencija

order as well as crimes against humanity, international law and organized crime. It has inherited the assets and a number of missions from the former 'Security Directorate' of the Army's General Headquarters.

– The Military Intelligence Agency (VOA)[17] is tasked with foreign military intelligence and answers to the Ministry of Defence.

– The Service of Research and Documentation of the Ministry of Foreign Affairs (SID).[18]

– The Security Service of the Ministry of Foreign Affairs (SB),[19] responsible for security, anti-bug and counter-intelligence protection of the Ministry Of Foreign Affairs and Serbian consular services and embassies abroad.

Janković insists on the overlaps existing between the different services and gives striking examples of this dysfunction, a consequence of a difficult heritage and of the constant evolution of the state. He hopes that the Strategic Defence Review that is underway will result in a better organization and improved management of this domain which has long been the most obfuscate and secret of all.

As far as accountability is concerned, Serbia cannot be given as an example of efficiency. *'The 2005 Law on Government provides the Serbian Government with the general authority to direct and oversee the work of all governmental agencies and to coordinate them. There was a failed attempt of the government to establish the National Security Council in the first half of 2006… The President and the Prime Minister could not agree on who should chair the meetings of the Council and, as a consequence, the first session never took place…'*

While recognizing the merits of the parliamentary Defence and Security Committee, especially the way in which it approaches and addresses political and security problems, Janković remains highly critical of the lack of protection of information (the Committee's meetings are open to the public even when it discusses the semestrial reports of BIA). The lack of specialization of its 17 members and the fact that its support element is understaffed is another issue of concern. Therefore, control of the services remains very superficial and this needs to be addressed. Such seems to be the intention of the Serbian Government and Parliament: the House Rules are currently being re-drafted, the Committee is being given, once again, a new name and, tentatively, new contents – the 'Standing Commission for Control of the Security

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[17] Vojno-obavestajna agencija
[18] Sluzba za istrazivanje i dokumentaciju
[19] Sluzba besbednosti

Services' – in line with the new anticipated law on federal services and the new Constitution.

By all means, Serbia is a state in transition and, as such, is switching progressively from a system that remained very restricted in terms of human rights and democratic oversight, clogged with a dubious security heritage, to a system based on good governance rights and methods. The 2004 Serbian Law on Free Access to Information of Public Importance has improved the conditions for public oversight on security matters. Much remains to be done however in that field as the mentalities of both the public and the administration have not yet evolved to the desired point. The media, which is generally open to change, is leading the way. However, coverage of the security sector 'still lacks an analytical approach and research' and is more interested in revealing scandals than in documenting the problems behind them.

Civil society has not played a great role in the reform of intelligence and security. NGOs and research institutes exist but are not employed in the way in which they could and should be by the government. However, staff members from the various agencies are more frequently than in the past attending special qualification courses, seminars and workshops organized by independent academic institutions and specialised NGOs.

The roles of Inspector General for the services and Ombudsman have yet to be established in Serbia.

All in all, Janković draws mixed conclusions from his thorough analysis of the Serbian intelligence and security services, which leaves some hope for the future of this state institution:

'*Caught between two steps, with overlapping and entangled competences of the services and unclear or non-existing lines of direction, control and co-ordination, the Serbian intelligence-security system is unfocused, expensive and left without strong protection against the universal tendency of services to overstep their authorities and escape scrutiny.*

*Fortunately, it seems that the existing balance of powers and the genuinely adopted principle of civilian supremacy and democratic civilian control among the highest politicians' and services' ranks are holding the system together without major turbulences.*

*The momentum should, of course, be used to create a proper legal framework for an intelligence/security system that would fully respect the rule of law; one which could efficiently provide information relevant to the security and development of the country, fit well between its needs and possibilities, and which would respect and protect human*

*rights and other fundamental democratic values and therefore well suited to be fully integrated into the international security community.'*


**Conclusion**

It remains difficult to make a general assessment on the status of intelligence in the Western Balkans. For various reasons pertaining to geography, history, politics, the economy and ethnicity, each country has experienced very different conditions.

Most of the states concerned were, one century ago, provinces of the Austro-Hungarian Empire. They achieved the status of sovereign countries in less than one century, undergoing very difficult periods, including a 50-year long era of communist rule which strongly and deeply impacted on the mindset of the populace and the political elite.

With the fall of the Marxist regimes, the advent of the EU and the explosion of international terrorism, these new countries had to reorganize totally. To that end, 15 years is a very short period of time, especially in a region that has been marred by bloody and brutal conflicts which have left deep scars and wounds.

Threat perception is vital for a nation state willing to build up a proper defence tool. There is not a great deal of indication to show, in the following chapters, emphasis to that end. Therefore, it is difficult to make a judgment on the value of the current intelligence policies, most of which follow the same general pattern inspired from the major powers and sometimes reproduced in the country's legislation with minor changes.

Details of the different intelligence services are scarce; no country has given any indication of the strength of their staff or budgets. This ultimately reflects a certain mindset.

This first survey is nevertheless very interesting as it shows the current status of the intelligence sector, which is usually considered confidential or at least restricted to a limited circle. An increasing number of institutes, think tanks and NGOs are now dealing with the issue and will hopefully have an impact on both the government and public awareness in the future.

# Republic of Albania: Survey on Intelligence Services

*Sotiraq Hroni and Enis Sulstarova, Executive Director and Project Officer, Institute for Democracy and Mediation, Tirana, Albania.*

It is the first time that research has been conducted on intelligence governance, management and oversight in Albania. Albania's transition to democracy and the reorganization of intelligence services have proven to be an undertaking less visible to the media and the public. Little information exists on the reform of these institutions except for the legal acts and confidential discussions one organizes with experts of the Secret Services. Information on this survey has basically been gathered from the existing laws, from different contacts and interviews with intelligence experts as well as from the private experiences gained while working with intelligence agencies in Albania in the framework of the partnership developed between the Institute for Democracy and Mediation and the intelligence services.

The aim of the study is:
(1) to describe the nature and effectiveness of provisions for the executive direction and legislative oversight of intelligence agencies in the country and,
(2) to describe the institutional arrangements and current practices that cover the provision of information about the organization, planning, budgeting, administration and operations of these forces, services and agencies in the selected countries (transparency aspect);

## Government Structure, Reporting and Management Relationship

According to the Constitution of the Republic of Albania which was approved by Law No. 8417 on 21 October 1998, the Albanian state is a parliamentary republic. There is no specific mentioning in the Constitution of intelligence services, except that the President of the Republic appoints the Director of National Intelligence Service based on the proposal of the Prime Minister.

The specific laws listed below regulate mission statements, structures and obligations for all government entities involved in formulating, implementing, reporting and overseeing intelligence policies (list 1):

- Law No. 8391, dated 28.10.1998, 'Law on the National Intelligence Service.' This law defines the State Intelligence Service (SIS), states that its duties are to acquire intelligence and counterintelligence, that its work cannot violate basic human rights, regulates the civil supervision of the service and its internal structure, regulates the special status of the budget of SIS and excludes it from the regular

budget supervisions that applies to other state agencies, and defines the right of SIS to protect classified information about its work and personnel.

- Law No. 9400, dated 12.05.2005, 'Amendment of Law No. 8391 'On National Intelligence Service.' This law makes minor amendments to the previous one, specifically concerning terminology. For example 'Deputy Director' replaces 'Vice Chairman' (Article 3), and 'the Prime Minister' replaces the phrase 'the Chairman of the Council of Ministers' (Article 4). It adds that besides the top officials of SIS that are appointed by the President of Republic, 'other employees of SIS are appointed and dismissed by the director of SIS.'

- Law No. 9357, dated 17.03.2005, 'On the Status of the Employee of the State Intelligence Service.' The purpose of this law is the status of SIS employees, their juridical, administrative position, criteria for recruitment, their liabilities and rights.

- Law No. 9157, dated 04.12.2003, 'On the Telecommunication Interception.' This law establishes the procedures to be followed by intelligence state agencies for telecommunications interception and the procedures to be followed by persons charged with the duty of interception. The basic principle of telecommunications interception is the respect for fundamental human rights and freedoms. The right of telecommunications interception lies with the Ministry of Interior, State Intelligence Service, Ministry of Defence and other law enforcement agencies, in order to gather the necessary information to fulfil their legal duties. The interception is allowed or rejected by the Prosecutor General, upon the request of one of the mentioned agencies.

- Council of Ministers Decision No. 194, dated 10.04.2004. This decision states the priorities, fields and levels of cooperation of the SIS with intelligence services of other states. Priority is given to issues concerning national security, regional security or obligations that arise from Albania's strategic alliances. Fields of cooperation are as follows: exchange of information, logistical support, exchange of experiences and training, modernization of technical – scientific aspects of intelligence work, carrying out joint tasks and operations, and the mutual use of sources for the solution of joint tasks. There are three levels of cooperation: (1) formal: SIS maintains contacts with its counterparts but there is no exchange of information nor are joint actions undertaken at this level; (2) normal: information is exchanged and joint actions are undertaken when countries enjoy good political relations; (3) optimal: SIS closely cooperates with counterparts in all prescribed fields. In all cases, the source of information is not disclosed.

- Law No. 9074, dated 29.05.2003 'On Military Intelligence Service.' This law defines the duties and field of operations for the Military Intelligence Service. MIS is organized at the directory level at the Ministry of Interior and it operates in the territory where the Armed Forces operate.

- Law No. 9295, dated 01.10.2004 'On Criteria of Acceptance, Career and its Interruption for the Employees in Military Intelligence Service.' This law regulates

the criteria for the recruitment of MIS officers, their careers, as well as the internal organization of the MIS, ranks, discipline and interruptions in their careers.

List 2 includes general laws that have application also to intelligence community governance:

Public information is regulated by these laws:

- Law No. 8503, dated 30.06.1999 'On the Right to Information about Official Documents.' This law regulates the procedures through which citizens can obtain information about official documents. This law does not apply for documents classified as 'state secrets.'
- Law No. 8457, dated 11.02.1999 'On Information Classified as 'State Secrets.'' This law determines the rules for the classification, use, protection and declassification procedures of information that is the object of national security and defined as a 'state secret.' There are three levels of classification defined in this law: 'top secret,' whose unauthorized disclosure may cause very serious damage to the national security, 'secret,' when unauthorized disclosure may cause serious damage to national security and 'confidential,' when unauthorized disclosure may cause damage to national security. Rules on the process of classification and the authority to classify are determined by sub-legal acts issued by the Council of Ministers (Article 3).
- Law No. 8517, dated 22.07.1999 'On the Protection of Personal Data.' This law guarantees the protection of personal information from unauthorized use. The classification of documents not for immediate public release is the competence of the President, Prime Minister and other directors authorized by the Prime Minister in the State Register of Classified Information (Law No. 8457, Article 4).

The procurements by state institutions are regulated with separate laws:

- Law No. 7971, dated 26.07.1995 'On Public Procurement.' This law operates in all the cases of the procurement of public institutions, with the exception of cases when the Council of Ministers, for reasons of national security, determines a separate procedure of procurement. The above is stated in Law No. 8553, Article 15, Paragraph 1.

- Law No. 8379, dated 29.07.1998 'On the drafting and implementing of the State Budget of the Republic of Albania,' whose subject are the principles and methods for drafting, administering and use of the budget.


The government's program speaks only in general terms on the priorities of the intelligence community and it currently stresses the need for more efficiency and a higher role of intelligence services in fighting organized crime, illegal trafficking, etc. The basic national security document is the Strategy of National Security of the Republic of Albania, which was approved by Law No. 9322, dated 25.11.2004. This document requests from the intelligence community 'the securing and exchange of the necessary information for the prevention of crime and internal crises. It cannot be

excluded the existence of criminal groups and public disorder. A basis for their discovery and prevention in time is the functioning of a modern system of the State Intelligence Service' (Part III, Section VII, Point 48).

## Coverage and Co-ordination

The State Intelligence Service (SIS) – (*Shërbimi Informativ Shtetëror*) 'acquires necessary foreign intelligence and counterintelligence on issues in the interest of the national security. SIS conducts its activity by using legal means and methods' (Law No. 8391, dated 28.10.1998, 'Law on the National Intelligence Service,' Article 2). SIS works for the collection, processing, dissemination and utilization of intelligence on issues related to national security, integrity, independence, and constitutional order.

The Military Intelligence Service – (*Shërbimi Informativ Ushtarak*) 'gathers, analyses and administers data on activities that threaten national security, possible threats or dangers to the Armed Forces, coming from outside or inside the country, and presents the data to the authorities of direction and strategic command of the Armed Forces and supports these during the exercise of their responsibilities' (Law No. 9074, dated 29.05.2003 'On the Military Intelligence Service').

There have not been significant changes in the past decade in the intelligence service with respect to its institutional organization, and function, while there has been some reduction in number of its staff.

The SIS is subordinate to and receives guidance from the Prime Minister. The President of the Republic, because of his/her constitutional capacity to appoint the Director of the Service, and on account of his/her standing as the Head of the National Security Council also has authority over the intelligence service. Both the President of the Republic and the Prime Minister are constantly informed about the products of the service. The Prime Minister decides what other governmental authority may be informed of the service's special activities.

The Military Intelligence Service is subordinate to the Minister of Defence and, accordingly, to the Prime Minister.

## 3. Accountability
*(to the executive)*

The **SIS** is accountable to the Prime Minister. It performs intelligence and counterintelligence activities as set forth by the law and the National Security Strategy, reporting to the Prime Minister on issues, such as, terrorism, arms and other means of mass destruction, trafficking of narcotics, weapons and human beings, organized crime and contraband, religious motivated extremism, and radical nationalism, wanted criminals, crimes against the environment and cultural heritage. The Prime Minister also exercises his control through the General Inspector. The Department of Internal

Control under the Prime Minister may by authorized by the Prime Minister to control budgetary issues. The management and supervision of SIS funds is arranged by acts issued by the Council of Ministers. The Parliamentary National Security Commission supervises the activity of both intelligence services and has the right to supervise the management of these funds.

The Military Intelligence Service is accountable to the Minister of Defence for its activities. The director of the Military Intelligence Service is appointed by the Prime Minister on the proposal of the Minister of Defence. There have no significant changes in these arrangements in recent years.

The modalities of accountability to the *executive* as arranged by the law are the following:

The director of the SIS reports to the President and the Prime Minister. On the request of the Prime Minister, SIS reports to the Council of Ministers. The Council of Ministers appoints an Inspector General, who is responsible for inspecting the activities of the service and who reports directly to the Prime Minister. The Inspector General is subordinate to the director of service and the latter may not give access to the former, if he deems so in the interest of national security, by immediately informing the Prime Minister.

The Minister of Defence reports at least once a year to the President and Prime Minister and at other times upon request about the activities of Military Intelligence Service. Legally, these agencies cannot evade their obligations to remain accountable to the executive.

### - to elected representatives

The Parliament supervises the activities of both intelligence agencies through the permanent Commission for National Security. In the previous Parliament (ended in June 2005), there was a sub-commission on intelligence services in writing, although it was formal and almost non-existent. While the current Parliament has not yet set up this sub-commission, although awareness on the issue has been established through various activities of international character, through foundations such as DCAF and local non-governmental organizations such as the Institute for Democracy and Mediation These organizations and Parliament have requested approval by a regulatory act by the Parliament on the organization, responsibilities, and functions of the sub-commission. However, it is yet to be arranged. Consequently, one cannot speak of any changes to these arrangements, although publications and activities that might help with international best practices on the issue have been published and carried out. It is not certain yet that best practice information will be consulted, while discussing and debating on the sub-commission's structure and its make up. In reality, these agencies cannot evade their obligation but the parliamentary oversight capacities actually are

simply formal. According to the law, the Director of SIS reports to the Parliamentary Sub-Commission once a year.

In 2002, the Albanian SIS was subject to investigation by a special bi-partisan parliamentary investigation committee due to alleged accusations against the agency's Director for abuse related to the procurement of public funds. Motivations to replace the Director by a political majority fuelled the proceedings. During the investigation process, the activities of the intelligence service were investigated as were important operational activities. The most problematic issue relating to this committee was that its members were chosen from a political list without undergoing any scrutiny process.

### - to other institutions

The SIS performs its tasks in compliance with the procedures designed by the Prosecutor General of Albania. The Prosecutor General has the right to verify the application of the procedures that determine:


- the means for acquiring counterintelligence and foreign intelligence.

- use of physical and electronic surveillance.

- appropriate forms of protecting methods and sources of counterintelligence and foreign intelligence from the unauthorized access.

- ways of verifying and corroborating sources of information.

- collection of intelligence on individuals viewed as potential sources of information.


In a recent activity organized by the Institute for Democracy and Mediation and DCAF, the Director of SIS asked for more detailed legally regulated relations between the SIS and the General Prosecutor's office.

The ombudsman has rarely dealt with issues of abuses of power by the intelligence services and has never reported on its activities. The Ombudsman (*Avokati i Popullit*, meaning the Advocate of the People) is empowered with the authority to receive and investigate complaints by individual citizens.

The print and broadcast media, as well as individual citizens, have the right to access state information about these agencies and bodies on a very limited scope. Both services are exempted from obligations, which request public access to the methods of work, sources of information, classified information, structures, functions, names, official titles, salaries and personnel numbers.

In cases where questions are raised in the media, the authorities acknowledge the right of journalists to protect their sources. The media and press rarely cover issues related to the intelligence services, and the quality of this reporting is generally informative of some activity, although mostly not professional in nature and, on occasion, it is abusive. There has not been any poll on public attitudes towards the security and intelligence services. Efforts have moved in this direction, particularly, by civil society actors but not carried out due to a lack of funding.

*Intelligence services are not subscribed to international codes and conventions. The SIS is a member of SEEICO (South East Europe Intelligence Conference and has been recently been given observer status in the MEC (Middle European Conference).*

## 2. Transparency

The obligation of intelligence services to remain transparent is legally regulated by law. It reports on the expenditure of its budget and can be controlled on the authorization of the Prime Minister.

Information on the organization, forces, services, as well as information about personnel strength is made public subject to privileged access, for example, to members of the parliamentary sub-commission.

Only the parliamentary sub-commission has the right to scrutinize the expenditure of the budget and the nature of intelligence operations.

Law No. 8457 dated 11.02.1999 'On information classified as 'state secrets' regulates all relevant issues to the secrecy of a document by assigning the State as the sole possessor of state secrets, and balancing this right to the right of the public to access this category of information. This includes information on intelligence activities, operations, work methods and forms, cryptology of technical means, as well as the facilities where information is processed and archives where information is stored. Information from foreign governments and international relations are also categorized, based on this law.

The authority of the classification of information can be exercised by the Head of State, the Prime Minister and Director of SHISH (Albanian Secret Intelligence Service). Senior governmental officials can also exercise this right if authorized by the designated authorities.

The State Intelligence Service and Military Intelligence Service do not have any reports or other publications published on their activities.

**Recent changes 2004/5**

The events of 11 September 2001 have not led to any significant declared changes with respect to the transparency and accountability of intelligence services.

The only change has been the establishment, in 2001, of a separate directorate dealing with anti-terrorism, the operations of which were previously part of other directorate mandates. In my opinion, another important change has been the intensification of international and regional contacts and exchanges with partnering secret agencies. This process has been intensified in recent years, culminating with the Athens Olympic Games, where intelligence services in the region intensified and established a credible platform for the cooperation and exchange of information.

More active partnerships have evolved with international experts resident in Albania that have led to the intensification of priorities in the fight against terrorism and organized crime.

**B. Specificities of Oversight and Guidance**

There is no openly available data on the structure of the general government decision-making process on the intelligence community. The Prime Minister approves the organization and the structure of the SIS. The head of the current government has introduced structural and dependency changes in the SIS, but has not yet provided a timetable or information on what might eventuate from the reform process. Although the law recognizes the Prime Minister as the one who guides the SIS, the constitutional right of the President to appoint the Director in practice makes the process of reform and leadership in the SIS somewhat consensual between the Head of State and the Head of the Government.

The role of the Parliament regarding oversight of intelligence services is not explicitly defined in the Constitution. Parliament can, with the consent of the executive powers, amend the law on Intelligence Services. The Parliament has an independent expert on intelligence working solely for the parliamentary commission. The Parliamentary Commission on National Security is using the established system of questions and hearings to make decisions on intelligence matters. The Parliament has not experienced any practice of commissioning research to public or private intelligence research institutes in the country. If the need arises, the parliamentary commission would request support on intelligence issues from different international organizations.

The most common practice in deciding on intelligence issues involves Parliament's adherence to the party or coalition lines. As mentioned earlier in this report, a specific parliamentary oversight subcommittee on intelligence issues is yet to be established,

although the law and parliamentary regulations recognize such a structure as responsible for the transparency and accountability process. The reason for this delay is undoubtedly associated with the lack of responsibility of parliamentary leaders in carrying out their responsibilities. The setting up of a sub-commission would naturally take place once an issue of real emergency (hot public or political debate) arose and this would lead to quick actions in that direction. The previous Parliament (2001-2005) established such a sub-commission but without any special regulation of criteria in terms of the selection of its members or mandate. This year, there has been encouragement from other outside actors and efforts by leaders of the National Commission, but no concrete action to date.

The role of the President in formulating or endorsing intelligence policy decisions is not explicitly defined in the Constitution or in any other relevant legislation. The President endorses all intelligence documents in the same manner as any other piece of legislation, according to constitutional provisions. The role that the President of the Republic might play in specific situations regarding the formulation of policies or reforms would derive from his role as chairperson of the National Security Council, or as the authority that appoints or to whom the Director of the intelligence service reports. The President would not produce any statement or take any legal initiative referring to the intelligence services. Local experience has demonstrated that the President's role may be important in terms of preserving and ensuring impartiality of the services, thus facilitating a real process of political neutrality in the services.

The President prepares his opinions on intelligence matters through his advisors, and other contacts that he may develop with independent experts. The President observes and exercises his role through discussions in the National Security Council or through public or political debate that may arise. The National Security Council has a consultative character for the President. The Director of the SIS is a member of this constitutional consultative structure.

The Prime Minister's role, although not defined in the Constitution, is based on relevant law. The Prime Minister is the main authority on policy decisions of the intelligence services. The head of the government endorses all documents issued by the SIS Director under whose guidance the services are maintained. The head of government sets the priorities for all intelligence activity. As for the Military Intelligence Services, its activities are conducted through the Minister of Defence.

The Prime Minister issues intelligence policy documents that are compulsory to the entire security establishment under his authority without the endorsement of the Parliament. Usually these documents are approved by the Council of Ministers.

In my opinion, the Prime Minister prepares his opinions on intelligence matters through his personal contacts, through different reports that may come from other institutions or from the reports of the General Inspector. He does not have any independent staff of experts working solely for him on these issues. Neither is he commissioning research to public or private institutes under the government's authority or in an independent manner. The Albanian Prime Minister has invited an international high-level expert to assist him on security issues. It should be underlined that until now the prevailing manners for the formulation of policies in intelligence matters by the Head of Governments have been realized without any independent analysis.

Although it is not stipulated in any legal act, the Minister of Interior is the closest authority to the Prime Minister. The Minister helps shape the Prime Minister's opinion of the intelligence service performance and activity. The state police also cooperate more closely with the intelligence service. However, the Minister of Interior does not have any direct implication on policy decisions in this field. In the past year, the government in power issued public declarations in support of structural changes regarding the dependency of the SIS. The change of dependency from the Prime Minister to the Minister of Interior meant a huge change to the institution and its legal basis. However, until now, no concrete step has been taken in this regard. This looks to have been an initiative of the Prime Minister himself because the Minister of Interior was not responsive to this change, although not publicly.

In cases where a strategic document on intelligence policy has been issued for endorsement, the issuing authority is the Director of Intelligence Service. This always takes place under the guidance of the Prime Minister. This guidance is usually not made public. The opinions of other relevant institutions are generally consulted. Such analysis, (from the ministries, the general prosecutor's office, etc) would basically refer to the responsibilities of the respective institution with regard to the document or legal initiative. If there are budgetary implications, it is indispensable for the support of the Ministry of Finance. The funding of intelligence is different from the system in place for the general government. Most aspects of the intelligence budget are undisclosed. They are, however, under the scrutiny of the parliamentary sub-commission on intelligence services. Different budgetary items, such as the procurement for investments in infrastructure or transporting means, etc. are controlled by the institution of the State Control.

**International contacts:**

The Prime Minister is the authority that oversees the development of international contacts of the State Intelligence Service, while the Minister of Defence oversees the development of contacts of the Military Intelligence Service. Directors play an important role in shaping the level and intensity of international cooperation, because

bilateral cooperation of secret agencies are mostly dependent, not in written agreements, but on the level of trust that individuals establish while cooperating with neighbouring or other agencies. The experience of international contacts and cooperation is relatively new, but confidential reports indicate that there is a positive record of cooperation among intelligence services. At present, there is a willingness and tendency to enhance cooperation among the intelligence community in the region. The Military Intelligence Service's international cooperation is somewhat linked also to the presence of Albanian troops in different international missions as well.

The Council of Minister's Decision No. 194, dated 10.04.2004, 'On the priorities and fields of cooperation with foreign intelligence services' is the first act of this kind that frames the international contacts and cooperation of the Albanian State Intelligence Service.

**Theory of Intelligence Thought:**

There is no national literature on the theory of governance as far as intelligence services are concerned. However, well-established practical mechanisms – when they have resisted time and political change – are, on occasion, consulted in intelligence practice. The most recently published national literature by practitioners refers to the nostalgic practices of the old *Sigurimi* structures of the late 1940s and 1950s. Books on intelligence models and activities especially from the United States and elsewhere are being marketed as readable literature by publishing houses. They may not, however, be considered as relevant literature from models of other countries.

Examples of good practices on different issues related to guidance and governance in the intelligence sector typically come from private or institutional contacts, from the leaders of intelligence services and representatives from the international intelligence community. Visits, trainings and other contacts are assisting in the introduction of best practices and effective models of intelligence services activity and organization. Books are also being translated into local languages, which directly serve in the formation of national thought on control and oversight of intelligence services. DCAF's latest publications on 'Legal Standards and Best Practices for Oversight of Intelligence Services' and the joint IDM & DCAF publication: 'Intelligence Services in Albania: Challenge of Democratic Control' are evidence of this development.

SEEICO is bringing together the leaders of intelligence services in annual conferences to discuss issues of common concern. This represents the first and only institutionalized form of international cooperation for the Albanian intelligence community. However, there has been no direct mentioning of the specific recommendations of international

organizations such as the Organization for Security and Cooperation in Europe (OSCE) or the World Bank directed to Albania.

There is only one public Institute on Intelligence Matters, which is within the organizational structure of the SIS, but its role is not at all visible and it is rarely, if ever, consulted. It has limited capacities and resources to carry out any activity. While in the private sector, although non-governmental organizations may exist, it remains difficult to speak of any research or publication which refers to the intelligence community. These organizations depend totally on funding from international donors and their interest in security is of a more general scope. Occasionally, intelligence issues are covered.

For the first time, a very effective partnership is taking place between the Institute for Democracy and Mediation in partnership with DCAF in developing a series of workshops and conferences as well as training in best practices and models, thus offering alternative reform strategies. National and international conferences on intelligence matters are also part of this program. These publications, conferences and workshops are taking place for the first time in the life of the local intelligence community. According to reports from targeted institutions, these developments constitute a major step in facilitating well-informed debates on the reform process and on the intelligence sector's relations with national authorities and parliaments. The program of these events is being organized in accordance with the local needs of the intelligence community. These activities have provoked public debate and reference has been made to these developments in the media.

These activities are also influencing decision-makers to adopt best practices for intelligence oversight. The latest event of this kind which has been co-organized by DCAF and IDM with the leaders of the intelligence community and other senior experts from the Parliament, the Prime Minister's Office and the President's Office produced five independent reports. The reports, which were delivered directly to the Prime Minister, supported the coordination of intelligence services and other institutions in the country. These events have also demonstrated that the security sector, starting with the National Security Council, is in need of reform. The best models and practices which were presented during the course of these events were shared with the country's most prominent leaders, although the Prime Minister would not publicly comment on this development in the media.

To the best of my knowledge, this is the first survey ever carried out on intelligence services.

**Intelligence Institutions within the Security Sector**

| Topic of Document | Title of Document | Issuing Authority | Endorsing Authority | Frequency / Time span | Status |
|---|---|---|---|---|---|
| Intelligence Planning | | | | | |
| Personnel policy | Law No. 9357, dated 17.03.2005, 'On the Status of the Employee of the State Intelligence Service.' | SIS, Government | Parliament | | Approved |
| Intelligence Education | | | | | |
| Public information policy | | | | | |
| Other intelligence Documents | | | | | |
| Intelligence Strategy | | | | | |

| Topic of Document | Title of Document | Issuing Authority | Endorsing Authority | Frequency / Time span | Status |
|---|---|---|---|---|---|
| Interagency Cooperation | Agreements signed with State Police, Ministry of Finance etc | The SIS, State Police, Min. of Finance | Government | | Realized |

The intelligence documents are published for internal authorized distribution, and members of the public cannot obtain copies. For each document, even those which have been declassified, authorization from the highest authority is required. There is no existing list of policy documents which may be released to the public. Documents are made public on a case-by-case basis.

The drafting of intelligence policy is the result of the work of authorized divisions within the relevant intelligence service, in which senior SIS experts may also be authorized.

Foreign advisors and experts working closely with the SIS in Albania are consulted following the drafting of intelligence documents.

The National Security Strategy and the decisions taken by the Council of Ministers are taken into consideration when developing intelligence strategy and policy. In each case, guidance from the Prime Minister is crucial. Conclusions and recommendations from the meetings of the National Security Council, workshop reports and international or bilateral expert advice constitute the principal sources for directives in the drafting and updating of objectives. Police documents also rely on these sources of information.

The process of assessing the security risks and threats inherent in the strategies and policies of the security sector is based on the assessments produced by international organizations such as the OSCE, the EU and NATO. Recommendations from these institutions are occasionally promoted publicly as internal assessments.

There has not been one case of public debate with regards to the resources allocated to intelligence services. Even the current budget of the SIS was determined by the government, which resulted in a considerable reduction of the proposed resources required by the Agency. The issue was discussed by the Parliamentary National Security Commission, which supported the government. On occasion, issues

concerning the budget may be interpreted as forms of political pressure. It is obvious that decision-makers at the political level decide on certain requirements without any debate, although the proposed budget is most often the result of internal debate at the service level.

The intelligence structures are devised by the Director and approved by the Prime Minister. Terms of reference and mission statements are developed for each structure. There are also unified regulations for each service.

It is difficult to determine whether an intelligence planning system is in place. Planning, programming, budgeting and evaluation are carried out according to assessments put before the intelligence services by the Council of Ministers or the Prime Minister. It is difficult to speak of an intelligence management system, or results-oriented planning system, because intelligence work hardly becomes the object of analysis or lessons learned by decision-makers. The results are consumed mostly by one person (the Prime Minister) or two (including the President). Institutions such as the National Security Council are not typically supported by an independent staff of experts involved in a process of results-oriented planning.

The resource allocation system is a top down system.

The intelligence planning system is organized on a departmental basis whereby each program is developed in accordance with existing policies. Intelligence planners are primarily experts from within the services. Intelligence Services will soon establish the requirements and guidelines for developing recommendations and alternatives, in any chosen course of action.

# Intelligence sector in Bosnia and Herzegovina

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## Introduction

The aim of this study is to provide insight into the current situation within the intelligence sector of Bosnia and Herzegovina (BiH). The guidelines for the scope of this study were determined by the organisation which initiated the task, the respectable Geneva Centre for the Democratic Control of Armed Forces (DCAF). This study aims to provide an overview of the norms governing the intelligence sector in Bosnia and Herzegovina. For that purpose, basic intelligence management laws and regulations will be outlined as well as the government structure, reporting and management relationships.

## Part A: Basic Intelligence Management Laws and Regulations

### Government Structure, Reporting and Management Relationships

### The Constitution

The Constitution of Bosnia and Herzegovina[1] is part of the General Framework Agreement for Peace in Bosnia and Herzegovina[2] or Annex IV of that Agreement, commonly known as the Dayton Peace Accords. In accordance with the provisions of the Constitution, the State of Bosnia and Herzegovina (BiH) consists of two Entities: the Federation of Bosnia and Herzegovina and the Republic of Srpska (hereinafter 'the Entities').

The Constitution regulates the responsibilities and relations between the institutions of Bosnia and Herzegovina and the Entities. Responsibilities accorded to BiH's institutions do not encompass security matters. Therefore, Entity authorities deal with security-related issues in accordance with the Constitution.

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[1] http://www.ccbh.ba/public/down/USTAV_BOSNE_I_HERCEGOVINE_engl.pdf
[2] The General Framework Agreement on Peace in Bosnia and Herzegovina ended the war in the country.

Nonetheless, Article III.5 (a) of the Constitution stipulates that: 'Bosnia and Herzegovina shall assume responsibility for,' inter alia, matters 'necessary to preserve the sovereignty, territorial integrity, political independence and international personality of Bosnia and Herzegovina.'

The powers given by the Entities' Constitutions regarding intelligence matters allow political parties to have full control of their own intelligence services. During the period of the so-called nationalist political leadership, the intelligence services in both Entities directed their activities against one another. The existing facilities were also used to support some criminal activities, including persons who were recognized as war criminals by the International Criminal Tribunal for the former Yugoslavia (ICTY).

The international community tolerated these activities for a long period of time despite the findings of several incidents connected to such misbehaviour. Some of these incidents were even directed against their own military forces responsible for maintaining peace and stability in BiH and also against investigators from the ICTY. The EU's decision to step up mobilisation efforts by the international community was aimed at preventing and combating terrorism after September 11, 2001.

A turning point or rather a critical moment occurred in 2002 when the Government of the Republic of Srpska violated a UN embargo on Iraq by selling the Iraq military armaments and equipment. In response, the EU decided to establish the Commission for Intelligence Reform with the purpose of reforming the intelligence sector and abolishing the existing parallel intelligence service within the Entities. It did so through the Office of the High Representative. Additionally, the EU identified intelligence reform as one of the requirements for starting negotiations with Bosnia and Herzegovina within the context of the Stabilisation and Association Agreement.

The Commission, which consisted of local and international experts, formulated a draft intelligence law that significantly changed the perspective of intelligence activities in BiH and established the highest European standards in this field.

The Parliamentary Assembly of Bosnia and Herzegovina endorsed the Law on the Intelligence and Security Agency of Bosnia and Herzegovina in March 2004. It did so with the assistance of the international community and, particularly, the Office of High Representative in Bosnia and Herzegovina as the final authority in interpreting the aforementioned Agreement on the Civilian Implementation of the Peace Settlement**.**

Reform of the intelligence sector is underway. The two intelligence sectors, which were established at the time of signing the Dayton Peace Accords, have been transformed and on 1 July 2004, they merged into one body - the State Intelligence Security Agency.

In addition, the Parliamentary Assembly of BiH within the realm of defence reform also endorsed the Law on Defence of Bosnia and Herzegovina in October 2005, which clearly defined the role and responsibilities of the military intelligence service.

Since the adoption of these new laws, responsibility for the security sector has been completely delegated to the State. The Constitutions of the two Entities (Constitution of the Republic of Srpska and Constitution of the Federation of BiH) have been amended in accordance with the new legislative regulations on intelligence and defence matters.

**Laws regulating the terms of reference, mission statements, structures and obligations for all government entities involved in formulating, implementing, reporting and overseeing defence policies.**

- The Law on the Council of Ministers of Bosnia and Herzegovina from 18 July 2003[3]

- The Law on Amendment to the Law on the Council of Ministers of Bosnia and Herzegovina from 2 December 2003[4]

- The Law on the Ministers and State Administration of Bosnia and Herzegovina from 13 February 2003[5]

- The Law on Amendments to the Law on the Ministers and State Administration of Bosnia and Herzegovina from 2 December 2003[6]

- Rules of Procedure of the Presidency of BiH from 23 April 2004[7]

**Laws of a general nature with direct application to intelligence governance (such as budgeting, protection of classified information, public information, statues for civil servants and dignitaries, procurement, etc.)**

- Budget for the Institutions of Bosnia and Herzegovina and International Obligations of Bosnia and Herzegovina 2006[8]

- Law on Protection of Secret Information[9]

- Freedom of Access to Information Act, 28 November 2000[10]
- Law on Civil Service in the Institutions of Bosnia and Herzegovina[11]

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[3] http://www.vijeceministara.gov.ba/bosanski/zakon_o_vm_b.pdf
[4] http://www.vijeceministara.gov.ba/bosanski/zakon_o_di_zakon_o_min.pdf
[5] http://www.vijeceministara.gov.ba/bosanski/zakon_o_ministarstvima_b.pdf
[6] http://www.vijeceministara.gov.ba/bosanski/zakon_o_di_zakon_organi.pdf
[7] http://www.predsjednistvobih.ba/nadl/1/?cid=5,1,1
[8] http://www.parlament.ba/bos/budzet/Budzet_2006_bos.pdf  - in Bosnian
[9] 'Official Gazette of BiH' 54/2005
[10] 'Official Gazette of BiH' 28/2000
http://www.vijeceministara.gov.ba/bosanski/zakon_o_slobodi_pristupa_informacijama_b.pdf - in Bosnian

- Law on Amendments to the Law on Civil Service in the Institutions of Bosnia and Herzegovina, March 2003[12]

- Law on Amendments to the Law on Civil Service in the Institutions of Bosnia and Herzegovina, April 2004[13]

- BiH Law on Public Procurement[14]

- Law on Conflict of Interest in Government Institutions of Bosnia and Herzegovina[15]

- Law on the Court of BiH, Official Gazette No. 29/00
- Law on the Court of BiH, Official Gazette No. 16/02[16]
- Criminal Code of BiH, Gazette No. 03/03
- Criminal Procedure Code of BiH, Gazette No. 03/03
- Law on the Human Rights Ombudsman of Bosnia and Herzegovina from December 2000[17]


**Key laws referring solely to the (various) intelligence service(s)**

- Law on the Intelligence and Security Agency of Bosnia and Herzegovina, Official Gazette of BH No. 12/04[18]
- Amendment to the Law on the Intelligence and Security Agency of Bosnia and Herzegovina, Official Gazette of BH No. 56/06
- Defence Law of Bosnia and Herzegovina, Article 9, 5 October 2005[19]

- Decision proposing the Law on the Intelligence and Security Agency of BiH to the Parliamentary Assembly of BiH[20]

- Decision proposing the Law on the Intelligence and Security Agency of BiH to the Parliamentary Assembly of BiH[21]

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[11] http://www.ads.gov.ba/en/laws/June%202002%20-%20Law%20on%20Civil%20Service.pdf
[12] http://www.ads.gov.ba/en/laws/March
[13] http://www.ads.gov.ba/en/laws/April
[14] 'Official Gazette of BiH' no. 49/04; Amendments: 'Official Gazette of BiH' 19/05; 52/05; 92/05
[15] 'Official Gazette BiH' 13/02, http://www.ohr.int/ohr-dept/legal/oth-legist/doc/LAW-ON-CONFLICT-OF-INTEREST.doc
[16] http://www.sudbih.gov.ba/files/docs/zakoni/en/Zakon_o_sudu_-_eng.doc
[17] http://www.ohro.ba/articles/article.php?lit_id=ombudlaw
[18] http://www.osa-oba.gov.ba/zakoneng.htm
[19] http://www.mod.gov.ba/bos/dwn/bos_zakonoodbrani.pdf - in Bosnian
[20] http://www.ohr.int/decisions/statemattersdec/default.asp?content_id=31400 – 17 Dec 2003
[21] http://www.ohr.int/decisions/statemattersdec/default.asp?content_id=31403) – 17 Dec 2003

- Decision enacting the Law on Amendments to the Law on the Intelligence and Security Agency of Bosnia and Herzegovina[22]

- Decision establishing the Expert Commission on Intelligence Reform[23]

- Decision extending the mandate of a Supervisor for Intelligence Reform[24]

- Decision extending the mandate of a Supervisor for Intelligence Reform[25]

- The Joint Committee on Defence and Security Policy of the Parliamentary Assembly of Bosnia and Herzegovina was established in December 2003.
- The Joint Committee of the Parliamentary Assembly of BiH for Oversight over the Intelligence-Security Agency (OSA) was established in April 2004.
- Rules of Procedure of the House of Representatives of the Parliamentary Assembly of the Bosnia and Herzegovina / Decision No. 1-34-6-96/06 from 16 January 2006

The following documents concern the role of intelligence within defence and security policy: the Security Policy of Bosnia and Herzegovina (8 February 2006) and the Strategy of Bosnia and Herzegovina to fight terrorism from 2006. However, these documents are not publicly available.

Other intelligence planning documents within the intelligence sector of Bosnia and Herzegovina are not publicly available and are only for internal use. The exception is the OSA and Military Intelligence Unit (VOR) budget (it is important to note that the VOR budget is planned within the budget of the Ministry of Defence of BiH and, as such, is part of the MoD budget). These budgets are publicly available as both belong to the overall budget of the institutions of Bosnia and Herzegovina.

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[22] http://www.ohr.int/decisions/statemattersdec/default.asp?content_id=32423: 4 May 2004
[23] http://www.ohr.int/decisions/statemattersdec/default.asp?content_id=29988: 30 May 2003
[24] http://www.ohr.int/decisions/statemattersdec/default.asp?content_id=33828: 17 Dec 2004
[25] http://www.ohr.int/decisions/statemattersdec/default.asp?content_id=35144: 4 July 2005

**1. Coverage and Co-ordination**

The legal provisions of the Law on the Intelligence and Security Agency of Bosnia and Herzegovina stipulate that the Agency (hereinafter OSA) has jurisdiction throughout the territory of Bosnia and Herzegovina and no other civilian intelligence security structures may be established in Bosnia and Herzegovina.

The role of the OSA is to gather intelligence regarding threats to the security of Bosnia and Herzegovina both within and outside Bosnia and Herzegovina. Further, its role is to analyse, elaborate and disseminate such intelligence to the state officials and bodies, as well as to gather, analyse, elaborate and disseminate intelligence for the purpose of providing assistance to authorized officials as defined in the criminal procedure codes and other competent bodies where necessary to prevent threats to the security of BiH.

'Threats to the security of Bosnia and Herzegovina' shall be understood to mean threats to the sovereignty, territorial integrity, constitutional order, and fundamental economic stability of Bosnia and Herzegovina, as well as threats to global security - all of which are detrimental to Bosnia and Herzegovina. They are as follows:

a) terrorism, including international terrorism;
b) espionage directed against Bosnia and Herzegovina or otherwise detrimental to the security of Bosnia and Herzegovina;
c) sabotage directed against the vital national infrastructure of Bosnia and Herzegovina or otherwise directed against Bosnia and Herzegovina;
d) organized crime directed against Bosnia and Herzegovina or otherwise detrimental to the security of Bosnia and Herzegovina;
e) drugs, arms and human trafficking directed against Bosnia and Herzegovina or otherwise detrimental to the security of Bosnia and Herzegovina;
f) illegal international proliferation of weapons of mass destruction, and the components thereof, as well as materials and tools required for their production;
g) illegal trafficking of internationally controlled products and technologies;
h) acts punishable under international humanitarian law; and
i) organized acts of violence or intimidation against ethnic or religious groups within Bosnia and Herzegovina.

The function of the OSA is to cooperate with intelligence and security services in other states and other foreign and international institutions with the purpose of performing those tasks. The Agency uses its operative means and methods to provide protection for institutions and facilities of Bosnia and Herzegovina as well as for the institutions and facilities of the Federation, the Republic of Srpska, the Brcko District of Bosnia and Herzegovina (hereinafter: Brcko District), and BiH's diplomatic missions located abroad. It also serves to provide protection for State visits and other

events as designated by the Chair of the Council of Ministers (hereinafter: the Chair) or the Director-General. The Agency does not provide any physical protection for such institutions or events.

The Agency cooperates with the International Criminal Tribunal for the Former Yugoslavia, (hereinafter: the International Tribunal) *inter alia*, by providing it with information concerning individuals responsible for serious violations of international humanitarian law on the territory of the former Yugoslavia after 1991. It also establishes security clearances for individuals seeking employment in the Agency to determine their level of responsibility and confidentiality, and it performs security checks of individuals seeking citizenship of Bosnia and Herzegovina.

The OSA gathers strategic military data and practices counter-intelligence activities in accordance to the regulation of the Law on Defence of Bosnia and Herzegovina. The OSA keeps the state officials and bodies informed about intelligence matters in a timely manner, both upon its own initiative and upon their request.

**Military Intelligence Unit**

Another intelligence body in Bosnia and Herzegovina is the Military Intelligence Unit (hereinafter VOR), which is a branch of the Armed Forces. VOR's role is to gather, process and distribute information related to the Armed Forces with the aim of supporting its military missions. The VOR branch of the Armed Forces assists the Intelligence and Security Agency in collecting strategic military intelligence and performing counter-intelligence activities.

In accordance with the Law on the Intelligence and Security Agency of BiH, the OSA will collect strategic military intelligence and undertake counter-intelligence activities, both of which require special investigative actions and the application of technical surveillance. Coordination between the VOR and the OSA will be regulated in greater detail by means of a signed agreement.

**Development of the intelligence sector in Bosnia and Herzegovina**

As mentioned earlier, in terms of security matters, the Constitution of Bosnia and Herzegovina directs intelligence responsibilities to the Entities. Therefore, the Republic of Srpska has its own civil Intelligence Security Service and Military Intelligence Service. The situation within the Federation of Bosnia and Herzegovina, however, has been more complicated. The Constitution of the Federation of Bosnia and Herzegovina stipulated the existence of two parallel civil and military intelligence services, with predominantly Bosniak and Croat members. Inside the Armed Forces of the Federation of BiH, there were two parallel systems that allowed each national corps to have their own Military Intelligence Service. A similar situation was within the civilian sector and

two civilian intelligence structures that existed in the Federation of BiH. There was the Croatian Intelligence Service (HIS) with its headquarters in Mostar and the Agency for Information and Documentation (AID) with its headquarters in Sarajevo. The situation changed in 2002 following the endorsement of the Law on the Intelligence Security Services of the Federation of Bosnia and Herzegovina (Official Gazette of the Federation of BiH No. 23/02). With this Law, the intelligence services merged into one common institution under the name of the Intelligence Security Service of the Federation of BiH.

Parliamentary oversight of these security institutions is performed by the Entity assemblies. Due to the inadequacies associated with conducting such tasks and after breaking the UN Embargo in 2002 through the irregular exportation of weapons to Iraq, the High Representative for Bosnia and Herzegovina, in accordance with the given power, made a decision to establish an Expert Commission for Intelligence Reform. The work of the Intelligence Commission, which was established in May 2003, resulted in the Draft Law on the Intelligence and Security Agency of Bosnia and Herzegovina.

Following the failed attempts of local politicians to submit a Draft Law to the Parliament, the High Representative made a decision to propose the Law on the Intelligence and Security Agency of Bosnia and Herzegovina to the Parliamentary Assembly of Bosnia and Herzegovina. In March 2004, the Parliamentary Assembly endorsed the Law (Official Gazette of BiH No. 12/04). The provisions of the new law also regulated that the Law on the Intelligence and Security Service of the Republic of Srpska (Official Gazette of the Republika Srpska 21/98, 17/99) and the Law on the Federation of Bosnia and Herzegovina Intelligence and Security Service (Official Gazette of the Federation of Bosnia and Herzegovina 23/02) needed to be abolished as of 1 June, 2004.

Those reforms significantly affected the entire intelligence system. The former security sector and its intelligence services were completely disbanded in favour of new security structures. The role of the services in protecting the sovereignty and territorial integrity of the Entities was transformed to tasks providing for the integrity of the entire State. The Entities parliaments lost their function in monitoring the intelligence sector with the establishment of the Oversight Committee of the OSA which operated at the level of the State. Finally, the most important fact is that the former intelligence services changed their roles and functions in performing tasks that were mostly directed against each other. They established a mechanism for collecting information regarding the threats to the constitutional order or existence of Bosnia and Herzegovina. Changes to personnel numbers were also introduced. Downsizing has continued throughout the whole reform process.

Certain similarities exist within the military intelligence sector. The reforms of 2003 and the introduction of the new Law on Defence granted the State responsibility for strategic and operational intelligence, while the responsibility for tactical intelligence continued to rest with the Entities. The elimination of entity defence competencies requires the State to undertake all military intelligence activities. This was introduced by the provisions of the new Law on Defence, which was endorsed in October 2005. It prescribed the competency for military intelligence as an exclusive State function.

Under the current regulations, there is no body responsible for the co-ordination of civil and military intelligence services. However, the Law on the Intelligence and Security Agency of Bosnia and Herzegovina stipulates that to facilitate the Chair of the Council of Ministers in the co-ordination of intelligence-security matters the Chair should establish an Executive Intelligence Committee. As previously detailed, apart from the Chair of the Council, the Executive Committee consists of two deputies from the Chair, or, alternatively, two ministers from the Council. Articles 12, 13, 14, 15 and 16 of the aforementioned law regulate the role and mandate of the Committee.


## 2. Accountability

### - *To the executive*

The three state institutions have the right and responsibility to oversee the work and expenditure of the OSA: The Presidency, the Council of Ministers and the Chair of the Council of Ministers of BiH.

The Presidency of Bosnia and Herzegovina is, among other things, responsible for the following:
- Approving the annual Intelligence Policy Platform, which contains general guidelines for the work of the Agency in line with international practice.;
- Approving an annual report on the work and expenditures of the Agency;

The responsibility of the Council of Ministers includes, but is not limited to:
- Preparing the annual Intelligence-Security Policy Platform, which contains general guidelines for the work of the Agency in line with international practice;
- Approving the annual Activity Program of the Agency, while taking into consideration the written opinion of the Ministry of Finance and Treasury on the financial aspects of the program and the Ministry of Foreign Affairs of Bosnia and Herzegovina regarding issues within its competence;
- Considering an annual report on the work and expenditures of the Agency;

The rights and responsibilities of the Chair of the Council of Ministers are as follows:

- Coordinating the activities of the OSA and provides guidance regarding intelligence-security policy. S/he also supervises and is politically responsible for the work of the Agency;
- Supervising operations of the Agency and ensuring the lawful performance of its work;.
- Providing an annual briefing to the Presidency and the Parliamentary Assembly of Bosnia and Herzegovina on the activities of the Agency;
- Submitting proposals to the Council of Ministers for incorporation into the annual budget of the institutions of Bosnia and Herzegovina, after receiving an opinion from the Intelligence-Security Committee on the proposed budget of the Agency.

In terms of the military intelligence (VOR) and in accordance with the Defence Law of Bosnia and Herzegovina, full responsibility for the activities and expenditure is delegated to the Cabinet of the Minister of Defence. Some other aspects of the possible co-ordination between the VOR and the OSA are regulated in detail according to a signed agreement.

The Law on Defence of Bosnia and Herzegovina endorsed in October 2005 and the Law on the Intelligence Security Agency of Bosnia and Herzegovina endorsed in March 2003 stipulate that the military and civil intelligence sectors are exclusively functions of the State. The rights and responsibilities of the executive organs of BiH with respect to the activities of the OSA are stipulated in Articles 7, 8, 9 and 10 of the Law on the Intelligence Security Agency. Article 9 of the Law on Defence of Bosnia and Herzegovina regulates responsibilities concerning VOR.

The intelligence sector reform process is still in its initial phase and it is very difficult to properly assess the way in which these arrangements actually work in practice. Activities related to BiH's programme of institution-building require additional financial and human resources. However, the OSA is not operating at full capacity. The situation for VOR is even more critical, particularly in light of the fact that the recent legal provisions have established plans for the re-structuring and re-sizing of the Armed Forces, within which the VOR is required to operate. Therefore, while the system is in place in legal terms, certain tasks are subject to ongoing delay, which is primarily due to the complicated administrative procedures involved in their undertaking.

The system of accountability for the executive is clearly stipulated in Chapter III - External Direction and Oversight of the OSA in the Law on the Intelligence Security Agency of Bosnia and Herzegovina. The law establishes the different levels of oversight – internal control, external control and parliamentary oversight – ensuring the highest level of democratic arrangement within the intelligence sector.

*- To elected representatives*

Parliamentary oversight of the activities of the OSA is conducted by the Intelligence-Security Committee for the oversight of the OSA, jointly established by the representatives of the House of Representatives and the House of Peoples of the Parliamentary Assembly of Bosnia and Herzegovina.

The Intelligence-Security Committee is responsible for:
- Overseeing the legality of the work of the Agency;
- Holding hearings on the appointment of the Director-General and Deputy Director-General of the Agency and expressing an opinion about the appointment;
- Reviewing reports from the Chair regarding matters that are within the competence of the Chair. These include actions taken to correct any problems in the Agency that are made evident by an inspection, audit or investigation;
- Reviewing reports from the Director-General regarding the operations and expenditures of the Agency and especially analyzing budget expenditure;
- Addressing employees of the Agency (via the Chair) to provide expert consultancy, if and when necessary and for the purpose of exercising its oversight authority;
- Providing an opinion on the detailed budget proposal for the Agency;

Prior to the adoption of the Law on Intelligence Security Agency in 2004, formal power was laid down within the Entities and the aforementioned law delegated responsibility for the intelligence sector to the Parliamentary Assembly.

Articles 18, 19, 20, 21, 22 and 23 of the Law on the Intelligence and Security Agency describe the establishment, the role and the responsibilities of the Intelligence-Security Committee for the oversight of the OSA.

Since the establishment of the Intelligence Security Committee in 2004, oversight of the security sector has been tied to the process of institution-building. It has assisted the newly-elected leadership of the OSA in its implementation of the provisions of the law. It is worth mentioning that the Committee has been highly engaged in these activities, even to an excessive degree in terms of the level of activity that is legally permitted, (i.e. instead of the mandatory two sessions per year, the Committee conducted more and in order to sustain the OSA transition process).

Alongside the different levels of control obliged by the provisions of the Law, Article 18 strengthens the role of the Committee. Under this Article, it is prescribed that the Chairman of the Intelligence-Security Committee is selected from among the Committee members and must be a member of a party represented in one of the Houses

of the Parliamentary Assembly of Bosnia and Herzegovina that is not a part of the governing coalition.


### - To other institutions

In Bosnia and Herzegovina, the role of courts is stipulated by the provision of the Law on the Intelligence Security Agency of BiH.

Surveillance in private places, of telecommunications and other forms of electronic apparatus, as well as the search of property without consent, may only be applied in cases where there has been advance authorization by the President of the Court of Bosnia and Herzegovina or from a judge of the Court.

The Director-General is obliged to make a written application to the judge in cases when there is reasonable ground to show that surveillance or a search is required to enable the Agency to investigate threats to the security of Bosnia and Herzegovina.

Article 77 of the Law on the OSA refers to the Secret Information Gathering Subject to Judicial Authorization.

The ICT is an institution that the Intelligence Security Agency needs to closely cooperate with. The OSA cooperates with the International Tribunal, *inter alia*, by providing it with information concerning individuals responsible for serious violations of international humanitarian law in the territory of the former Yugoslavia after 1991. Article 6 of the Law of OSA regulates the tasks of OSA in accordance with the International Tribunal.

The Human Rights Ombudsman of Bosnia and Herzegovina has no direct or specific power within the intelligence sector. However, provisions of the Law on the Human Rights Ombudsman should be considered as obligatory for all State institutions. The Human Rights Ombudsman of Bosnia and Herzegovina is an independent institution set up in order to promote good governance and the rule of law and to protect the rights and liberties of natural and legal persons, as enshrined in particular in the Constitution of Bosnia and Herzegovina, monitoring to this end the activity of the institutions of Bosnia and Herzegovina, its entities, and the District of Brcko.

The Freedom of Access to Information Act of 2000 clearly stipulates the right of access to information on the activities of the Government by citizens and the general public. The Law also regulates the right of the journalist to protect his/her sources. The lack of a democratic culture in BiH does not ensure the full implementation of the provisions of this Law, which need to be aimed much more at the promotion of all levels of society.

The Law on OSA outlines the procedure for personnel to report irregularities. Article 42 of the Law on OSA prescribes the following: Should an employee believe that s/he has received an illegal order, s/he will draw the attention of the issuer of the order to his/her concerns with respect to its illegality. In cases where the issuer of the order repeats the order, the employee will request a written confirmation of the order. If the employee continues to have reservations, s/he shall forward the order to the immediate superior of the issuer of the order and report the matter to the Inspector General. S/he is responsible for providing an internal control function within the OSA.

The Office for the Human Rights Ombudsman of Bosnia and Herzegovina is an independent institution which promotes good governance and the rule of law and protects the rights and liberties of natural and legal persons.

In terms of the level of media coverage of security news in BiH, it is important to note that it is deeply influenced by the journalists' interests in the security sector and their understanding of the complicated developments. Moreover, several constraints, such as the lack of professional competence in covering security issues, the organization of the media market in the country and the level of politicization of the news, have also proved to be essential factors in hindering relations between the media and the security sector in BiH. It is hard to say whether any polls or data on the public's attitude to the security services and intelligence agencies with particular reference to accountability exists.

### *- To codes and conventions*

The complicated governmental structure of Bosnia and Herzegovina has not yet empowered institutions to fully respect all international codes and conventions either through acceptance or ratification thereof. However, at the same time, the Agency has adopted the Code of Ethics, which is based on the highest international standards.

For the purpose of fulfilling its responsibilities, the OSA may, with the approval of the Chair of the Council of Ministers, enter into an arrangement with the intelligence and security services of other countries.

For the purpose of fulfilling its responsibilities, the OSA may also, with the approval of the Chair after consultation with the Minister for Foreign Affairs, enter into an arrangement with an institution of a foreign country or an international organization.

By entering into these arrangements, the OSA upholds full respect of the domestic legal regulations in relation to the principle of accountability.

## 3. Transparency

### Domestic transparency: dimensions

The Law on the Intelligence Security Agency established different institutions which have a responsibility to make information available to the elected representatives. Therefore, the Chairman of the Council of Ministers of BiH, who is in charge of the external direction and oversight of the OSA, has a responsibility to:

- Provide an annual briefing on the activities of the OSA to the Parliamentary Assembly of Bosnia and Herzegovina;
- Call for the opinion of the Intelligence-Security Committee on the proposed budget of the OSA, and after receiving an opinion, submit the proposal to the Council of Ministers in order to incorporate it into the annual budget of the institutions of Bosnia and Herzegovina, which are to be adopted by the Parliamentary Assembly;

Article 10 of the Law on the Intelligence and Security Agency stipulates the obligations of the Chairman of the Council of the Ministers of BiH.

According to this law, the officials responsible for the internal direction and control of the OSA have responsibilities towards the Parliamentary Assembly of Bosnia and Herzegovina. Based on this regulation, the Director General, as the head of the OSA, is responsible for:

- The dissemination of information to officials and, among others, to the members of the Collegial of the Parliamentary Assemblies at both the State and Entity levels, with regards to the activities that are within the scope of the duties of the Agency
- The submission of the budget report and available funds expenditure to the Intelligence-Security Committee.

Article 27 of the Law on the Intelligence and Security Agency stipulates the obligations of the Director General. Article 33 of the Law on the Intelligence and Security Agency stipulates the obligations of the Inspector General.

The Inspector General of the OSA, who is responsible for providing an internal control function within the OSA, has the following obligations towards the elected representatives:

- Investigating complaints regarding the activities of the Agency at the request of the Intelligence-Security Committee of the Parliamentary Assembly of BiH;
- Reporting to the Intelligence-Security Committee on the complaints which are made against the OSA every six (6) months, as well as reporting the disposition of such complaints. Particularly serious matters shall be reported immediately to the Intelligence-Security Committee.

Information about the organization, personal strength, nature of operations and its planning is accessible to the institutions that are responsible for the external control and oversight of the activities of the OSA. Information on the budget is publicly available and can be located in a document titled, 'The Budget for the Institutions of Bosnia and Herzegovina and International Obligations of Bosnia and Herzegovina.' Planning and reporting on the expenditure of funds granted to the OSA is carried out in a manner that protects intelligence operations, sources, methods and operational measures of the OSA. In the course of parliamentary oversight exercised by the Intelligence-Security Committee, the obligation of the Chair and the Director-General to provide information does not go beyond releasing and/or disclosing information that might directly or indirectly threaten vital national security interests, which are further connected to the protection of the sources or methods in a specific case.

In the course of the inquiry about suspected illegal activity of the Agency, the Intelligence-Security Committee may, with the consent of at least seven of its members, obligate the Chair and the Director-General to provide information, that is, knowledge that is essential for overseeing the legality of the work of the OSA. Information gained through this inquiry may only be used during the procedures of the Intelligence-Security Committee.

The Law of Protection of Secret Information (Official Gazette No.54/05) regulates the general provisions about the confidentiality of information, which are applied to all institutions and citizens of Bosnia and Herzegovina. The law clearly stipulates the common basic principles on identification, access, use, maintenance and abuse of secret information within the responsibilities of Bosnia and Herzegovina, the Entities and other levels of the administration concerning public order, defence, foreign affairs and intelligence and security activities.

The legislative bodies of BiH are not accustomed to the practice of issuing regular policy statements on the OSA's annual activities. Public statements are made by the members of the Committee, and these are made only when the media shows interest. There is no system in place to ensure the regular reporting either of activities or of statistics available to the general public.


**International transparency**

As a member of the UN, the OSCE and the Council of Europe, Bosnia and Herzegovina has committed itself to many international obligations. This is particularly relevant in the fight against terrorism in the form of international conventions and politically-binding agreements.

In recent years, BiH has been a regular provider of information at the international level. It has done so through international organisations: the OSCE Code of Conduct on Politico-Military Aspects of Security, the OSCE Document on Small Arms and Light Weapons, and the UN Programme of Action Combating the Illicit Trafficking of Arms. Alongside these obligations, the presence of the EU's military forces and especially NATO's headquarters in Sarajevo have provided for an additional form of transparency, which is based on the close cooperation of these forces with local security institutions.

Although integration into Euro-Atlantic structures is a priority for most officials in the government, Bosnia and Herzegovina has not commenced the negotiation process for EU membership. Therefore, under international law, Bosnia and Herzegovina is not obliged to follow EU guidelines. Nonetheless, the state aims to adjust its internal regulations in keeping with the EU *acquis*.

Most of the international standards regarding transparency of the intelligence sector are embedded in the new Law on Intelligence and Security Agency as well as in the Law on Defence of Bosnia and Herzegovina. In this rather early stage of the implementation process,  it is quite difficult to evaluate how local authorities comply with such obligations.


**Recent changes in 2004/5 and the general appeal**


The events of September 11 2001 have not significantly affected the transparency and accountability practice of security institutions in Bosnia and Herzegovina. BiH has increased its level of co-operation with foreign intelligence agencies and has joined the coalition in fighting terrorism at the global level.

The recently adopted laws within the security sector take into consideration the best practices and international standards regarding transparency and accountability.

The General Framework Agreement for Peace in Bosnia and Herzegovina refers to the significant presence of international military and police forces in BiH whose purpose it is to secure peace and assist local institutions in performing necessary security sector reform. With their presence and significant influence, international forces undertake additional control and oversight of all security institutions and forces in Bosnia and Herzegovina.

**Part B: Specificities of Oversight and Guidance**

There is no openly available data on the structure of the government's decision-making process on intelligence. In February 2006, the Presidency of BiH endorsed a document on the security policy of BiH, and also provided a list of institutions and facilities protected by the OSA. The Council of Ministers is responsible for approving the annual Activity Programme of the Agency and endorsing several internal books of rules.

The role of the Parliament in endorsing intelligence policy decisions is unrestricted. The Parliament is able, without the consent of the executive powers, to amend strategic objectives on intelligence (reformulate, introduce new objectives, delete objectives), to vary defence expenditures and to revise defence intelligence missions.

The Parliament prepares its opinion on intelligence matters through a specific parliamentary oversight committee: the Joint Committee for the Oversight of the work of Intelligence Security Agency. It uses the established system of questions, hearings and interpellations to make decisions on defence matters.

The role of the BiH Presidency, which consists of three members who share equal power in the rotating system of chairing the Presidency, is to formulate and/or endorse intelligence policy decisions. Furthermore, the Presidency issues intelligence policy documents that are submitted to Parliament for approval after endorsement by the Council of Ministers. The Presidency's advisors work on military and foreign affairs and not on intelligence matters. The Presidency observes decisions taken by the Council of Ministers. However, the members of the Presidency do not use any independent analysis.

According to the constitutional provisions, the Chairman of the Council of Ministers (the Prime Minister) endorses all documents issued by the relevant ministers. After endorsement by the Council of Ministers, the Chairman issues intelligence documents that are submitted to Parliament for approval. In some cases, prior to submitting documents to Parliament, the Prime Minister needs approval from the Presidency. The Prime Minister's Executive Intelligence Committee consists of the two deputies of the Chair of the Council of Ministers, or, alternatively two Ministers from the Council of Ministers. Thus, the composition of the Executive Committee in any case represents all three parties. The Executive Committee serves as an advisory body to the Chairman of the Council of Ministers. Furthermore, the Intelligence-Security Advisory Service provides technical support to the Executive Intelligence Committee.

The Minister of Defence and the General Director of the OSA are responsible for proposing laws through which regulations are defined for the effective functioning of institutions that operate under their authority.

Prior to the issuing of a strategic document for endorsement, there are no legal or customary provisions for formal guidance from a higher authority.

The funding of intelligence is no different from the system which is in place for the government. Both the intelligence and the general procurement systems are transparent for industry, business and the public. Certain aspects of the intelligence budget are, however, secret.

The head of the institution is responsible for organizing, approving and supervising all the activities of the institution, included financial management and responsibility. The General Inspector is responsible for overseeing the development of the contract. However, the Parliamentary Committee also has the authority to undertake this task at any time.

There is no national literature on the theory of governance or on related practical mechanisms, so the main sources of knowledge that the government uses in the formulation of national intelligence policy is the DCAF Handbook on 'Making Intelligence Accountable: Legal Standards and Best Practice for Oversight.' In terms of codes of good practice, employees of the intelligence services attend international conferences and seminars where they gather additional knowledge and education about international standards in the field.

Bosnia and Herzegovina has several private and public research institutes working on intelligence matters. The status of private institutes is independent, and they are of a more general scope (security, international relations, transparency etc.) but they occasionally cover intelligence issues. These institutes produce occasional papers and organise national and international conferences on intelligence matters. The Government publicly comments on findings published by independent research institutes. Public debates on intelligence policy also discuss the results of such work.

**Part C: Intelligence Institutions within the Security Sector**

The following is the latest openly available data on existing policies within the intelligence sector. This includes the policy documents required by law or defence level regulations, relevant ministers, chief of services, information on the frequency, the higher authority responsible for endorsing each policy, and the current status of such documents.

The Director General will be responsible for issuing, *inter alia*, the following Rule Books, regulations and instructions:

**Table 2 – Structure of Decision Making on Intelligence Policy**

| Topic of Document | Title of Document | Issuing Authority | Endorsing Authority | Frequency | | Status |
|---|---|---|---|---|---|---|
| | | | | Time span | | |
| Personnel policy | The Book of Rules on Internal Organization | General Director of the OSA | Council of Ministers | | | Adopted |
| Personnel policy | Code of Ethics | General Director of the OSA | Council of Ministers | | | Adopted |
| Other intelligence documents | Data Security Plan | General Director of the OSA | General Director of the OSA | | | Adopted |
| Other intelligence documents | Book of Rules on Classification and Declassification of Data | General Director of the OSA | General Director of the OSA | | | Adopted |
| Other intelligence | Book of Rules on the Security | General Director | Council of Ministers | | | Adopted |

| Topic of Document documents | Title of Document Clearance Procedure | Issuing Authority of the OSA | Endorsing Authority | Frequency Time span | Status |
|---|---|---|---|---|---|
| Other intelligence documents | Book of Rules on the Safeguarding of Secret Data and Data Storage | General Director of the OSA | General Director of the OSA | | Adopted |
| Other intelligence documents | Regulations on Dissemination of data | General Director of the OSA | General Director of the OSA | | Adopted |
| Personnel policy | Book of Rules on the Recruitment, Handling and Payment of Informants | General Director of the OSA | General Director of the OSA | | Adopted |
| Intelligence Strategy | Book of Rules on the Application, Use and Engagement of Special and Technical Operational Means | General Director of the OSA | General Director of the OSA | | Adopted |
| Intelligence Strategy | Book of Rules on Carrying and Use of Firearms | General Director of the OSA | Council of Ministers | | Adopted |
| Intelligence planning | Book of Rules on Work | General Director of the OSA | General Director of the OSA | | Adopted |
| Personnel policy | Book of Rules on Salaries | General Director of the OSA | Council of Ministers | | Adopted |

| Topic of Document | Title of Document | Issuing Authority | Endorsing Authority | Frequency / Time span | Status |
|---|---|---|---|---|---|
| Intelligence planning | Book of Rules on Internal Security | General Director of the OSA | General Director of the OSA | | Adopted |
| Personnel policy | Book of Rules on Disciplinary Procedure | General Director of the OSA | General Director of the OSA | | Adopted |
| Personnel policy | Book of Rules on Employment Abroad | General Director of the OSA | General Director of the OSA | | Adopted |
| Intelligence planning | Book of Rules on Basic and General Vocations of Employees of the Agency | General Director of the OSA | General Director of the OSA | | Adopted |
| Interagency cooperation | Book of Rules on Cooperation with Bodies and Institutions in Bosnia and Herzegovina | General Director of the OSA | General Director of the OSA | | Adopted |
| Interagency cooperation | Book of Rules on the Conclusion of Memoranda of Understanding with Bodies and Institutions in Bosnia and Herzegovina | General Director of the OSA | General Director of the OSA | | Adopted |
| International cooperation | Book of Rules on Cooperation with International Bodies and Intelligence Exchange | General Director of the OSA | General Director of the OSA | | Adopted |

| Topic of Document | Title of Document | Issuing Authority | Endorsing Authority | Frequency / Time span | Status |
|---|---|---|---|---|---|
| Personnel policy | Book of Rules on Liaison Officers | General Director of the OSA | General Director of the OSA | | Adopted |
| Intelligence planning | Book of Rules on Identification Cards | General Director of the OSA | General Director of the OSA | | Adopted |

Members of the public may obtain copies of policy documents upon written request. Approval for the release of such documents is pending the decision of an authority. The applicant must pay a fee for each copy. An authority decides what documents may be made public on a case-by-case basis.

Authorised divisions within the Ministry of Defence, high-ranking officers, civilian personnel and foreign advisors all participate in the drafting of defence policies.

The process of assessing the security risks and threats referred to in defence strategies, policies and directives is based on the following sources: assessments made on policy documents at the national level, such as the National Security Policy, assessments published by international organisations such as the OSCE, the UN, the EU or NATO, internal assessments, theoretical debates at national and international conferences, assessments made on similar documents published by the defence/security/intelligence establishments of other countries and assessments made by international and bilateral experts.

In terms of a debate on intelligence requirements (such as forces, equipment or resources), there is an internal debate at the service level, the results of which are forwarded to the political decision-makers. There is also an internal debate at the political level with military input, as well as a debate between other security sector agencies on defence requirements.

The main organisational documents governing the intelligence structures are: organisational charts approved by the higher echelons, mission statements for each structure, job descriptions for commanding officers and their staff, and unified regulations for each service.

There is an intelligence planning system in place, which can be described as an intelligence management system and a financial planning system. A resource allocation

system has also been established as a top-down system whereby the higher echelons allocate resources that are considered appropriate for the lower echelons. Service programmes are listed according to their order of priority and decision makers issue guidance accordingly. The corps of intelligence planners is mostly composed of experts from within the services.

**Conclusion**

Reform of the intelligence sector in Bosnia and Herzegovina is not the result of a systematic reform process, as in some other post-communist countries, but rather the result of effective political agreement.

It has been stated several times that the influence of the international community is most crucial during the implementation of reforms and the establishment of political agreements.

Lacking a comprehensive approach to the process of reform impedes the functioning and efficiency of the security sector. The political tensions, which have inhibited agreements and contributed to the fragmentation of the overall system, have meant that some parts of the system have been reformed while other areas have continued to lag behind. BiH's intelligence sector, for instance, was reformed before its police sector. This lack of coordination has not been a major problem for other countries undertaking similar reforms processes. Some police institutions in BiH have been given responsibilities which overlap with the intelligence services and this has sharpened misunderstanding and conflict between the two sectors.

Reform of security agencies in Bosnia and Herzegovina represented one of the key requirements for discussions with the EU and, specifically, for negotiations on the Stabilisation and Association Agreement. The international community has requested that a law on the intelligence and security service be adopted as soon as possible with the aim of increasing the efficiency and organization of the security services in the struggle against threats posed by international organized crime and terrorism. The reform process, under the auspices of the international community, was quickly established but its development has been dependent on difficult political negotiations and compromises.

The reform of intelligence agencies, meaning unification of the existing services, did not merely involve the amalgamation of two institutions. It required the reorientation of staff members who had once been embattled in inter-institutional conflict. This highly complicated task involved acquainting personnel with the democratic principles which are incorporated in the Law on the Intelligence Security Agency, since a large number of employees had been educated during the communist system. The heritage of the old system is still very present in the field of public relations. This means that some

specific information, such as the organisational structure of the Agency is still unavailable, despite the existence of the legislation framework.

The Intelligence Security Agency is responsible for implementing acts from the Law on the Intelligence Security Agency. Implementation of this law meets addressing the administrative problems that are connected with the decision-making processes at the upper levels of the Government. This implies agreement on the transfer of property which belonged to the ex-Entity agencies to the new intelligence agency. Agreement on these aspects of cooperation is yet to be reached. Nevertheless, despite all these problems, the intelligence system is functioning.

Some of the most important undertakings in this phase of the reform process are being initiated by DCAF in the form of workshops and training programmes. Education in the area of democratic oversight has created a base for staff from which they have been able to establish efficient practice and control of the security sector. The establishment of a new system of values for staff employed in the intelligence sector creates a solid base for improving ties with international institutions in the same field. Foreign language training and schooling in the use of sophisticated equipment, which is still lacking to a great extent, is necessary for the further development of the State's intelligence services.

The presence of the international community in BiH and its involvement in all phases of oversight and reform of the intelligence service has been very important. Consequently, the training and equipping of Agency staff is a logical continuation of the work that has already been achieved. Accordingly, the international community has to develop a unified approach in the form of an advisory body that would be responsible for training the intelligence service so that it can effectively fulfil its responsibilities in the fight against new threats and challenges.

The public, the media and scientific research agencies have to work to increase the transparency of intelligence services in BiH. With the promotion of democratic values, the mysticism that surrounded the intelligence service during the communist period will continue to dissipate. At present, however, the newly-created institutions are not doing a great deal to enhance this process. There is little dialogue between the media and the intelligence sector aiming at the promotion of democratic values. The means to establish dialogue and develop the baselines against which progress can be measured need to be established.

# The Republic of Macedonia: Intelligence Sector assessment

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## Introduction

This report is divided into two sections. The first section provides an assessment of the intelligence sector's current system of functioning in Macedonia and the second section assesses future prospects in the sector.

## I. Assessment of current functioning of the intelligence sector

Country's national intelligence agencies, their role and function
There are three intelligence agencies in Macedonia:
- o Intelligence Agency of the Republic of Macedonia;
- o Security and Counterintelligence Administration within the Ministry of Interior; and
- o Service for Security and Intelligence in the Ministry of Defence.

*The Intelligence Agency of the Republic of Macedonia* was established as a separate body of state administration under the Law on the Intelligence Agency which was adopted in April 1995. The competences of the Intelligence Agency are defined in the Law on the Intelligence Agency. They mainly consist of: the collection of data and information which is considered important for the security and defence of the country, as well as for the economic, political and other interests of the state; conducting analysis and research on the data and information. The Agency is obliged to inform the President, the Government, and other state bodies of issues that are important for their sphere of competence and to cooperate with state bodies on issues of mutual concern.

In an effort to strengthen mutual cooperation, the Agency and state bodies are obliged to mutually exchange data and information, as well as to coordinate the actions that are within the competence of the Agency. The Intelligence Agency informs the President, the Government, other ministries and state bodies. It distributes information from its sphere of work to corresponding ministries and other state bodies which is used to enforce certain measures or policies.

The Constitution of the Republic of Macedonia is the initial statutory basis for the work of the Intelligence Agency. The National Security and Defence Concept and the Defence Strategy define the position of the Intelligence Agency within the national security system. The Law on the Intelligence Agency of the Republic of Macedonia, adopted by the Assembly of the Republic of Macedonia in 1995 is another source.

*The Security and Counterintelligence Administration within the Ministry of Interior* functions as a separate organ within the Ministry of Interior in the field of state security. The security system protects the country from espionage, terrorism, or other activities directed towards the deterioration or destruction of democratic institutions through violent means. The Director acts independently of the administration, but is answerable to the Ministry of Interior and the Government, who, at the same time, appoint him for a period of four years. Upon the proposal of the Director, the Minister initiates actions and activities which are undertaken by the various posts of the administration. In the performance of their functions, members of the administration have the right to collect data, information from citizens, organisations, firms, and other legal units which are obliged to provide the necessary information.

After the country gained independence, the State Security Service within the Ministry of Interior (now the Security and Counterintelligence Administration) continued to identify and inhibit actions that were directed towards the undermining or destruction of the system established with the Constitution. The Service also worked to prevent any worsening of the internal security situation. In 1995, with the reorganization of the organs of the state administration, the State Security Service was renamed the Directorate for Security and Counterintelligence. However, with the introduction of the Law on Organization and Work of the State Administration in 2000, the Directorate was renamed and restructured into the Security and Counterintelligence Administration, maintaining its earlier role with regard to state security.

The Law on Police (1995) is the statutory basis of the Security and Counterintelligence Administration.

*The Service for Security and Intelligence of the Ministry of Defence* has counterintelligence functions and deals with measures, activities and procedures undertaken for collecting, recording and analyzing intelligence data for the defence of the Republic. People working for the defence intelligence administration are employees of the Ministry of Defence appointed by the Minister of Defence. The authorized persons working for the Service have the same rights and responsibilities as persons employed in the Intelligence Agency. Defence intelligence encompasses measures, activities and procedures undertaken for: 1) detecting and preventing any type of subversive activity which is directed against the Republic by foreign military intelligence or intelligence agencies inside or outside of the country; 2) detecting and preventing all forms of terrorist activities directed against the Republic; 3) taking counter-intelligence protection measures in relation to the tasks, plans, documents, material and technical assets, regions, areas and facilities of importance for the defence of the Republic.

The Service also prevents and detects criminal activities in military units, institutions and camp sites, as well as in areas and facilities utilised by the Government. The

Service employs various measures and procedures to prevent criminal activities. It detects and apprehends criminals and turns them over to the authorities.

The authorized persons working for the Service have the following rights and responsibilities: 1) to establish the identity of persons by viewing their identity card; 2) to cordon off protected areas until the necessary activities are accomplished; 3) to search vehicles, persons and luggage; 4) to remove an individual by force from a certain area as well as persons who does not act in accordance with authorised orders; 5) to use weapons if no other means are available to protect lives; to repulse immediate attacks; to repulse attacks which threaten people or facilities and to prevent individuals from escaping after their capture.

Various measures, activities and procedures are employed to protect classified information. Citizens, trading companies, public institutions and services working in the area of defence, as well as local self-management units and government agencies are responsible for the storage and protection of secret data. Measures are taken for the protection of information critical to the defence of the country. These measures are issued by government regulation. The members of the Armed Forces are obligated to store and protect secret data which is critical to the Armed Forces. They are authorised to perform certain measures aimed at the protection of classified information. A List of Regulations issued by the Ministry of Defence determines which data must to be kept secret as well as the measures for their protection by the Armed Forces.

The Law on Defence (2001) defines the existence and role of the Ministry of Defence's Security and Intelligence Service.

Bodies co-ordinating different forces, services and agencies

The main coordinating body is the Government or Council of Ministers, which approves the main organizational documents of the state organs, including those of the intelligence services.

Another coordinating body, which works on the level of protection of classified information, is the Directorate for Security of Classified Information. The Directorate coordinates the activities of the services and other government bodies and acts as a central body for the exchange of classified information between various international organizations such as NATO and foreign government bodies.

At the wider horizontal level, there is the Management Committee for Crisis Management and the Government's Assessment Group for Crisis Management. Both groups are newly-established organs, which are responsible for the evaluation and coordination of government activities that are undertaken in response to crises situations.

The Republic of Macedonia has not yet resolved the question of inter-cooperation between organs involved in intelligence-related activities. The laws on the intelligence service refer to the cooperative ties that exist between the agencies and ministries in very little detail. Given this lack of detail, there is a risk that when inter-agency (or ministry) clashes or conflicts arise, there might not be a full exchange of information.

Accountability of the intelligence services

Macedonia has instituted the principle of accountability of the intelligence services to the executive within a legal framework that includes the Constitution, laws, national security concepts and intelligence doctrines. The country has succeeded in establishing legal structures that subordinate the intelligence sector to the executive organs. Looking to the actual practice of accountability within the executive, the legacy of the communist era norms of behaviour has influenced the course of post-socialist intelligence institutions in the country. There are gaps in the legislative framework, and there is an unclear division of responsibility between the Government, the President and the Ministers of Defence and the Interior, specifically in relation to the work of the intelligence services.

In the early 1990s, as part of the first generation of reforms, Macedonia adopted a necessary legal framework in which intelligence services operated. This framework defined the area of responsibility of the services, the limits of their competence and the mechanisms of oversight and accountability to the executive. Several intelligence services have, for a long period of time, remained under the control of political parties. International donors have not offered their support for reform of intelligence services.

All intelligence services are accountable to the executive organs of the Government. The accountability arrangements are clearly stated in the relevant legislative provisions defining the existence of these services, including the laws on intelligence agencies, the police and the defence sector, which underpin these arrangements. The existing accountability arrangements date back to earlier years at the time of their establishment and, since then, there have not been any significant changes to the accountability arrangements.

*The Intelligence Agency of the Republic of Macedonia* is accountable to the President of the Republic; the Government; and the Ministry of Finance. The Agency is headed by a Director, who is appointed and discharged by the President of the Republic. The Director is answerable for his/her work and for the work of the Agency to the President of the Republic. The Government of the Republic may request accountability from the Director about the work of the Agency. The Director of the Agency adopts an act for the organisation and its work activities, and for the systematisation of jobs within the Agency, upon a prior agreement by the Government, which is empowered to provide overall executive direction.

*The Security and Counterintelligence Administration of the Ministry of Interior* is accountable to the Government; the Ministry of Interior and the Ministry of Finance. The Administration is headed by a Director, who is appointed and discharged by the Government. The Director is held answerable for his/her work and for the work of the Administration to the Ministry of Interior and to the Government. The Government may request accountability from the Director on the work of the Administration. The Government, as such, is the overall provider of the executive direction to the Administration.

*The Service for Security and Intelligence of the Ministry of Defence* is accountable to the Government of the Republic of Macedonia and the Ministry of Defence. The Service is managed by the Ministry of Defence employees, who are appointed and discharged by the Minister of Defence. The Director is held answerable for his/her work and for the work of the Service to the Minister of Defence. The Ministry of Defence, as such, is the overall provider of the executive direction to the Service.

Intelligence services are also accountable to the legislature of the country (Sobranie or Assembly of the Republic of Macedonia). The accountability arrangements are clearly stated in the relevant legislative provisions defining the existence of these services, including the laws on intelligence agencies, and on police, which underpin these arrangements. The existing accountability arrangements date back to years of their establishment and, since then, there have not been any significant changes to the accountability arrangement.

The Assembly of the Republic of Macedonia oversees the work of the Intelligence Agency of the Republic of Macedonia and the Security and Counterintelligence Administration within the Ministry of Interior through a competent Commission ('Commission for control of the work of the Security and Counterintelligence Administration and the Agency for Intelligence'). The Commission submits a report to the Assembly of the Republic of Macedonia for the work performed at least once a year. The directors of the Intelligence Agency of the Republic of Macedonia and the Security and Counterintelligence Administration within the Ministry of Interior are required to provide the Commission with an insight and with all the information and data into the work of the organisations within the sphere of competence of the Commission. The conclusions regarding the Commission's report are communicated to the President of the Republic of Macedonia and to the Government of the Republic of Macedonia by the Assembly of the Republic of Macedonia.

The Assembly does not have clearly defined authority over the Service for Security and Intelligence of the Ministry of Defence, however, in practice, through the Commission on Defence and Security performs oversight functions over the work of the Service.

Sobranie has a great role to play in the control of intelligence services. However, Sobranie does not have political authority comparable to that of many Western

institutions. Very often it lacks necessary information; or appropriate financial and human resources or necessary professionals and experts. There is also a general lack of knowledge among parliamentarians about intelligence issues. Sobranie's Commission for the work of intelligence services has not firmly overtaken its authorities with respect to strong parliamentarian control of intelligence planning and procedures. Particularly important is that there are no procedures clearly defining how the Committee's decisions and recommendations take effect. The Commission does not function sufficiently, as it has not received regular reports from the intelligence services and its work primarily depends on the attitude of the MPs who tend not to act as professional MPs, but rather as political deputies reluctant to criticize the intelligence agencies, which might be headed by somebody who is affiliated to the same party.

The judiciary or courts have specific powers in relation to the intelligence sector. The Ombudsman's office, as a human rights protection administration, also has special powers with regard to the state organs, including the intelligence services, specifically with respect to the protection of human rights and fundamental freedoms of citizens. Municipal authorities do not have authority over the work of the intelligence services. Whereas internal accountability boards within the Ministries of Defence and Interior have specific powers in relation to the work of their intelligence services in terms of ensuring that they function within the legal bounds of their existence.

Over time, there have been significant changes to these arrangements, particularly following the Ohrid Framework Agreement, specifically targeting the Ombudsman. It has acquired more and stronger competencies in terms of the investigation of cases of human rights violations and bringing them to the attention of the courts and the prosecutor's office.

The establishment of a fair and independent judiciary is essential and of practical worth for a transitional country such as Macedonia. It is essential to build a security system based on the rule of law and human dignity. The judicial branches of government are subject to manipulation by the executive branch. Investigations into abuses by the intelligence services frequently prove fruitless and charges of wrongdoing are rare. There is an inability and a lack of desire on the part of judiciary to prosecute law enforcement officials who cross the line. Much remains to be done in rooting out corruption, improving the court system and protecting individual liberties.

In principle, individuals have the right of access to information that is held by state bodies. This applies both to individuals and legal entities. State organs are in principle obliged to provide information that has been requested. However, the legal provisions endow state organs, including intelligence agencies, with the right to withhold any access to information that is classified as confidential. Intelligence organs can still provide information by deleting the confidential parts of the document. The Law on Access to Information obliges transparency by state organs and requires them to make information public through various means. If a request for information is not satisfied,

individuals can complain to the Commission for the protection of right of access to information. Individuals requesting information can sue the relevant state organs in court.

The country's intelligence services are also held accountable through the international codes and conventions to which Macedonia subscribe to. These among others include:

- Council of Europe (2001 European Convention on Mutual Assistance in Criminal Matters; 2005 Convention on Action against Trafficking in Human Beings; 2005 Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism; 1950 Convention for the Protection of Human Rights and Fundamental Freedoms; 1972 European Convention on the Transfer of Proceedings in Criminal Matters; 1981 Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data; 1987 European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment);
- OSCE (1994 Code of Conduct on Politico-Military Aspects of Security; country specific recommendations);
- EU: European Partnership and Stabilization and Association progress reports.
-

The principle of accountability in intelligence structures is fragile. The intelligence sector has recognized that it cannot remain immune to external developments. As such, the intelligence service has a duty to remain accountable in its activities and has agreed to respect Macedonia's commitments to international conventions.

Transparency

The Intelligence Agency of the Republic of Macedonia and the Security and Counterintelligence Administration within the Ministry of Interior are obliged to make information available to the elected representatives, i.e. Sobranie. The legal basis of this obligation is to be found in the relevant articles of the Constitution and in the sectoral laws, including the laws on intelligence agency and on police. The information provided to Sobranie is confidential and is subject to privileged access by the members of the Commission overseeing the work of both agencies.

The concept of transparency in the intelligence sector involves a state of affairs where the wider public, including the Parliament and the media, have access to the necessary information to maintain the legitimacy of intelligence sector actors. Transparency is important for the civilian elite who have the right to control intelligence sector agents when they have, in their disposal, the necessary information to make sound intelligence policy decisions. Transparency is a key for democracy. Communication to Sobranie is an issue that has to be an integral part of the working culture of intelligence sector actors. Information sharing significantly affects the ability of security sector actors to establish relationships with other government agencies, the media and society at large.

The transparency of the intelligence sector is relatively new for Macedonia and there is still a lack of doctrinal intelligence documents to provide a solid basis for transparency in intelligence policy and planning. Therefore in many cases, the problem is not related the inaccessible nature of strategic documents but rather in their non-existence.

International codes or conventions to which Macedonia subscribes stipulate general transparency in the work of the defence and security sector, including that of the intelligence sector. The growing involvement of intelligence officials in the cross-border and regional exchange of information, including in bodies such as the SECI Centre, has encouraged greater transparency in the functioning of intelligence services.

Specificities of Oversight and Guidance

The powers of Parliament in the area of intelligence are regulated and defined by the Constitution, by relevant sectoral laws, including the laws on police and intelligence agencies and the procedural rules of Sobranie. Sobranie adopts the highest legal acts, including laws, strategy documents, resolutions and declarations in the area of intelligence, as well as other legal instruments. Although the powers of Parliament are defined in the Constitution and the rule of law, Parliament has the capacity to amend the strategic objectives of the intelligence sector without the consent of the government. This means that Parliament can effectively reformulate, introduce new objectives, delete objectives, vary intelligence expenditures and revise intelligence missions.

There are various instruments that Parliament uses to deal with intelligence issues. It may request that the heads of intelligence agencies, as the principal bearers of the implementation of intelligence policies, provide their opinions on various intelligence issues. Parliament also relies on its permanent and temporary working bodies in the field. At present, the following permanent commission exists in the area of intelligence: The Commission on Control of the Work of the Security and Counterintelligence Administration and of the Intelligence Agency. The Parliament may set up commissions of inquiry for any domain or any matter of public interest, including on that of intelligence.

In addition, the Parliament has a permanent and temporary staff of experts working solely for the parliamentary intelligence commission. Moreover, it is using the system of questions, hearings and interpellations to make decisions on intelligence matters. In the finalization of its opinion reflected in the adopted laws, strategy documents, declarations or resolutions, the Parliament predominantly follows the party or coalition lines in deciding on intelligence matters. The practice of commissioning research to public or private intelligence research institutes in the country or from abroad has not been initiated.

The role of the President of the Republic in formulating and endorsing intelligence decisions is defined by the Constitution and the Law on intelligence agencies. The President appoints the Director of the Intelligence Agency. The President, at the same time, presides over the Security Council of the Republic, which plays an advisory role in the formulation and implementation of intelligence policies. The President has no staff of experts on intelligence working solely for him.

The role of the head of the Government (the Prime Minister) in formulating and/or endorsing intelligence policy decisions is defined in the Constitution and in the relevant sectoral laws. The Prime Minister issues intelligence policy documents that are submitted to the Parliament for approval, after endorsement by the Council of Ministers. The head of the Government does not have exclusive powers in the intelligence area. His/her authority is dependent on the decisions reached by the Council of Ministers.

The head of the Government exercises his/her powers and responsibilities on the basis, and within the framework, of the Constitution and the law. The President may propose the dismissal of the Director of Security and Counterintelligence Administration of the Ministry of Interior.

The Prime Minister has no staff of experts working solely for him on intelligence issues. However, in practice, the required advice is provided by the Security Adviser to

the Prime Minister. To date, the practice of commissioning research to public or private intelligence research institutes in the country or from abroad has not been initiated by the Prime Minister. The head of the Government also observes the decisions taken by the Council of Ministers without independent analysis.

The head of the Government's response to intelligence developments is also dependent on inter-ministerial co-operation reflected in the formation of the inter-ministerial working bodies. These working bodies are established on a permanent or temporary basis. While reviewing issues, the working bodies co-operate with ministries and other administrative bodies. The permanent working bodies of the Government are the Government commissions and special commissions. The Government's permanent inter-ministerial working body (commission) in the area of intelligence is the Foreign Affairs, Defence and Security working body. Membership is restricted to ministers from the relevant ministries and, where appropriate, high-ranking officials.

The Minister of Defence endorses all intelligence documents issued by the chief of Service for Security and Intelligence of the Ministry of Defence. The Minister issues intelligence policy documents that are submitted to the Parliament for approval, after endorsement by the Council of Ministers. Moreover, the Minister of Defence issues defence intelligence policy documents that are compulsory for the entire defence establishment. This is done under his/her authority without the endorsement of the Parliament, after the approval of the Council of Ministers.     The minister of defence has a permanent staff of experts and advisers working solely under his/her authority on intelligence issues. The Ministry of Defence has not commissioned research to public defence research institutes or to private defence research institutes in Macedonia. Moreover, there are no records of external assistance from foreign public defence research institutes.

Guidance on intelligence policy

Before any strategic document on intelligence policy is issued for endorsement, legal and customary provisions are addressed at various levels for formal guidance from a higher authority. The highest authority is the Security Council of the Republic of Macedonia. The Security Council is composed of the President of the Republic, the President of the Assembly, the Prime Minister, ministers heading the bodies of the state administration in the fields of security, defence and foreign affairs and three members appointed by the President. The Council deliberates on issues relating to the security and defence of the Republic and makes policy proposals to the Assembly and the Government.

At the governmental level, there is also a strategic planning methodology according to which it reviews and adopts its strategic priorities on an annual basis and integrates strategic priorities in the fiscal strategy and the budget. According to the Budget Law,

the relevant intelligence agencies are required to develop a three-year strategic plan which reflects the strategic objectives of the Government in the field of intelligence and adequately support their activities through the agency programmes and budget submissions.

At the level of the ministries, the Ministers of Defence and Interior issue guidance for the implementation of intelligence policies. There is no specific process in place for the subordinating authority to comment on the guidance provided by the higher authorities.

The funding system

The financial/budgetary arrangements for the intelligence sector are integrated into the general government arrangements and legislation. The current financial/budgetary arrangements for the Government were introduced simultaneously with those for the intelligence sector. The intelligence budget follows the same lines as the Government's general budget and is approved at the same time. Both the general budget and the intelligence budget are structured by chapters of revenues, expenditures and by programmes. The reporting system on the intelligence budget is similar to that of the general budget.

Main sources of knowledge used by the government in the fulfilment of its obligations while formulating national intelligence policy:

• National literature on the theory of governance and related well-established practical mechanisms, including the following: 'Process 2002: Security of the Republic of Macedonia, Skopje: Sv. Kliment Ohridski Press, 2002'; 'Aspects of National Security of the Republic of Macedonia, Skopje: Institute for Sociological Legal and Political Research, 2001.'
• Literature, models and examples from other nations with a recognised success in good governance and/or sound national defence planning, including the following nations: EU member states, Norway, Switzerland, the United States and Turkey.
• Internationally accepted codes of conduct and codes of good practices on governance and/or defence planning, including the following:
• Council of Europe (2001 European Convention on Mutual Assistance in Criminal Matters; 2005 Convention on Action against Trafficking in Human Beings; 2005 Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism; 1950 Convention for the Protection of Human Rights and Fundamental Freedoms; 1972 European Convention on the Transfer of Proceedings in Criminal Matters; 1981 Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data; 1987 European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment);

- OSCE (1994 Code of Conduct on Politico-Military Aspects of Security; country specific recommendations);
- EU: European Partnership and Stabilization and Association progress reports.
- Specific recommendations of international organisations: EU, NATO, OSCE, IMF, World Bank, Stability Pact for Southeast Europe, and other recommendations directed to the country.

- NATO expert programmes and other activities within the framework of EAPC and the PfP.

Research institutes on intelligence matters

A number of public and private research institutes in Macedonia engage in research activities which address intelligence, defence and security issues. Public institutes are military organisations, ministerial organisations and academic organisations. Private institutes are independent and are, in part, financially dependent on public funds. Private institutes engage in research of a more general scope: security-related, international relations and transparency issues. Occasionally, private institutes work on defence issues and produce research papers, occasional papers, review series, commissioned reports and alternative strategies. They also host national and international conferences on defence policy.

To date, parliamentary commissions are yet to contract independent research on defence policy to public and private institutes. The Government (the Prime Minister's Office and the Minister of Defence) are similarly yet to use commissioned research on specific issues of intelligence policy in their decision-making process. There are no officially or privately commissioned surveys on intelligence issues.

The way in which intelligence documents are communicated

Members of the public, in principle, have a right to obtain a copy of intelligence documents upon written request. Approval for the release of copies is pending on the decision of an authority. The applicant must pay a fee for each copy.

Members of the public may obtain a copy of certain policy documents, while others are restricted. A list of policy documents which may be released to the public or otherwise restricted should be made available. An approval authority decides what documents are to be made public on a case-by-case basis.

Electronic tools (e-mail and Internet) are being used for communication with the media and the public. Intelligence agency websites can be located at the following address: http://www.ia.gov.mk. At this site, information is posted about the general intelligence policies of the Republic of Macedonia.

Drafting intelligence policies

The following bodies or groups participate or are consulted in the drafting of intelligence policies: authorised divisions within the Ministries of Defence and Interior; civilians with higher responsibilities within the Ministries of Defence and Interior and the President's and the Prime Minister's Cabinet; experts from the military research institutes; faculty members of military education institutions; independent research institutions; foreign military advisors and others.

The process of establishing intelligence objectives and of assessing security and defence risks and threats mentioned in strategies, policies and directives within the intelligence sector are based on the following sources: defence policy documents at the national level, such as the National Concept for Security and Defence; guidance from the Ministers of Defence and Interior; internal assessments of national values, interests and requirements; conclusions and recommendations from research reports; theoretical national and international literature; similar documents published in other national defence establishments; advice and recommendations from international or bilateral experts.

Public debate on intelligence requirements is rare. However, there are occasions where decision-makers at the political level deliberate and decide on intelligence requirements within the context of a debate. There are also occasions where decision-makers at the political level decide on intelligence requirements upon the request or advice from individuals in the top intelligence echelon. There is an internal debate at the service level where inputs are provided by civil servants and the results are forwarded to the political decision-makers. There is also an internal debate at the political level with intelligence inputs. Moreover, there are debates on intelligence requirements with other security sector agencies.

Organisational documents governing intelligence structures

The main organisational documents governing intelligence structures include organisational charts approved by the higher echelons; terms of reference for each structure; mission statements for each structure; job descriptions for officers and their staff; standing operating procedures for each structure; and unified regulations for each service.

The administrative legal framework in the country is defined as all laws and by-laws necessary to ensure that the administration as a system functions in line with generally accepted principles, e.g. the rule of law, transparency, accountability, and legal certainty. This implies that the administrative legal framework includes, besides general administrative laws (such as the Law on Administration, Law on Administrative Procedures and legislation covering redress and appeal), laws regulating the 'general management systems' of the public administration. The most important of these laws are: the laws on civil/public service, the organic budget law, laws on financial control and internal audits as well as external audits. In addition, it encompasses such laws as freedom of information, data protection legislation, law on the ombudsman, law on conflict of interest, i.e. 'annex' legislation to ensure the implementation of accepted administrative principles. A basic element of the normative framework is the so-called 'rule book.' The 'rule book' specifies the internal arrangements of the State and Government bodies (including the ministries). Each body has its own rule book which has to be approved by the Government. This rule book usually defines the workplaces in the bodies, job descriptions, professional and other requisites for job placement, numbers of civil servants and employees, as well as other issues arising from the specific or general laws. Where a civil service law is in place, the rule book usually specifies which positions are to be occupied by civil servants. The legal foundation for the rulebook is based on the Law on Administration or the Civil Service Law.

Intelligence planning system

There is an intelligence planning system in place. It is a multi-year planning, programming and budgeting system. There is also an intelligence management system. A results-oriented intelligence planning system has not been established. There is a force planning system and a separate resources allocation system. In addition, there is a financial planning system and a hybrid resource allocation system in place. It is both a bottom-up allocation system (the lower echelons issue requests to the higher echelons) complemented by a top-down allocation system (the higher echelons allocate resources they consider appropriate for the lower echelons).

## II. The Way Ahead

The problems that need to be tackled in the future

Due to the enormous role that the intelligence services played before 1989 and during the transition process, their transformation entails great political, security and societal difficulties. During the transitional process, the intelligence sector is far more exposed and its role is much more ambiguous than in consolidated democracies.

During the first generation reforms of the early 1990s, Macedonia adopted a necessary legal framework in which the intelligence services came to operate. This framework defined the area of responsibility of the services, the limits of their competence and the mechanisms of oversight and accountability.

However, reform of the intelligence sector has been challenging especially with respect to the opening of files and their de-politicization. Due to the possible implications of the reform process, Macedonia has adopted a gradual approach to reform, which has not privileged total reform in all its dimensions. Some dimensions of the reform process have therefore been delayed for better times. However, it is important that the country initiates to reforms in the intelligence services at the political level, and this necessarily includes society as a whole. Reform of the intelligence sector can help the country come to terms with the burden of the past. Because these agencies often wield enormous power, based on the information they gather and the clandestine operations they sponsor, it is vital to subject them to the same standards of reform as other state security institutions. Intelligence services in the country have, for a long time, remained under the control of political parties. No major international donor has showed support for intelligence sector reform.

There is no dilemma in the country with regard to the necessity of the reform process. It is important to mention, however, that the question of inter-cooperation between the organs that are responsible for decision-making in the area of security and defence has yet to be settled. The laws on the intelligence sector mention that the agency and ministries cooperate, however, without providing any real detail. Therefore, when inter-agency (and ministry) clashes or conflicts arise, the risk that they might not exchange information is greater.

Macedonia has managed to establish civilian control of the intelligence sector, where all decisions are made by civilian representatives responsible to the elected President and the Government.

Establishing horizontal contacts between government officials and various security agencies is critical in all seven countries of the region. The establishment of a crisis management system and, accordingly, a crisis management centre in Macedonia will be a major test in this regard.

There are also other problems that need to be tackled. Among others, the distinctive cultures of the intelligence sector need to undergo fundamental changes before truly substantive reform is likely to occur. The country needs to develop a personnel management system that is capable of attracting new and qualified people into the sector. There should be energetic moves to establish reference points for the intelligence reform process as was the case with the abolishment of the country's compulsory military service.

Changes in the security environment and in the functions and missions of the security sector units require serious consideration for the reform of the authority and competence system of the civilian governance structures on how to control the intelligence sector and how to institute checks and balances inside and outside the sector, particularly as the intelligence sector units have acquired new functions.

How the international community can assist

Implementing intelligence reforms has not been easy for Macedonia. Despite Macedonia's overall success in establishing a sustainable environment for the reform of the intelligence sector and despite the progress that has been made in terms of the country's integration into NATO, the Government is yet to achieve its objectives in the area of intelligence sector reform. Key problem areas are yet to be resolved as the country lacks clear goals, particularly in terms of the framework of its general vision for intelligence sector reform.

The role played by the international community in the defence and police sectors underscores the importance of international involvement and cooperation.

Intelligence reform is an area where considerable support from the international community is lacking. This type of support will only benefit the country in its efforts to reform the intelligence sector which remains a 'critical weakness' as Macedonia makes its way to NATO and EU membership.

Status of the internal/domestic discussion

The discussion on intelligence reform is far from over. Issues relevant to intelligence reform are yet to be resolved, particularly with regard to transparency and accountability, sustaining political will and the difficulties associated with challenging and changing old mentalities. Intelligence sector reform is a permanent process and, as such, it is affected by change, especially in the security and defence realm.

Intelligence reform remains a daunting challenge to the country and it will undoubtedly assist in the development and stabilisation of good governance. The services are at the centre of post-communism's moral panic and conspiracy theories, yet, at the same time, they are expected to protect the people and enlighten policy-makers in a period of uncertainty and disquiet. In this context, their reform is a litmus test of both the functioning and accountability of the governance system in the post-communist state of Macedonia.

Looking ahead, the reform process is confronting many obstacles, not the least of which is the absence of efficient, effective and legitimate civilian governance structures. Whether there is progress in this regard or not, the absence of such

structures will continue to have negative implications on the overall reform processes in the intelligence sector.

**Annex I**

Basic intelligence management laws and regulations:
- Constitution.
  - Constitution of the Republic of Macedonia – 1991 (Articles 122-7, relevant to defence policy). Last accessed 22 August 2006:
  - (http://www.morm.gov.mk/english/Constitution/constitution7.htm).
- Laws regulating the terms of reference, mission statements, structures and obligations for all governmental entities involved in formulating, implementing, reporting and overseeing defence policies.
  - Law on organization and work of the state administration – 2000 (available in Macedonian)
  - Law on government – 2000 (available in Macedonian)
- Laws of general nature with direct application to intelligence governance (such as budgeting, protection of classified information, public information, statues for civil servants and dignitaries, procurement etc.)
  - Law on access to public information – 2006 (available in Macedonian)
  - Law on crisis management – 2005 (available in Macedonian)
  - Law on working relations – 2005 (available in Macedonian)
  - Law on civil servants – 2005 (available in Macedonian)
  - Law on budgets – 2005 (available in Macedonian)
  - Law on personal data protection – 2005 (available in Macedonian)
  - Law on classified information – 2004 (available in Macedonian)
  - Law on protection – 2004 (available in Macedonian)
  - Law on special rights of people belonging to security institutions – 2002 (available in Macedonian)

**The intelligence services**:
- Key laws referring solely to the (various) service(s)
  - The Law on the Intelligence Agency of the Republic of Macedonia – 1995 (available in Macedonian)
  - Law on Internal Affairs – 1995 (available in Macedonian)
- Political documents stating the role of intelligence within defence and security policy (Government programme, national security strategy or concept, white papers on security and defence etc.)
  - National Security and Defence Concept of the Republic of Macedonia – 2003. Last accessed 22 August 2006
  - http://www.morm.gov.mk/english/nationalconcept.htm.
  - The Strategy of Defence of the Republic of Macedonia - 1998 (available in Macedonian).

**Annex II**

Intelligence Institutions within the Security Sector:
3. Please provide the latest openly available data on the existing policies within the intelligence sector: what are the policy documents required by law or defence level regulations to be issued by the National Security and Defence Council, relevant minister, the chief of services, with what frequency, what higher authority is supposed to endorse each of them, as well as the current status of such documents. Please fill in Table 2 with the existing information where applicable:

Table 2 – Structure of Decision Making on Intelligence Policy

| Topic of Document | Title of Document | Issuing Authority | Endorsing Authority | Frequency / Time span | Status |
|---|---|---|---|---|---|
| Intelligence Planning | Pillars of the work of the intelligence services | Services | Government | | |
| Personnel policy | Act for organization and work and systematization of the working posts at the Agencies | Services | Government | | Legal act |
| Intelligence Education | - | | | | |
| Public information policy | - | | | | |
| Other intelligence documents | - | | | | |

| Topic of Document | Title of Document | Issuing Authority | Endorsing Authority | Frequency / Time span | Status |
|---|---|---|---|---|---|
| Intelligence Strategy | - | | | | |
| International Cooperation | - | | | | |
| Interagency Cooperation | - | | | | |

**Annex III**

<u>Overview: Country Key Facts</u>

- Official name: The former Yugoslav Republic of Macedonia
- Independence: 8 September 1991
- Country status in EU enlargement process: Candidate country since December 2005.
- Country status in NATO enlargement process: Candidate country (Membership Action Plan) since April 1999.
- Population (2002 Census): 2.022.547
- Ethnic composition: Macedonian 64.18%, Albanian 25.17%, Turk 3.85%, Roma 2.66%, Serb 1.78%, Bosnjak 0.84%, Vlach 0.48%, Other 1.04%
- GDP per capita (2006): 3.208 USD
- Main intelligence bodies: Intelligence Agency of the Republic of Macedonia; Security and Counterintelligence Administration within the Ministry of Interior; and Service for Security and Intelligence of the Ministry of Defence.

# Intelligence/Security Systems of Serbia and Montenegro

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## Introduction

The recent (May 2006) dissolution of the State Union of Serbia and Montenegro has, among other consequences, resulted in the need for both independent states – the Republic of Serbia and the Republic of Montenegro, to build their own full-scale intelligence/security systems. This process is still at an early stage and both countries, in the second half of 2006, continue to deal with the legacy of intelligence/security systems of the former Yugoslavia, although Montenegro to a significantly lesser extent. This paper describes the current, transitional situation, recalls the State Union arrangements when it is necessary to understand those of today, and indicates, where possible, the most likely future developments.

## The Main Regulations of Relevance to the Intelligence/Security System

The Constitution of the Republic of Serbia, adopted in 1990, stipulates that the Republic 'organizes and provides defence and security of the Republic of Serbia and its citizens.'[1] However, up until its dissolution in 2006 it was not the Republic, but the State Union that provided defence for Serbia (and Montenegro) through the Defence Ministry and the Army of the State Union. There are no further deliberations on security issues in the Serbian Constitution.

The Constitution of the Republic of Montenegro, which was adopted in 1992, does not elaborate on security or defence issues. It states that the Republic guarantees the 'safety' of its citizens.[2] The Constitutions of Serbia and Montenegro do not contain explicit guarantees of democratic civilian control of the armed forces and/or security services.

The Constitutional Charter of the State Union, which was adopted in 2003, has dealt rather extensively with defence issues. It contained an explicit guarantee of 'democratic and civilian' control of the armed forces. The issue of *security* was, by decisive opinion, seen as belonging to the Member States and the Charter did not elaborate on this. Nevertheless, the four federal intelligence/security agencies established in 2002 during the Federal Republic of Yugoslavia, continued to exist throughout the short life

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[1] Article 72 of the Constitution of the Republic of Serbia.
[2] Article 20, par. 2 of the Constitution of the Republic of Montenegro.

of the State Union, and persisted in the Republic of Serbia as the 'continuing' state of the former State Union.

The Supreme Defence Council of the former State Union[3] was the collective supreme commander of the Army. Although both Montenegro and Serbia organised their respective republican intelligence/security services which worked in parallel to the 'federal' ones, the services of the State Union and the two Member States were left without any joint management or co-ordinating body.

The State Union has never adopted a National Security Strategy. It has, nevertheless, adopted the Defence Strategy (a document that should be based on the security strategy) in 2005, and the 'White Book' on Defence. After the dissolution, the Montenegrin Government adopted the National Security Strategy in June 2006. The drafting of the National Security Strategy is ongoing in Serbia. However, it is not available to the public for discussion.

A compressive law on the protection of classified information did not exist at the State Union level or at the level of the republics, although its lack thereof has been identified as an obstacle to further security sector reform on various relevant occasions. Instead, defence-related information was classified and protected according to the governmental regulation which was enacted in 1994,[4] while the republican intelligence/security agencies use their own internal regulations. It is widely acknowledged that the current regulations fail to provide an appropriate legal framework for the protection of classified information. Serbia has produced several preliminary drafts that are intended to remedy this problem, yet none of them have been made public.

### *Intelligence/Security Services*

### The Five Serbian Services

Serbia currently has five intelligence/security services. One was organised for the Republic when the federal state was in existence, while the other four Serbia 'inherited' by taking over the Ministry of Defence and Foreign Affairs of the dissolved State Union (this process is in legal terms unfinished – the Amendments and Agenda to the Law on the Ministries was pending parliamentary procedure at the time this paper was written). Therefore, at present, Serbia is lacking a consolidated intelligence/security system. It has, however, preserved elements of the previous systems. The five services are:

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[3] Its members were the three presidents - of the State Union and the two Republics
[4] Not available in English language.

**A. The Security-Information Agency of the Republic of Serbia (Bezbednosno-informativna agencija – BIA).** BIA is a service of a merged type, responsible for both foreign and internal (security) intelligence. BIA's mandate and operations are predominantly regulated by the *Law on Security-Information Agency of the Republic of Serbia* (2002). It is an autonomous governmental agency that inherited the space, equipment and selected staff of the discontinued State Security Sector of the Serbian Ministry of Interior. BIA is headed by a civilian director, who is appointed by and answers directly to the Government. In terms of manpower, BIA is the strongest I/S agency in Serbia.[5]

**B. The Military Security Agency (Vojno-bezbednosna agencija, VBA).** VBA is an internal military security service, established by the *Law on Security Services of the Federal Republic of Yugoslavia* (further on – *the Law on Services),* adopted in 2002. Organised within the MoD, the VBA is charged with counter-intelligence and counter-terrorism protection of the Army and MoD. Its mandate also includes investigation and documenting military-related criminal offences against the constitutional order and security of the Federal Republic of Yugoslavia (now outdated), crime against humanity and international law, and organised crime.[6] VBA emerged from the 'Counter-intelligence Service' of the Yugoslav Army which was subordinate to the 'Security Directorate' of the Army's General Headquarters. The head of the VBA, currently a retired army general, is subordinate to the Minister of Defence.

**C. The Military Intelligence Agency (Vojno-obaveštajna agencija - VOA).** VOA is charged with foreign military intelligence, and was also established by the *Law on Security Services*. Organised within the Ministry of Defence (MoD), VOA is tasked with providing intelligence on foreign countries and their armed forces, international and foreign organisations, groups and individuals which jeopardise the Army, MoD, sovereignty, territorial integrity and defence.[7] The Draft Strategic Defence Review foresees merging of the two military services – VBA and VOA, until the end of 2010.

D. **The Service for Research and Documentation of the Ministry of Foreign Affairs (Služba za istraživanje i dokumentaciju - SID)** is organised within the Ministry of Foreign Affairs and, by the *Law on Security Services,* charged with collecting intelligence relevant to foreign policy.[8]  The head of SID (holding the rank of ambassador) answers to the Minister of Foreign Affairs.

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[5]  BIA has nine departments: Counter Intelligence Dept, Intelligence Dept, Technical Dept, Analytics Dept, State Institutions Protection Dept, Security Dept, Communications and IT Dept, Human Resources and Financial Dept, International Relations Dept. It also has its own Education and Research Centre, Security Institute and Medical Centre, (www.bia.sr.gov.yu)
[6]  See Articles 8 and 9 of the *Law on Security Services*
[7]  See Articles 10 and 11 of the *Law on Security Services.*
[8]  See Articles 12 and 13 of the *Law on Security Services.*

**E. The Security Service of the Ministry of Foreign Affairs (Služba bezbednosti – SB),** established by the *Law on Security Services,* SB is responsible for security, anti-bug and counter-intelligence protection of MoFA and diplomatic and consular missions abroad. The head of SB (holding the rank of ambassador) answers to the Minister of Foreign Affairs.

At this point, it should be noted that, according to the *Law on Security Services,* VOA's name is the Military-Intelligence Service (not Agency), and VBA's name is the Military-Security Service. The same law provides that the both agencies/services work within the Government, not the MoD. These inconsistencies exist due to the (classified) decision of the former State Union Council of Ministers that amended the law (!?) by changing the names of the services and attaching them to the MoD.

Out of the five Serbian services, only BIA and VBA are authorised to implement measures that infringe rights and freedoms guaranteed by the constitution and law. BIA is requested to obtain a warrant from the court only for the interception of communications, while VBA, apart for intercepting communications, also needs a warrant in order to conduct documented surveillance. All services use methods such as infiltration, secret obtaining of documents, undercover work (concealed identity), etc.

The competencies of the former federal services and BIA were written for the different levels of state organisation. Consequently, the transfer of the federal services to the republican level resulted in considerable overlaps. SID and BIA are an example. According to the Law, SID *'collects, analyses and evaluates information of a political, economic and security nature, which relate to foreign countries, international organizations, groups and individuals, and which are of relevance to forming and implementing foreign policy, and especially about clandestine activities or intentions that could endanger the constitutional system, sovereignty, territorial integrity or other state interests of the Federal Republic of Yugoslavia.'* At the same BIA *'performs tasks related to the maintenance of security, the discovery and prevention of activities, (both internal and external – remark by author), which are aimed at undermining the constitutional system of the Republic of Serbia; investigation, collection, analysis and evaluation of intelligence relevant to the security of the Republic of Serbia, as well as informing the relevant state authorities of that intelligence...'.* Now when SID in reality works for Serbia, and not Yugoslavia or Serbia and Montenegro, the overlap is obvious. The Military Intelligence Agency also *'collects, analyses, evaluates and forwards data and intelligence on potential and real threats, activities, plans or intentions of <u>foreign countries</u> and their armed forces, <u>international and foreign organisations, groups and individuals,</u> which are directed against the Army of Yugoslavia, the federal ministry in charge of defence affairs, <u>sovereignty, territorial integrity,</u> and defence of Federal Republic of Yugoslavia'* (*non-military components underlined by the author*). BIA, if its Director and the Minister of Interior agree, *'can take-over and execute tasks which are in competence of the ministry in charge of*

*interior affairs,*[9] using all powers available to the policemen. These are just some of the glitches of the present I/S system in Serbia.

**The Montenegrin NSA**

**National Security Agency (Agencija za nacionalnu bezbjednost – ANB)** of the Republic of Montenegro was established in 2005 by the *Law on the National Security Agency),* from the discontinued State Security Sector of the Montenegrin Ministry of Interior. It is a merged foreign/domestic intelligence organisation, whose mandate relates to the protection of the constitutional order, security and territorial integrity of the Republic, protection of human rights guaranteed by the Constitution and other issues of interest to national security. The Government appoints the director of the Agency upon the proposal of the Prime Minister, keeping in mind the opinion of the National Assembly.

There is no information available on the military structure or intelligence/security capacities of Montenegro.

**Accountability of Intelligence/Security Agencies**

**Coordination and Control by the Executive**

Serbia does not have a special governmental body charged with directing, overseeing or co-ordinating the services and other institutions that have a stake in national security. The *Law on Government*[10] provides the Serbian Government with the general authority to direct and oversee the work of all governmental agencies, and to co-ordinate them. The Law on BIA additionally states that BIA co-operates with foreign institutions and services in line with the guidelines of the Government and the 'security-intelligence policy.'[11] There was a failed attempt of the Government to establish a National Security Council in the first half of 2006. The Prime Minister and the President could not agree on who would chair meetings of the Council and, as the consequence, the first session never took place.

The *Law on Security Services* provides that the heads of the four 'federal' services answer to the 'appropriate Federal Minister and/or Federal Government.' By analogy, today they should be responsible to the Government/Ministers of the Republic of Serbia.

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[9] Article 16 of the Law on BIA.
[10] The Law on the Government, Article 8 (Official Gazette of the Republic of Serbia, no. 55/2005, 71/2005).
[11] Article 4 of the Law on BIA.

The lack of and need for co-ordination has become especially obvious due to the problems in apprehending a fugitive from the trial at ICTY,[12] a former general in the Serb Army in Bosnia and Herzegovina, Ratko Mladic. The Government of Serbia has adopted the 'Action Plan' to facilitate the arrest of Mladic by removing this coordination gap. However, it is widely assumed that the plan, which has not been made public, has no ambition to probe the foundations of the intelligence/security system, but only to produce the arrest.

As previously mentioned the legal transition of the four former 'federal' services to the level of the Republic of Serbia is unfinished, leaving many issues associated with the former federal services open, or to be dealt with 'by an analogy.'

According to the Serbian Constitution, the President of Serbia is the Supreme Commander of the Armed Forces. The President is authorized to 'take measures' in an emergency situation, which he/she proclaims at the proposal of the Government. Under the conditions laid down in the Constitution, he/she may then take measures required by the 'reason of the State.' As the Supreme Commander of the Armed Forces, the President has a certain degree of indirect influence in the two military services. However, the President has no formally defined role in formulating and/or endorsing intelligence policy decisions.

The Ministers of Defence and of Foreign Affairs exercise ministerial control over the work of the agencies which are part of their respective ministries. However, the two ministers who were elected in the former Federal Parliament are not re-elected as members of the Serbian Government in the Serbian Parliament, but nevertheless hold posts and exercise their respective duties.

Montenegro does not have a specialised body within the executive branch of power to direct, oversee and/or co-ordinate intelligence/security services and other institutions with a stake in national security. The *Regulation on the Montenegrin Government* authorises the Deputy Prime Minister to co-ordinate the work of the ministries and other state agencies for which he/she is responsible.[13] The Inspector General is appointed by the Government, which is to exercise internal control of the Agency. The Inspector's term of office is five years and he/she reports to both the Government and the director of the Agency.

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[12]  International Criminal Tribunal for the Former Yugoslavia (ICTY).
[13] Article 6 of the Regulation on Government of the Republic of Montenegro (Official Gazette of the Republic of Montenegro, no. 15/94, 4/97).

**Accountability to the elected representatives**

**Serbia**

The Parliament is an institution designed to ensure democratic control over intelligence-security services. In order to be able to respond to the requirements of parliamentary control, Parliament needs to meet a number of prerequisites which are described in the theory of parliamentary control. Where does the Serbian Parliament practically stand in this regard? The parliamentary Defence and Security Committee has relatively broad authorities. Its 17-member composition is proportionate to the strength of parliamentary parties and it meets at fairly regular intervals. The president and vice-president of the Committee belong to the two largest opposition parties. The present-day Committee conducted its first visit to BIA headquarters. Another of its pioneering actions was a joint session with the Committee for Multiethnic Relations which was held in Serbia's most northern town of Subotica. The session, dedicated to interethnic relations in the province of Vojvodina, was also attended by the Director of BIA and the Minister of Interior. No serious 'leak' of sensitive information made available to the Committee members has ever been registered. On the other hand, the Committee's work is seriously obstructed by the boycott of the Parliament by two strongest oppositional parties (chair and the vice-chair of the Committee belong to them), and the majority of Committee members are overburdened with obligations in other parliamentary bodies. The Committee also lacks specialization - its mandate covers the issues of internal affairs, defence and intelligence-security services, and there are no sub-committees to the Committee established for these rather different tasks. The Committee's meetings are open to the public even when it discusses the six-monthly reports of the BIA, and it is lacking its own rules of procedure. The Committee's support unit is seriously short staffed, and the Committee has never commissioned research from public or private think-tanks on intelligence issues. Neither the Constitution nor the relevant legislation provides Parliament with a role by endorsing intelligence policy decisions (nor is any such decision known to exist).

The Committee did not excel in informing citizens on the work of the Agency, nor was it too successful in ensuring the public that it has BIA under efficient control. The Committee also did not do much to ensure the public that BIA respects laws and works meaningfully, or to establish an image of itself as the guarantor of BIA's political neutrality. The grave obstacle to efficient parliamentary oversight of BIA is the lack of precise regulation on exactly what kind of information is available to the Committee – the parliamentarians are unsure of what they are entitled to ask or know and BIA is unsure of what it should and must give the parliamentarians. Neither the Rules of Procedure of the Parliament, nor the Law on BIA provide that information. Furthermore, the provisions on internal control, the quality of which largely determines

and should provide reliance on external efforts of this kind, are also missing from the Law on BIA. Although the Law, when adopted, positively contributed to reform of the intelligence/security sector by separating intelligence/security agencies from the police, it certainly failed to chart the road towards functional democratic civilian control.

The House Rules of the Parliament are currently being re-drafted, in order for the new permanent body - the Standing Commission for Control of the Security Services, to be established in line with the Law on Federal Services. Given the recent announcements that the new Constitution of Serbia is to be adopted in the near future and that general elections will immediately follow, it should come as no surprise to find that the redrafting was postponed for 'better times.'

### Montenegro

The Montenegrin *Law on National Security Agency* provides a mandate to the Parliament to oversee the Agency through a 'competent working body.' Acting upon this provision, the Montenegrin Parliament has established the Security and Defence Committee, chaired by the member of the ruling coalition (who is also a vice-Speaker of the Parliament). The Law requests NSA to report annually, but also on demand, to the Committee. Upon request, the Agency has to allow the Committee insight into cases (ongoing and previous) in which the privacy of communications is being/has been infringed, provided that this does not harm the interests of national security. Also, the Agency will not reveal to the Committee the identity of its employees, sources or third persons, nor will it disclose to the Committee information on ongoing activities.[14]

### Accountability to the courts and other institutions

The legal framework for the democratic civilian control of intelligence-security services entails a network of laws and regulations, among which are those governing the work of the Parliament, the functioning of state administration, the financing of the state and controlling of its expenditures. Also relevant are the regulations on the civil sector (the media, citizens associations, academia and the judiciary), etc. Even a cursory glance at the above-mentioned regulations in Serbia reveals a 'state of transition.' Some regulations have undergone initial reform (the judiciary), others are just commencing, (citizens associations and the state auditing agency), while others face continued delays, (the Constitution).

The current regulations in Serbia are not privy to independent control bodies or oversight institutions in the area of intelligence and security. (The establishment of the Office of the Inspector General for the Intelligence Services, as an institution responsible only to the Government was foreseen in the federal *Law on Security*

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[14] Article 43 of the Law on National Security Agency.

*Services.*) Serbia adopted the *Law on Protector of Citizens* (ombudsperson) in 2005. However, the post is still vacant.

BIA and the four former 'federal' services in Serbia, and the Montenegrin NSA are centralised national agencies and are not responsible to the municipal or regional authorities or to the institutions of local self-government. Nonetheless, a certain level of dialogue exists. As an example, the Director of BIA visited the Government of the autonomous province of Vojvodina twice during the past 12 months to discuss the security situation in the province.

**The Role of Courts**

Apart from the general mandate of courts to adjudicate in cases of a breach of a law, the courts in Serbia are also approving the implementation of the most intrusive measures that infringe upon the rights that are guaranteed by the Constitution (interception of communications). If the intelligence sector is required to serve as evidence before the criminal court, wiretapping or the opening of mail must be approved beforehand by the investigative judge working on the case. If these measures are needed for reasons of national security (pure intelligence gathering) an approval of the Supreme Court, also beforehand, is needed. The communications interception warrant may last for six months at the most, and can be extended only once for another six months upon a renewed proposal from BIA.

In Montenegro, the interception of communications must be approved by the President of the Supreme Court, in writing and beforehand. The interception warrant is valid for three months, and can be extended for the next three months for an indefinite number of times.

**Budgetary Control**

As part of the *Law on Budget*,[15] the total amount of BIA's revenue is publicly disclosed in 16 descending budgetary lines. The *Law on Budget* is discussed and adopted by the Parliament. BIA is a direct user of the state budget and the director of the Agency is responsible for its lawful use. In 2005, the budgetary inspection of the Ministry of Finance controlled BIA's expenditures for the first time and its report was not made public. BIA's internal structure provides for the position of the 'Chief Controller of the Budgetary Funds,' but further details on this post are not available. Prior to the establishment of BIA in 2002, the State Security Sector of the Ministry of Interior had

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[15]  The Law on the Budget of the Republic of Serbia, Official Gazette of the Republic of Serbia no. 106/2005, 108/2005

its budget included in the overall budget of the Ministry of Interior, but its share in the total spending of the Ministry was never revealed to the public.

The budgetary arrangements of the former State Union were of a special kind. Despite its institutions and mandate, the State Union did not have its own budget – instead there was an 'Expense Book,' and the expenses were paid by the Member States. 'Hidden' within the expenses of the two parent Ministries, the costs of the four federal services, which now belong to Serbia, remained unknown to the parliamentarians of the State Union and the two Member States, let alone the public, and never went through an external control process.

**Transparency**

**Access to Information**

The Serbian *Law on Free Access to Information of Public Importance*, [16] which was adopted in 2004, was a significant and necessary step allowing for greater transparency in public matters, appropriately also in intelligence/security issues. While the Law was not primarily designed to complement the needs of the media (which typically requires information at a faster rate than it can be obtained by calling upon the provisions of this law), it has especially improved the conditions of general public oversight. According to the Commissioner's 2005 annual report on free access to information,[17] the right of access to information was mostly invoked by citizens, associations of citizens, state institutions and the media to a lesser extent. The implementation of the Law is, however, unsatisfactory. According to the same report, BIA, courts and the Ministry of Interior (even the General Inspectorate) are among the public institutions that failed to act upon the decision of the Commissioner to provide the requested information.

The *Law on Free Access to Information* was adopted in Montenegro in 2005.[18] The Law limits access to information which might endanger national security interests.

**The Media**

It is well-known that the media has uncovered more scandalous affairs and abuses of prominent intelligence-security services in the world then all the other control institutions combined. Freedom of media is a key prerequisite in allowing this to be possible. The media in Montenegro and Serbia is widely considered to be free. Print and electronic media are numerous and easily available, and there are no taboos or

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[16] The law was published in the Official Gazette of the Republic of Serbia no. 120/2004
[17] http://www.poverenik.org.yu/Dokumentacija/45_ldok.pdf
[18] The Law on Free Access to Information (Official Gazette of the Republic of Montenegro, no. 68/2005)

'untouchable' personalities. Topics related to security are on the agenda fairly regularly, and one could even speak of a kind of media fascination with the secret services. Weekly and daily papers publish interviews with current and former heads and high officials of civilian and military services (the previous head of the Military Security Service was in fact dismissed from that post after an interview of which the content was assessed as inappropriate by the highest civilian leaders). Nonetheless, the media's coverage of the security sector lacks an analytical approach. Reports are usually prompted by incidents and predominantly take the form of the simple agency news. Despite the screaming headlines, 'sensational' disclosures and quotations from 'highly reliable sources from the top ranks of the intelligence community,' Serbia's 'Watergate' equivalent has not happened, perhaps because of the fact that 'whistleblowers' are not protected by the respective laws. The unsolved assassination of a well-known Serbian journalist, Slavko Ćuruvija, in the 1990s and a few other renowned cases provide reasonable doubt that journalists were subjected to illegal measures from the arsenal of secret services. These are important pieces in the mosaic of relations between the press and intelligence-security services in Serbia.

**Civil society and citizens**

The state academic institutions that are expected to conduct research and prepare the grounds for decision makers on intelligence/security issues have not played a visible role in the making of security policy. The Security Institute of BIA has focused its work on the improvement of methods that the Agency applies, not on policy papers. On the military side, the MoD's Institute for War Skills is similarly removed from intelligence/security policy issues. Non-governmental organisations (NGOs), such as the Belgrade based Centre for Civilian-Military Relations or the International and Security Affairs Centre occasionally produce in-depth analyses of security sector reform issues, but their contact with the intelligence/security state institutions is limited and feedback is lacking.

There is no doubt that in its deliberations on security policy, the state has yet to discover how to effectively make use of NGOs, their knowledge and alternative approaches. This is precisely where the largest 'reserves' of knowledge reside, especially when the state institutions are still fettered by administrative and bureaucratic obstacles and a surplus of priorities.

The educational system within intelligence/security agencies is widely considered to be overly isolated, resulting from and adding to an introverted institutional perspective. Increased participation of Agency members in seminars, courses, workshops and other educational activities organized by academic institutions and specialised NGOs, especially on topics such as human rights protection, the eradication of corruption and the promotion of the democratic nature of civil-military relations, could help to overcome this problem. Independent analyses of general and specific security challenges and encouragement of the newest democratisation trends remains invaluable

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for the national security service. Such developments are not obtained by operative work or the engagement of 'collaborators,' but rather by cooperation.

As previously mentioned, in Serbia, there is no Inspector General for the services, ombudsperson or other specialised institution that might readily accept complaints against the services. The parliamentary House Rules do not foresee that the Security and Defence Committee acts upon the complaints and grievances of citizens against services (the federal *Law on Security Services* explicitly tasked the Commission for Control of the work of the Services to do so). The House Rules, however, provide for the possibility that MPs receive citizens and their complaints in the Parliament. Of course, citizens can seek protection from the courts, if they consider that their rights which are guaranteed by the Constitution and the law are disrespected, or that the services act in breech of the law.

### Instead of the Conclusion

Caught between two steps, with the overlapping and entangled competences of the services and unclear or non-existent lines of direction, control and co-ordination, the Serbian intelligence-security system is ill-defined, costly and left without strong protection from the universal tendency to overstep authority and escape scrutiny. Fortunately, it seems that the existing balance of power and the genuinely adopted principle of democratic civilian control hold the system together without major turbulences. This momentum should, of course, be used to create a proper legal framework for an intelligence/security system that fully respects the rule of law, provides information relevant to the security and development of the country and makes the distinction between its needs and its potential. A system that respects and protects human rights and other fundamental democratic values can look forward to full integration into the international security community.

Less troubled by 'inherited' issues, the Montenegrin intelligence/security system is lighter underfoot, and it remains to be seen how the military aspect of its security sector will be finally conceived and integrated into the national security structure.

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## Part III – Border Management Reform in the Western Balkans

## Security Sector Reform in the Western Balkans: Assessing Progress

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The six papers on Security Sector Reform (SSR) in the states of the Western Balkans assess the progress made in terms of legal changes, organizational developments and strategic planning, as well as the implementation of reforms in the security sector. The papers also focus specifically on the creation and impact of internal and external accountability mechanisms, changes in threat assessment and strategy following the September 11 terrorist attacks on the United States and later elsewhere, and the movement, if any, towards a more integrated management of the security sector as a whole and of border control systems more specifically. The normative criteria for assessing success and progress are improvements in various aspects of internal security, conditions and changes in the organizational structures and performance of security agencies (police and border mainly), and adherence to or movement toward the United Nations (UN) and the European Union (EU) professional standards and codes of conduct related to the security sector and the integrated management of border control agencies. These standards are incorporated in the *Guidelines for Integrated Border Management in the Western Balkans* which spells out the threshold criteria which must be met for accession to the EU and in the *Way Forward Document* developed at the Ohrid Meeting of 2003. Furthermore, EU expectations and standards have become firmly embedded in the domestic political discourses and laws passed within each country.

I will assess the reported progress made in SSR in these six countries, as detailed in the papers, using the same international and regional standards found in the two documents mentioned and used by the authors. In addition, I will briefly sketch some of the basic lessons and best practices discerned and learned from efforts to restructure and reform security sectors in other countries.

What is clear from the papers, as well as the changes that are described and assessed in the six countries, is the dominance of EU standards as the criteria for planning and guiding policy development and implementation in the security sector. The wish and perceived need to join the EU has become a powerful force for policy reform. In order to be deemed acceptable by current EU members and the EU bureaucracy that governs the AFJS area, reforms in security systems, with a focus on border control, are essential in bringing these countries up to European standards.

The wish to become acceptable has to be balanced against local (in)security realities within and at the borders of the six countries, their political histories and dynamics, and

the institutional traditions and cultures of security providing agencies. The path from current structural, social and political realities towards the establishment of security sectors which meet European, as well as international standards is not direct, straightforward or easy to traverse. SSR in the Western Balkans is both a movement away from the discredited policies and practices of past regimes and toward new and acceptable standards and forms of conduct. The obstacles and objections which will arise from local contexts must be faced realistically.

**Standards and Lessons**

The three sources of standards discussed below, together, can be used to assess progress, and lack thereof, in the six Western Balkan countries.

*Security Sector Reform*
The dynamics of SSR have been extensively analyzed and a number of basic lessons on how to plan and implement reforms have been learned (e.g., Ball et al, 2003; Bryden and Hänggi, 2004; Hänggi and Winkler, 2003; Huang, 2005; OECD, 2004, 2005; or Peake et al, 2006). These lessons apply to the Western Balkan states, even though they require adjustment to local conditions.

The most important lesson is that changes in the security sector shift the balance of political power within a state and alter the relations between governments and civil society. SSR is not only a technical process which, once properly planned and stated, will be implemented without dispute or difficulties. SSR is a political process and, as such, it requires more than just stating desired goals and necessary changes. SSR is political in two basic ways. Firstly, the implementation of reforms requires existing agencies and agents to change the way they conduct their work and, in the cases of Integrated Border Management (IBM), how they work together. Those decisions, on what to change and what to keep, are political, in the sense that there has to be some discussion of who will do what and why. Unless implementation is part of the planning process, which including clearly delineating why it would be in the interests of actors to implement reform, plans will remain paper documents and mere aspirations.

SSR is also politically significant in a second sense. The control of agencies which can coerce is a major resource in political contexts, and can be and often has been misused. Reforms which shift the allocation of powers and authority are not neutral as they affect the political fortunes of leaders and their followers. Stated differently, the question in SSR is who has the political will, skills, power and authority to accomplish change, even against inevitable resistance. Unless one can point to a political process which exists to carry out reforms they will not happen. This is true even if most leaders agree that reforms would be a good thing for the country.

A second basic lesson is that the goal of reforms should be functioning organizations. Before one can coordinate policies, information exchanges, establish joint working

groups, or cooperate for common cross-agency goals, organizations which work have to exist. Organizations which 'work,' at the minimum, have a functional identity which has salience across internal roles and rank hierarchies (e.g., 'we are all border guards' or 'police'), a common occupational culture, and an administrative/management system which can guide the allocation of resources and assess the efficiency and effectiveness of the organization. The first goal of reform, then, is to create an organization and subsequently coordination among organizations in the security sector.

Organizations, agencies, civil society groups and political leaders which are expected to work together in a holistic framework will be hampered by the inescapable reality that their specific interests will not always coincide with the goals of SSR. One of the resources any organization has to protect and expand on in its domain is information which will not be shared simply because that is what is expected and is in the public interest. Two important corollaries follow for organizational development.

From the past reform efforts of security agencies, it is clear that despite a rhetoric which stresses a common occupational label, the underlying organizational realities can be quite different. What reformers and managers describe as the organization's working practices and goals is not always what rank and file, who implement plans, does or wishes to do. Organizations are staffed by people with their own ideas of how to do things. Organizations are not machines which can be arranged and turned on at will to act on commands.

For example, corruption is a temptation and a reality among security agencies, especially in border areas where opportunities abound and much of the work by customs agents and border guards is discretionary and unobserved. Having training sessions on how not to be corrupt, or abuse one's powers, is not likely to make much of an impact on the work of agents in the field, where the likelihood of corruption is real, powerful and can be pursued with almost complete impunity. When the higher echelons of an organization are also corrupt, the work of field agents is even more susceptible to corrupt practice. Unless organizational mechanisms are developed and used consistently and fairly by managers, corruption will occur and it will be pervasive.[1]

Emerson (2005: 2), in his discussion of the impact of Schengen visa standards in the

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[1] The *Guidelines* discussed below suggest that 'border guards should have the power to refuse entry to persons, even if they are holders of a visa, with duly motivated reasons. Special training is needed for the officials in order to ensure the quality of their decisions in this regard' (p. 33). This provision would grant substantial discretionary powers to border guards which are not likely to be exercised appropriately, even with training. Moreover, border guards, by their discretionary capacity to exclude people who fit suspicious profiles, will undermine the visa process itself, for visas are not good until the guards say they are and that is not what the visa process is supposed to be about.

Western Balkans, notes that people who were formerly free to move now need visas to enter Slovenia, and that the Western Balkans face the prospect of being 'driven back into an inner ghetto space. This applies of course only to law-abiding citizens, since criminals can walk or bribe their way across these frontiers with little difficulty. The introduction of visa requirements is a stimulus for corruption and criminality, since the borders are unenforceable, and the attempts to install them create incentives for illegal activity, including the trafficking of goods and people.' Emerson's suggestion is that, for a time at least the Balkans should become a visa free zone.

Third, SSR is a holistic approach to providing security for the state and civil society. Reform cannot involve only one agency or element in the security field but must take into account other supporting agencies (such as criminal justice or intelligence agencies) and civil society actors (NGOs and community based groups.) Security is a continuum, both by the threats faced which can range from severe threats to minor annoyances and in the responses by all security actors, which will reflect their respective competences and commitments. Piecemeal SSR is incomplete but, more importantly, inefficient.

The *Guidelines* (below) focus mainly on border guards, customs, veterinarian and phyto-sanitary services, but 'could include Ministries of Interior, Finance, Foreign Affairs, Economy, Defence, Tourism, Environment, Agriculture, Transport, Health, Telecommunications and European Integration' (p. 24). The Ministry of Labour (p. 26) and international and EU processes (Pompidou Group, Budapest Process and the International Police Conference (p. 39) are also mentioned. Considering that 'integrating' the security sector and border management will require interagency working groups based on MoUs, a vast array of interconnections will have to be created to meet EU expectations and achieve IBM.

Even so, the list of possible agencies and groups to be included in an integrated approach leaves out some potential actors. As Hobbing (2005:3) notes, 'the EU CARDS formula, although a strikingly concise and reliable guideline in many respects, is missing one important feature for success, which is the cooperation with the private sector, especially in the transport sector.' The chapter on 'border management' in the proposed OECD handbook on SSR, lists state intelligence agencies and anti-corruption committees, in addition to the other state agencies mentioned in the *Guidelines*; inter-state regional steering groups and policing organizations; community based fora, cross-border peace building committees and non-state vigilante and security forces; as well as private companies providing specialized customs or border security services (Andrew McLean, personal communication). The array of interconnections which have to be organized becomes even wider and more extensive.

Fourth, much of the impetus for SSR come from international sources - countries, regional organizations and NGOs - as well as from domestic aspirations toward more democratic forms of providing security, safety, stability and justice. Countries are faced

with having to deal with the multiple expectations and demands placed on them from the outside. They often have little preparation or capacity to absorb international advice and assistance, especially if advice is conflicting or different goals, models and practices for reform are proposed. The absorption capacity for change is limited for most countries. SSR pushed from the outside works well only when donors coordinate their advice and assistance and when assistance is tailored to the needs and absorption capacities of countries. In addition, international advice and pressures will only be sustained and legitimized if they become part of the political process within each country, if local politically connected stakeholders successfully champion needed reforms.

**Integrated Border Management**

The *Guidelines* (2004?)[2] spell out what IBM means to EU planners as applied, and adjusted to the realities of the Western Balkans. IBM 'seeks to ensure proper in-country and international co-ordination among the various services involved in border management issues, in order to guarantee that borders are managed with maximum effectiveness and efficiency' (p. 11).[3] Three pillars define relevant areas and aspects of coordination and cooperation which have to be addressed: 'intra-service, inter-agency and international cooperation' (p. 16). The pillars are analytical categories but given the 'sometimes atypical State structures or evolving institutional (if not constitutional) arrangements' (p. 16) in the Western Balkans states might not be precisely applicable.

Border management cannot be solved at the borders alone but needs to include the relevant agencies within the countries, at the borders and in other countries to meet the basic 'Schengen' and EU standards for full border services - controls systems must be effective, adjusted to the specifics of risks and threats faced, and based on best practices and experiences taken from reforms in prior accession and candidate countries.

The *Guidelines* are not detailed technical specifications on how to establish IBM systems in the Western Balkans but rather are of a 'strategic nature,' indicating standards and issues which should be taken into account when developing national plans. The *Guidelines* reflect a systems approach to planning and implementation. They stress rationalization, systematization, regularization of relations among agencies in the three pillars, the need to precisely define competencies, efficiency and impact

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[2] The concise history and background to the IBM concept as it was developed in the EU can be found in Hobbing (2005), and the general growth of the EU JHA *acquis* in Apap (2004), Kovács (2002) and in chapters on the EU in Caparini and Marenin (2005).

[3] A somewhat different definition is stated later: the IBM concept 'covers the coordination and cooperation among all relevant authorities and agencies involved in border control, trade facilitation and border region cooperation to establish effective, efficient and integrated border management systems, in order to ensure the common goal of open, but controlled and secure borders' (p. 14).

measures, appropriate administrative procedures, communications and IT systems, legal and regulatory frameworks, the development of human resources and skills, and detailed work plans specifying objectives, milestones and benchmarks, sequencing of activities, time lines, expected outputs and the division of responsibilities for work (p.40). Coordination and cooperation will need to be achieved by MoUs, interagency joint task forces, systematic communications among agencies, routing slips and regular briefings to relevant mid-level managers, all of these mechanisms taking into account the policy approach and structures of National Action Plans, which will also have to be developed.

Among the more specific recommendations of the *Guidelines* are the passing of enabling laws which define agency competencies and authority; the creation of information sharing systems available in real time to all relevant agencies; the promulgation of a set of procedures providing clear and precise guidance to agents on how to work within the integrated system and with other agencies; if possible, joint training and common manuals familiarizing agents with the work and responsibilities of other agencies; and the development of a common MoU form which can be used to establish the lines of authority and communication among border control agencies.

In addition, planning must acknowledge the four-tiered system of the Schengen regime: activities in third countries which will impact border control systems; international border cooperation at three levels (local co-operation between officials at both sides of the border; bi-lateral co-operation between neighbouring states; and multinational co-operation, focusing on border management issues); measures at external borders; and further activities inside the territory of the Schengen states and between Schengen states (p. 18, p. 63).

The *Guidelines* focus on the planning aspects of border management and say little about implementation which, so it seems to be assumed, will proceed without much difficulty or hindrances if planning was detailed and complete enough. There is, as well, no substantive mention of the politics of planning and implementation on the assumption, so it seems again, that rational and well-meaning people will understand why the plans for IBM systems are as they are and will abide by them without considering their own or their reference groups political fortunes. The *Guidelines* are aseptic, almost self-executing, devoid of any notion of human discretion, initiatives and interests. Integration of border control management will be achieved when all the activities which need to be accomplished in order to avoid duplication, waste of resources and efforts, overlapping authority and work, inefficient communication, and ineffective resolution of inevitable disputes about competences and responsibilities for failures. The *Guidelines* are replete with extended and detailed sets of activities which should be undertaken.

Having been critical of the general nature of the *Guidelines*, the need for cooperation among border relevant state agencies and civil society institutions within an IBM

framework is obvious given the challenges faced by the Western Balkan states and, ultimately, the EU which will have to depend on the outer border of the community for protection of its interior AFJS space. As noted, the 'still developing system for managing the EU external borders, consisting of rules, best practices and recommendations are relevant for SAP countries, as they provide for ways to address their operational needs, and will ensure further integration into the EU' (p.15). The basic goals of IBM are legitimate and needed, but have to be considered in the wider contexts of politics, ideologies of control, and security assumptions (Hills, 2006).

The ultimate *organizational goal* of reforms should be, in accord with the Schengen Catalogue, 'specialized, unified, well-trained and fully professional and independent police-like border guard forces. Border Guards should form an independent, centralized unit if possible within the general police structures and have their own budget' (p. 20). These self-standing border guards will become integrated and part of a system of border management, but with distinct competencies and responsibilities.

The ultimate *operational goal* is the proper balance between facilitating the legitimate and legal movement of people and goods and preventing threats and risks to domestic and regional security. Yet how that balance is to be achieved cannot be found in the recommendations of the *Guidelines* for that is a political decision on how to protect security without sacrificing rights, on how to provide easy access for legal activities and prevent illegal ones, and what and who present unacceptable risks and threats and what and who should be given legal access to the *cordon sanitaire* or buffer zone represented by potential accession states to the EU and from there to EU member states (Andreas and Nadelmann, 2006: 182-185). Risks, threats, as well as legal and legitimate access should be defined and these are decisions which only a political system can and should make.[4]

*Ohrid Goals*

The *Way Forward Document* (2003) 'identifies concrete and specific measures necessary to achieve agreed objectives, taking into account some specific requirements in the parts of the region where, for exceptional reasons and on a temporary basis, military units are involved in border control and smuggling interdiction operations during a transitional period (i.e. before full military withdrawal in the framework of security sector reform, and until border control is entirely under the responsibility of specialized professional police services, in accordance with European standards' (p. 1).

The participating Western Balkan countries and the four regional partner organizations

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[4]  For example, in some Western Balkan states, as elsewhere, smuggling is honoured though illegal tradition and economic activity among many people living in border zones. Establishing an effective IBM system will disrupt those activities, deprive people of incomes, and will be resisted by evasion, the corruption of border guards, paper fraud, and political protests. Should smuggling be allowed to continue if it is considered 'harmless' and traditional?

(NATO, the EU, the OSCE and the Stability Pact) committed themselves to developing national regional instruments (laws, regulations and MoUs) for moving toward IBM systems. Countries, or rather and oddly enough their capitals, committed themselves to work on specific measures set out in phased time lines for the 2004-2006 period. Regional organizations agreed to assist in drafting regional cooperation instruments and provide training and financing for police and border guards. One NGO, the Geneva Centre for the Democratic Control of Armed Forces (DCAF) agreed to subsidize regional workshops, training courses delivered on-site and through a virtual border police academy, and help in the creation of a group of experts in each country and regionally who can assist in developing appropriate IBM systems and assess progress toward their achievement.

## The Security Conditions of Western Balkan States

The need for IBM is based on assessments of risks and threats to the security of the region and countries. Risks come in different guises. In the Western Balkans, as the country papers note, threats to security have arisen from different sources:

- criminalized regimes, working with organized crime groups to evade border controls on the importation and through trafficking of goods, traffic from which they skim massive profits;
- the normal smuggling activities by groups and people for profit or livelihood;
- the existence of the 'Balkan route,' a collective label for trafficking routes used to illegally transport people and goods across the Balkans into Western Europe and 'Schengenland.' Extensive human trafficking occurs along the Balkan route and, of course, if people can be trafficked or smuggled for work or sex so can terrorists;
- the trafficking of goods (cars, arms) from the EU into the Balkans; and
- identity group based violence along borders which are artificial and still unsettled. Violence is perceived as one means which can affect the final delimitation and demarcation of borders in the region.

The borders of the EU now lie along Slovenia's southern and Hungary's western and southern borders, with potential accession states ready to join the EU on a staggered schedule. Two types of borders exist and so do threats to the integrity of border controls - EU borders which must be safe and secure. The buffer zone borders which should be safe and secure but need not be as tightly controlled as the EU borders are the second line of defence.

Complicating security issues have been political instability, wars and violence which ensued following the collapse of Yugoslavia. Regional instability, since it threatens the security of the EU and its allies - by its frequent inter-ethnic violence and by the concomitant inability or unwillingness by governments to deal with civil strife, violence and the criminal trafficking of people, drugs, arms or nuclear goods - in turn has led to outside interventions to stop violence and bloodshed and help create

conditions conducive to political stability and democratic change. Many of the security forces of the states in the region now are either under the direct control of outsiders or heavily influenced in their restructuring and recreation by external advice and assistance. The Ohrid Document is replete with examples of external involvement, as are the country papers.

In practice, security threats in the Balkans are accordingly defined both by the needs of external actors and the wishes of domestic political and security leaders. What matters and what should have priority in security policies may be perceived quite differently by all actors. For domestic actors and civil society, personal insecurities and protection against normal and organized crime and the corrupt depredations of security forces would rank high. For external actors, stopping the trafficking of threats into their countries is what matters most - creating politically stable countries and effective IBM systems are a means to that goal.

**Country Papers**

Common themes run though the six country papers. The papers on Serbia and Montenegro list four general goals which capture the basic thrust of reforms - the four Ds: decentralization, depolitization, decriminalization and demilitarization. Though not specifically stated in the other papers or in the justifications for laws passed by legislatures, the four Ds are common goals in all countries. These goals reflect both the wish to move away from former models of organizing security sector agencies, dating back to communist rule and successor authoritarian and personality based politics and governments, and the need to meet EU accession standards which define professional conduct and express a preference for more democratic organizational arrangements, such as community and local, but limited, involvement in deciding on policies and priorities in the security field.

Centralization undermines the capacity of the public and communities to participate in decision-making. Criminalization, or the participation of government personnel and security agencies in transnational crime and the oppression of political opposition groups, is by definition undemocratic. Militarization of the police and border control agencies infuses an occupational culture and set of working norms in control agencies which are antithetical to democratic performance. Politicization converts agencies of the state, which are expected to work for the general public good, into instruments of partisan and personal rule and subverts the rule of law and the protection of basic human rights and human security. It is little wonder that, from the perspective of international observers and advisors who also and often have substantial authority and power in these post-conflict states, the four Ds are seen as minimal prerequisites for further reforms. The four Ds are rejected by local leaders as they have often experienced the arbitrary and coercive actions of security agencies of former undemocratic regimes themselves and wish to avoid creating similar policies which will only alienate the public and delegitimize the government and further reforms, as

well as undermine the international financial and technological support which is essential for sustainable reform programs. All papers mention the firm expectations which are held by local leaders that the international community will step in when resources, skills and technology are not available at the local and state levels.

Second, the dynamics of local politics consistently constrain and divert policy reforms away from goals stated in laws and policy directives, lead to tensions among different governmental agencies within and outside the security sector over basic decisions on the mission, structures, sizes, strategies and operational policies of security sector agencies, and frequently stymie attempts to enhance transparency and accountability within agencies and to outside bodies. It is not surprising that in conditions of massive political upheaval following the violent dissolution of the Yugoslavia conflict the question of how to structure security and control of the instruments of coercion and security should become a political concern, irrespective of the specific security needs of new countries.

Third, in all countries significant progress has been made on paper, in passing necessary laws which establish and define the authority for actions and the legal constraints under which security agencies need to operate. Each paper details the long list of laws on police and border guards, the protection of privacy, public and media access to information, interagency coordination and cooperation, or accountability and oversight which have been passed by the legislatures. In addition, all countries have developed numerous policy documents on strategies and goals for the security sector. One can perceive the influence of international regime norms, regional advisors and NGO lobbying in all these documents and laws.

Fourth, major security sector reorganization has occurred in all countries. However, some of the four Ds seem to be more important, or easier to achieve, than others. Demilitarization of the police and border guards is a common goal. The state police force, concerned with intelligence and state security, has been separated from the military and so have the conventional police and boarder guards, or at least, the laws have been written to achieve that goal. Depolitization, on the other hand, is much more difficult in conditions of political instability. The temptation to use the police and other coercive and intelligence agencies to promote and protect partisan goals, to be winners rather than losers, is an urge that is hard to resist.

As a whole, the country studies provide a wealth of information on the current state of legislation, organizational arrangements, future plans and accountability mechanisms.

**Albania**

This study spells out in great detail legislative changes concerning border control and policing, on oversight and accountability, as well as some of the limitations on transparency which are linked to national security notions, which have been introduced

and planned. Yet the study concludes that 'one cannot speak of substantial changes in the 'normal practices' of the Border Police so far as transparency and accountability of police forces are concerned' (p. 9). The tradition of centralized executive government control continues and Parliament lacks the will and capacity to act independently on security issues, despite assistance from external NGOs (such as DCAF) (p. 10). Nor is there an 'inherited and institutionalized Albanian thought or tradition ... in developing national police policies.' In consequence, much of the planning has been based on models and examples from other nations which often promote the 'model they know best' (p. 12). Existing local research institutions are little consulted, as Albania lacks the 'civic culture to make use of research products in improving performance and reform' (p. 13).

The authoritarian history and the tradition of centralized executive control and secrecy hamper the indigenous developments of national plans, policies and organizational reforms. Even assessments of security threats or requirements for police reforms are made by international observers and accepted within, without public debate or the inclusion of security agencies in determining needed changes. In sum, the lack of change in the political system systematically hampers reform efforts in the security sector. Well intended and constructed laws have been passed, but implementation and progress are lacking.

**Macedonia**

Macedonia, since its creation, has had to cope with the 'sometimes hostile attitudes of neighbouring countries' (especially in relation to the status of Kosovo and the borders with Albania), has been 'infected with ethnic rather than ideological policy orientation[s],' and security agencies, the police and army, 'given their initial autonomous roles in the newly sovereign state ... [have failed] to support and facilitate the process of institution and state building (p. 2). The prospects for SSR, hence, are a 'long way ahead' (p. 4).

SSR has been stymied by the lack of effective government institutions which are still in the process of being created, by the need to 'overcome the misbalanced relations between malformed security threats and risks and post-Cold War security/defence capabilities' (p. 4), the continued politicization of policing (p. 10), as well as the vague and imprecise legal and constitutional delimitations of the powers and authorities of branches of government. SSR and state-building are occurring simultaneously and with initial harmful effects for both processes. Only recently, since 2003, has a more systematic approach to SSR and IBM been possible and legislation been passed to implement changes. Police and border guards have been moved from the military and state control of all Macedonian borders with its neighbours was achieved in 2005.

The study lists the ambitious and extremely detailed plans for IBM and coordination which have been written as well as some of the organizational changes and structural

adjustments which have been made. Nonetheless, gaps remain. What is set out in plans by the authorities and their international advisors appears to represent an extremely complicated system of boards, plans, commitments and regulations. It is unclear how such a system would be created.

This is a nicely written analytical study of reforms efforts. It concludes that 'political interests and influence on the reform process,' reflecting a centralized, top-down orientation towards reform, have focused planning and implementation on state security and have neglected the voice of communities and their security concerns. 'The main goal of these reforms is [and should be] to provide more secure borders but also more secure communities' (p. 3).

**Serbia**

Serbia suffers from its history, as do the other Western Balkan states, but possibly more so. The legacy of conflicts about ethnic identities and territory, the unresolved status of Kosovo, internal instability and political violence (for example, the involvement of the JSO, in the assassination of Prime Minister Zoran Djindjic)), criminalized and politicized policing, military and border control systems bedevil reforms and hampers even the passing of needed legislation. A working group which brought together experts from the police, NGOs, judiciary and legislature agreed on a Vision Document in 2003 and a Projects Catalogue consisting of 174 needed reforms to rectify a long list of defects and issues, including: 'links between the state and MoI officials with organized crime, outdated legislation, centralization, militarised systems, politicization, the non-existence of parliamentary and internal oversight, a lack of professional attitudes, a lack of talented managers, an obsolete selection of recruits, unrepresentative police services, etc.,' (p. 8, note 10). Even though years have passed since the vision document was written, Serbia does not yet 'have an overall police strategy or National Security Strategy' (p. 8).

The study details the structure of the Serbian security sector since 1990 and proposed changes, those following largely OSCE documents. There has been much international input into SSR, especially into external and internal oversight mechanisms, relations to the media and civil society, the introduction of community policing as the dominant strategy (to break 'the public image of a police officer as an untouchable figure in a semi-military combat uniform,' p. 21), as well as stress on fighting organized crime which had grown powerful under and with the cooperation of the Milošević regime.

The introduction of IBM notions has been complicated by the federation of Serbia with Montenegro, now dissolved by a vote in Montenegro. Serbia was a late starter in developing its own border control system, as border control was typically exercised by the federal border system. However, laws, plans and policies are being made.

**Montenegro**

Montenegro came into existence in early 2006 by a narrow independence vote, which dissolved its confederate association with Serbia. It is a small ethnically and religiously diverse country, with little history of separate and autonomous state institutions. Its pre-independence economy consisted of a weak formal sector, a 'vast grey economy, omnipresent black market, state-driven hyperinflation, state-sponsored smuggling, state-backed pyramidal schemes, an inefficient fiscal system, almost complete absence of legitimate foreign investment and tycoonisation' (p. 2) - all characteristics which now limit the state's capacity for reforms. Politics has been dominated by factions organized around political leaders who have used, when in power, the police and security agencies as 'tools for oppression and potential combat' (p. 3). The OSCE's Monk Report 'characterized the police as oversized, predominantly male, overwhelmingly monoethnic, corrupt, politicized, inadequately trained, reactive and young' (p. 5).

The new government has begun to pass laws for the security sector which reflect European and international standards but has little capacity to implement them. Implementation has been slowed, as well, by factional conflicts among leaders, each assessing proposed reforms in terms of personal political consequences. The study details the content of new laws and changes in the organizational structure of the security sector which, on paper, look quite impressive. In practice, crime rates are fairly low but organized trans-border crime flourishes, both in terms of human trafficking into the EU and the importation of stolen cars into Montenegro. The author of the study suggests that there is little capacity for effective policing in the areas of forensics, intelligence, investigations, technology and witness protection. Evidence for high profile crimes is still processed elsewhere, in Serbia, Slovenia or Germany. The police need to 'ensure organizational consolidation' and develop a 'new police identity, mission, goals and guiding principles' (p. 26). External oversight, a major European standard, is 'still declaratory but not fully practiced' (p. 24). Reforms in policing still have a long way to go.

IBM also presents a formidable challenge, despite a fairly small international border. The first priority is the demilitarization of border control. An IBM strategy was adopted in early 2006 by the government, making it much too early to assess how well IBM could and would be managed.

**Bosnia-Herzegovina**

As with other countries in the region, the establishment of a State Border Service (SBS) in 2000, under pressure from the UN mission and the High Representative, was resisted by many state and police officials who have made a lucrative living moonlighting as smugglers at the porous borders of the state. The establishment of SBS as an effective border control force in the 'face of well organized and politically well connected

smuggling operations' (p. 3) is a continuous struggle. In 2006, the SBS was renamed the Border Police BIH.

Numerous laws, as approved by the EUPM to BIH, spell out the accountability and transparency processes which are required from the Border Police with certain limitations related to strategic information. A number of research papers on the SBS have been published by academic institutions and private organizations, as have opinion polls. Such reports have been used by the government to set out plans, priorities and processes needed to enhance the effectiveness of the Border Police. Yet much of the responsibility to improve the border service rests with the EUPM, which 'definitely should stay longer and work with representatives of SBS in the future. ... [A] lot still needs to be done' (p.13).

**Croatia**

The country study lays out the extensive set of documents, plans, regulations and directives on border management and the police which have been passed since Croatia declared its independence and its hope to join the EU in the next rounds of accessions. On paper, progress towards an IBM system seems well on its way. Requirements for accountability and transparency are clearly stated as are obligations for security agencies. Reform efforts have been extensively supported by international aid and advice. Existing strategic plans are in the process of implementation over the 2005-2009 period.

A number of academic and private research efforts on events in Croatia, its international relations and internal security reforms have been undertaken, with the assistance of prominent European institutions, such as DCAF and the Marshall Centre in Germany. The influence of domestic research institutions on planning and policy making, so far, occurs 'more in the informal preparatory phase in the decision making process, than in some formal way... At the moment, public policy institutes, academics and independent experts are informally accepted as provisional advice-givers in security and military issues, but there is no feasible system of permanent consultation… Decision-makers at the political level decide defence requirements without public debate.' Yet there is an internal debate within security services on plans and priorities, and experts from within the services participate 'in risk assessment and planning.'

Croatian officials interact extensively with international officials and organizations in the security field. The dual goals are to gain familiarity with European standards related to SSR and IBM, as well as to present Croatia as a willing partner in European security matters as a supporter of EU standards. In Croatia, in contrast to other Western Balkans states, the legislature on its own authority, rather than delegation or demand from the executive, 'can amend the strategic objectives of Border Management (reformulate, introduce new objectives, delete objectives), to vary defence expenditures, to revise

defence Border Management missions, etc.'

**Concluding Thoughts**

Overall and taken together, the country studies rectify some of the weaknesses of the *Guidelines*, by noting, unavoidably so, the political realities of reform. As such, the country studies are a healthy corrective to bureaucratic planning processes which are promoted by international and domestic policy makers. The studies move beyond, even as they extensively catalogue legal changes, the notion that changing law and rhetoric will suffice as motivators for change, and they also stress the argument that building organizations should be the fundamental goal of SSR and IBM.

The biggest weakness related to IBM pointed out in the country studies is the lack of implementation capacity, either because little capacity (skills, knowledge, technology, finances) exists at all and has to be substituted by international advice and assistance, or because politics makes implementation difficult. So far, by the standards and goals stated in the *Guidelines* and the *Ohrid Document,* the move toward IBM systems is, at best, in its early stages. In a sense, the easier part - writing the laws - has been achieved. The harder work - carrying plans into action – is pending.

At the same time, the localization of EU standards and international norms seems to be largely pragmatic, ad hoc, instrumentalist, a necessary means to achieving EU acceptance and membership, rather than the principled adoption of new democratic norms, goals and practices. If this is correct, and not a misreading of the country studies, then the politics and mentalities of the political and security agency leaders and, possibly, the civil society actors of the regional countries will have to change alongside, with or preceding SSR. That will not be easy.

**Recommendations**

International cooperation and assistance would be useful for all countries in three areas, which seem least susceptible to being perceived as a challenge or interference in the sovereign affairs of independent states:[5]
  ➢ Continuing support for the creation of research centres which can evaluate and assess progress and obstacles to implementation. These can form the core of civil society efforts to counterbalance state claims about security needs and policies and help in enhancing transparency and accountability;
  ➢ A compilation of best practices learned not just from the EU experience but from efforts to reform security sectors in Balkan states. Lessons are more

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[5]  I do not suggest what to do about politics because outside advice and assistance on changing the style and character of politics is not likely to have much impact. Politics will change according to its internal dynamics

applicable if drawn from similar contexts;

➢ Support for training and education, especially of mid-level managers in new border control agencies and systems. Leaders of security agencies will always be politically astute if they are to survive, and the 'street' will need the technical skills to do their job correctly. Mid-level managers provide the heart and soul of any organization, shape its organizational dynamics and culture, are indispensable information transmission belts between the 'street' and the chief's office and, accordingly, are the main implementers of change given their close contact with the street. In a pinch, they can be whistle blowers.

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# Border Police Reform in the Republic of Albania

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This paper aims to describe how the executive direction and legislative oversight of border management function in Albania. It is based on a study of constitutional dispositions and the main laws that regulate the border services, as well as on interviews conducted with experts at the Ministry of Interior. Other issues discussed are accountability and transparency of border control, management and international cooperation.

## A. Basic Defence Management Laws and Regulations

## 1. Government Structure, Reporting and Management Relationships

The Constitution of the Republic of Albania was approved by Law No. 8417 on 21 October 1998. It defines the Albanian state as a parliamentary republic. Albania's Parliament is elected every four years. The Parliament approves laws on the organization and functioning of the institutions as foreseen by the Constitution. No explicit reference to the Border Police is made in the Constitution.

*Legal Framework for the Control and Management of the Border*

There are specific laws that regulate the control and management of the border of Republic of Albania. These laws define the border and determine the duties of each of the state entities that have responsibility in this respect. Laws regulate the terms of reference, mission statements, structures and obligations for all governmental entities involved in formulating, implementing, reporting and overseeing defence policies.

- ▪ Law No. 8771, dated 19.04.2001 'On the State Border of Albania.'

The law defines the integrity and sovereignty of the territory of Republic of Albania,[1] the fact that the state boundary of Albania is determined through international acts and bilateral international acts signed by Albanian State.[2] It describes the specific signs that are used to demarcate the boundary on the ground and in water (sea, lakes and rivers). It also describes the border line of water, underground and air space in Albania.[3]

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[1] Law No. 8771, dated 19.04.2001 'On the State Border of Albania,' Article 1, paragraph 2; Article 4
[2] Ibid. Article 1.
[3] Ibid. Articles 3-4.

- Law No. 8772, dated 19.04.2001 'On guarding and controlling of the state border of Republic of Albania.'

The law defines the rules of guarding and controlling the state border of the Republic of Albania; rules for the movement of Albanian citizens, foreigners and different transport through the border; the state structure that guarantees the implementation of these rules.[4] The Border Police is responsible for the guarding and control of the border, and the legal passing of the border. The Border Police is part of the State Police, but has its own structure and personnel.[5]

- Law No. 8553 dated 25.11.1999 'On State Police.'

This law regulates the status of the State Police, its institutional duties, organization, attributes, symbols, etc. Among its institutional duties, the law states that the police 'control the state borders of Republic of Albania.'[6] The Border Police is a separate department in the General Directory of Police.[7] (A new law on the State Police, that includes the Border Police, has been drafted and is expected to be approved within this year).

- Law No. 8875, dated 04.04.2002, 'On Albanian Coast Guard.'

This law regulates the functioning of the Coast Guard of Republic of Albania, as part of the Armed Forces and under the authority of the Minister of Defence.

- Law No. 8492, dated 27.05.1999, 'On Foreigners.'

This law regulates the entry of foreign citizens in Albania, their status, rights and obligations during their stay in the country.

- Law No. 9509, dated 03.04.2006 'On Declaring the Moratorium on Motor Vehicles of the Republic of Albania.'

This law declares a three-year moratorium on certain categories of motor boats in the sea of Albania.


**Laws of a general nature with direct application to Border Management Governance**


The main institutions that formulate, implement, report and oversee police policies are the Parliamentary Commission on National Security, the Ministry of Interior and the Ministry of Defence for the Coast Guard. As the Border Police is part of the State

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[4] Law No. 8772, dated 19.04.2001 'On guarding and controlling of the State border of Republic of Albania,' Article 1
[5] Ibid. Article 3
[6] Law No. 8553 dated 25.11.1999 'On State Police,' Article 3, paragraph (ç)
[7] Ibid. Article 12, paragraph 2.

Police, the general legal framework that applies to the State Police is also applicable to the Border Police. As the Coast Guard is part of the Armed Forces, the general legal framework that applies to the Armed Forces, is also applicable to the Coast Guard.

General laws that regulate the working of the administration are applicable to the functioning of the Ministry of Interior. So, the personnel of that ministry are subject to the laws on information that guarantee the right of citizens to be informed about official documents,[8] with the exception of classified documents,[9] and which guarantee the protection of personal information.[10] The classification of documents not for immediate public release is the competence of the President, the Prime Minister and other directors authorized by the Prime Minister in the State Register of Classified Information.[11]

The budget for the Border Police is part of the budget for the State Police and the Ministry of Interior. The budget for the Coast Guard is a separate item in the budget for the Ministry of Defence.[12] These budgets are drafted by applying the same rules established for the state budget.[13] The Parliament approves the state budget for the next year,[14] in which the expenditure for the Ministry of Interior, State Police and Border Police as part of the latter are included. The laws of procurement for other state institutions also apply to the Ministry of Interior.[15] In cases when the Council of Ministers deems that procurement involves issues of national security, a separate procedure is determined.

The status of Border Police officers is the same as that of police officers and is regulated by Law No. 8553. The laws for the Border Police's supporting and administrative staff are applicable to the civil servants,[16] as specified by the Work Code of the Republic of Albania.[17] The status of the Coast Guard is the same as the status of the military.

The description of the abovementioned legislation does not necessarily refer to its applicability. The Border Police is far from a consolidated structure of the Albanian State Police. Although increased attention is being paid by the international community to the enforcement of effective Border Police law through training and workshops, the

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[8] Law No. 8503, dated 30.06.1999 'On the Right to Information about Official Documents'
[9] Law No. 8457, dated 11.02.1999 'On Information Classified 'State Secrets''
[10] Law No. 8517, dated 22.07.1999 'On the Protection of Personal Data'
[11] Law No. 8457, dated 11.02.1999, Article 4
[12] Law No. 8875, dated 04.04. 2002, 'On Albanian Coast Guard', Article 8, paragraph 1
[13] Law No. 8379, dated 29.07.1998 'On Drafting and Implementing of the State Budget of the Republic of Albania'
[14] For example, Law No. 9464, dated 28.12.2005 'On the State Budget for Year 2006'
[15] Law No. 7971, dated 26.07.1995, 'On Public Procurement'
[16] Law No. 8549, dated 11.11.1999, 'On the Status of Civil Servants'
[17] Law No. 8553 dated 25.11.1999 'On State Police,' Article 15, paragraph 1.

institution is undergoing constant personnel changes from the top down. The directors of the Border Police change every one to two years and are often assigned to jobs unrelated to border management. As explained above, the Border Police Department until now has been just one department of the State Police. It is my opinion that it has been only in recent years that the authorities have put greater emphasis on Border Police issues after gaining a better understanding of the role of effective border management in overcoming the country's integration challenges. The draft Law of the State Police is the first-ever effort undertaken at the national and local level to legally enhance the capacities of the Border Police through relative independence in structure and functioning.

**Border Management Services**

The Border Police (in Albanian: *Policia Kufitare*) is the main border guarding force. The key law that refers solely to the Border Police is Law No. 8772, dated 19.04.2001 'On guarding and controlling of the state border of Republic of Albania.'

The status of the Border Police does not change even in times of war, during a state of emergency or natural disaster. In these cases, the Border Police cooperate with the structures of the Armed Forces.[18]

Besides the Border Police, border guarding functions are implemented by the Coast Guard (in Albanian: *Roja Bregdetare*), which is part of the Armed Forces operating under the civil authority of the Ministry of Defence. The contradictions in the authority of the naval border forces are being addressed (see below).

Political documents which define the role of Border Management within defence and security policy are as follows: the National Security Strategy of the Republic of Albania 2003-2006, which was approved by Parliament in Law No. 9322, dated 25.11.2004 'On Approving the National Security Strategy of Republic of Albania.' The Law mentions that 'the control and integrated management of borders remains a priority in the function of the prevention of organized crime, terrorism and trafficking.'[19]

Publication of the border management planning document was the decision of the Council of Ministers. Law No. 118, dated 27.02.2003, 'On Border Control and Its Integrated Management 2003-2006,' includes the following information: the background and history (historic data, demarcation of the border, creation of the Border

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[18] Law No. 8772, dated 19.04.2001 'On guarding and controlling of the state border of Republic of Albania,' Article 14
[19] National Security Strategy of Republic of Albania 2003-2006, Part III, Section VII, Point 49.

Police, etc.); an analysis of inter-border crime and trafficking; institutional composition, legal framework and personnel; external environment; institutional cooperation; international cooperation, including the Integrated Border Management of the CARDS program; vision, goals and objectives of the strategy, and action plans.

**Coverage and Co-ordination**

Border Police – 'The Border Police is responsible for the control of legal border crossing and for guarding the border. It is a constitutive part of the State Police. The Activity of the Border Police is based on the Constitution, in the law for the State Police, in international acts and agreements that regulate border issues and emigration, in which our state is part, in this law and other legal provisions. The Border Police has its own structure and personnel, which are approved by the Minister of Public Order (Interior).'[20] Among the responsibilities of the Border Police, the most important ones are:

1. Overviews the border situation;
2. Periodically controls the border signs;
3. Implements measures for preventing illegal border crossing;
4. Accomplishes legal procedures for the verification, discovery, documentation and arrest of the persons who commit illegal acts or blocks the transport means that enter the border with illegal papers.
5. Implements the international conventions and bilateral and multilateral agreements for the cross-border movement of people and goods;
6. Issues entry visas and controls the validity of documents;
7. Realizes meetings with counterparts in neighbouring and other countries for the implementation of agreements on the exchange of information;
8. Implements the dispositions concerning the asylum-seekers.[21]

Coast Guard – 'The aim of the creation of the Coast Guard is the implementation of legality at sea.[22] The Coast Guard is subordinate to the Ministry of Defence and is part of naval districts, which are subordinate to the Command of Naval Forces. The Coast Guard co-acts with state or private institutions and subjects that have interests in the sea.'[23] The main functions of the Coast Guard in relation to border control are:

1. Prevention and exertion of control on the illegal border passing of navigating vehicles, of goods and people;

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[20] Law No. 8772, dated 19.04.2001 'On guarding and controlling of the state border of Republic of Albania,' Article 3
[21] Ibid. Article 4.
[22] Law No. 8875, dated 04.04. 2002, 'On Albanian Coast Guard', Article 1
[23] Ibid. Article 3, paragraphs 1-2

2. In internal waters, the Coast Guard offers help and cooperates with the Border Police, with captains, ports and other state institutions.[24]

The main changes involving the Border Police relate to the fact that its role has been defined not as a military one but as a civilian one. In 1991, due to rapid internal change, instability and destabilization in ex-Yugoslavia, border forces were the responsibility of the Ministry of Defence. In 1993, together with the consolidation of the new democratic system in the country, border forces came under the authority of the Ministry of Public Order (presently, the Ministry of Interior) and have remained so until now. Under the draft Law of the State Police which is scheduled for approval in 2006, the Border Police will remain part of the State Police but will gain more autonomy within the Police Force in terms of its organizational structure (see below).

The Coast Guard was created in 2002. It is part of the Armed Forces and its duties include the sea border control.

**Accountability**

*To the executive*

The Border Police is part of the State Police of Albania, although it has its own personnel and internal organization structure. The General Directory of Border Police is accountable to the General Director of the State Police and, through the latter, to the Minister of Interior. The budget for the Border Police is included in the budget of the State Police. The Minister is the highest authority who, within the general program of the Council of Ministers, exerts political control on the State Police. The Minister represents the State Police in relation to other constitutional institutions within the country and in bilateral and multilateral foreign relations.

At present, a draft law on the State Police is being developed and it is expected to be approved in 2006 by the Council of Ministers and Parliament. It is intended to be a comprehensive law that covers the structure, functions of separate departments, ranks, relations with the public and other institutions, management of personnel, disciplinary procedures, evaluation, employment of police personnel, competences, etc. The new legislation clearly foresees a well-defined split of competences between the State Police and the Ministry of Interior. It also separates the budget of the State Police from that of the Minister of Interior. The General Police Director will be appointed by the President of the Republic based on proposal of the Prime Minister. He/She clearly becomes the only responsible official of police operations.

The new draft law states that the Border and Migration Police will remain a constitutive part of the State Police, but will gain greater autonomy and more decentralized power to take decisions. Its structure will have its own District Directories of the Border

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[24] Ibid. Article 5, paragraphs 1 (c), 2

Police that will be determined by the Council of Ministers, as well as separate commissariats of the Border and Migration Police. The Border Police cannot evade its obligations to the executive control.

The Coast Guard is part of the naval districts and it is under the command of the Commander of Naval Forces. The commander of the Naval Forces is responsible for the military readiness and operational direction of the force.[25] The commander reports to the Chief of General Staff or directly to the Minister of Defence.[26] As part of the Armed Forces, the Coast Guard is under the military discipline of the executive control and authority and, as such, cannot evade its obligations.

In recent times, within the specific reform process of the State Police and of the security forces in general, the most important change has been the transfer of border control from the Ministry of Defence to the Ministry of Interior. This is an ongoing process and the last phase is taking place with the civilian control and command of the Border Guard, within the Integrated Border Management regulations supported by EU. In terms of the present arrangement, police officers are stationed on board ships of the Coast Guard and they have the authority to exert civilian control over operations.

In general, border control arrangements have worked in practice. However, in order to improve the functioning of the Border Police and to bring it in line with EU requirements, organizational changes are anticipated. Civilian control of the Coast Guard is an issue of major concern. According to EU standards, the present arrangement of an on board police officer is unacceptable. In a speech made earlier this year, the representative of the EU's delegation to Albania recommended a possible solution in the transfer of the operational command of the Coast Guard from the Ministry of Defence to the Ministry of Interior.[27]

*To elected representatives*
The State Police Force is answerable to legislature, through the various parliamentary committees that oversee the executive power. The State Police is made accountable, through the Minister of Interior, to the Parliamentary Commission for National Security. The Coast Guard is accountable to the same parliamentary commission, through the Minister of Defence. A few years ago, the Parliamentary Commission on Public Order and the State Intelligence Service oversaw the activities of the State Police and the Parliamentary Commission on Defence oversaw the activities of the Armed Forces. The inclusion of both commissions in one, the Parliamentary

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[25] Law No. 8671, dated 26.10.2000, 'On Powers and Authorities of the Commanding and Strategic Direction of the Armed Forces of the Republic of Albania', Article 35
[26] Ibid. Article 36.
[27] Joachim Tasso Vilallonga, Justice and Home Affairs Coordinator in the Delegation of European Commission to Albania. Speech at the conference: 'An Albanian Agenda for Regional Security,' Tirana, 7-8 March 2006

Commission for National Security, means that both the Border Police and the Coast Guard are answerable at the same instance to Parliament. The parliamentary commission has the right to investigate the institutions subject to the Ministers, which include the various police forces.

*To other institutions*

- Cases of legal violations by the Border Police may appear before the courts. The officers of the Coast Guard are subject to military courts. The Ombudsman also open cases against the Border Police and the Coast Guard. The Ombudsman may investigate the cases even based on media reports.

- Internal boards of accountability in State Police structures control the operational and financial management of police structures. Internal boards are rather centralised institutions. The Internal Control Services operates under the direct authority of the Minister of Interior and reports all cases of abuse of power by police forces directly to the Minister. In each local police department, there is an Internal Control Services' inspector working under the direct responsibility of the central authority.

- The local governments do not have specific powers over the Border Police or Coast Guard. Whenever the need arises, they can cooperate with the border guard structures.

The right to information is guaranteed by Article 23 of the Constitution. In compliance with this article, Parliament approved Law No. 8503, dated 30.06.1999, 'On the Right of Information about Official Documents.' Although the law makes no explicit mentioning of the police, it does apply to the police force. The Directory of Public Relations and Information, working within the Ministry of Interior, regulates communications with the media and the public. The State Police has another such directory and the 12 District Police Directories located throughout the country include the office for public relations and information, which is accountable to the Police Director. This does not mean that, in practice, laws are obeyed and relations with the public or the media run smoothly in this respect. Police officers frequently refrain from revealing to the public information that they are permitted by law to disclose, without prior consent from their superiors. No separate structure for relations with the public and the media exists within the structure of the Border Police. Communication with the public is carried out though the public relations departments of the State Police and the Ministry of Interior as well as the public relations offices in the various police districts. If questions concerning the work of the Border Police are raised in the press, the authorities acknowledge the right of journalists to protect their sources.

The media regularly reports on the activities of the State Police, including the Border Police and it seems that the police authorities as well as those at the Ministry of Interior privilege media coverage of police actions. However, the media is for the most part

satisfied in transmitting police press reports and only occasionally applies investigative journalism to issues concerning the police, mostly on matters of corruption.

There are no polls dedicated to the public's opinion of to the Border Police, but inferences can be made from various civil society projects. In summer 2003, the Institute for Democracy and Mediation in Tirana together with the Euro-Balkan Institute in Skopje conducted a survey in the border districts between Albania and Macedonia in the framework of a joint project titled 'Cross-Border Confidence Building between Albania and Macedonia.' The questionnaire included questions about the performance of Border Police in preventing border incidents. The level of public satisfaction with the Border Police varied from district to district.

**Codes and Conventions**

-        Council of Europe (e.g. 1979 Council of Europe Declaration on the Police)
-        OSCE (e.g. 1994 Code of Conduct on Politico-Military Aspects of Security)
-        Europol (e.g. 1995 Europol Convention)
-        Interpol (e.g. 1999 Interpol Seoul Declaration)
-        European Convention on Human Rights.

Although the State Police has subscribed to the above conventions and regulations, the extent to which they are obeyed and have influenced the work of police *inside* the country is unclear. It seems that the political elite and the police authorities are willing to sign international agreements and, especially, requirements by the EU in the framework of the accession process, but most of these codes and conventions are hardly known by officers at any level. There are no reports or sufficient data to judge on the extent international co-operation between security services and border management agencies affect the domestic accountability of the Border Police. The fact is that the law permits the Border Police to organize meetings with neighbouring Border Police for the exchange of information and for duties related to the joint border. Such initiatives have been encouraged also by civil society for the benefit of border community security and cross-border trust building. Albania is a member of international agencies and conventions associated with border control, such as the SECI Centre, FRONTEX, Interpol and Europol.

**Transparency**

*Domestic transparency: dimensions*

All police forces are obliged by law to make information available to elected representatives. This obligation is determined as a general principle in the Constitution and in legislation about the organization and functioning of police services. There are no legal acts stating that these services have no such obligation.

Information is available and made public for all citizens. Most of the institutions have websites but they are all published in the official gazette. Information on *budgets* is made available, the material (a) contain detail covering what money is spent *on* (inputs) and what funds are used *for* (outputs) or (b) provide only an abbreviated statement of money requested? The public can receive information on allocated budgets for almost all items except for specific operations, which might need special authorization. The budget is most often made public in general terms according to the nature of operations.

Law No. 8457, dated 11.02.1999 'On Information Classified 'State Secret'' is the basic official document for assessing public availability for operations and the budget. The classification of documents which are not for immediate public release is the competence of the President, the Prime Minister and other directors authorized by the Prime Minister in the State Register of Classified Information. The law regulates the extent and the procedures that make possible the partial or total disclosure of a document to certain categories of state employees or the general public. Information about the *strategic outlook* and planning of services is made public in general terms, most often when it is under scrutiny. Reports of activities are mostly published for the State Police which enjoy also the highest public visibility. Policy statements are normally made public when the agency is under scrutiny, otherwise it may take place on special occasions.

*International transparency*

Albania's subscription to different international conventions and codes of conduct such as the UN Resolution: Code of Conduct for law-enforcing officers, Council of Europe Police Code of Conduct, the OSCE 1994 Code of Conduct on Politico-Military Aspects of Security, Europol Convention, Interpol Seoul Declaration, and the European Convention on Human Rights imposes transparency obligations, but they normally are respected in bilateral exchanges of communication. This is especially the case when requests are set forth by the abovementioned organization in relation to relevant institutions of the country. It should be stressed that it is a widely-accepted fact that subscription to such legislation or its approval by the Albanian Parliament does not imply any additional local capacity to its implementation. Inadequate capacities, institutional instability and a lack of public responsibility in transparency in general contribute to a lack of compliance with these international conventions or codes of conduct.

In the case of international co-operation between police forces and other internal security forces, domestic transparency is limited to pre-approved declarations or statements regarding cooperation of a bi-lateral or multilateral character. Information on domestic police activities involving international operations becomes public after the operations have ended. The level of information regarding these kinds of operations is made somewhat public and the mentioning of international actors involved is

considered by the relevant authorities as a means of enhancing the credibility of domestic operations or evidence that Albanian police agencies are a credible partner of international cooperation.

**Recent changes 2004/5 and general appeal**

As with other departments of the State Police, one cannot speak of substantial changes to the 'normal practices' of Border Police to date as far as the transparency and accountability of police forces are concerned. Changes are mostly associated with the scrutiny displayed by the Border Police towards certain categories of people entering Albania and to better technical devises employed at some border entry points for controlling the passing of people and goods. The international programs of ICITAP and PAMECA are assisting technically the capacities of the Border Police. ICITAP leads the TIMS program which intends to significantly improve information technology and networking capacities while PAMECA is mostly committed to raising the capacities of integrated border management. DCAF is also partnering with the Albanian Department of Border Police mostly in a regional cooperation framework.

**B: Questions on the Specificities of Oversight and Guidance**

The President of the Republic does not have any competencies on issues related to decision making on police matters, including the Border Police. However, the Head of State may use his moral authority to heighten sensitivity on particular issues relating to police structures and performance. The new draft Law on State Police (to be approved by the Parliament in 2006) enhances the competences on the President of the Republic by recognizing his role in the appointment of the General Police Director on the proposal of the Prime Minister (actually it is the Prime Minister that appoints the General Police Director). However, this change is not expected to have any impact on the work of Border Police. The Prime Minister as head of the Government is the highest political authority who signs Government decisions and other normative acts relating to the police forces. The proposal for each normative act comes from the Ministry of Interior.

The role of the Parliament in endorsing police policy decisions is not explicitly defined in the Constitution. It appears in the functional responsibilities of the Parliamentary Commission on National Security. The Parliament is able constitutionally to act independently to amend strategic objectives on the police, to reformulate, introduce new objectives, delete objectives, vary police expenditures and revise police missions. Until now, however, the Parliament or the Parliamentary Commission has never put in motion a single case without the prior consent of the Government. The reason for that is that each parliamentary commission is controlled by the political majority. In practice the Parliament has only the power of endorsing or rejecting the police policy documents submitted for its approval. The same procedures take place also regarding the role of Parliament in endorsing police policy decisions. In practice the Parliament

has only the power of endorsing or rejecting the police policy documents submitted for its approval, although it legally there exists the possibility that police policy initiatives can be taken, but until now if an initiative of that kind is undertaken, a prior even silent consent of the Head of Government is ensured.

The Parliament has a staff of experts working on security issues solely for the parliamentary commissions. It should be mentioned that these officials do not directly cover police issues but rather assist the Parliamentary Commission members on all issues. For a second year DCAF has supported an additional expert within the Parliamentary Commission on National Security, who has proved to be the most active member of the staff of experts. The Commission does not have a sub-commission for border matters but rather three experts work for 17 members of the Commission. External assistance would not only increase the parliament's efficiency on border matters but in other areas as well. Experts, if not the members of the commission themselves, can carry out visits to border posts and independently from the Border Police or Coast Guard report on their findings to the Commission.

It should be underlined that the Parliament follows the party or coalition lines in deciding on police matters, police reform or performance on specific issues.

The National Security Council is a constitutional institution that serves as an advisory council to the Head of State. There is no special legislation or statute on the functioning of the National Security Council and, as such, there are no specific duties assigned to the President or to the National Security Council regarding the formulation of policy decisions on border management, except for different recommendations on specific matters when/if they arise.

With respect to the issues of border control and management, the Prime Minister exerts his/her influence through the Ministers of Interior and Defence. The Council of Ministers formulates/endorses policy decisions and normative acts on police activities. An example is the approval of the Strategy on Border Control and its Integrated Management 2003-2006. The Prime Minister supports or initiates different actions on border control in response to situations concerning public security. This is achieved through communication with authorities of the Ministry of Interior, the State Police and the Ministry of Defence. No specific unit of experts or staff assists in the formulation of opinions of the Prime Minister on border control and management issues.

The Minister of Interior formulates and endorses police policy, including the Border Police, through orders and normative acts. The Minister also presents different normative acts to the Council of Ministers or legal acts for approval by the Government to be sent to Parliament. It should be mentioned that the new draft Law on State Police clearly excludes the Minister of Interior from leading police operations.

For activities and regulations concerning the Coast Guard, civilian responsibility lies with the Minister of Defence.

In cases where a strategic document on border control and management is issued for endorsement, there are no special legal or customary provisions for formal guidance from a higher authority, except for the normal approval procedures. The issuing authority for police issues is the Minister of Interior. The Minister sends a policy document to all other ministries or Government institutions that are stakeholders in the draft legal act or draft law. Following official commentaries and suggestions, supportive or non-supportive documentation is produced. The document is subsequently reviewed prior to its delivery to the Council of Ministers for approval. The Ministry of Finance is required to approve the document if it is in need of additional budgetary requirements. Of special importance is the position of the Department of Codification in the Ministry of Justice. Deviation from these procedures is rare. In general, the procedures are not made public.

The funding of the Border Police is similar to the system established for the general police. Both the police system and the general Government procurement system are disclosed for industry, business and the public. However, the media has never scrutinized or commented on Albania State Police budget or on the Ministry of Interior's budget expenditures. It may be difficult for journalists to obtain information from the police on specific budgetary items. The budget and its expenditure are under the scrutiny of the Parliament. If a case of abuse of funds is uncovered by the media, the Parliament has the authority to scrutinize the police and Ministry of Interior budgets.

The Minister of Interior oversees the development of international contacts and cooperation and is the only authority permitted to end such contracts. The General Police Director represents the Albanian State Police, including the Border Police, in international contacts and cooperation. Nonetheless, the director is obliged to receive endorsement by the Minister of Interior on every action he undertakes. Every international visit even for lower rank officers requires the authorization of the Minister of Interior. The Prime Minister eventually acts through the Minister of Interior to authorize, oversee and end international contracts. The new draft Law on State Police maintains the same procedures on international contacts and cooperation.

Albania's subscription to international conventions or codes has provided the country with experiences and practices which have found their way into the relevant legislation on the police force. Where inherited and institutionalized thoughts and traditions have been lacking, well-established practical mechanisms have been valuable in the

development of national police policies. The literature published in the past decade on police management by Albanian experts is not the main source of written material on the subject. Concerning the issue of border management, special reference is made to the Ohrid Declaration on Border Management and Security, an EU directive titled 'Integrated Border Management in Western Balkans.'

Literature, models and examples from other nations with recognized success in good governance, are the main sources for general national police planning. There is not any one particular model, example or nation. However, if it exists it should bear the experience of a particular nation that an international expert offers. For instance, in the past decade, Albania has been assisted by PAMECA (the EU's police assistance mission), ICITAP (US Justice Department), the EU delegation, experts from Italy's Interforca and experts from the OSCE. The abovementioned organizations and embassy representatives who are resident in Albania formed a formal forum recognized as International Consortium on Security Sector Reform. This forum has enhanced the coordination of international assistance efforts. Two of the different working groups which operate within the consortium are a legal reform working group and an integrated border management working group.

Certain recommendations and programs have been developed by different police assisting missions such as the EU Police Assistance Mission in Albania (PAMECA) and the US Justice Department Assistance Program ICITAP. These missions have a number of experts that assist in many police operations and planning. Each of these missions has a number of officers in the Ministry of Interior who advise the Minister or General Police Director on police issues. This assistance is proving helpful in supporting reform of the Albanian police in many respects.

The country and its institutions in general are far from adopting practices that would lead to reforms through the input of research local institutes. Public institutes are formal structures with limited capacities to develop research on police and border control matters. The public funding for these institutions is limited to just keep them in existence. Public institutes are ministerial organizations, but they do have a very low profile in producing police policy recommendations. Private institutes and think tanks are somewhat more active due to their capacities and flexibility in programming their activities in assisting police reforms. Think tanks and private institutes are not economically dependent on public funds, but receive most of their funding, if not all, from international donors. These are organizations of a more general scope which deal with different issues of security and international relations, but also cover police issues. Other organizations typically publish occasional papers on state border issues and

national security.[28] Commissioned reports are limited to international demand. Oversight commissions have not been established nor have governmental authorities contracted independent researchers on police or border issues. The existing public institutes may be involved in producing occasional papers requested by the political authorities, but this has not constituted any sort of research helpful for the decision-making process. Even in the formulation of national police strategy, local expertise is rarely consulted.

Government (the Prime Minister, ministers) authorities are not accustomed to applying the results of public institute research to specific policy issues or in their decision-making. However, the Government, the Prime Minister, ministers and other senior political figures continue to justify the need for reform by supporting the demands made by international organizations and police missions to increase reform efforts and establish appropriate legislation. The reaction of authorities to non-governmental organizations (NGOs) typically involves critical declarations of human rights organizations. Public debate on police issues has been raised during specific episodes of police reform, but also during the media's reporting of different surveys, especially once problematic truths have been exposed. Albania, in general, (authorities, media, and other institutions) does not possess the civic culture to make use of research products to improve performance and reform. Even in cases whereby surveys might have led to different police policy decisions, authorities rarely acknowledge the results. This indicates that official bodies are not making policy decisions based on the outcomes of such surveys. Private surveys commissioned by international actors are not meant for public release. In all cases, surveys are not a regular occurrence.

**Border Management Institutions within the Security Sector**

Structure of Decision Making on Border Management Policy

| Topic of Document | Title of Document | Issuing Authority | Endorsing Authority | Frequency | Status |
|---|---|---|---|---|---|
| | | | | Time span | |
| Border Management Planning | Action Plan<br><br>Operation Plan | General Directory of Border Police | General Police Director | | |

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[28] For example, the Institute for International Studies. *Debating National Security. The case of Albania: Border, Religion, Corruption.* Tirana, 2004

| Topic of Document | Title of Document | Issuing Authority | Endorsing Authority | Frequency | Status |
|---|---|---|---|---|---|
| | | | | Time span | |
| Personnel policy | Personnel Act | Ministry of Interior | Council of Ministers | | Approved |
| Border Management Education | Educational Program | Academy of Police General Directory of Border Police | General Police Director | | Approved |
| Public information policy | Functional Duties and status of Public Relations Offices | Depart. of Public Relation | Minister of Interior | | Approved |
| Other Border Management documents | | | | | |
| Border Management Strategy | 'On Border Control and Its Integrated Management' | Minister of Interior | Council of Ministers | | Approved |
| International Cooperation | Agreements, | Ministry of Interior | Council of Ministers | | |
| Interagency Cooperation | Protocols or Agreements (Various) | General Police Director | Ministry of Interior | | |

All policy documents are published for internal distribution, but in practice this is not a norm. Members of the public may obtain a copy of policy documents upon written request, with the exception of cases where a document circulates for internal use. For special documents, the release of documents is pending the decision of an authority. The practice of publishing a list of policy documents that may be released to the public or a list of restricted policy documents that are to be made public has not been established in Albania. An approval authority decides what documents may be made public on a case-by-case basis.

In drafting police policies it is most common that the Minister or General Police Director will authorize specialized divisions within the Ministry of Interior. For issues concerning border control, a specialist from the General Directory of Border Police forms the nucleus of the group of experts. In some cases, the ministerial authority might select a group of experts according to their level of expertise on specific issues, including experts from education institutions. Foreign advisors might also be included for particular issues.

Strategy and policy objectives are not established in accordance with a determined set of regulations or best practices. Advice and recommendations from international and bilateral experts are the most commonly used measures. The a*pproximation of* national *legislation with that of* the *EU*, with*in the framework of integration efforts*, has become *a decisive* aspect of the *reform* process, particularly in *th*e police *sector*. The increasing numbers of international contacts and conferences have also heightened the country's *sensitivity* to *special objectives and police policy strategies*. Documents published by police organisations in other countries are referred to in some cases as well. Guidance from the Minister is also mostly related to such experiences, while the internal assessments of national values, interests and requirements are rarely a source for setting objectives in police strategy. Internal interests or needs are taken into consideration if they are mentioned or referred to by international reports or statements.

Even the process of assessing security risks and threats mentioned in strategies, policies and directives within the police sector, including the Border Police, are made based on declarations, statements and priorities set forth by international organizations such as the OSCE, the UN, the EU or NATO. The EU and NATO integration process are a priority and enjoy the most authoritative position in the development of local policies.

To date, there has not been a debate on police requirements for the basic reason that police have not been allowed to establish a unified professional voice in a professional organization. The Police Trade Union which was set up in 2006 with the assistance of

the Institute for Democracy and Mediation is expected to be legalized soon. Until now, decision-makers at the political level have decided on requirements without any debate. Internal and public debates on the requirements of the police services have been non-existent. Although the current police law, which was approved in 1998 for the first time, legally accepted the police forces as part of the public administration, internal police practice until now has been similar to that of a military organization. Police requirements have remained under the total authority of the Minister. The media has rarely reported on these issues. The police organizational chart is prepared by the State Police and approved by the Minister of Interior. There are terms of reference for each structure but recent discussions (over the last three years) to update the terms have not produced any results. Even standing operating procedures for each structure require a full update because the draft Law on State Police, which is yet to be approved, includes many changes. In this draft law, the organizational structure and chart is more detailed and comprehensive than in the current law.

The police planning system is being set up with the close assistance of ICITAP and PAMECA. The State Police in Albania is rather a centralized organization, and the resource allocation system is a top-down system, although lower structures can present their requests.

The system is organized according to a departmental service program. However, proper coordination between the departments is lacking. Police planning starts once the Minister issues guidance. The description of the end state of each program is available and the costs of the program are established upfront.

There is no regulated requirement for police planners to develop planning assumptions, recommendations and alternatives for the commanding officer or civilian dignitary before a certain course of action is adopted. Police planners are typically experts from within the service. International experts, on the authorization of the Minister, may also be involved.

# Bosnia's Security Sector Reform – State Border Service of BH as an efficient Border Management Agency

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## Introduction

### Basic Border Management Laws and Regulations - The State Border Service (SBS)

The establishment in 2000 of a state-level and genuinely multinational State Border Service (SBS) was both a practically important contribution towards police reform in BiH,[1] and a politically significant step towards building a viable state. The State Constitution provides for the State to have responsibility over customs policy; immigration, refugee, and asylum policy and regulations; and international and inter-entity law enforcement.[2] In addition, under Article III, 'Bosnia and Herzegovina shall assume responsibility for such matters as are agreed by the Entities; are provided for in Annexes 5 through 8 of the General Framework Agreement; or are necessary to preserve the sovereignty, territorial integrity, political independence, and international personality of Bosnia and Herzegovina.'[3] Control over the frontiers is a *sine qua non* of territorial integrity and international legal personality, and the SBS has already gone a long way to shore up these attributes of Bosnia's fledgling sovereignty. For this very reason, the SBS encountered formidable opposition from an RS political establishment committed to maximizing the Entity's 'statehood' and minimizing that of BIH, above all by denying it effective or potentially powerful central institutions.

Even though the three-member Bosnian presidency agreed to establish the SBS when signing the 'New York Declaration' in 1999,[4] the High Representative had to impose the law creating it on 13 January 2000. The BiH Parliament only ratified the law in August 2001, long after the service had in fact taken control of major border crossings. Under the stewardship of UNMIBH's Border Service Department (BSD), the SBS has become an established institution, controlling 88 per cent of Bosnia's frontiers and

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[1] The SBS Directorate consists of three directors (one from each constituent people), and the force itself currently employs 37 per cent Bosniaks, 35 per cent Serbs, 24 percent Croats and 4 per cent 'others'. Yet, UNMIBH has claimed that 'It had been stressed throughout that ethnicity plays no part in this [recruiting] process at all.' Juan A. Pina, 'BiH State Border Service inaugurated,' *SFOR Informer*, N°90, 21 June 2000.

[2] Article III, Paragraph 1, subparagraphs (c), (f) and (g).

[3] Article III, Paragraph 5, subparagraph (a).

[4] On the fourth anniversary of the Dayton Accords, the UN Security Council met with Bosnia's three-man presidency and convinced them to sign on to the 'New York Declaration' 19 November 1999 reaffirming the DPA.

deploying 1,750 officers, a complement which is targeted to rise to 2,700 by the end of 2002. In addition to BSD supervision, the SBS has benefited from immigration control training provided by the EU IMMPACT team.[5] Although it has made considerable progress in sealing Bosnia's notoriously porous borders, expectations of the SBS have also risen since 11 September 2001. Another intended benefit of SBS deployment is a reduction in customs evasion. In last few years such evasion cost the budgets of the Federation and the RS an estimated KM 300 million and KM 500 million, respectively. The fact that government officials and political parties have often been complicit in backing or profiting from evasion partly explains their opposition to creating such a force. There have been cases of large numbers of police officers in Cantons 7 and 8 moonlighting as smugglers. The establishment of the SBS seems to have improved revenue collection at the crossings where it operates. Besides combating customs evasion on the import of legal goods, the SBS has proved central to curbing cross-border trafficking of weapons and other contraband.

The SBS is also controlling the flow of illegal immigrants through Bosnia into Western Europe, to keep out potential terrorists and to prevent the trafficking of women into and through Bosnia. Since its formation, the number of people estimated to have used Bosnia as a transit route to EU countries has declined by approximately 60 per cent.[6]

Although the SBS now controls major border crossings, those that it does not are staffed by regular entity police officers, and several minor crossings are totally unmanned.[7] SBS deployment has also been hampered by the continuing absence of border infrastructure. There is, moreover, considerable evidence testifying to the impotence of the SBS in the face of well organized and politically well connected smuggling operations.

Customs are also a problem, proposals to enhance and institutionalize cooperation have thus far come to naught, and co-operation will probably continue to stall until the collection of customs is transferred from the Entity level to the State level and the two organizations are eventually merged. Despite its high profile, political significance and international support, the SBS has also lacked sufficient funds. The UN Secretary-General reported to the Security Council in November 2001 that the projected shortfall in SBS salaries for 2001-02 was USD 16 million, while the equipment budget had a hole of some USD 2.5 million. The IMF reportedly told the High Representative last autumn that Bosnia simply could not afford the SBS. Lack of funds obviously inhibits the ability of the SBS to do its job. For example, the SBS until 2005 didn't have the

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[5] The EU IMMPACT team has trained approximately 350 SBS officers in detecting forgery and in interviewing and profiling. UNHCR has trained the SBS in the handling of asylum seekers and the appropriate application of the relevant laws.
[6] Beth Mapschor, 'Paying for Porous Borders', *TransitionsOnline*, 23 November 2001.
[7] BiH Presidency Discusses Work of State Border Service,' *OHR Media Round-up*, 22 February 2002.

motorboats required to patrol Bosnia's Sava and Drina river borders with Croatia and FRY. Meanwhile, the SBS station in Trebinje is obliged to cover 190 kilometres of land frontiers with 110 officers, three vehicles, six radios, and a sparse assortment of shared weapons.

On the other hand, the 11 September 2001 attacks on the U.S. boosted Washington's support for an effective border service and accelerated the deployment of the SBS to areas it had not previously covered. Advance teams have taken over Mostar and Banja Luka airports, while Tuzla airport has been closed to international traffic following revelations that it was being used by Air Bosna as a soft entry point for its lucrative trade in illegal migrants from Istanbul.[8] The IMMPACT team has concluded, however, that Sarajevo Airport is no longer being used as a way station for illegal immigrants or dubious asylum seekers. SBS efforts to track potentially illegal movements have been aided by an ICITAP-funded project aimed at providing real-time information on all persons entering and leaving the country. It has enhanced the authority of the State, boosted its revenues and made a real contribution to fighting cross-border crime. Nevertheless, the follow-on mission will need to strengthen the arm of the SBS and work to ensure that it is not hijacked by political interests. The EU has included support for the SBS in its plans for a first and second EUPM mission. This is a positive sign, because so much more remains to be done in establishing an effective border regime. The Reconstruction, Development and Stabilization (CARDS) program also supports the SBS.

**Coverage and Co-ordination**

For the performance of the border protection and airport security, Border Service authorities have been established within the responsibility of Bosnia and Herzegovina. The Presidency of Bosnia and Herzegovina established the fundamental principles of organization, functioning and responsibilities of the Border Service of Bosnia and Herzegovina.[9] Field offices are established as required, and they are reporting to the Border Service main headquarters in Sarajevo. The composition of personnel in the Border Service[10] is based on the 1991 census according to the following criteria:

- the main headquarters reflects the BIH-wide distribution;
- the field offices reflect the distribution of the regions or cantons in which they are situated;

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[8] 'S Aerodroma Tuzla jucer vracena 34 Turcina i dva Tunizanina' Dnevni avaz, 9 August 2001; 'Imigranti iz Turske letjeli u pola cijene', Oslobodjenje, 11 August 2001
[9] Law on State Border Service. Official Gazette of Bosnia and Herzegovina as well as in the Official Gazettes of both Entities, 13 January 2000
[10] Law on State Border Service. Official Gazette of Bosnia and Herzegovina as well as in the Official Gazettes of both Entities, 13 January 2000

- the representation of any one of the constituent peoples of BIH at each office level in any event are no more than 2/3 or less than 10 percent of the total Border Service personnel; this provision does not apply to the representation of others who shall, in all cases, be entitled to representation in accordance with the 1991 census and the above criteria;
- all Border Service units are fully integrated and members may serve at any point on the border.

**Accountability**

*-to the executive*

Insofar (up to 2001) as the Republika Srpska, the Federation of Bosnia and Herzegovina (hereinafter, Federation) or its cantons have performed border protection, Bosnia and Herzegovina may recruit part of the staff presently assigned to such tasks. So the State border service is directly responsible to the Ministry of Security BIH (Ministry to Presidency of BIH). In last two years, the State border service BIH has actively fulfilled its capacities employing around 300 officers covering 93% of the BIH border. Institutional structures in the past three to four years haven't changed, but some new responsibilities have been assumed (like patrolling and jurisdiction amplification to 30km border area). Only major change took place on 10 September 2006 when the 'State Border Service BIH' changed its name to the 'Border Police BIH.'[11]

The organization that is formally accountable for policy and operational accountability is the State Presidency of BIH (through the Ministry of Security) and for financial accountability a special Commission has been formed between the EU Commission and BIH authorities. The partners have agreed on a set of technical assistance projects, with the overall objective to reform the BIH public administration and security agencies. A consortium, formed by ICMPD[12] and its partner TC Team Consult, has been tasked to carry out the functional review of the BIH State Border Service (SBS). The project results in an annual report on financial sustainability and efficiency of the forces, including recommendations. It is submitted to the EU Commission and BIH authorities. Parliament Assembly also receives an Internal Commission report from the Audit Office of the Institutions of Bosnia and Herzegovina.

*- to other institutions*

Only the Ministry of Security has specific powers in relation to border management forces. The newly-formed State office for the fight against trafficking and organized

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[11] *'Change of the Law on State Border Service,'* Dnevni avaz, 11 September 2006.
[12] ICMPD Consultancy, www.icmpd.org

crime BIH is the first law enforcement agency to deal with cross border crime and especially with the trafficking of women. No significant changes have been made to these arrangements in the past decade, except for an increase in the fulfilment of the service. SBS can evade its obligations with respect to these arrangements.

*- to the media and society at large*

The media (print and broadcast media) and individual citizens, have right of access to state information about the State Border Service's work and this has been secured in the Constitution and especially in the law on access to public information.[13] It can be judicially enforced.

Questions raised in the media are acknowledged by the authorities as the right of journalists to protect their sources. This has been secured and regulated by the State Agency for the protection of information. If an individual citizen believes that he/she has been improperly treated, there is an office and official Ombudsman empowered to receive and investigate complaints and correct abuses. The quality of media coverage of the activities of border management forces, internal security forces and the security services is at its highest level, due to the importance of police reform in Bosnia and Herzegovina. More then a dozen polls on public attitudes to the security services and border management forces, with references to accountability, have been conducted (ICG, CSS Sarajevo).[14]

*- to codes and conventions*

International codes and conventions that  Bosnia and Herzegovina  subscribe:
-        United Nations (e.g. 1979 UN Resolution: Code of Conduct for law enforcing officers)

-        Council of Europe (e.g. 1979 Council of Europe Declaration on the Police)

-        OSCE (e.g. 1994 Code of Conduct on Politico-Military Aspects of Security)

-        Europol (e.g. 1995 Europol Convention)

-        Interpol (e.g. 1999 Interpol Seoul Declaration)

-        European Convention on Human Rights

-        Through the EU feasibility study, Bosnia and Herzegovina tries to fulfil the requirements of the EU, and most of these international obligations are respected due to the long-term process of international oversight (IPTF and EUPM mission and its sanction measures - de-authorisation and screening).

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[13]  Official Gazette of Federation of BiH 32/01
[14]  www.icg.org, www.css.ba

International co-operation between security services and especially the State Border Service does affect the domestic accountability of BIH forces and with co-operation at its highest level, it is not likely that extra-territorial operations can escape scrutiny.

**Transparency**

*- Domestic transparency: dimensions*

When transparency is at stake, all of the Bosnia's enumerated forces, services and agencies are obliged to make information available to elected representatives through parliamentary sub commissions and commissions.

Constitutional provisions and the EUPM mandate impose this obligation, and there are legislative provisions (for the agencies at the State level, as well for agencies at the Entity and cantonal level), stating that for the Intelligence Service of BIH there is *no* such obligation.

Information about the *organisation* of the different forces, services and agencies is available to the public and all relevant information is not subject to *privileged* access by selected persons (e.g. members of a specialist committee of the legislature or even a sub-committee or group of carefully chosen individuals).

Information about the *personnel strength* of the different forces, services and agencies is also available and, if there is some breakdown of personnel, restriction or downsizing, transparency is guaranteed.

Information on the *budget* is available and, for the most part, the material contains details covering what money is spent *on* (inputs) and what funds are used for (outputs). Transparency is guaranteed by the law on access to public information.

General information's about the *nature of operations* that are, or will be, conducted is available. The material is not specific. It is expressed in the most general terms and it is in public domain.

Information on the *strategic outlook* of the services under scrutiny, and planning in the services are subject to privileged access but they are under the constant monitoring of EUPM mission program officers.

Confidentiality criteria and clauses apply only for information and documents protected by the law on the protection of secret information.[15]

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[15] Official Gazette of Bosnia and Herzegovina 54/05

Regular *reports of activities are* published in official gazettes of the respected agencies. EUPM publishes its own magazine and monthly reports.

All statistics about police force efficiency and capacities are available in the public domain by services reports in the Entity or Cantonal Agencies for Statistics. Bosnia is yet to establish a State level statistics agency.

### -International transparency

The international codes and conventions that impose 'transparency' obligations to which Bosnia subscribes are as follows:

- United Nations (e.g. 1979 UN Resolution: Code of Conduct for law-enforcing officers)

- Council of Europe Police Code of Conduct

- OSCE (e.g. 1994 Code of Conduct on Politico-Military Aspects of Security)

- Europol (e.g. 1995 Europol Convention)

- Interpol (e.g. 1999 Interpol Seoul Declaration)

- European Convention on Human Rights

- EUPM mission mandate rules,

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The authorities comply with such obligations. International co-operation between border management forces, internal security forces, security services and police agencies affect domestic transparency positively. However, until reform and precise legislation in this sector progress one cannot expect efficient transparency or true internal and external cooperation. Bosnia is a member and has its own coordinator police and border management officer in SECI Centre in Bucharest.

### Recent changes 2004/5 and general appeal

The events of 11 September 2001 led to changes in 'normal practice' so far as the transparency and accountability of the State border service, security and intelligence services are concerned. Although it has made considerable progress in sealing Bosnia's notoriously porous borders, expectations of the SBS have also risen since 11 September 2001. Efficiency in work has been analyzed[16] and all procedures have been raised to a

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[16] 'Presidency Discusses Work of State Border Service,' *OHR Media Round-up*, 22 February 2002

higher level due to fact that SFOR and now EUFOR force have a contingent of US Army troops.

**The Specificities of Oversight and Guidance**

The role of Parliament in endorsing border management policy decisions is restricted. The Parliament is allowed to make amendments only in consent with the executive powers, and all the amendments need to be approved by the EUPM mission and, in some cases, by the Office of the High Representative (OHR).

When Parliament prepares its opinions on border management matters there is an independent body/staff of experts working solely for the parliamentary commissions monitored by OHR. Nonetheless, some parliamentary members try to follow party or coalition lines in deciding on police matters.

Bosnia and Herzegovina has not established a National Security and Defence Council due to the reform process problem.

The role of Prime Minister in formulating and endorsing policy decisions is mostly assertive, and co-ordinated with the EUPM mission. Due the EUPM mission, most policies pass through the parliamentary assembly and presidency in a declarative form during the adjustment process of legislation and the reform process.

As previously stated, when a strategic document on border management policy is issued for endorsement, there is a complex process of legal and customary provisions for formal guidance from a higher authority. This is also one crucial reason for functional security reform under the EUPM. The main topics addressed in terms of guidance for border management strategy are threat assessments, different national ethnic objectives, and the intended level of ambition for the size and the structure of the armed forces needed to accomplish the strategic mission. Funding of border management - both the police system and the general government procurement system – is transparent for industry, business and the public. International contacts and cooperation have reached the highest possible level due to the previous IPTF missions and the current EUPM mission.

The main sources of knowledge applied by the government authorities in the formulation of national police policies are respected professional experiences and domestic and regional literature produced by the Law Faculty and the Faculty of Criminal Justice Sciences at the University of Sarajevo.

When national literature on the theory of governance and related well-established practical mechanisms are in question, a great deal of literature is produced. Some of the more relevant references are listed below:

- Masleša Ramo, *'Organization and Functioning of The Police,'* Faculty of Criminal Justice Sciences University of Sarajevo, Sarajevo 1999,ISBN: 9958-613-08-5;
- Abazović Mirsad, *'National Security,'* Faculty of Criminal Justice Sciences University of Sarajevo, Sarajevo 2002, ISBN: 9958-613-13-1

Research institutes on border management matters in Bosnia and Herzegovina exist. There are several public and private institutes. They are, at the core, focused on the question of law enforcement. However, they also deal with parliamentary oversight and international questions concerning reform of the security sector in Bosnia and Herzegovina and in the Western Balkans region (such as the CSS BIH-Centre for Security Studies BIH and the Institute for Security Studies and Criminology.)[17].

Public institutes belong to academic organisations and private institutes are independent, Public institutes are economically dependent on public funds in part. Private institutes are of a more general scope (security, international relations, transparency etc.) but occasionally study defence issues. The main products of these institutes are research and occasional papers as well as national and international conferences on police matters.

The relevancy of the institute's products:

a. Oversight commissions contract independent research on police issues to both public and private institutes.

b. Public debates on border management policy make reference to the work of research institutes.

The results of officially and privately commissioned surveys on police issues are published by the media.

**Border Management Institutions within the Security Sector**

Some data on the existing policies within the border management sector:

Table 2 – Structure of Decision Making on Border Management Policy

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[17]   Institute of Faculty of Criminal Justice Sciences, University of  Sarajevo

| Topic of Document | Title of Document | Issuing Authority | Endorsing Authority | Frequency / Time span | Status |
|---|---|---|---|---|---|
| Border Management Planning | Law on State Border Service. Official Gazette of Bosnia and Herzegovina as well as in the Official Gazettes of both Entities, 18/00 | Parliament of Bosnia and Herzegovina | Council of Ministers of Bosnia and Herzegovina | | |
| Personnel policy | Law about police officers of Bosnia and Herzegovina, 20/06 | Parliament of Bosnia and Herzegovina | Council of Ministers of Bosnia and Herzegovina | | |
| Border Management Education | Border management academy (established by IPTF/EUPM) in Sarajevo in 2000. | Parliament of Bosnia and Herzegovina | Council of Ministers of Bosnia and Herzegovina | | |
| Public information policy | Law about access to public information, 32/01 | Ministry of Civil Affairs of BiH | Council of Ministers of BiH | | |

1. All policy documents are published for internal distribution, and members of the public may obtain a copy of all policy documents upon written request.

     i. Approval is granted by default.

     ii. The applicant must pay a fee for copy above 40 pages.

2. Members of the public may obtain a copy of all policy documents.

      iii. There is a list of policy documents that may be released to the public. The list is made public.

3. Participation and consultancy in the drafting of defence policies:

      b. The authorised divisions within the relevant Ministry.

      c. Experts from the research institutes.

      d. Faculty members of education institutions.

      e. Independent research institutions.

      f. Foreign advisors.

4. The process of establishing objectives for strategies, policies and directives within the police sector is based on the following sources:

      g. Policy documents at the national level, such as the National Security Strategy.[18]

      h. Internal assessment of national values, interests and requirements.

      i. Conclusions and recommendations from research reports.

      j. Theoretical national and international literature.

      k. Similar documents published in other nations' defence establishment.

      l. Advice and recommendation from international or bilateral experts.

5. The process of assessing security risks and threats mentioned in strategies, policies and directives within the defence sector is based on the following sources:

      m. Assessments made on policy documents at the national level, such as the National Security Strategy.

      n. Assessments published by international organisations such as the OSCE, the UN, the EU or NATO.

      o. Internal assessments.

      p. Independent research reports.

      q. Assessments made on similar documents published by the defence/security/police establishments of other countries.

      r. Assessments made by international or bilateral experts.

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[18] National Security Strategies for the Entities exist in Bosnia, but a State Level National Security Strategy is still lacking.

6. A debate on border management requirements (such as forces, equipments or resources):

     s.    There is an internal debate at the service level, the results of which are forwarded to the decision-makers.

     t.    There is an internal debate at the service level with civil servants input.

     u.    There is an internal debate at the political level with military input.

     v.    There is a debate on defence requirements with other security sector agencies.

     w.    There is a public debate on requirements.

7. The main organisational documents governing border management structures are:

     x.    Organisational charts approved by the higher instances (Parliamentary and OHR).

     y.    Mission statements for the State Border Service.

     z.    Job descriptions for commanding officers and their staff.

     aa.    Standing operating procedures for the State Border Service.

     bb.    Unified regulations for the State Border Service.

8. Bosnia has a border management planning system in place and it can be best described as follows:

     cc.    A planning, programming, budgeting and evaluation system at the State level.

9. The police planning system is organised according to departmental and service programmes, and the planners are provided with the necessary information about each programme in order to perform their tasks.

     dd.    Each programme is decided on in light of existing border management policy.

     ee.    All programmes are listed with their order of priority.

     ff.    Each decision-maker issues guidance comprising his/her intentions.

     gg.    The description of the end state of each programme is available.

     hh.    The costs of each programme are set up front.

     ii.    The medium-term framework is established.

     jj.    The spending allocations are within the multi-annual budget.

10. Bosnia has regulated requirements for defence planners to develop planning assumptions, recommendations and alternatives for the commanding officer or civilian dignitary before a certain course of action is adopted.

11. When a description of the composition of the corps of State Border Service planners is at stake, one can say that they are mostly civil servant experts.

**Conclusion**

Today, the State Border Service is a complete law enforcement agency designed for tasks associated with preserving the sovereignty, territorial integrity of BiH and of course combating all forms of border-related crime including illegal migration, smuggling ... the whole spectrum.

We can, in a certain way, acknowledge the successes of SBS BiH - but we also have to say that a lot still needs to be done.

The EUPM has done a great job, but it definitely should stay longer and work with SBS representatives in the future. SBS needs to increase the number of police officers, obtain specialized equipment and support educational training.

With the SBS still short of at least 200 officers, one of the future tasks of the government and EUPM will be to increase management capacities within the service. This will mean getting the most from the existing, though limited resources of personnel, equipment and funds. It is only by doing so that the SBS will be able to 'efficiently' fight cross-border crime in Bosnia and Herzegovina and stop the next shipment of drugs from passing through the mountains of Bosnia on its way to the EU or another destination

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1. "*NO PROGRESS, NO EU*," Europe Report No. 164, 6 September 2005, Brussels
2. "*POLICING THE POLICE*," Balkans Report No. 130,10 May 2002, Sarajevo/Brussels
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General of the Council of the EU and High Representative for the Common Foreign and Security Policy, H.E. Javier Solana.

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**Appendix**

**Glossary of Abbreviations and Acronyms**

BIH/BiH         Bosnia and Herzegovina

DPA             Dayton Peace Accords

EU              European Union

EUFOR           European Union Force in Bosnia and Herzegovina

EUPM            EU Police Mission

EU IMMPACT Educational team of EU

FBiH             Federation of Bosnia and Herzegovina

ICTY            International Criminal Tribunal for the Former Yugoslavia

IEBL            Inter Entity Boundary Line

IPTF            International Police Task Force

NATO            North Atlantic Treaty Organisation

OHR             Office of the High Representative

OSCE             Organization for Security and Cooperation in Europe

PfP             NATO's Partnership for Peace

PIC             Peace Implementation Council

PRC             Police Restructuring Commission

PSU             Police Station Units

RS              Republika Srpska

SAA             Stabilisation and Association Agreement

SBS             State Border Service

SDS             Serbian Democratic Party, the leading party in the RS, originally led by
                 Radovan Karadzic

SIPA            State Investigation and Protection Agency

UK              United Kingdom

| U.S. | United States |
| UN | United Nations |

# Border Management Reform in Macedonia

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## Introducing Integrated Border Management

As an integral component of the process of police reforms supported by extensive European Community (EC) assistance under the 2001-2005 programmes, Macedonia introduced the border security component within the process of security sector reform (SSR).[1] This process received precise form and complete strategic dynamics after the Government adopted the National Strategy for Integrated Border Management (NSIBM).[2] Following the reforms of the MoI and the Action Plan for Police Reforms, two significant processes have opened the operational ground for development of the organizational structure and strategic framework of border management: first the Border Police Service (BPS) was established under the Bureau of Public Security within the MoI and second, the methodology, timeframe and procedures for transferring the competences of border control from the Army Border Brigade to the BPS was developed.

The basic functions of the Border Police in supervising the state border are determined in the Strategy for Police Reform as follows:

- monitoring and controlling the state border, especially at border crossings;

- preventive function, with presence and monitoring by special patrols in the border area and the territorial waters;

- investigation of crimes and misdemeanours;

- detention of suspects, collection of material evidence, i.e., collecting, processing and analyzing information and data related to the fight against illegal immigration and border crime;

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[1]  Within these programs, SAA Article 74 on reinforcement of institutions and the rule of law, Article 75 on visa, border control, asylum and migration and Article 100 that provides for modernizing and restructuring the agro-industrial sector and for gradual harmonization of veterinary and phyto sanitary legislation with EC standards were supported. The 2004 and 2005 programs emphasised the European Partnership priority to complete the implementation of the Integrated Border Management Strategy (IBMS) and the Integrated Border Management Action Plan (IBMAP).
[2]  National Integrated Border Management Strategy, Government of the Republic of Macedonia, 22.03.2003

- administrative function with respect to the general monitoring of laws and sub-laws.[3]

Basic competences of the Border Police according to the SPR are: control of crossing the state border at border crossings; control of movement and stay in the border region; securing of the state border, border crossings and other facilities in the border region; discovery and detention of persons violating the principle of inviolability of the state border, persons subject to searches, transport and other vehicles and their surrendering to the competent bodies as well as prevention of the entry and exit of persons who are prohibited from entering or exiting the territory of the Republic of Macedonia; organization of the border belt regime and control of persons and vehicles crossing the state border, independently and in cooperation with other ministries; prevention, detection and participation in resolving criminal offences and other misdemeanours in cases specified in the law, independently or in cooperation with other organizational units of the Ministry of Interior and other ministries and institutions; control of persons and vehicles under suspicion of transporting weapons, explosives and other dangerous materials when crossing the state border; collecting, processing, utilising, retaining and communicating information in violation of the principle of inviolability of the state border and the border belt regime, related to security of the country and in cooperation with other competent state bodies; studying and analyzing the reasons and factors influencing violations of the regime of the state border and proposing appropriate measures for their reduction; placing border belt markings and maintaining them, prevention of demolition, movement or destruction of the markings and demarcation of the border line; acting according to international agreements, treaties and conventions which the Republic of Macedonia has signed and ratified (readmission agreements, etc.) as well as participation in the resolution of border incidents at the state border, independently or in cooperation with other competent state bodies; control of observation of the determined sailing order and stay in the territorial waters of the three lakes by local and foreign sailing objects; taking measures and activities in cooperation with the police and other ministries in order to secure stable public order and peace; protection of the rights and freedoms of citizens and their property in the border belt region and the airports; informing the local authorities about the measures implemented in emergencies in the border belt region and harmonization of joint activities to the best interest of the security of the state border; acting independently or jointly with the Army of the Republic of Macedonia when providing the security and control of the border belt region in a situation of armed threat from outside, as well as the establishment of cooperation with border police forces from other countries.

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3 Strategy for the Police Reform, Ministry of Interior, February, 2004, pp 20

The transfer of competences and establishment of the BPS were, in a way, parallel processes in compliance with the project prepared by an inter-ministerial working group of MoI and MoD representatives that was responsible for providing an overview of the current situation regarding the equipment and personnel that had to be transferred to the MoI and to perform assessment analysis of the needs of the Border Police. The transfer of personnel from the MoD to the MoI addressed two problems at the same time: the basic problem of over employment in the MoD was partially and temporarily solved by this transfer while the faster process of creating the Border Police was possible after the successful training of personnel (821 candidates were trained at the Police Academy with OSCE expert support). The time frame for transferring the competencies was determined and the Border Police undertook responsibility for securing the state border with the Republic of Greece on 1 May 2004.[4] The process of establishing control over the state borders was completed in 2005 when the Border Police was made responsible for controlling the borders with Serbia and Montenegro and Albania. In this way, one of the core principles of the Common Platform and the Way Forward Document adopted at the Ohrid Conference on Border Security and Management has been fulfilled.[5] The obligations of the Republic of Macedonia, in accordance with these documents, actually emphasized a number of tasks that determined the specific national platform for introducing EU standards clarified by the EU Schengen Catalogue of Recommendations for correct application of the Schengen and best practices.

According to the obligations, the Government established an inter-ministerial MoI - coordinated working group that was responsible for managing the Integrated Border Management (IBM) project and monitoring the complete process of implementation of the concept. NSIBM determined the policy and the model for administration of the border by adopting EU standards, regional specifics and national needs and objectives. The document represents a comprehensive and systematized approach by the representatives of different ministries responsible for the issue of border management, their responsibilities and competences.

The specific issues that the NSIBM addresses are: Description of the Border; Strategic Challenges; Legal Issues – Integrated Border Management; State Commissioner for Border Management; National Border Police Service; Handover Methodology – Army Border Brigade/Border Police Service; National Border Management Coordination

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[4] The total length of the borders of the Republic is 895.1km (772.7km on land and 122.4km on water). Almost all of the country's borders are rural and mountainous, the border often following the ridge of mountain ranges. The border line reaches its highest parts on the border with the Republic of Albania, (2,764m above sea level) and its lowest point (45m at the border pyramid no.58) The most inaccessible stretch of the border is in the north in those parts shared with Albania, Serbia and Montenegro. See: *National Integrated Border Management Strategy,* adopted by the Government of RM, at the session held on 22 December 2003.
[5] Way Forward Document; Ohrid Regional Conference on Border Security Management; 22/23 May 2003

Centre; Border Zone and Area of Responsibility of the National Border Police Service; Delineation of Competencies – National Border Police Service and Customs; Coordination of Strategic Operational Policy; National Border Monitoring System; Categorisation of Border Crossing Points; Border Crossing Point Competencies and Procedures; Closed Circuit Television; Commercial and Other Vehicle Searches; Illegal Immigration, Human Trafficking and Smuggling; Illegal Drugs Trade; Radioactive Materials; Regulation and Control of Hazardous and Dangerous Material; Contagious Disease Control Phyto-sanitary, Veterinary and Forestry; Food Quality Inspections; 'Green Border' Procedures – Customs Administration and Border Police Service; Border Area Development; Airports; Lake Patrol; Regional Cooperation and Coordination; Joint Border Commissions; Border Data Management System (BDMS); Passport and Visa Regime; Profiling; Intelligence; Risk Analysis; Data Protection; and Military Support to the Civil Authority as well as Transparency and Accountability.[6]

By addressing a comprehensive set of issues this document determines the political, operational and functional aspects of the IBM system that includes different actors. In this way, the coordination of activities and cooperation among the actors of the IBM system as well as in the organizational network of any specific actor is of crucial importance for an integrated approach to border administration. The aims of the NIBMS are:

- To create a fully integrated National Border Management Strategy for Macedonia, in compliance with the Schengen Catalogue of best practices, international norms, human and equal rights, in order to maintain territorial integrity, expedite legitimate movement and trade, whilst deterring, detecting, identifying, preventing and where necessary interdicting illegal or hostile cross border movement;

- Withdrawal of the Army from border management by 31 December 2005;

- Creation of a new National Border Police Service (NBPS) within the MoI, as the country's principle border management agency, to take over responsibility for policing the national borders by 31 December 2005;

- Creation of a National Border Management Coordination Mechanism, managed by the BPS in cooperation with all other national border management agencies with the goal of achieving cooperation, coordination, mutual support and information sharing between these agencies.

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[6] National Integrated Border Management Strategy, adopted by the Government of RM, in the session held on 22.12.2003.

**Actors and structure of IBM**

Through the appointment of a State Commission for Border Management (SCBM) democratic oversight is incorporated in this Strategy. According to the NCIBM, the State Commissioner must be independent of any other body or agency involved in border management. The State Commissioner, who will be appointed in accordance with Article 76 of the Constitution, will be responsible for the following:

- Give advice to the Parliament and the Government related to Integrated Border Management;
- Manage the law pertinent to the legislative procedure related to Integrated Border Management;
- Mediate and arbitrate, if necessary, between ministries and agencies in case of conflict or disagreement related to Integrated Border Management;
- Make recommendations for improvements in Integrated Border Management;
- Submit reports on implementation of the country's Integrated Border Management Strategy to Parliament and the Prime Minister twice a year.

Main powers of the State Commissioner are:
- Keep him/herself informed as to the manner in which the ministries and agencies execute border management with particular emphasis on:
- Compliance with the constitution, the law, international agreements and treaties and international standards of best practice.
- Cooperation, exchange of information and coordination between law enforcement and other ministries and agencies working in the area of border management.
- Dealing with complaints from the public related to the border management agencies and their procedures.
- Efforts and arrangements made by the border management ministries and agencies for consultation aimed at obtaining the views of business and local communities related to border management.
- Human Resources strategy and conditions of service of border management ministries and agencies related to their border management responsibilities.

**National Border Police Service**

The new BPS (under the Bureau for Public Security of the MoI) absorbed the responsibilities of the Sector for Border Crossings of the MoI in addition to those of the Army Border Brigade. The BPS is responsible for control and inspection of persons at all points on the country's borders, including airports and lakes; for conducting inspections for detecting and preventing threats to national security and readiness to provide 'Administrative Support' to other border management agencies.

To counter specific challenges a new concept of operations is proposed within the NSIBM. The first element that this concept should introduce is integration in a sense that the BPS will not only be integrated into border management, but it will also be the centre point of integration. Through its National Border Monitoring System and wide base of skills and resources, it will provide much of the infrastructure and facilitation allowing integration of all border management agencies.

The principle of Situational Awareness will be introduced and depict the way in which the border management authorities define the lapse of time and area for three functions:
- Detecting movements that are possible attempts for crossing the border illegally;
- Identifying the detected targets;
- Analysing the previous identification in due time.
- This also applies to unusual incidents including those at airports.

Also, overt liaison patrols will be provided in order to ensure regular and friendly relationships with the local communities. The main task of these patrols, conducted by specialist community liaison officers, will be to ensure that the needs, concerns and interests of the local border area communities are fed into the analysis and planning systems. They are also responsible for providing advice and support to the local border area communities.

The issue of monitoring and information sharing will be resolved through the National Border Monitoring System (NBMS), which will be accessible to both the Customs Administration and the Ministry of Defence. This system should provide a timely and accurate information flow and support operational planners and managers with all the information they require in order to make timely, informed decisions and achieve effective coordination. The system should ensure that command and control systems are integrated or, at the very least, interfaced.

The Law on State Border Surveillance introduced a new provision that sanctioned the role and the competences of the PBS.[7] In accordance with the provisions of the Law, the surveillance of the state border, cooperation among state institutions with competences in border management, internal competences of the police and its international cooperation are sanctioned. The MoI is primarily competent for surveillance of the state border through the BPS in cooperation with other state institutions competent in border management. The Law stipulates that surveillance of the state border includes activities related to securing the state border and control of the border crossings in order to protect inviolability of the state border, detection and prevention of illegal border crossings and illegal migration; protection of the lives and

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[7] Law on State Border Surveillance, Official Gazette of the Republic of Macedonia, No.71; June 2006

health of citizens, personal security, property and environment, and detection and prevention of other dangers affecting public order, the rule of law and national security.

In accordance with the Law, the MoI will conduct the border surveillance function together with other state institutions responsible for border management: the Ministry of Defence, Ministry of Foreign Affairs, Ministry of Finance – the Customs Office, Ministry of Agriculture, Forestry and Water Economy (MAFWE), Ministry of Health, Ministry of Transport and Communication and the Ministry of Environment and Physical Planning. These institutions are responsible for efficient cooperation on three main issues:

- Surveillance of the border crossing of people, goods and vehicles;
- Detection and prevention of organized crime;
- Collection and exchange of data and information related to border management.[8]

The procedures for cooperation should be determined by signing the Memorandum of Understanding between responsible institutions. The basic coordinative function is to be provided by the National Border Management Coordination Centre.

In accordance with the Law, the PBS is also responsible for specific measures and activities that the police officials administer on the state's territory regarding illegal migration, illegal border crossings and stay on the territory as well as detection and suppression of trans-border crime through the inspection and control of people, goods and vehicles.

International police cooperation in managing state border surveillance is determined as a set of activities undertaken by representatives from foreign police services on the territory of the Republic of Macedonia, activities of the BPS on the territory of other states, cooperation with security institutions and the exchange of libation officers.

**The National Border Management Coordination Centre (NBMCC)**

According to the Strategy for IBM the BPS is responsible for establishing and operating the National Border Management Coordination Centre. Through the NBMCC, the service will have the capability of coordinating its own activities with those of other border management agencies. The BPS is the principle border management agency, but it will not have authority over other border management

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[8] Law on State Border Surveillance defines: the surveillance of the state border; the competences on surveillance of the state border; the institutions responsible for the surveillance of the state border; cooperation and coordination; NBMCC; border line; crossing of the state border and border crossing points; border control; police issues on the state territory; collection and evidence of personal data; authorization for drafting by-laws. See: Law on State Border Surveillance, Official Gazette of the Republic of Macedonia, No.71; June 2006

agencies. It will facilitate cooperation and coordination through provision of services and support to those agencies that are partly based on the principle of 'Administrative Assistance.' The Law on State Border Surveillance defines the position of the NBMCC, its functions and tasks.

The NBMCC is composed of a coordinator, deputy coordinator and representatives of the MoI, MoF-Customs Office and the Ministry of Agriculture, Forestry and Water Resources Management. The coordinator and deputy coordinator are appointed by the Government for a period of five years. The main responsibilities of the NBMCC are:

- Coordinating the activities of state institutions with competence in border management;

- Facilitating the exchange of information among state institutions with competence in border management;

- Maintaining greater integration in border management;

- Maintaining coordination in completing joint plans and procedures for emergencies;

- Coordinating the activities in cross-border cooperation related to border management of institutions with competence in border management in accordance with the ratified international agreements;

The NBMCC is accountable to the Government of the Republic of Macedonia. It is responsible for the submission of reports on its activities once a year. NBMCC was established on 10 April, 2006.

**Border Police Regions and Border Control (Basic Command Unit)**

In order to provide a comprehensive and tailored approach to border control, as each has different characteristics with regards to crime, transit and as a source of illegal immigration, four regions and four centres should maintain control over the state border. Each regional centre is responsible for a sector of the national borders corresponding to the neighbouring states: Greece, Bulgaria, Albania and Serbia. Border policing within the BPR will be delivered through the local border police areas. These areas, known as BPR Regions, will be centred on Regional Coordination Centres.[9] Four Regional Border Police Centres (Greece-South, Bulgaria-East, Serbia; North and Albania-West) are operational.

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[9] The investigative and some criminal analytical capability of the Border Police Service, while operating in support of that service, will be attached from the Criminal Police Sector of the Directorate for Public Security in the Ministry of Interior.

Border control is determined by the Law on State Border Surveillance as the control of persons, goods and vehicles. The responsibility for control and inspection of persons crossing the state borders rests with the BPS but it does not have primacy over the Customs Administration in cases of processing goods. The BPS should be prepared, upon request from any level, to provide support to the Customs Administration in this area in order to meet the national objective of facilitating the movement of commerce and trade. The Law on State Border Surveillance is not specific with regards to the delineation of competencies among the NBPS and the Customs Administration. The political framework for the competences of the BPS (responsible for operational coordination; emergency and disaster response coordination) and the Customs Administration has been provided within the NSIBM while legal framework is provided by the Law on State Border Surveillance and the Law on Customs Administration.[10] According to the Law on Customs Administration, the Customs Administration is directly responsible for undertaking and performing customs surveillance and control, customs clearance of goods as well as investigative and intelligence measures for the prevention, detection and investigation of customs and criminal offences.

While cooperation procedures between the two institutions are determined by the Memorandum of Understanding, it has already been noted that cooperation and coordination have not been the best practice. Because of the underdeveloped procedures and practice and competitive as opposed to cooperative relations, additional provisions for the purpose of clarification could be necessary. From an operational and functional viewpoint, it may provide better solutions for cooperation but another important issue that has been emphasised is the discrepancy in salaries of the Border Police and Customs Administration personnel.


**Border Crossing Points**

According to the Law of State Border Surveillance, any movement across the state border is a border crossing. The Law specifies that the state border, after the Convention for Implementation of the Schengen Agreement in the Republic of Macedonia has come into force, and the state border that is not internal border, could be crossed only at official border crossing points. Assessment of the recent situation on the Border Crossing Points is in favour of urgent measures that are to eliminate organizational shortcomings as cooperation and coordination of the Border Police and the Customs Administration, prioritized technical and other equipment and categorization of the NCPs (regional, social, domestic or local).[11] In light of reform priorities, the CARDS program 2006 and a number of twin projects (Slovenia is the

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[10] See: Customs Administration Law; Official Gazette of the Republic of Macedonia, No.46/04
[11] Currently there are 20 international BCPs, 12 of which perform veterinary and phyto-sanitary controls.

2006 Macedonian twin partner) are oriented at overcoming the assessed shortcomings within the National Police Reform Strategy. They provide directed assistance at different levels: strategic, operational and educational.[12] The BCPs are considered a vulnerable point of the IBM strategy because of an unclear division of tasks and duplication of efforts and among other actors competent for border control.

**Illegal migration, smuggling and human trafficking**

Illegal immigration was considered not only a specific problem for Macedonia but also for the countries of the region. However, in Macedonia's case, the number and the category of illegal immigrants shows characteristics of a transiting country and less as a source or destination country. Most of the illegal migrants belong to the categories of unorganized illegal migrants, partially organized migrants and organized migrants. A significant percentage of illegal migrants come from the Republic of Albania while illegal migrants from Romania, Moldova, Bulgaria, Serbia and Montenegro are represented by a smaller percentage. The role of the MoI in general and the BPS in particular in preventing and detecting various forms of offences such as human trafficking and people smuggling is crucial and needs improvement. Coordination and better cooperation among different MoI departments and units is crucial as the NSIBM has recognized. Reinforcement of the Criminal Police Sector with the Human Trafficking and People Smuggling Unit was suggested in order to provide more systematic support to the activities of the Criminal Police in detecting and preventing human trafficking. The next step in providing support for more effective information exchange and the processing of illegal immigrants was absorption of the Illegal Immigration and Asylum Department into the BPS and attachment of a human trafficking and people smuggling investigator to the BPS.[13]

**Cooperation and coordination within the Integrated Border Management**

The issue of coordination and cooperation within the realm of IBM seemed to be the most challenging issues together with that of clear competences among the actors within the system. The coordination of activities and facilitating cooperation between the BPS and other institutions competent in border management is the primary responsibility of NCCIBM. Given the fact that coordination and cooperation depends on clear normative procedures, as well as the compliance and respect of specific norms,

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[12] The internal border, after the Convention for Implementation of the Schengen Agreement in the Republic of Macedonia has come into force, is the common border with the state that did not sign the Convention. External border, after the Convention for Implementation of the Schengen Agreement in the Republic of Macedonia has come into force, is the state border of the Republic of Macedonia with a state that did not sign the Convention. Law on State Border Surveillance: Official Gazette of the Republic of Macedonia, No.71; June 2006

[13] Netkova, B., Prevention of women trafficking and post-conflict peace building in Macedonia; in Georgieva, L., (ed.); Conflict Prevention: From the Idea towards Culture of Conflict prevention in Macedonia; Friedrich Ebert Stiftung, Skopje 2004; pp.239-250

it seems that introducing more detailed procedures for cooperation and coordination of the activities will be necessary in order to prevent or to remove the overlapping competences. The principle guiding normative acts that provide IBM actors with procedures for mutual relations are the Law on Internal Affairs, the Law on State Border Surveillance, the Law on Crossing of the State Border and Movement in the Border Zone and the Law on Organization and Operation of State Administration Bodies.[14] According to the provisions, the Minister of Interior is authorised to establish mixed comites and working bodies in order to foster and facilitate the harmonized performance of the activities in controlling the state border crossing and the movement and stay inside the border zone. The MoI through the BPA-BPS maintains the function of primary actor for border management while facilitating the cooperation and effective control of the border and inside the border zone in the detection and resolution of border incidents and other violations of the state border, as well as other activities defined by the law. The Memorandum for cooperation is the basic act that establishes the roles and procedures for cooperation among the different border management bodies. The MoI should establish cooperation with other bodies on different levels in order to develop a procedure for the regular exchange of information and functional support. The Law on State Border Surveillance determines that on request of one of the state bodies (the MoD; Ministry of Foreign Affairs; Ministry of Finance-Custom Administration; Ministry of Agriculture, Forestry and Water Management; Ministry of Health; Ministry of Environment and Spatial Planning; Ministry of Transportation), the others are responsible for providing expert assistance to facilitate cooperation in border management according to their competencies.

It appears that coordination and cooperation in fulfilling the main competencies on the strategic level, such as inter-ministerial cooperation, is more consistent and successful than cooperation on the tactical level among local units. There are suggestions that the general principles of the IBM strategy as well as activities for implementation of the National Action Plan for IBM are more difficult to transfer from the general to the tactical level thus making the process of reform less compact and inefficient. Also, there are suggestions that differences or even discrepancies recognized among actors in developing their capacities for implementation of the reform processes or in providing their basic competencies also influences and undermines the process of cooperation and coordination. Unequal technical capacities and support in terms of equipment and facilities, as well as problems in human resources, have contributed to this situation.

As much as horizontal cooperation among different ministries is vital for the coordination of functional aspects of border management, vertical cooperation through the different bodies is also important. It seems that because the issues of accountability

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[14] Law on Crossing of the State Border and Movement in the Border Zone, Official Gazette of the Republic of Macedonia, No. 36/92, 12/93, 11/94 and 19/2004; Law on Organization and Operation of State Administration Bodies; Official Gazette of the Republic of Macedonia, No. 58/2000 and 44/2002

and regular control of the efficiency of the bodies competent for border management is still underdeveloped and inefficient, cooperation and coordination remain without basic support.

**Conclusion**

The aim of this paper, although guided by certain points of interest in defining the concept of IBM, is to offer a broader framework for understanding the specifics of its implementation in Macedonia. This framework derives from the reform process that started as a peace building policy of stabilization for the Republic of Macedonia following instability in 2001. It proceeded with assistance from the EU and other international programmes supportive of SSR, specifically in the sphere of Justice and Home Affairs. The contribution of the CARDS programme 2001-2005 assisted in the development and implementation of reforms in the police force in general and introduction and strengthening of border management in particular. The regional dimensions of IBM and bilateral cooperation on specific border issues were introduced through the Ohrid Process.

In the case of Macedonia, it appears that the issue of effective state border control and administration is a core preventive instrument, necessary for the successful detection and suppression of the main sources of instability as well as for overriding the challenges associated with public security. Organized crime, trans-border crime, illegal migration, human trafficking, illegal arms transfer, drugs trafficking, although experienced with different intensity and frequency, have emerged as a primary threat for public security. Increasing the efficiency of border management, complementary to EU standards and best practices will enhance its capacity as the core preventive mechanism against the increasing number of non-military threats. Initial efforts to move closer to EU standards and practices involved the transfer of responsibility for border control from the Army (ARM-border brigade) to the BPS. This process would only be successful in the case of simultaneous and efficient police reforms which, in the first place, meant acceptance of the principle of the reform process, its content and goals, and the significance of full political and professional support.

The BPS was established as a component of the MoI - Public Security Bureau with the immediate task to take over the responsibility of border control from the Army. The Strategy for Police Reforms determined the initial responsibilities of the BPS, its organizational structure and basic functions. As a derivative of this document, the NSIBM introduced a model for border management that rests on the broader framework of actors that should be coordinated by BPS - NCCIBM.

It appears that several issues are significant for effective implementation of the IBM and Action Plan for IBM:

- conceptualization and normative support for the model that defines national priorities and specifics;
- legislative support, definition of the organizational issues that determines the reorganization and new structure of the MoI;
- efficient accountability and control mechanisms (horizontal and vertical);
- establishing a professional and effective BPS under the MoI;
- providing effective mechanisms for cooperation and coordination of activities among different border management actors, thus avoiding duplication and any overlapping of activities;
- efficient regional and internal cooperation;
- training and continuous education;
- equipment and technical support and
- political and professional support for the reform process;

The final conclusion about the achievements and the prospects of the process of IBM implementation based on the implementation of the NSIBM and the Action Plan could be that as long as conceptual and normative issues are in question the new Law on Police will remain the most challenging issue. This is not because there are misleading professional standards, because when border security is in question the Schengen catalogue and EU best practices are the basis for the provisions. It is more the question of competing political interests and influence on the reform process. This is the most immediate obstacle for police reforms and effective implementation of IBM. The implementation of effective control and accountability over policing and border management while strengthening the role of the Parliament and its Commissions in civilian and democratic control could be an effective motivating mechanism for reform processes and the implementation of the Action Plan. After all, the principle of democratic policing and full respect of human rights should be the primary guiding principle in these reforms. This certainly means that reforms are not a one way top-down process; instead, reflections made during the implementation process should be evaluated at the local level as well. The best practice, namely a decline in state border violations from various criminal activities and efficient border control, also means an increased feeling of security at the individual and public security levels. Finally, the main goal of these reforms is to provide not only more secure borders but also more secure communities.

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Rulebook on Areas and Facilities Comprising the Border Crossing Points ('Official Gazette of the Republic of Macedonia', Nos. 69/92 and 9/97),

Rulebook on Movement, Stay, Settlement and Hunting and Fishing Regime Inside the Border Zone ('Official Gazette of the Republic of Macedonia', No. 78/92),

Rulebook on the Delineation Markings on the Border Zone at Land ('Official Gazette of the Republic of Macedonia', No. 26/95),

The Customs Administration Law ('Official Gazette of the Republic of Macedonia', No. 46/04),

Law on Safety of Foodstuff and of Products and Materials in Contact with Foodstuffs ('Official Gazette of the Republic of Macedonia', No. 54/02),

Law on Protection and Safety from Ionising Radiation ('Official Gazette of the Republic of Macedonia', No. 48/02), Law on Protection of the Population from Contagious Diseases ('Official Gazette of the Republic of Macedonia', No.66/04),

Law on Precursors ('Official Gazette of the Republic of Macedonia', No. 37/04),

Law on Transport of Hazardous Material ('Official Gazette of SFRY', Nos. 27/90 and 45/90 and 'Official Gazette of the Republic of Macedonia', Nos. 12/93 and 31/93)

Law on Trade in Poisons ('Official Gazette of SFRY', No. 13/91)

Law on Spatial and Urban Planning ('Official Gazette of the Republic of Macedonia', Nos. 4/96, 28/97, 18/99, 53/01 and 45/02)

Memorandum of Cooperation between the Customs Administration and the Border Police was signed on 18.11.2004

## Part IV – Police Reform in the Western Balkans

## An Overview of the Police Reform Process in the Western Balkans

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In order to assess the main achievements in the area of Security Sector Reform (SSR), and, in particular, police reform in the Western Balkans, it is important to recognize several common features that underline this complex process. Firstly, it is essential to understand the context in which police reform processes in those countries have been developing since the late 1990s. Unlike the countries of Central and Eastern Europe, the countries of the Western Balkans - namely Croatia, Bosnia and Herzegovina, Serbia, Montenegro, Albania and the former Yugoslav Republic of Macedonia (hereinafter referred to as Macedonia) emerged from a period of war, inter-ethnic conflict and internal political instability at the end of the 20th century.

Following the Dayton/Paris and Erdut Peace Agreements, the European Union (EU) formulated a new political approach towards this region. The nature of this new EU framework is best reflected in its name - Stabilization and Association Process (SAP), which offered the European perspective to the Western Balkans (WB) in the form of European Partnership. The EU estimated that stabilization of the political and security situation in the Western Balkans was a necessary remedy towards a more global solution and opening up of the possibilities for association to the European structures. Reforming the security sector, the police in particular, was deemed crucial for the stabilization process, i.e. to create an environment in which sustainable economic and regional development would be possible.

The strategic goals of all Western Balkans countries are European and Euro-Atlantic integration. With regards to Euro-Atlantic integration, it is worthwhile mentioning that all Western Balkan countries became a part of the NATO Partnership for Peace (PfP) program at the end of 2006 and all of them are, more or less, advanced in their negotiations with the EU (e.g. Serbia's negotiations are suspended for the time being due to a lack of cooperation with the United Nations' International Criminal Tribunal for the former Yugoslavia).

Regardless of the current differences in the level of their relations with the EU, the framework of the European Partnership being offered to the countries of the Western Balkans has proven to be the main reform driving force in their respective societies, police reform being one of the most important. For example, in Bosnia and

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[1] The author works with the Law Enforcement Department of the OSCE Mission to Serbia, but the views expressed in this report belong solely to the author and do not necessarily reflect the views of the OSCE.

Herzegovina 'police reform is possibly the last substantial policy issue that must be resolved before the international community can draw down its decade-long engagement. The EU has clearly stated that it is a key precondition for Bosnia's negotiations on a Stabilization and Association Agreement (SAA).'[2] Police reform is important not just in relation to structural and legislative changes, but it is important especially in terms of the introduction of European values such as respect of human rights, the rule of law and development of democratic and accountable institutions.

In the chapters that follow this introduction, which provide overviews of police reform processes in each of the Western Balkan countries, detailed accounts on the main police and border management reform achievements are presented, however one should ask what the common denominators in this field are apart from the above mentioned EU framework, i.e. the Stabilization and Association Process.

The following common feature underlined in each overview is that all of the reforming police services are striving to become a public service. The example of Albania might serve as the most descriptive case for understanding this common feature if we take into account that the police in Albania became a part of the public administration in 1998 - less than a decade ago. Police forces in some of the countries, most visibly in Montenegro and Serbia, were almost private armies of the ruling regimes. The realization, which set into motion all essential elements of police reform, was the recognition that the primary role of the police is to be a public service accountable to society working closely and in partnership with their respective communities.

In that respect, development of the community policing concept seems to be a favoured methodology when addressing the issue of working closer with communities. Community Policing Strategies were developed in Albania, Macedonia and Croatia, whereas Montenegro and Serbia have formally declared community policing to be one of their police reform priorities. Croatia reported having one of the best developed models of community policing in the Western Balkans, which was formally acknowledged by the Croatian chairmanship of the Community Policing Board[3] within the Southeast European Police Chiefs Association (SEPCA).

Another common feature touches the issue of the organization of police services. In this regard, it was indicative that the overviews underlined as one of the main issues, associated with either adoption or amendments of their respective laws on police, the introduction of nominal separation of the police service and the Ministry of Interior (e.g. new draft law on police pending adoption in Albania, and gaining of operational

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[2] Jasmin Ahić, MSc. '*Bosnia's Security Sector Reform' Reconstruction of BH Police*, The Geneva Centre for the Democratic Control of Armed Forces (DCAF), Geneva, 2007, p. 8
[3] Southeast Europe Police Chiefs Association (SEPCA) has four Boards – Board for Organized Crime, Board for Community Policing, Board for Police Education and Board for Harmonizing Legislation. Internet: http://www.sepca-bg.org/ 09/01/07

independence by the General Police Directorate was highlighted). In practice, it means a step towards decreasing the political influence over the professional and operational issues that should be under the competence of an independent police service. This was consistently emphasized as a crucial issue.

In addition, the new law on police is pending in Macedonia, and it is expected that the new law would bring clear provisions with regards to the process of de-centralization of police responsibilities. The issue of de-centralization and/or de-concentration of the decision making authority seems to be significant for all police services in the Western Balkan countries. The only exception is Bosnia and Herzegovina due to the *sui generis* nature of the country. 'The two entities (the Federation of Bosnia and Herzegovina and Republika Srpska) maintain their own police forces under the control of their respective Ministries of Interior. Authority over the police is further decentralized in the Federation, with each of the ten cantons also possessing a Ministry of Interior.'[4] Furthermore, there is an additional police service in the Brcko district. Centralization of the Bosnia and Herzegovina's police seems to be the main police reform challenge, one which is a key precondition for Bosnia and Herzegovina's negotiations within SAP, as mentioned above.

In line with the issue of organization of respective police services is the noticeable difference in the number of police agencies in the Western Balkan countries. The most striking was the number of 15 police services in Bosnia and Herzegovina (reflecting the complex and unique structure of the country), and then Albania – where in addition to the state police there are additional law enforcement agencies such as the forestry police, the construction police, the municipality and the commune police, etc. In other countries, a centralized national police service - organized in the form of a Police Directorate - is the prevailing model.

In line with the prevailing model of the centralized police services, such as in Montenegro, Croatia and Serbia, the main coordination role lies with respective governments. In the case of Albania, which has many services with police authorities that are subordinated to various ministries, it has been reported that ministries are accountable to the Council of Ministers. There was no mentioning of a body that would coordinate the work of the services in Albania. In Bosnia and Herzegovina, the 'Federal Ministry of Interior coordinates the limited policing tasks that fall under its purview such as inter-entity and inter-cantonal cooperation (especially in regards to terrorism and other serious and organized crimes, protecting of VIPs and guarding diplomatic premises).'[5]

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[4] Jasmin Ahić, MSc. '*Bosnia's Security Sector Reform' Reconstruction of BH Police*, The Geneva Centre for the Democratic Control of Armed Forces (DCAF), Geneva, 2007, p. 3
[5] Ibid, p. 3

National Security Councils were established in some of the countries. However, they have different roles. In Croatia, the National Security Council, which is run by the President, coordinates the roles of the President and the Government in the matter of security intelligence services.[6] The National Security Council in Albania serves as an advisory council to the Head of State. Although this body is a constitutional institution there is no special legislation on the functioning of the Council.[7] In Serbia, the National Security Council was set up, however, due to different views over who should preside over the body. The Council has not yet met.

With respect to strategic documents on police reform and development, the majority of the Western Balkan countries have drafted such documents – in Montenegro and Serbia there are the so-called Vision Documents. However, the Serbian Vision Document needs to be revised and updated. Macedonia and Albania have developed Strategies on Police Reform whereas Croatia has drafted the Ministry of Interior's Guidelines 2004 - 2007. Albania is in the process of drafting a 10-year strategy on the development of its police service.

The countries in the region that lack a National Security Strategy are Bosnia and Herzegovina (its entities have their national strategies, however it still does not exist at the state level), Montenegro and Serbia. Other strategic documents primarily relate to Integrated Border Management (IBM) and their development has clearly been influenced by the Stabilization and Association Process and the European Partnership. Several Western Balkan states have drafted, or are in the process of developing strategic documents on community policing and the fight against organized crime and drugs.

As mentioned above, the development of a citizen's service that is accountable to the public is seen as an ultimate goal. With regards to accountability to the executive, all of the police services are accountable to the executive branch, i.e. to the government through their respective Ministries of Interior, or through other ministries in cases where countries have additional law enforcement services. Regarding accountability to the elected representatives, the establishment of a parliamentary committee responsible for external oversight of police services is a common feature in each of the assessed countries. Annual reporting of the executive branch to the parliamentary committee responsible for external police oversight is the prevailing practice.

The visible difference remains in the area of the committee's body of experts which provide support to the committees that are working exclusively on police related issues. Such a body was reported only in Croatia and Bosnia and Herzegovina. In most of the

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[6] Mladen Staničić, Ph.D. (Edit.), *'Security Sector Reform in Croatia,'* The Geneva Centre for the Democratic Control of Armed Forces (DCAF), Geneva, 2007, p. 16

[7] Sotiraq Hroni, '*Albanian State Police,'* The Geneva Centre for the Democratic Control of Armed Forces (DCAF), Geneva, 2007, p. 10

assessed countries, staff members are associated with this parliamentary committee. However, the level to which their capacities are employed by Members of Parliament remains disputable.

As an exception, in 2005, Montenegro established an independent external police oversight body named the Council for Citizens' Control of Police. However, 'the Council is actually a quasi-independent body. The Council has five members representing three quasi-civil society organisations […], the University of Montenegro, and NGOs dealing with human rights. The Government never gave up their Tito-era control of the first four entities, while the human rights NGO representative was nominated by phantom NGOs organised by the regime only for this purpose.'[8] Further development of effective and efficient external oversight remains a challenge in all of the Western Balkan countries.

In addition to the mechanisms of external oversight, internal oversight is an important facet of accountability which should guarantee that the police act in accordance with the law when applying powers and adhere to professional standards such as the Discipline Code and the Code of Ethics. The different models of internal oversight range from the centralised internal affairs units in Serbia, Albania and Montenegro to the Professional Standards Unit, which operates at the local level in Bosnia and Herzegovina. In addition, assuring the legality of police performance lies with line managers and the judicial branch. This area has room for improvement. Dealing with citizen complaints, for instance, is an important way of developing public trust in the police.

-        In line with the above, it was very encouraging to note that, with the exception of Serbia, all of the Western Balkan countries have established Ombudsman institutions. The Serbian Parliament adopted a Law on Ombudsman in 2005. However, the Parliament has not yet elected and appointed an Ombudsman even though the deadline for the appointment passed. In Croatia, Albania, Bosnia and Herzegovina the Ombudsman office is empowered to receive and investigate complaints. The report on Albania states that 'while the court starts proceedings if there is an accusation, the Ombudsman may investigate even based on reports from the media,'[9] which is commendable.

An important positive step in ensuring the accountability of the state authorities to the media and society at large was taken with the adoption of the Law on Free Access to Information in all Western Balkan countries. The right to access to information could be enforced by the judiciary in most of these countries, whereas in Serbia it is within

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[8] Novak Gajic, '*Police Reform in the Republic of Montenegro,*' The Geneva Centre for the Democratic Control of Armed Forces (DCAF), Geneva, 2007, p. 24
[9] Sotiraq Hroni, '*Albanian State Police,*' The Geneva Centre for the Democratic Control of Armed Forces (DCAF), Geneva, 2007, p. 6

the government's competence to enforce such obligations. An effective mechanism to resolve this issue in Serbia is yet to be found. In Montenegro, this law is 'quite restrictive and effectively hinders access to information. Citizens have to justify their requests by explaining why they need certain information, rather than institutions having to justify why some information is classified.'[10]

With regard to the media's coverage of police service activities and police related issues, Bosnia and Herzegovina reports a satisfactory level of coverage. However, the situation in other countries appears to be different. Mostly, it was noted that the media reports in a sensationalist manner in the style of tabloid journalism, with little analytical or research based reporting. Important policing issues are not being investigated whereby journalists lack the expertise and professional curiosity to pursue relevant issues from this domain.

A lack of research on the issue of public trust in the police services seems to be the prevailing practice in the Western Balkan countries. Only Albania and Bosnia and Herzegovina reported that such research has been conducted. Furthermore, in reference to accountability in Bosnia and Herzegovina, there have been more than a dozen polls conducted on public attitudes to security services and police agencies. However, in general, commissioned research and public opinion polls on accountability of the police services appear to be the exception rather than a rule of thumb in the countries concerned.

With regards to the issue of transparency, the prevailing practice in the Western Balkan countries is that all police services are obliged to make information available to the elected representatives. The availability of police related information is generally regulated by relevant laws on the secrecy of information and/or by constitutional provisions.

In the case of transparency and the availability of information on the organisation and personnel strength of different forces, services and agencies it is interesting to note that Croatia is an exception. In Croatia, 'information about the organisation and personnel strength of the police service is a state secret according to the Act on Protection of the Secrecy of Data. This information is not made public and selected persons have privileged access to it.'[11]

In terms of budgets and access to information, general information on all agencies is publicly available. However, the differences between the various Western Balkan

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[10] Novak Gajic, '*Police Reform in the Republic of Montenegro,*' The Geneva Centre for the Democratic Control of Armed Forces (DCAF), Geneva, 2007, p. 24

[11] Mladen Staničić, PhD. (Ed.), *'Security Sector Reform in Croatia,'* The Geneva Centre for the Democratic Control of Armed Forces (DCAF), Geneva, 2007, p. 15

countries lie in the intricacies of inputs and outputs. One feature that is common to all countries in the region is that budget narratives are given in the most general terms.

What would be particularly interesting to assess in future assessments is the process of budget programming. Although this issue was not covered by the questionnaire upon which the reports were based, if the situation in other Western Balkan countries is similar to those in Montenegro and Serbia, then it could be concluded that budgeting is highly centralised and is not reflective of realistic needs. Also, a centralised system of budgeting is a pre-condition for the de-concentration of authority. Furthermore, if the processes are similar in all Western Balkan countries, one could presume that the establishment and first actions of the Supreme Auditing Institution might represent a turning point for the transparency of police services which are striving to become a viable part of the public administration system.

**Integrated Border Management in the Western Balkans**

The issue of the demilitarisation of the Western Balkan borders also needs to be seen from a wider prospective of overall SSR and the impending accession of the Western Balkans to the EU, where border protection is not seen as an issue of defence, but rather of home affairs. The issue has not only been viewed in terms of the transfer of responsibility in securing the state borders from the military to the police and building up the national border police services, but also with respect to the delineation of borders particularly between the former Yugoslav republics.

The whole demilitarization process demanded both commitment and support not just from the Western Balkan countries, but also from the international community bearing in mind that, in early 2003, 'following a NATO initiative, the EU, NATO, the OSCE and the Stability Pact worked jointly to develop a coherent and concerted approach to the border security and management issue in the region.'[12] The international community's interest in border protection reform also lies in the fact that the Western Balkans is a part of the infamous Balkan Route – one of the main roads used for the illegal trafficking of human beings, weapons, drugs and other hazardous substances to the EU. The Balkan Route is also an important road for terrorists, connecting the Middle East and Central Asia with Europe. To give just one example, the only surviving suspect of the Madrid 11 March 2004 bombings was arrested on a train in Serbia. The suspect was en route to the Middle East.

The international community's initiative resulted in the Ohrid Process on Border Security within which the countries and international organisations involved agreed on a way forward regarding all crucial aspects of the process at a conference which was held in May 2003. The long-term overarching goal of the Ohrid Process was to develop Integrated Border Management (IBM) system in the Western Balkans. IBM should

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[12]  Internet: http://www.nato.int/docu/conf/2003/030522_ohrid/c030522a.htm

provide the right balance between open but secure and controlled borders – open borders for trade, tourism and other forms of legitimate movement of people and goods, but secure and controlled to prevent illegal migration, human trafficking, criminal activities and terrorism.[13]

In such a complex region as the Western Balkans, the demilitarization of state borders and introduction of an IBM system in line with EU and Schengen standards[14] is an enormous challenge, especially since relevant legislation in some of the region's countries is still pending, (e.g. the current law on borders in Serbia dates back to 1979). The driving force for working on the demilitarization and development of an effective IBM system remains the top priority issue within the European Partnership.

Development and adoption of IBM strategies as well as action plans for their implementation have been reported as major achievements in Albania, Macedonia, Croatia, Montenegro and Serbia. While Bosnia and Herzegovina is working on the IBM concept, it is the only country that is not bordering with the EU at present. Most Western Balkan countries have demilitarised their borders and Serbia is expected to finalize this process in early 2007.

The centralization of state border services is the main model of organization in all of the Western Balkan countries. Even in the case of Bosnia and Herzegovina there is a centralised body - the State Border Service. Although the various police services in Bosnia and Herzegovina are not subject to the authority of the same central ministry, the co-operation between them is developed as inter-agency co-operation. In most other countries, state border services are a part of the General Police Directorate.

The IBM concept entails cooperation between four main border authorities - Border Police, Customs Administration, Veterinary Inspection and Phyto-Sanitary Inspection. In addition, cooperation with the military and other state authorities plays a vital role. Cooperation and coordination of activities among these authorities is deemed crucial bearing in mind that all of the numerous authorities fall under the jurisdiction of different ministries. Croatia and Serbia have established inter-ministerial working groups that deal with the issues of cooperation and coordination.

Macedonia has taken the issue of coordination to a higher level through the appointment of a State Commission for Border Management (SCBM) for democratic oversight which is incorporated in the IBM strategy. Macedonia's State Commissioner

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[13] Internet: http://www.feio.sv.gov.yu/code/navigate.php?Id=173

[14] In June 1990, the 'Convention Implementing the Schengen Agreement' was signed. Its key points relate to measures designed to create, following the abolition of common border checks, a common area of security and justice enhancing the free flow of people and goods across borders in Europe.

must be independent of any other body or agency involved in border management.[15] In addition, according to the country's IBM strategy, the Border Police Service is responsible for establishing and operating the National Border Management Coordination Centre (NBMCC). Through the NBMCC, the border police service will have the capacity to coordinate its own activities with those of other border management agencies.[16]

Taking into consideration the important geo-political position of the Western Balkans and the fact that the region's countries are situated at the crossroads of major trans-national organized crime routes, the strengthening of the overall capacities of border services contributes significantly to the fight against organized crime in Europe and to improving its efficiency and effectiveness. The challenge in the area of IBM remains in terms of implementation of the adopted laws and regulations, joint training programs for the border services and reconstruction and building up of the border crossing points, which will become a focus in the years to come.

Nevertheless, although the development and strengthening of respective border police services has been the exceptional political and SSR priority for the Western Balkan countries in the short and medium term, the long-term prospective should not be overlooked. As mentioned in the report on Montenegro, 'the border services of all of the Balkan countries must maximise their limited capacity and co-operate. Overdeveloping the border police service with the main purpose of implementing EU and Schengen regulations should be avoided. This would then require huge personnel and infrastructure cuts once the Balkan Peninsula is integrated into the Schengen area.'[17]

In conclusion, police reform in the Western Balkans represent a major challenge since it requires deep changes not just in relation to the security sector but also in terms of the overall system of values of the region's respective societies which are all striving for European and Euro-Atlantic integration. In that regard, the level of influence of the different international bodies and organisations in the respective countries of the region needs to be highlighted. In pursuing the goals and priorities set by different international organisations, the reality on the ground has been somewhat overlooked. As the report on Albania notes, 'internal assessments of national values, interests and requirements are rarely used as a source for setting objectives in police strategies. Internal interests or needs are taken into consideration if mentioned or referred to by

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[15] Lidija Georgieva PhD, 'SSR in Macedonia: Border Security between Challenges and Expectations,' The Geneva Centre for the Democratic Control of Armed Forces (DCAF), Geneva, 2007, p. 21
[16] Ibid., p. 24
[17] Novak Gajic, '*Police Reform in the Republic of Montenegro*,' The Geneva Centre for the Democratic Control of Armed Forces (DCAF), Geneva, 2007, p. 33

international reports or statements.'[18] Integrating a democratic set of values in the police services of the Western Balkans still remains an issue beyond all laws, strategies and accountability mechanisms which are reported to have raised policing standards to a new level.

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[18] Sotiraq Hroni, '*Albanian State Police*,' The Geneva Centre for the Democratic Control of Armed Forces (DCAF), Geneva, 2007, p. 15

# Reform of the Albanian State Police

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The following research has been undertaken on law enforcement issues, more specifically on policing in the Republic of Albania. It should be noted that this subject was considered to be highly important by the relevant authorities of the police institutions who were consulted and interviewed on the subject of police management and decision-making. Another important aspect of this report relates to the fact that law enforcement institutions, state police and other police agencies are in constant structural and other changes as the country strives to adopt practices and legislation based on initiatives leading towards the process of European Union (EU) integration.

**The objectives of this survey are the following:**

1) to describe the nature and effectiveness of the provisions for the executive direction and legislative oversight of police agencies in selected countries (the accountability aspect of this research);

2) to describe the institutional arrangements and current practices that cover provisions on information about the organization, planning, budgeting, administration and operations of these forces, services and agencies in the selected countries (transparency aspect);

**Government Structure, Reporting and Management Relationships**

There are is explicit mentioning of the police in the Constitution of the Republic of Albania. Issues related to police governance and management can be found in articles regulating the activity of the Government, the Minister's responsibilities as well as respective Parliamentary Commissions.

The main institutions that formulate, implement, report and oversee the police policies are the Parliamentary Commission of National Security and the Ministry of Interior. The main law that regulates the functioning of the State Police is Law No. 8553 dated 25.11.1999 'On State Police' and Law No. 8933, dated 25.07.2002 'On an Amendment to the Law No. 8553.' The Law No. 8553 states that the State Police is under the supervision of the Ministry of Interior (ex Ministry of Public Order) (Article 1, paragraph 1) and the State Police budget is an item in the budget of the Ministry of Interior (Article 3). It also states that the Minister holds the highest leadership capacity who, within the general program of the Council of Ministers, exert civil supervision on the State Police (Article 7, paragraph 1) and also represents the State Police in relation

to other constitutional institutions within the country and in bilateral and multilateral foreign relations (Article 7, paragraph 4). The Prime Minister influences policies through the Minister of Interior.

The Parliamentary Commission on National Security is responsible for overseeing and holding the Ministry of Interior and State Police accountable for operational police management and supervision of its activities. This commission has replaced the Commission on the Public Order and the State Intelligence Service which, in the past, oversaw the police. Now the Commission for National Security has the responsibility of supervising the police forces, the Armed Forces and the intelligence agencies.

A draft law on the State Police is currently under preparation and it is expected to be approved in 2006 by the Council of Ministers and Parliament. It is meant to be a comprehensive law that covers the structure, functions of separate departments, ranks, relations with the public and other institutions, management of personnel, disciplinary procedures, evaluation, employment of police personnel and competences, etc. The new legislation foresees a more clearly defined split of competences between the State Police and the Ministry of Interior. It also separates the budget of the State Police from that of the Minister of Interior. The General Police Director is to be appointed by the President of the Republic based on proposal of the Prime Minister and clearly becomes the only responsible administrator of police force operations. However, the author of this report has consulted the draft law, which is subject to changes by the Council of Ministers and the Parliament.

Public information is regulated by the following laws: Law No. 8503, dated 30.06.1999 'On the Right to Information about Official Documents' and Law No. 8457, dated 11.02.1999 'On Information Classified 'State Secret'' and Law No. 8517, dated 22.07.1999 'On the Protection of Personal Data.' The last guarantees the protection of personal information from unauthorized use. The classification of documents not for immediate public release is the competence of the President, the Prime Minister and other directors authorized by the Prime Minister in the State Register of Classified Information (Law No. 8457, Article 4). Law No. 8553 regulates the status of police officers. For the supporting and administrative staff of State Police Law No. 8549, dated 11.11.1999 'On the Status of Civil Servants,' is applied or the Work Code of Republic of Albania as stated in Law No. 8553, Article 15, paragraph 1.


**Procurement and budget:**

There is no separate law for the procurement of the State Police. The procurements by state institutions are regulated with separate laws: Law No 7971, dated 26.07.1995 'On Public Procurement.' This law operates in all the cases of procurement of public institutions, with the exception of the cases when the Council of Ministers, for reasons of national security, determines a separate procedure of procurement.

Law No. 8379, dated 29.07.1998 'On Drafting and Implementing of the State Budget of Republic of Albania,' defines the principles and methods of drafting, administering and use of the budget.

Law No. 9464, dated 28.12.2005 'On the State Budget for Year 2006,' determines the concrete allowance for each of the budgetary institutions, including the State Police.


**The police services**

Law No. 8553 dated 25.11.1999 'On the State Police' is the main legal act that regulates the mission, functioning and competences of the State Police. As mentioned above, this Law will be substituted in 2006 by the new draft prepared by senior experts of the Ministry of Interior and State Police with the important assistance of the EU police mission in Albania (PAMECA) and the US Justice Department Assistance Program (ICITAP).

'The National Security Strategy of Republic of Albania 2003-2006,' approved by Parliament with Law No. 9322, dated 25.11.2004 'On Approving the National Security Strategy of Republic of Albania' is a crucial document of the security sector. Other important documents are:

- The Strategy for Reform in State Police;

- The Strategy for the War Against Illegal Trafficking and the Trafficking of Children;

- The National Anti-Drugs Strategy 2004 – 2010;

- The Strategy for Integrated Border Management;

- The Strategy for Community Policing (to be approved).

These strategies are accompanied by action plans for their implementation. At present, a 10-year Strategy for the Development of the Albanian Police is awaiting approval.

The State Police is the main non-military law enforcement institution – 'The State Police is an institution of the public administration of the Republic of Albania, subjugated to the Ministry of Interior, whose mission is to defend the public order and security and to guarantee the enforcement of the law' (Law No. 8553, Article 1, paragraph 1).

In the course of the last decade, efforts to improve law enforcement in the various areas of public administration have led to the establishment of the following police agencies:

- Within the System of the Ministry of Finance, the Taxing Police and the Revenue Police are responsible for controlling the payment of taxes and revenues at the border entries.

- Construction Police – 'Construction Police is an executive, armed entity, specialized in the control of the law implementation in the field of construction and city planning' (Law No. 8408, dated 25.09.1998 'On Construction Police,' Article 1).

- Municipality and Commune Police - 'Municipality and Commune Police is an executive organ that guarantees the order and welfare of public works within the territory of municipality or commune, in congruence to the provisions of this law and which are not competences of the other state authorities' (Law No. 8224, dated 15.5.1997 'On Organization and Functioning of the Municipality and Commune Police,' Article 1).

- Forestry Police is under the authority of the Minister for Agriculture and Food.

- Electricity Police – 'Electricity Police is established as an executive entity specialized for the control of the implementation of legislation for the administration and use of electric energy in the state and private sectors by physical and juridical persons, Albanian citizens or foreign citizens, that exert their activity in the territory of Albania' (Law No. 8637, dated 06.07.2000, 'On Electricity Police', Article 1).

- Military Police - 'Military Police is an executive organ that is located in the united operative unit of the army and deals with security and guard of the members of the Armed Forces and of military property, with keeping order and discipline in military garrisons, in other areas and in the network of urban and interurban transport and with detection of those who commit military penal acts.' (Law No. 7508, dated 07.08.1991 'On Military Police in the Armed Forces of Republic of Albania', Article 1).

- Prison Police, whose responsibility is the policing of prisons and in subject of the Ministry of Justice.


The correct official designation of each of the forces, services and agencies is listed below:


A. Policia e Shtetit – State Police

B. Policia Doganore – Revenue Police

C. Policia Tatimore – Taxing Police

D. Policia e Ndërtimit – Construction Police

E. Policia e Bashkisë dhe Komunës – Municipality and Commune Police

F. Policia e Pyjeve – Forestry Police

G.  Policia Ushtarake – Military Police

H.  Policia e Burgjeve – Prison Police

From 1997 – 2006, several new police force agencies were established, such as the construction police, the municipality and commune police and the electricity police. The revenue police force was reorganized from the financial police. There has been a tendency to improve law enforcement through the creation of police agencies. However, these institutions are far from effective and they rely on the presence and support of the State Police to enforce the law. In terms of the reorganization of these services, reform might be an issue. During these years, the legislation concerning the organization and functioning of the State Police was revised. Under the current law, the State Police has become a part of the public administration rather than a branch of the Armed Forces. A significant reduction in the number of the police forces is based on European standards of equating the number of police forces with population numbers. Within a year, the country is required to reduce its police force by nearly 1700 personnel.

The State Police is currently subordinate to the Ministry of Interior. The new draft Law 'On State Police' supports the independent operational capacity of the State Police.

The Military Police is subordinate to the Ministry of Defence.

The Taxing Police and Revenue Police are subordinate to the Ministry of Finance.

The Electricity Police is subordinate to the Ministry of Economics and Energy.

The Construction Police is subordinated to the Ministry of Transport and Telecommunications.

The Forestry Police is subordinate to the Ministry of Environment, Waters and Fishery.

The Municipality and Commune Police is subordinate to Municipalities and Communes.

The Prison Police is subordinate to the Ministry of Justice.

All police forces are accountable to the Council of Ministers.

Each governmental institution mentioned above has, on its own initiative, proposed laws in support of the establishment of law enforcement agencies. After approval by the Council of Ministers, the legislation was approved by Parliament.

**Accountability**

With the exception of the Municipality and Commune Police all other police institutions belong to central government institutions, and they are under the responsibility of the respective Ministry. The organizational structures of these police forces are approved by the respective Minister and are accountable to that Minister. Ministers are accountable to the Council of the Ministers and the Parliament. The Municipality and Commune Police was only recently established and it is far from being a consolidated structure.

The various law enforcement agencies lack the proper capacities, skills and motivation to provide effective and unbiased law enforcement. Frequently, they lack clearly defined responsibilities as in the case of the Municipality and Commune Police. While, the Construction Police can hardly enforce law without the support of the State Police.

These agencies normally use reports, information, periodical analyses and analyses of specific issues to provide accountability to the executive, but it should be mentioned that the agencies primarily feel accountable to the Minister then to the provisions of law. This makes the institutions less transparent and accountable to the public and to the rule of law. In these circumstances, legal obligations and respect for law can be evaded. The most consolidated police force is the State Police, which enjoys greater public trust according to polls produced by the Institute for Democracy and Mediation. Media reports reveal that the other police forces have little respect for the law and are biased in their law enforcement operations.

*- to elected representatives*

The police forces are directly accountable to the legislature, through the parliamentary committees which oversee the executive power. The State Police is accountable through the Minister of Interior to the Parliamentary Commission for National Security. The Parliamentary Commission has the right to investigate the institutions subject to the Ministers, which include the various law enforcement agencies. Institutional leaders of the various law enforcement institutions may appear before the responding Parliamentary Commission upon the request of the Minister.

Regarding the issue of accountability to elected representatives at the local level, according to the legislation and norms, the local directors and chiefs of the State Police are made accountable to the locally elected once per year. This is a rather formal process and it is rarely applied. Even in cases that the law requires a process of

accountability to the locally elected authorities, leaders of such agencies at the local level frequently evade this responsibility. The Albanian State Police will continue to be a rather centralized institution and the new draft law strengthens this component by excluding wholly the currently existing chapter on police and local government cooperation.

There is not any institutional or procedural control towards transparency and accountability to the law for any police institution. The Minister, in other words, the political leadership of the institution, remains the main and only authority with respect to the accountability of law enforcement institutions to elected representatives at the national level. The General Police Director appears for questions and hearings at the Parliamentary Commission on National Security, if requested by the Minister to do so.

Public information reported by the media remains the main source of assessing the process of accountability of police agencies.

With respect to the evasion of obligations, from the legal point of view, the various police agencies have to respect, in practice, the leaders of such agencies who would normally hold the position of Minister, who is not always held accountable to the law.

- *to other institutions*

The courts are institutions where administrative and penal cases may appear once there is a violation of the law by any of the agencies concerned or the police force. Juridical proceedings have seen many cases whereby police officers and leaders are frequently dismissed without proper justification. Most proceedings are finalized by a decision that counteracts the ministerial authority. Sentences, however, are rarely carried out. The most publicized case of this nature was the Decision of the Albanian Supreme Court which ordered the Ministry of Interior to re-employ a former General Police Director. While the decision was not carried out by the authorities, the former Director continued to receive his salary and this has been the case since his dismissal in 2002.

The ombudsman may also be put in motion in cases of accusations of abuse of power and other violations by the police force. While courts commence proceedings if there is an accusation, the ombudsman may commence his/her investigation based on media reports alone, or upon the request of individuals or human rights groups.

The mayors or chairmen of communes have authority over the Municipality or Commune Police under their jurisdiction.

Internal structures for validating accountability and observance to the rule of law by the various police structures have been established especially in the State's police force, which controls the operational and financial management of all police structures. Internal control and inspection departments are rather centralized institutions. Moreover, under the direct authority of the Minister of Interior, the Internal Control Service reports all cases of abuse of power by the police. In each local police department, there is an Internal Control Services inspector working under the direct responsibility of the central authority.

The Law of Internal Control has been amended on two occasions in the past decade.

These institutions perform efficiently because they are privy to the rule of law and other regulations. However, in terms of accountability, the Internal Control Service undoubtedly presents the greatest challenge. The Service does not enlist in any other form of transparency in relation to its investigations on the misuse of power by police officers other then reporting directly to the Minister. Police officers are frequently dismissed after being charged by the Service, yet they are rarely notified of the reasons for their dismissal or made aware of the evidence that has been gathered to justify the dismissal.

Police forces and other agencies normally cannot evade their legal obligations in this respect.

### - to the media and society at large

Article 23 of the Constitution guarantees the right to information. In compliance of this article, the Parliament has approved Law No. 8503, dated 30.06.1999 'On the Right of Information about Official Documents.' This law makes no explicit mentioning of the police force, but it does apply to the force. Although legally access to state information is recognised, in practice, there may be cases to the contrary. To regulate communications with the media and the public, every agency has a Public Relations (PR) department or a related component assigned with these responsibilities. The Ministry of Interior and the State police have established separate PR departments at the national and local police directorate level.

Nevertheless, the tendency not to produce documents and rather to ask political authorities to make information, such as laws and regulations, accessible to the media and interested individuals, is a common occurrence.  In recent years, no cases have

reported incidences whereby pressured has been exerted by the authorities to reveal sources of information. The law supports the right of journalists to protect sources of information.

Since 1998, the Ombudsman (in Albanian *Avokati i Popullit*, meaning the Advocate of the People) has investigated the abuse of power by the police force. In most cases, the Ombudsman office is put in motion even on the advice of media reports.

The media is highly sensitive towards the police services and devotes considerable space to the activities of the State Police. Perhaps the quality of the media's coverage could be greater. A lack of professionalism is a problem and the media basically produces press releases with the aid of the police's PR departments. My opinion is that, in general, the media is not hostile to the police, although the force does consider the media to be rather problematic. Public attitudes to the police force are, however, having a positive effect on overall levels of acceptance and cooperation.

The Institute for Democracy and Mediation conducted a poll in May-June 2005 on public trust in the police service in several districts. Target groups were police officers, officials of local governments, high school students, businessmen and citizens at large. The questionnaire included questions about public accountability of the police. It was revealed that 60% of the respondents trusted the State Police more in relation to other police forces and that over 50% of citizens agreed to be involved in cooperation and consultation processes with the State Police. Analysis of the results was included in the publication of IDM at the annual conference 'Public Trust – A Challenge to Police.'

In another public opinion poll carried out by IDM in August-September 2006, the question of 'what police should do better' was asked. 45% of the respondents said that the police should arrest criminals, while 32% said that the police's role was 'to eliminate corruption'. Other questions in the survey clearly revealed the need for police institutions to take on board the public's perceptions of threats.

*-to codes and conventions*

Albania has subscribed to various international codes and conventions such as:

- United Nations (e.g. 1979 UN Resolution: Code of Conduct for law-enforcing officers)
- Council of Europe (e.g. 1979 Council of Europe Declaration on the Police)

- The OSCE (e.g. 1994 Code of Conduct on Politico-Military Aspects of Security)
- Europol (e.g. 1995 Europol Convention)
- Interpol (e.g. 1999 Interpol Seoul Declaration)
- European Convention on Human Rights.

The country is ready politically to subscribe to any other requirements stemming from EU accession actions but most of these codes and conventions are not known to officers at any level. They are mostly applied on the request of internationals rather then as an obligation of the institutions themselves. In my opinion, the accountability process of the country and its institutions remains a very weak component and this may become even more obvious in cases of international cooperation.

**Transparency**

All police forces are obliged by law to make information available to *elected representatives*.

This obligation is determined as a general principle in the Constitution and in legislation about the organization and functioning of the police services. There are no legal acts stating that these services have no such obligation.

Information is available and made public for all citizens. Most of the institutions have websites. The public can receive information on allocated budgets for almost every item except specific operations which require special authorization. The budget is made public in general terms most often in accordance with the nature of operations.

Law No. 8457, dated 11.02.1999 'On Information Classified 'State Secret'' is the basic official document for assessing public availability for police operations and the budget. The classification of documents not for immediate public release is the competence of the President, the Prime Minister and other directors authorized by the Prime Minister in the State Register of Classified Information (Law No. 8457, Article 4). Nonetheless, one can hardly say that the relevant officials freely reveal police operations and budget issues without prior confirmation from the highest authority. This is dependent also on the level of professionalism and efficiency of the administration whereby some would prefer to follow an order as opposed to abiding by a law in order to act.

Information about the *strategic outlook* and planning of the services is made public in general terms, most often when it is under scrutiny.

The reporting of activities are principally published for the State Police, which enjoy the highest public visibility. Policy statements are normally made public when the agency is under scrutiny. Otherwise statements may be made on special occasions.

Official publications about the State Police can be found on the website of the Ministry of Interior: www.moi.gov.al.

**International transparency**

Albania's subscribes to different international conventions and codes of conduct such as the UN Resolution: Code of Conduct for law-enforcing officers, Council of Europe Police Code of Conduct, the OSCE 1994 Code of Conduct on Politico-Military Aspects of Security, Europol Convention, Interpol Seoul Declaration, and the European Convention on Human Rights. These conventions impose transparency obligations, but they normally are respected in bilateral exchanges of communication. This is particularly true in relation to requests set forth by the abovementioned organizations with relevant institutions of the country. It should be stressed that it has been a widely accepted fact that the subscription to such legislation or its approval by the Albanian Parliament does not mean supplementing any additional local capacity to its implementation. Inadequate capacities, institutional instability, and low levels of public responsibility in general are among the reasons for a lack of compliance with these international conventions or codes of conduct.

In the case of international co-operation between police forces and other internal security forces, domestic transparency is limited to pre-approved declarations or statements regarding cooperation of a bi-lateral or multilateral character. Judging from recent history, domestic police activities in which international cooperation is involved are made public after the operations have ended. The level of information regarding these kinds of operations is made somewhat public and the relevant authorities mention international actors merely as a means of enhancing the credibility of domestic operations or to demonstrate that Albanian police agencies are a credible partner.

**Recent changes in 2004/5 and general appeal**

The events of 11 September 2001 led to some minor changes with regards to institutional structures. The State Police Directorate and local branches have set up special 'departments to fight against organized crime and terrorism.' One cannot speak

of substantial changes to 'normal practice' to date as far as the transparency and accountability of police forces are concerned. In my opinion, the most important change involves the focused activities against special 'social groups' which are considered potential sources of terrorism. International organizations assisting the Albanian police have facilitated the reform process in terms of the structure and performance of the police force and in its capacity to address global and local challenges related to the events of 11 September.

**Oversight and Guidance of the Police**

The President of the Republic does not have any competencies on issues related to decision-making on police matters. However, the Head of State may use his moral authority to heighten sensitivity on particular issues relating to police structures and performance. Most often, the Head of State addresses police on election-related operations to abide by the law and ensure the transparency of the process. The new draft Law on State Police (to be approved by Parliament in 2006) enhances the competences of the President of the Republic by recognizing his role in the appointment of the General Police Director on the proposal of the Prime Minister. The Prime Minister actually appoints the General Police Director. The Prime Minister, as Head of the Government is the highest political authority who signs decisions and other normative act concerning police forces. The proposal for each normative act comes from the Ministry of Interior. The Ministry is required to send to the Government for its approval the National Strategy for Community Policing. This document is prepared by the Ministry before being sent to the Council of Ministers for final approval, the document is endorsed by the relevant institutions. In this case, the Finance, Education and Justice Ministries as well as the Department of Codification endorse the document. The frequency of general Government decision-making process depends on the initiatives that are undertaken.

The role of the Parliament in endorsing police policy decisions is not explicitly defined in the Constitution, but it appears in the functional responsibilities of the Parliamentary Commission on National Security. The Parliament is able constitutionally to act independently to amend strategic objectives on the police, to reformulate and introduce new objectives, to vary police expenditures and revise police missions. However, until now, the Parliament or Parliamentary Commission has never put in motion a single case without the prior consent of the Government. The reason being, that the political majority controls the Parliamentary Commission. Thus, Parliament is permitted to make amendments only in consent with the executive powers. In practice, Parliament only has the power to endorse or reject police policy documents submitted for its approval. The same procedures also concerns Parliament's role in endorsing police policy decisions. The possibility that police policy initiatives can be taken by

Parliament does exist. However, if such an initiative is undertaken the prior silent consent of the Head of the Government is required.

Parliament has a staff of experts working on security issues solely for the parliamentary commissions. It should be mentioned that the limited officials do not cover police issues directly but they assist the Parliamentary Commission members on all issues. For a second year, DCAF has supported an additional expert at the Parliamentary Commission on National Security, who has proved to be most active member of the staff of experts. This Commission does not have a sub-commission for police matters and there are three staff experts, while the whole Commission is comprised of 17 members of Parliament. The Parliamentary Commission invokes questions, hearings and interpellations once an issue is debated in the media or there is a legal initiative or any other issue of public importance arises. Parliament has not commissioned research to public or private research institutes in the country. It would be more favourable for Parliament to apply for external assistance; basically carry out exchange visits of members of the Commission to different public research institutions from abroad, or to request best practices on different issues.

It should be underlined that the Parliament follows the party or coalition lines in deciding on police matters, police reform or performance on specific issues.

The National Security Council is a constitutional institution that serves as an advisory council to the Head of State. There is no special legislation or statute on the functioning of the National Security Council. As such, there are no specific duties established on the role of the President or National Security Council regarding the formulation of police policy except for different recommendations on specific matters. To the best of my knowledge, the National Security Council until now has been summoned only occasionally with respect to different emergencies on very specific occasions.

The Prime Minister exerts his/her influence over the police through the Minister of Interior or the General Police Director who is appointed by the Prime Minister. The Council of Ministers formulates/endorses policy decisions and normative acts on police activity. There is no staff of experts or special units responsible for police reform or issues. The Prime Minister supports or initiates different actions on police matters in response to situations concerning public security. This is basically achieved through communication with authorities of the Ministry of Interior or the State Police. There is no specific unit of experts or staff close to the Prime Minister that assists in the formulation of opinion

The Minister of Interior formulates and endorses police policy decisions through orders and normative acts. He also presents different normative acts to the Council of Ministers for approval or legal acts for approval by the Government to be sent to Parliament. It should be mentioned that the new draft Law on State Police clearly excludes the Minister of Interior from leading police operations.

In case a strategic document on police policy is issued for endorsement, there are no special legal or customary provisions for formal guidance from a higher authority, except for the normal procedures of its approval which involves the following: the issuing authority, on police issues, the Minister of Interior sends the document to all other Ministries or other institutions that are effected or are stakeholders in the draft legal act or draft law. Following official comments and suggestions, supportive or non-supportive documentation is received by that institution. The document is reviewed and sent to the Council of Minister for approval. If the document requires a special additional budget, the Minister of Finance has to approve it. Of special importance is the position of the Department of Codification in the Ministry of Justice. Deviation from these procedures is rare. In special cases, for instance, during the process of consultations which took place during procedures for the approval of the National Security Strategy, the Ministry of Foreign Affairs set up a meeting with civil society activists. The meeting, however, was simply a formal process. The ideas that were proposed were not incorporated or approved by the experts in charge. Generally, such procedures are not made public. Basically, political interest prevails over expertise and advice is not seriously considered or taken into consideration in the final draft of any document.

The system of police funding is similar to the system in place for the Government. Both the police system and the general procurement system are transparent for industry, business and the public. However, the media has never commented on the expenditure of the budget by Albania State Police or the Ministry of Interior. It may be difficult for journalists to obtain information from the Albanian police on specific budgetary items. The budget and its expenditure are under the scrutiny of the Parliament. There is no set of procedures in place for Parliament to investigate the police or Ministry of Interior budgets, unless a case of abuse is raised in the media. Scrutiny of the Parliamentary Commission on National Security took place two years ago, when the procurement units of the Ministry of Interior were accused of corrupt procedures and abuse of public funds in contracting civilian passports.

### Contacts and International cooperation

The Minister of Interior authorizes issues related to international contacts and cooperation, and oversees the development of such contacts. The Minister also has the

authority to end international contracts. The General Police Director represents the Albanian State Police in international contacts and cooperation, but the Minister of Interior's endorsement of every action is a prerequisite. Every international visit even for lower rank officers requires authorization by the Minister of Interior. The Prime Minister acts through the Minister of Interior in the authorization, oversight or cessation of international contracts. The new draft law maintains the same procedures of international contacts or cooperation.

**Theory on police matters**

National police policies are formulated in accordance with Albanian tradition in general terms. Democratic reforms have facilitated different contacts of a bilateral or multilateral character. Albania's subscription to international conventions and codes related to the police has assisted in the development of new legislation. With the absence of institutionalized thought, well-established practical mechanisms have been mostly consulted in the context of national police policy development. The literature published by Albanian experts in the past ten years on different police management issues represents the main source of written material. However, these texts are rarely consulted.

Literature, models and examples from other nations with recognized success in good governance of the security sector, I believe, are the main sources for national police planning. There is no particular model, example or nation to be followed. But, if it exists it should bear the experience of a particular nation that an international expert offers. For specific areas of activity, it may be a particular model of a certain country and for another area of activity it may serve a certain other model. In the past decade, Albania has been assisted by PAMECA (the EU's police assistance mission), ICITAP (the US Justice Department, experts from Italy's Interforca and OSCE experts. In order to better coordinate this international support and evade overlapping organizational structures, the International Consortium on Security Sector Reform was established. It is obvious that each organization offers the model its experts know best. In the case of PAMECA, for instance, every expert has its own model practiced in the country of origin. For instance, the Spanish are keen on the model produced by Spain. This becomes much more problematic when local capacities to choose a certain model remain weak and where the model chosen is unsuitable for Albanian realities.

Another problem with internationally accepted codes of conduct and codes of good practices in police planning is the fact that, in most cases, codes are identical without any reflection on the Albanian reality or on local capacities. They are practically

inapplicable. The Code of Ethics, for example, was a translated copy paste from the similar CoE Code.

There are certain recommendations and programs developed by different police assisting missions such as the EU Police Assistance Mission in Albania (PAMECA) and the US Justice Department Assistance Program ICITAP. These missions have a number of experts that assist in many police operations and planning. Each of these missions has a number of officers in the Ministry of Interior who advise the Minister or General Police Director on police issues. This assistance is proving helpful in supporting the reform of the Albanian Police Force in many respects.

Albania and its institutions are far from adopting practices on the basis of input from local research institutes which would lead to effective reform. Public institutes are formal structures with limited capacities to develop research on police matters. They are ministerial organizations and they have a very low profile in producing policy recommendations. Private institutes and think tanks are somewhat more active due to their capacity to be flexible in the programming of their activities in assisting police reforms. Thinks tanks and private institutes are not economically dependent on public funding. They receive most of their funding from international donors. These organizations deal with different security issues and international relations, while also covering police issues. A limited number of NGOs work on the development of alternative strategies, organizing national conferences on police matters and carrying out surveys and research on public trust issues and perceptions of police performance.

In addition to such activities, organizations such as the Institute for Democracy and Mediation assist police initiative such as the establishment of police trade unions through a bottom-up process. Other organizations primarily publish occasional papers. Commissioned reports are limited to international demand. Oversight commissions and the contracting of independent research on policy issues by Government authorities are lacking. Public institutes may be involved in producing occasional papers requested by the political authorities, but not on research that would assist in decision-making. Even in terms of the formulation of national strategies local existing expertise is rarely consulted. The Government (the Prime Minister and various Ministers) do not use research facilities on specific issues of police policy in their decision-making process. While the Government, the Prime Minister and other senior institutional leaders continue to justify the need for reform they are largely motivated by inaction. The reaction of the authorities to NGOs is often critical. Public debate on police issues occurs at specific moments of police reform, but also when surveys published in the press have exposed some problematic truths. Albania in general (authorities, media, and other institutions) does not possess the civic culture to make effective use of research to facilitate the reform process. Even when survey results might have

influenced different police policy decisions, the authorities rarely acknowledge public criticism. This indicates that official bodies are not making policy decisions based on the outcome of such surveys. Private surveys commissioned by international actors are not meant for public release. In all cases, surveys are not a regular occurrence.

**Police Institutions within the Security Sector**

Structure of Decision Making on Police Policy

| Topic of Document | Title of Document | Issuing Authority | Endorsing Authority | Frequency / Time span | Status |
|---|---|---|---|---|---|
| Police Planning | Action Plan Operation Plan | Departments | General Police Director | No time span | |
| Personnel policy | Personnel Act | Ministry of Interior | Council of Ministers | | Approved |
| Police Education | Educational Program | Director of Police Academy | General Police Director | | Approved |
| Public information policy | Functional Duties and status of Public Relations Offices | Depart. of Public Relation | Minister of Interior | | Approved |
| Police Strategy | Strategy of Police Development for 10 years | Ministry of Interior | Council of Ministers | 10 years | Not approved |
| International Cooperation | Agreements, | Ministry of Interior | Council of Ministers | | |

| Topic of Document | Title of Document | Issuing Authority | Endorsing Authority | Frequency | Status |
|---|---|---|---|---|---|
| | | | | Time span | |
| | | | | | |
| Interagency Cooperation | Protocols or Agreements (Various) | General Police Director | Ministry of Interior | | |

All policy documents are published for internal distribution to the institutions involved but, in practice, this is not a norm. Members of the public may obtain a copy of all policy documents upon written request with the exception of cases where a document circulates for internal use. For special documents, the release of copies is pending the decision of an authority. Institutions do not make public lists of policy documents that may be released to the public or lists of policy documents that are restricted to be made public. An authority decides what documents may be made public on a case-by-case basis.

In drafting police policies, it is most common that the authority, the General Police Director will authorize specialized divisions within the Ministry of Interior. In some cases, the ministerial authority selects a group of experts according to their expertise on specific issues, including experts from educational institutions. Foreign advisors are also involved in particular issues. For instance, the National Strategy to Community Policing group was made of experts from different police departments. The new draft Law on the Albanian State Police was prepared by a working group set up by the Minister of Interior. It was comprised of high-ranking experts from the Ministry of Interior, the Albanian State Police and a significant number of international experts from PAMECA, ICITAP, the OSCE and other independent international experts. Local independent expertise was not consulted. Generally speaking, the Ministry of Interior does not utilize relevant expertise to draft police policy documents.

A set of regulations or best practices is yet to be established to assist in the development of strategies and policies. The most commonly applicable form that has led to steps in setting these objectives derive from the advice and recommendations from international or bilateral experts. The approximation of national legislation with that of the EU, in the framework of integration efforts, is a decisive factor in the reform of this sector. However, the increasing number of international contacts and conferences are enhancing sensitivity on special objectives and police policy strategies. Documents published by police establishments in other countries are consulted or referred to in some cases as well. Guidance from the Minister is also mostly related to

such experiences, while internal assessments of national values, interests and requirements are rarely used as source for setting objectives on police strategies. Internal interests or needs are taken into consideration if they are mentioned or referred to by international reports or statements. International reports remain crucial in the development and consolidation of police institutions. Albanian political leaders have proved to be responsible and will continue to be so for the foreseeable future according to the evaluations made by European or Euro-Atlantic organizations. This means that international assistance could be better balanced between technical assistance and evaluation reports in an effort to make politicians more accountable.

Even the process of assessing security risks and threats mentioned in strategies, policies and directives within the police sector are made based on international declarations, evaluations, statements and priorities set forth by international organizations such as the OSCE, the UN, the EU and NATO. The EU and NATO integration process are a priority in the international relations of the country and enjoy the most authoritative position in developing local policies. Because of the country's aspiration to join the EU, and the signing of the Stabilization and Association Agreement in June 2006, EU monitoring remains an important element in the country's reform efforts. Such monitoring evaluates the progress made in the consolidation of institutions of the State Police. This becomes more obvious if one compares institution-building and reform of the Armed Forces with that of State Police. The work undertaken to meet NATO standards and the close monitoring of reform and its implementation are making the army a much more effective and modern institution. While it is very hard to say, the standards that are to be achieved also stand for the police.

Usually until now there has not been a debate on police requirements for the basic reason that the police force was not permitted to organise a unified professional voice. The Police Trade Union was established this year with the assistance of the Institute for Democracy and Mediation and it is awaiting legalization. Until now, decision-makers at the political level have adopted requirements without debate. The most significant example of this involved a police officer who expressed dissatisfaction with the rank he had been given two years ago, upon which he was dismissed. There was no internal debate within the service

Although the current police law, which was approved in 1998 for the first time, legalized the police forces as a part of the public administration, internal police practice mirrors that of a military organization. Police requirements remain under the total authority of the Minister. It should be mentioned that although legislation and strategic development documents have been approved or are being approved, there is an obvious lack of professional culture to insist on obedience to the law. Political voluntarism prevails and this enforces a lack of trust in the institutions and the law. There has never been a public debate on police requirements. The media has rarely reported on these issues. The Law on the State Police includes an organizational chart for the main police structures, which was approved by the Minister of Interior. There are terms of reference

for each structure but discussion over the past three years to update them has not produced any result. Even standing operating procedures for each structure require full updates because the draft law on the State Police while is to be approved includes many changes. The organizational structure and chart in the draft law is far more detailed and comprehensive than in the current law.

The police planning system is being established with the close assistance of ICITAP and PAMECA. The State Police in Albania is a rather centralized organization, and the resource allocation system is a top-down system.

The police planning system is organized according to departmental and service programmes but effective coordination between these departments is lacking. Police planning commences once the Minister issues guidance in this direction. The description of the end state of each program is made available and the costs of the program are established upfront.

There is no regulated requirement for police planners to develop planning assumptions, recommendations and alternatives for the commanding officer or civilian dignitary before a certain course of action has been adopted. Police planners are mostly experts from within the service. International experts, on the authorization of the Minister, may also be included.

In conclusion, it should be mentioned that certain strategic documents, such as the draft Law on the State Police and the Police Strategic Development Plan are in place for the coming decade. Other policy documents that intend to advance police reform in the State of Albania are awaiting approval.

**The Reconstruction of the BH Police Force**

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**Reconstruction of BH Police**

**Introduction**

Since the Dayton Peace Accords (DPA) were signed in December 1995, Bosnia and Herzegovina's (BiH) multiple police forces have been a major obstacle to their implementation and consequently the country's progress toward normal democratic statehood and its integration into the European Union (EU).

Like Bosnia itself, the country's police forces are divided. The two entities (the Federation of Bosnia and Herzegovina and Republika Srpska) maintain their own police forces under the control of their respective interior ministers. Authority over the police is further decentralized in the Federation, with each of the ten cantons also possessing a Ministry of Interior or MUP (*Ministarstvo unutrasnjih poslova*).[1] While the RS police are merely subdivided geographically into regional Public Security Centres (PSCs) and local police stations, the chiefs of which remain directly accountable to the RS interior minister, the cantonal Ministers of Interior have significant autonomy vis-à-vis the Federation ministry. The limited power of the Federation's Ministry of Interior is indicated by the short list of policing tasks that fall within its purview: coordinating inter-entity and inter-cantonal cooperation, especially in regard to terrorism and other serious and organized crimes, protecting VIPs and guarding diplomatic premises. The ten cantonal interior ministries are responsible for all other aspects of law enforcement, with each municipality having a police administration. The RS Ministry of Interior, by contrast, is responsible for all crime prevention and enforcement in the entity.[2] Under the Ministry of Interior, there are five Public Security Centres (PSC) that parallel the areas that are covered by the district courts. A second complication arising from the Federation's devolution of power to the

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[1] In addition to its regular police forces, the Federation also has separate Court Police (under the authority of the Federation Supreme Court) and Finance Police (under the Ministry of Finance and, effectively, the OHR Anti-Fraud Department). The Federation Court Police are responsible for protecting trials, court buildings and witnesses, transporting prisoners, enforcing court-ordered evictions and carrying out court-ordered arrests, and (somewhat oddly) dealing with cases of child abduction. The Court Police are also mandated to assist the Federation Ombudsman, but have thus far lacked the resources to do so. The RS has neither court police nor finance police.

[2] The unified RS command structure means that EUPM and OHR can reasonably hold the RS Interior Minister responsible for policing failures throughout the entity.

cantons is the lack of consistent policing practices between and among cantons with Bosniak, Croat or no national majority populations. Croat majority cantons often coordinate their activities as if they were a third entity, while official Bosniak-Croat power sharing in mixed cantons (Cantons 6 and 7) has given rise to parallel structures within their MUPs. In Canton 7, approximately 300 police officers are paid to 'stay at home' (but in reality they have been functioning as a parallel police - up to 2005). As if the discontinuities between and within the entities were not sufficiently labyrinthine, Brcko District has its own autonomous police force and structure. The director of police in Brcko reports to the mayor and provides monthly reports to the District Assembly. The Assembly, in turn, convenes a police supervisory committee.[3]

## Basic Police Management Laws and Regulations

The weakest link in Bosnia's policing framework is the State. The BiH Constitution (Annex 4 of the Dayton Peace Accord -DPA) entrusts the State with responsibility for 'international and inter-Entity criminal law enforcement, including relations with Interpol.'[4] OHR has sought to provide the State with the institutions necessary to fulfil these tasks, usually in the face of determined opposition by one or both of the Entities and occasionally by international organizations worried about footing the bill. The recently created State Investigation and Protection Agency (SIPA) is taking responsibility for exchanging law enforcement information and providing protection for national institutions and representatives. SIPA is also meant to facilitate inter-Entity and regional cooperation in the fight against organized crime, human trafficking and international terrorism. Successful establishment of a Citizens Identity Protection System (CIPS), a State level civil registry, is facilitating SIPA's work. CIPS has obligation to create a State-level Network Operations Centre, containing a registry of 'black-listed' lawbreakers compiled by Interpol. While the legislation establishing SIPA at the end of 2005 passed parliamentary procedure, the agency has employed some 300 police officers (plan is to employ 500 of who 400 will be charged with protecting buildings and VIPs - Presidency and Council of Ministers members, Supreme Court justices and embassies). The other 100 will be investigators dealing with crimes committed against the State. SIPA is expected to facilitate inter-Entity cooperation. Finally, while the EU-EUFOR troops stationed in Bosnia do not uphold the laws of the country, they do perform significant security tasks which local police are not always willing or able to carry out. Thus, EFOR apprehends indicted war criminals on behalf of the Hague Tribunal and provides a measure of security – mostly

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[3] The committee is required to meet at least twice a year, but convenes more frequently should the need arise. The committee has proved a useful means of scrutinising the police and their attainment of established targets.

[4] Dayton Peace Agreement, Annex 4, Article III/1(g). At present, the State Ministry of Civil Works and Communications provides a home for an Interpol office.

of a preventive nature – for returnees to various parts of the country. As such, EUFOR troops must now also be seen as a part of the law enforcement establishment in Bosnia.

Reflecting as they do the national and political fault lines created by the war and confirmed by the peace settlement, the divisions among Bosnia's several police forces obviously facilitate the exercise of political influence and national bias. Of equal or greater concern is the fact that these forces cooperate either inadequately or not at all with one another, giving criminals all sorts of opportunities to operate with near-impunity across internal and international boundaries. Non-cooperation between the entities, between the Entities and Brcko District, and between the Federation and its cantons is the norm. In the first two cases, little information is shared, joint operations are rare and arrest warrants issued in one jurisdiction are not executed in another. One high-ranking police officer characterized the degree of co-operation between the entities as 'more like that between countries than within a country.' Until recently, Bosnian police forces have relied more on Interpol for the exchange of information than on direct contacts. Even now, when a crime occurs, it can take eight hours before the police in one Entity inform their opposite numbers in the other Entity, if they inform them at all. Cooperation between the Federation and cantonal MUPs can be almost as poor – and is sometimes even worse – than that between the entities.[5] Although the Federation MUP has official responsibility for tackling organized crime, drug dealing, inter-cantonal crimes and terrorism, it must in practice rely upon the good will of the cantonal ministries. Attempts by the Federation Ministry to place liaison officers in the cantons in order to improve communications have frequently been met with hostility or intransigence. In Mostar, for example, Federation MUP officers have been quartered in a fire station some three kilometers from the Canton 7 Ministry of Interior. To quote an UNMIBH memorandum, 'this will create difficulties in duty performance.'[6] In other cantons, Federation police officers may work alongside their cantonal counterparts, but still encounter animosity, especially in Croat-majority cantons. Conversely, cantonal MUPs frequently complain about the negligence and/or undue political interference of the Federation MUP. A cantonal MUP official remonstrated to IPTF that no one from the Federation Ministry of Interior comes to arrest suspected criminals whose whereabouts have been established on its behalf.[7]

The jumbled structure of the police is compounded by discrepancies in legislation. For example, there are inconsistencies between cantonal laws on internal affairs and Federation criminal procedures, as well as between laws relating to identical crimes. The Federation has failed to make any serious legislative efforts to rationalize and restructure the relationships either between the Federation and the cantons or among the cantons. A draft law on internal affairs that aims to establish a clearer hierarchy of competencies has languished in parliament since 1998, blocked by deputies

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[5]  This is compounded by the fact that the police in the cantons are paid from cantonal budgets.
[6]  Internal UNMIBH memorandum, 10 January 2002
[7]  Internal UNMIBH memorandum, 10 January 2002

representing parties opposed to centralization. Cantonal assemblies have likewise done their utmost to sabotage such measures. Nor have all OHR regional offices accorded a high enough priority to this legislation. As long as policing structures remain flawed, providing for too much latitude at the local level and too little accountability to the centre, international efforts to clamp down on party political influences on the police will remain unavailing. EUPM should make a start, however, by seeking to ensure obligatory, operational-level sharing of information between and among the entity and Brcko District forces. The implementation of simplified reporting procedures would help.

### *Coverage and Co-ordination*

The Dayton Peace Accords (DPA) from 21 November of 1995 (Map 1.) stopped the war in Bosnia and Herzegovina, and all BIH political/security spheres entered, from the point of rebuilding, into the long term and complex process of stabilization and functionality. With the Dayton Peace Agreement (DPA), Bosnia and Herzegovina is structured like no state in this world; it is the state with two/three political administrative parts, two entities Federation of BiH and Republic of Srpska, and Brcko as a district.

So, in this complex political situation, Bosnia and Herzegovina managed to reform the security sector almost 100%. However, it is far from achieving functional implementation in the field. Under great pressure from the international community (represented by the Office of High Representative/OHR), Bosnia and Herzegovina has established at the state level:

- *Ministry of Defence*          (A)
- *Ministry of Security*          (B)
- *State Border Service*          (C)
- *Intelligence Agency*   (D)
- *Agency for Investigation  and Protection* (E)
- ***The Ministry of Interior of BiH[8] is in the process of being established.***

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[8]  This part will be analyzed in details in Part 2. Accountability

Bosnia and Herzegovina under the Dayton Peace Agreement
and the front lines at the end of 1995
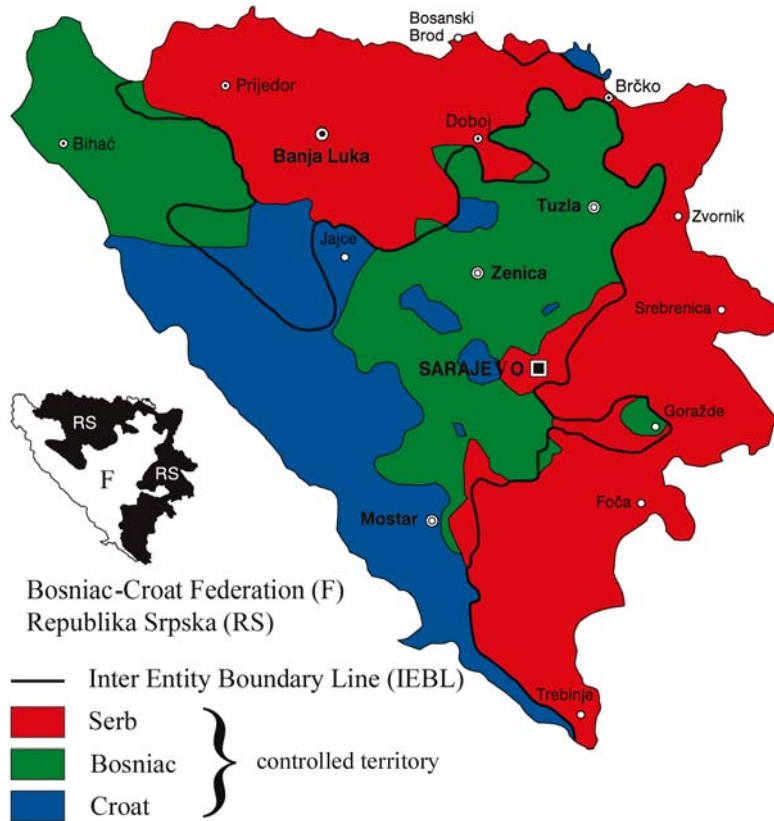


**Map 1**
(Political/Security/Administrative Shape of BiH)

Bosnia and Herzegovina currently has 15 criminal law enforcement agencies. For a state the size of BiH this represents an unsustainable and illogical approach to crime fighting.

1. *State Border Service*
2. *Agency for Investigation and Protection*

3. *Federal Ministry of Internal Affairs BiH*
4. *10 Cantonal Ministries of Internal Affairs (Federation of BiH)*
5. *Ministry of Internal Affairs of Republika Srpska*

In this very complex and disordered political and security situation, which has undoubtedly served for the rise of criminality, the international community continuously pressured Bosnian politicians to reform and downsize military and police forces capacities. The last downsizing of the military forces established the newly-reformed *Bosnia and Herzegovina Army*[9] in accordance with NATO's Partnership for Peace (PfP) and EU standards. The question of police reform is much more complex and trickier to solve.

Police reform is possibly the last substantial policy issue that must be resolved before the international community can draw down its decade-long engagement. The EU has clearly stated that it is a key precondition for Bosnia's negotiations on a Stabilization and Association Agreement (SAA). It also appears to be an informal precondition for membership in NATO's PfP. If Bosnia is to be perceived as a functional state rather than a potential security risk requiring continued supervision, efficient police are a necessity. Until the current structures have been fundamentally reformed, the international community cannot seriously contemplate reducing either its mission in Bosnia or the powers of the Office of the High Representative (OHR).

All efforts at reform have failed, due almost entirely to obstruction by politicians in the Serb entity, the Republika Srpska (RS), which has an 'inefficient' police force in Bosnia -- one that continues to protect and employ war criminals, resist refugee return and refuse cooperation with the International Criminal Tribunal for the Former Yugoslavia in The Hague (ICTY). RS politicians, with strong support from Belgrade, block reform as an infringement to 'sovereignty.'

Bosnia needed to approve a reform program by 15 September 2005 in order to move forward on EU integration. Bosnia clearly missed that first opportunity, and the European Commission concluded that Bosnia failed to meet the requirements for commencing SAA negotiations.[10] However, the international community gave Bosnia another chance with very flexible deadlines. The country lost at least two years, because people and public opinion in Bosnia was preoccupied with the failed 'Constitutional Changes' and the elections of October 2006. The international community and OHR need to take a strong and united stance in the face of RS and Belgrade obstruction and also revise the plan that is presently on the table to bring it into compliance with EU criteria. Attention likewise needs to be given to how any legislated police reform will be implemented. The mandate of the lacklustre European Union Police Mission (EUPM) expired at the end of

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[9] Official Gazette of Bosnia and Herzegovina 56/04
[10] The European Commission is scheduled to issue a report on Bosnia's readiness to begin Stabilisation and Association negotiations in October 2005.

2005 and the EU clearly missed a chance to create a replacement mission with a more robust mandate that would help in finally developing police reform.

The BiH Constitution and relevant entity laws prevent police from crossing into the territory of a different entity. This hampers any serious efforts, whether from the Federation or RS, to launch an investigation or operation in another jurisdiction. While it would be inaccurate to say there is no cooperation between the fragmented entity police agencies, there is neither operational coordination nor an institutional framework for such cooperation. Organized crime, petty criminals and corrupt politicians regularly exploit Bosnia's fragmented police: numerous offences cannot be resolved, simply because criminals can skip across the entity boundary to the safety of another jurisdiction. Some criminals cooperate with or act under the protection of the police in their entity, particularly in RS, where persons indicted for war crimes by the Federation or the ICTY[11] have found refuge.

Attention to police reform has concentrated on technical issues. Bosnia's police have been given training to improve their skills, its police academies have received donations, and various organizations and individuals were certified by the UN agency responsible for the initial reforms -- the International Police Task Force (IPTF) -- in an often hasty procedure. However, the essence of the problem -- political control -- has largely been ignored. Especially in the RS, police still act according to the will of their political masters, particularly when it comes to war crimes.

Police in the Federation have demonstrated the ability to arrest and deliver those who have been indicted as war criminals, but they also face numerous problems. The Federation has a highly complex police organization. Each of its ten cantons has an autonomous police ministry and laws regulating operations. The Interior Ministry at the Federation level is not superior to canton police. It has jurisdiction only in cases of terrorism, inter-cantonal and organized crime and cannot interfere in other matters.[12] In addition, there is an autonomous Brcko District police -- a total of 13 distinct forces employing some 19,000 people in a country of less than 4 million.[13] This fragmented structure consumes close to 10 per cent of the government's budget at Federation, RS, cantonal and state level, double the percentage of public expenditure dedicated to policing in the EU. yet crime continues to increase.

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[11]  International Criminal Tribunal for Yugoslavia (ICTY)
[12]  Law on Internal Affairs of Federation BiH 01/96, Article 2
[13]  In addition, the RS and each of the ten cantons run separate court police services.
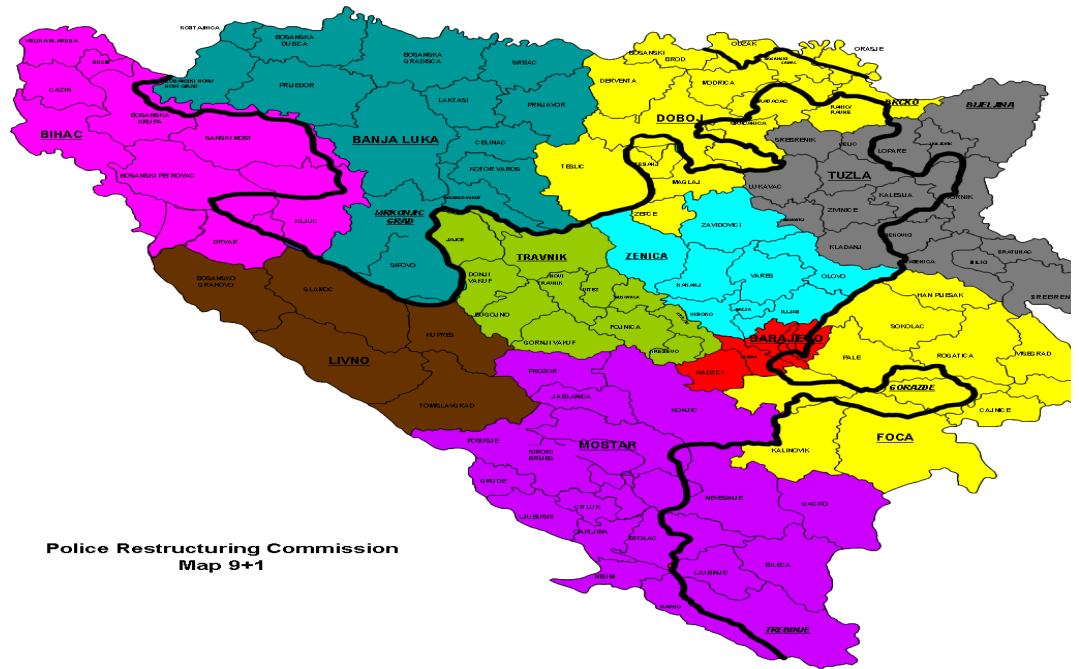
**Police Restructuring Commission Map 9+1**

## Accountability

Regarding accountability vis-à-vis the *legislature*, all police force services and agencies (15 of them – at Entity and State level) in Bosnia and Herzegovina are directly accountable to elected representatives through a designated committee set by EUPM mission director[14] in Bosnia and Herzegovina so the legislature's *formal or informal* powers in this connection are very small.

Should the OHR succeed in getting the RS to agree to police reform measures that meet the European Commission criteria, they would still have to be implemented. Annex 11 of the Dayton Peace Accords established the UN-led International Police Task Force (IPTF) to supervise Bosnia's police. While the IPTF had many image problems, it was a major force for change in the war-torn country, managing to halve police numbers, install training courses and begin to remove officers implicated in war and ethnically-related crimes. The IPTF's mandate expired at the end of 2002, and the EU established the European

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[14] Actually, it is Colonel Vicenzo Coppola, Italian representative in the EUPM

Police Mission (EUPM) as a follow-on agency with a three-year mandate (extended for two more years 'till 2007) to oversee police reform. In spite of the IPTF's successes, much has been done on the during the first EUPM mandate, primarily with regard to the structure of the police forces, their financing, and their relationship to the courts.[15] While the EUPM and OHR left the process to domestic police professionals (and politicians), the local police could not be counted on to enforce the law.

In this sense, regarding accountability in last six years, the system of IPTF and now EUPM certification did not enact many changes, but it has produced some tricky procedural cases for police officers and commissioner appointments.

#### - to the media and society at large

All the media (print and broadcast media), and individual citizens, have right of access to state information about police work of all law enforcement agencies in BiH. This been secured in the Constitution and especially in the law on access to public information.[16] It can be judicially enforced.

Questions raised in the media are acknowledged by the authorities as the right of journalists to protect their sources and that has been secured and regulated throughout the State's Agency for the Protection of Information.

If an individual citizen believes that he/she has been improperly treated, there is an office and official Ombudsman empowered to receive and investigate complaints and correct abuses.

The quality of media coverage of the activities of the police force, internal security forces, security services and police agencies is at its highest level, due to the importance placed on the police reform process in Bosnia and Herzegovina. More then a dozen polls on public attitudes to security services and police agencies with reference to accountability have been conducted (ICG, CSS Sarajevo, etc.).

#### - to codes and conventions

International codes and conventions that Bosnia and Herzegovina subscribe:

-         United Nations (e.g. 1979 UN Resolution: Code of Conduct for law-enforcing officers)

-         Council of Europe (e.g. 1979 Council of Europe Declaration on the Police)

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[15] For a full analysis of the IPTF, see Crisis Group Europe Report N°130, *Policing the Police in Bosnia: A Further Reform Agenda*, 10 May 2002.
[16] Official  Gazette of Federation of BiH br.32/01

- OSCE (e.g. 1994 Code of Conduct on Politico-Military Aspects of Security)
- Europol (e.g. 1995 Europol Convention)
- Interpol (e.g. 1999 Interpol Seoul Declaration)
- European Convention on Human Rights

Throughout the EU's feasibility study, Bosnia and Herzegovina tries to fulfil the requirements of the EU, and most of the international obligations are respected due to the long term process of international oversight (IPTF and EUPM mission and its sanction measures - de-authorisation and screening).

International co-operation between security services and police agencies does affect the domestic accountability of Bosnia and Herzegovina forces and co-operation is at the highest level, so it is unlikely that extra-territorial operations can escape scrutiny.

### *Transparency*
- domestic transparency: dimensions

When transparency is at stake, all of Bosnia's enumerated forces, services and agencies are obliged to make information available to elected representatives throughout parliamentary sub commissions and commissions. Constitutional provisions and the EUPM mandate impose this obligation, and there are legislative provisions (for the agencies at State level, as well for the agencies at the Entity and cantonal level), and they state that for Intelligence Service of BIH there is *no* such obligation.

Information about the *organisation* of the different forces, services and agencies is available to the public and all relevant information is *public*. Such information is not subject to *privileged* access to selected persons (e.g. members of a specialist committee of the legislature or even a sub-committee or group of carefully chosen individuals). All information about the *personnel strength* of the different forces, services and agencies is also available and, if there is some breakdown of personnel or restriction or downsizing transparency is guaranteed.

*Budget* information is available and the material primarily contains details covering what money is spent *on* (inputs) and what the funds are used *for* (outputs). Transparency is guaranteed by the law on access to public information.

General information about the *nature of operations* that are, or will be, conducted is available. The material is not specific but it is more expressed in the most general terms and it is in public domain.

Information about the *strategic outlook* of the services under scrutiny and planning of the services is subject to privileged access but remains under the constant monitoring of EUPM mission program officers. Confidentiality criteria and clauses apply only for information and documents protected by the law on protection of secret information.[17]

Regular *reports of activities are* published in the official gazettes of the respected agencies.   EUPM publishes its own magazine[18] and monthly reports. All statistics about police force efficiency and capacities are made publicly available by service reports in the Entity or Cantonal Agencies on Statistics. Bosnia still doesn't have a State level statistic agency.

*-international transparency*

Bosnia subscribes to the following international codes and conventions which impose 'transparency' obligations:
-        United Nations (e.g. 1979 UN Resolution: Code of Conduct for law-enforcing officers)

-        Council of Europe Police Code of Conduct

-        OSCE (e.g. 1994 Code of Conduct on Politico-Military Aspects of Security)

-        Europol (e.g. 1995 Europol Convention)

-        Interpol (e.g. 1999 Interpol Seoul Declaration)

-        European Convention on Human Rights

-        EUPM mission mandate rules,


One can say that the authorities comply with such obligations. International co-operation between police forces, internal security forces, security services and police agencies affect domestic transparency positively, but until reform and precise legislation in this sector are established one cannot expect efficient transparency and genuine internal and external cooperation.   Bosnia is a member and has its own coordinating police officer at the SECI Centre in Bucharest.


**Recent changes 2004/5 and general appeal**
*- to the events of 11 September 2001*

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[17]  Official Gazette of Bosnia and Herzegovina 54 /05.
[18]  ' Mag Mission,' www.eupm.org

- The events of 11 September 2001 have led to (declared) changes to 'normal practice' so far as the transparency and accountability of police forces, security and intelligence services are concerned. Moreover, as part of the post-September 11 'war on terrorism', U.S. troops, operating independently of EUFOR, in 2004 captured and ordered the apprehension or custody of suspected terrorists. There is the well-known case of the *'Algerian group'*[19] and in 2003 there was the apprehension of Sabahudin Fiulajanin[20] linked with 'war on terrorism.'

### *-to police officers*

At present, however, the police rarely scrutinize themselves; the judiciary prefers not to get involved, even if disciplinary proceedings call for it; and the public is drip-fed some information on scandals, but is generally kept in the dark. EUPM and ICITAP have helped to form local Professional Standards Units (PSUs), co-located in regional police stations, and have sought to develop uniform disciplinary practices in the Federation and Republika Srpska. With the guidance of ICITAP, the PSU chiefs have begun meeting regularly, exchanging information and experiences. New procedures for dealing with complaints against the police have also been designed to track all aspects of complaints and the subsequent actions.

Unfortunately, the PSUs and the disciplinary procedures they are intended to oversee continue to be ignored. For example, the author of this report was told of an occasion in Drvar when a judge was arrested by police officers after having called them in to assist her in executing a court-ordered eviction. When quizzed, the local police chief simply explained that the officers involved were 'young and inexperienced.' The PSU was not involved and no further action was taken in this blatant obstruction of property law implementation. PSUs and the disciplinary procedures continue to be vehicles for manipulating the police. PSU reports are often thrown away or not forwarded to prosecutors. Alternatively, the PSUs are not informed of cases that might fall within their jurisdiction. An American report notes, 'Although Ministers and Deputy Ministers are appointed by their governments and cannot officially be investigated by their PSU, they sometimes request the PSU to conduct an investigation of the allegations. When the determined facts do not exonerate the official, retaliatory actions might occur.'[21] According to an internal UNMIBH report, 'Based on the IPTF audit of the Canton 10

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[19] Six BIH citizens (Algerian native) were apprehended and handed over to US military forces on 18 January of 2002., Voice of America , http://www.voanews.com/bosnian/archive/2002-01/a-2002-01-18-5-1.cfm

[20] Arrested in the village Gornja Maoča near the city of Tuzla on 20 November by US military forces allocated in Bosnia in SFOR mission, http://www.nato.int/sfor/trans/2003/t030102a.htm

[21] Internal US report, June 2001.

police internal control, the local police have submitted crime reports against seven former and three current Drvar police officers.'

Without IPTf and EUPM intervention, the cases would have been dropped. EUPM and the Human Right's Office are currently examining court and police records to identify police officers accused of crimes, but who have remained on the force. Again, this should have been done by the PSUs. In a review of the Doboj Basic Court's records alone, EUPM found that seven police officers had been indicted for crimes, but that no investigations or proceedings had taken place thereafter.[22]

On the other hand, PSUs are also frequently overburdened with cases that do not fall within their remit in order to distract them or, indeed, to use them for political or other nefarious purposes. For example, the PSU in the Federation MUP is sometimes asked to investigate infractions committed in the cantons that do not lie within its jurisdiction.

While Dayton implementation continues and international organizations retain their right to intervene and impose, neither the Bosnian state nor its citizens enjoy the complete range of legal protections that would or should be available in a fully-fledged democracy. It is DPA implementation itself that will ultimately make this possible – and one vital aspect of that implementation is purging the police of bullies, crooks, incompetents, and war criminals.

## The Specificities of Oversight and Guidance

The role of the Parliament in endorsing police policy decisions is restricted. The Parliament is allowed to make amendments only in consent with the executive powers, and all amendments with consent need to be approved by the EUPM mission and, in some cases, by the Office of the High Representative (OHR).

The Parliament has an independent body/staff of experts working on police matters solely for the parliamentary commissions that are monitored by OHR. Some members of the Parliament try to follow party or coalition lines in deciding on police matters.

Bosnia and Herzegovina doesn't have a National Security and Defence Council due to the reform process problem.

The role of Prime Minister in formulating and endorsing policy decisions is merely assertive, and in coordination with the EUPM mission. Due to the EUPM mission, most of the policies pass through the parliamentary assembly and presidency in a declarative form during the adjustment process of the legislation and reform process.

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[22] Internal UNMIBH report 2001.

As stated previously, when a strategic document on police policy is issued for endorsement, there is a complex process of legal and customary provisions for formal guidance from a higher authority. That is also one crucial reason for functional police reform under the EUPM. Main topics addressed in that guidance for police reform are threat assessment, different national ethnic objectives, and intended level of ambition for the size and the structure of the police and armed forces needed to accomplish strategic missions. The funding of the both the police system and the general government procurement system are transparent for industry, business and the public. International contacts and cooperation are conducted at the highest possible level due to the previous missions of IPTF and the current EUPM missions.

One can say that the main sources of knowledge used by the government authorities for fulfilling their obligations in the formulation of national police policies are respected professional experiences and domestic and regional literature researched at the Faculties of Law and Criminal Justice Sciences at the University of Sarajevo.

When national literature on the theory of governance and related well-established practical mechanisms are at stake a great deal of literature is produced. The following represents just a few important references:

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- Masleša Ramo*,'Organization and Functioning of The Police,'* Faculty of Criminal Justice Sciences University of Sarajevo, Sarajevo 1999,ISBN: 9958-613-08-5;
- Abazović Mirsad, *'National Security*, ' Faculty of Criminal Justice Sciences University of Sarajevo, Sarajevo 2002, ISBN: 9958-613-13-1

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Research institutes on police matters in Bosnia and Herzegovina exist, and the State has several public and private institutes. They are, at the core, focused on law enforcement issues but they also deal with parliamentary oversight and international questions on security sector reform in Bosnia and Herzegovina and the Western Balkans region (such as CSS BIH-Centre for Security Studies BIH ).

Public institutes belong to academic organisations whereas private institutes are independent. Private institutes are economically dependent on public funding in part, and private institutes are of a more general scope (security, international relations, transparency, etc.) but occasionally they cover defence issues. The main products of these institutes are research and occasional papers, as well as national and international conferences on police matters.

The relevancy of the institute's products:

   c.  The oversight commissions contract independent research on police to both public and private institutes.

   d.  The public debates on police policy make reference to the work of research institutes.

There are officially and privately commissioned surveys on police issues, the results of which are published on the media.

**Police Institutions within the Security Sector**

4.  The existing policies within the police sector enjoy a specific status because of the reform process. This is reflected by the whole security situation, and process is ongoing. Several of the ongoing policies are emphasised below.

  Table 2 – Structure of Decision Making on Police Policy

| Topic of Document | Title of Document | Issuing Authority | Endorsing Authority | Frequency | Status |
|---|---|---|---|---|---|
| | | | | Time span | |
| Police Planning | Law on Internal Affairs of Federation BiH, 01/96 | Parliament of Federation of BiH | Government FBiH- Ministry of Internal Affairs of Federation of BiH | | |
| Personnel policy | Law about police Officers of the Federation of BiH, 28/05 | Parliament of Federation of BiH | | | |
| Police Education | Police Academy and Faculty of Criminal Justice Sciences University of Sarajevo | Ministry of Internal Affairs of Federation of BiH and University of Sarajevo | Government FBiH | | |

| Topic of Document | Title of Document | Issuing Authority | Endorsing Authority | Frequency / Time span | Status |
|---|---|---|---|---|---|
| Public information policy | Law about access to public information 32/01 | Ministry of Civil Affairs of FBiH | Government FBiH | | |
| International Cooperation | EUPM mission mandate | European Commission | Office of High Representative in BiH | 2007 | Active |

1.  All policy documents are published for internal distribution. Members of the public may obtain a copy of all policy documents upon written request.

    i.   Approval is granted by default.

    ii.  The applicant must pay a fee for copy above 40 pages.

Members of the public may obtain a copy of all policy documents.

        iii. There is a list of policy documents that may be released to the public. The list is made public.

Participation and consultancy in the drafting of defence policies:

        b.   The authorised divisions within the relevant Ministry.

        c.   Experts from the research institutes.

        d.   Faculty members of education institutions.

        e.   Independent research institutions.

        f.   Foreign advisors.

5.  The process of establishing objectives for strategies, policies and directives within the police sector is based on the following sources:

        a.   Policy documents at national level, such as the National Security Strategy.[23]

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[23] Bosnia has national strategies for the Entities, but still lack a State Level National Strategy

      b.    Internal assessment of national values, interests and requirements.

      c.    Conclusions and recommendations from research reports.

      d.    Theoretical national and international literature.

      e.    Similar documents published in other nations' defence establishment.

      f.    Advice and recommendation from international or bilateral experts.

6. The process of assessing security risks and threats mentioned in strategies, policies and directives within the defence sector is based on the following sources:

      a.    Assessment made on policy documents at national level, such as the National Security Strategy.

      b.    Assessments published by international organisations such as OSCE, UN, EU or NATO.

      c.    Internal assessment.

      d.    Independent research reports.

      e.    Assessment made on similar documents published in other nations' defence/security/police establishments.

      f.    Assessment made by international or bilateral experts.

7. A debate on police requirements (such as forces, equipments or resources):

      a.    There is an internal debate on the direction of police reform BIH[24] and the results are forwarded to the political decision-makers and OHR.

      b.    There is an internal debate at the service level and the results are forwarded to the political decision-makers.

      c.    There is an internal debate at the service level with civil servants inputs.

      d.    There is an internal debate at the political level with military inputs.

      e.    There is a debate on defence requirements with other security sector agencies.

      f.    There is a public debate on requirements.

8. The main organisational documents governing police structures are :

      a.    Organisational charts approved by the higher instances (Parliamentary and OHR).

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[24] Established by OHR

b. Mission statements for each structure.

c. Job descriptions for commanding officers and their staffs.

d. Standing operating procedures for each structure.

e. Unified regulations for each service.

9. Bosnia has a police planning system in place. It can be described in the following way as:

a. A planning, programming, budgeting and evaluation system at different administrative levels (Canton, Entities, State).

b. A resource allocation system is not in place, due to events in the past.

10. The police planning system is organised according to departmental and service programmes. Planners have most of the necessary information about each programme in order to perform their tasks.

a. Each programme is decided in light of existing police policy.

b. All programmes are listed with their order of priority.

c. Each decision maker issues guidance comprising his/her intentions.

d. The description of the end state of each programme is available.

e. The costs of each programme are set up front.

f. The medium-term framework is set.

g. The spending allocations are within the multi-annual budget.

11. Bosnia has a regulated requirement for defence planners to develop planning assumptions, recommendations and alternatives for the commanding officer or civilian dignitary before they decide on a certain course of action.

12. When a description of the composition of the corps of police planners is at stake, one can say that they are mostly civil servant experts.

**Conclusion**

The specificities of Bosnia's national police system are a representation of all the problems that a war-torn country in its long term process of rebuilding and reconstructing can expect to have. Bosnia and Herzegovina currently has 15 criminal law enforcement agencies. For a state the size of BiH, this represents an unsustainable and illogical approach to crime fighting. A functional review of

policing conducted by the European Commission in June 2004 found BiH's police forces to be divided, over-staffed, and unable to operate across the country. This was subsequently confirmed by the Police Restructuring Commission itself, which described the current policing system in BiH as too complicated, too expensive, and ineffective in combating crime. Police restructuring represents a means of overcoming systemic deficiencies in the organization of policing in BiH. It provides a means of achieving European best practice in an effective and efficient police service for BiH citizens.

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**Appendix**

**Glossary of Abbreviations and Acronyms**

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| BIH/BiH | Bosnia and Herzegovina |
| DPA | Dayton Peace Accords |
| EU | European Union |
| EUFOR | European Union Force in Bosnia and Herzegovina |
| EUPM | EU Police Mission |
| EU IMMPACT | Educational team of EU |
| FBiH | Federation of Bosnia and Herzegovina |
| ICTY | International Criminal Tribunal for the Former Yugoslavia |
| IEBL | Inter Entity Boundary Line |
| IPTF | International Police Task Force |
| NATO | North Atlantic Treaty Organisation |
| OHR | Office of the High Representative |
| OSCE | Organization for Security and Cooperation in Europe |
| PfP | NATO's Partnership for Peace |
| PIC | Peace Implementation Council |
| PRC | Police Restructuring Commission |
| PSU | Police Station Units |
| RS | Republika Srpska |
| SAA | Stabilisation and Association Agreement |
| SBS | State Border Service |
| SDS | Serbian Democratic Party, the leading party in the RS, originally led by Radovan Karadzic |
| SIPA | State Investigation and Protection Agency |
| UK | United Kingdom |

U.S.        United States

UN        United Nation

# Police Reform in Macedonia

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## Introduction

When the Republic of Macedonia proclaimed independence after a successful referendum on 8 September 1990, and security forces and territorial defence units assumed responsibility for protecting the state border, the process of institution building and security sector formation was initiated. The new Constitution of 1991 and the Defence Law, adopted as the first legal act by the Parliament, provided a normative basis for establishing a national defence system and core defence sector actors. Following some external and internal signs of instability, the defence system was considered a priority for the Macedonian Government in the process of state building. Contesting visions and the sometimes hostile attitudes of neighbouring countries were the first signals that the international positioning of the new state would not be an easy process. The dispute over the country's name with its southern neighbour additionally complicated and prolonged official recognition and membership into international institutions. On another level, the internal political processes that were to focus on democratic institution building were based on ethnic rather than ideological policy orientations. As a consequence, major divisions appeared between the ethnic Macedonian majority and ethnic Albanian minority, apart from the fact that all Macedonian governments were coalition governments. In such conditions, the Macedonian police and the Army, given their initial autonomous roles in the newly sovereign state, faced a difficult task: to support and facilitate the process of institution and state building.

Peaceful dissolution and transition towards parliamentarian democracy were of utmost interest for Macedonia and also for the international community. The complex situation and violent ethnic conflicts in the former Yugoslavia threatened to endanger the fragile stability and security of the country; this marked the beginning of international involvement in Macedonia. After the OSCE monitoring mission, the UN approved a preventive deployment mission called UNPROFOR-UNPREDEP in order to monitor and inform on events that might endanger the stability and security of the country. In this way, Macedonia has become a recipient of preventive mechanisms in the monitoring of the northern and western border areas. The international presence was successful during the Kosovo intervention in 1999 while Macedonia became a ground for refugees and international forces supporting the intervention. The contagious effects of the Kosovo crisis undermined the previous preventive efforts in Macedonia and the political situation deteriorated under the pressure of ethnic divisions and increased criminal activities, illegal arms transfer and cross border extremist group activities.

In unfavourable regional circumstances, after involving itself in the PfP, EAPC and other NATO mechanisms for cooperation and transformation according to NATO standards, Macedonia presented its first MAP in 1999. While substantial defence reforms were scheduled to begin there were no intentions or signals of similar processes of reform for the police. The Stability Pact for SEE created a general framework for more comprehensive regional preventive efforts within its framework of developing projects for addressing specific security issues.

On 23 February 2001, Macedonia and the FRY signed an agreement on the placement and description of the border, which was later ratified by both Parliaments. The Agreement was lodged with the UN Headquarters thus finalizing the border issue by establishing an internationally recognized border. Soon after signing the agreement, Macedonia was involved in a six-month armed conflict that was initiated by armed attacks on the Macedonian security forces. The former UCK and later NLA fighters challenged the preparedness of the police forces and the entire defence system to manage the crisis and prevent an overall armed conflict. The hostilities were terminated under the international mediation and signing of the Framework Agreement (13 August 2001) that set provisions for removing the immediate conflict potential. The Agreement provisions were transformed into amendments to the Constitution thus reshaping inter-ethnic relations and introducing power-sharing arrangements. The implementation was supported by the NATO missions Amber Fox (disarmament of former combatants) and Essential Harvest (protection of EU and OSCE monitors), the EU Crisis Management Operation Concordia and the Police Mission Proxima.

Full implementation of the provisions of the OFA was the precondition for Macedonia to receive a positive answer to its application as a candidate country for EU membership. In line with the post-conflict peace building strategy, the Macedonian Police were to be transformed so as to provide fulfilment of the democratic policing criteria. The five year period after signing the Stabilization and Association Agreement was to be a period of the most intensive reforms in Macedonia in general and of the security sector in particular. Obligated by the SAA and committed to fulfil the Copenhagen Criteria for EU membership, the Macedonian Government adopted the National Strategy for Integration into the EU in order to strengthen the reform processes and set priorities. Reforms in Justice and Home Affairs and the priorities for implementation of specific tasks were an integral part of the National Strategy.[1]

The concept of integrated border management (IBM) is in the initial phase of realization. The National Strategy for Integrated Border Management (NSIBM) was adopted by the Government in October 2003.

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[1] National Strategy for Membership into EU, July 2004; available at www.http//:vlada.gov.mk

**SSR in Macedonia: long way ahead**

The process of security sector reform (SSR) was more or less an obvious characteristic for a significant number of western democracies as well as a growing number of SEE democracies and would-be NATO and EU members. The motives for profound and significant transformation and reform have arisen from the intention to strengthen and protect the zone of freedom, democracy and security while for some of the other participants, SSR processes are more significant as part of a policy and an instrument for recovering and restructuring security institutions from deep security/military crises or armed conflict. Generally speaking, new and/or modified security risks and challenges which have created the common perception of increased vulnerability have also contributed to the shared perception that security challenges are demonstrating contagious cross-border effects thus eroding the overall sense of security. The year of 2001 and the succeeding terrorist attacks were among the critical events that increased and multiplied national and international efforts to transform security policies and reform defence missions and capabilities. As a concept, SSR represented one of the core instruments targeted to overcome misbalanced relations between malformed security threats and risks and post-cold war security/defence capabilities. Across different spectrum of motives, nations and their security actors are searching for the space, tools and instruments that will support their newly-recognized security role and particular national interests, and provide them with more security. Most of them were trying to find the most advanced position within the changing security relations. While in the early 1990s the core goal of SSR for the Central European countries and now NATO members was to overcome the insecurity that was produced by unbalanced civil-military relations, democratic control over the military or over numbered and heavily equipped armies, within the complex ethnic-conflict environment of South East Europe, post-conflict reconstruction and reform became the priority for most of the SEE countries.

It was rightly pointed out by Mr. Haltiner that the political culture of a nation determines its civil military-relations.[2] This conclusion becomes evident especially during the transitional and reform processes of the WB countries. Even more, most of them demonstrated that SSR should be accepted as a serious, complex and demanding process; they all demonstrated different levels of acceptance of the reforms, some specific understanding of the content and goals of the reforms and finally the importance of reform for the democratic process. Defence reforms undertaken in any WB country have gained distinctive support and characteristics framed primarily by political will, a capacity for civil-military cooperation, social development and the

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[2]  See Haltiner K: Swiss Security Sector: Structure, Control, Reforms; in Georgieva L (ed): The Challenges for the SSRs in Macedonia; DCAF& Institute for Defence and Peace Studies; Makedonska riznica, Skopje 2003

economy, and finally by public support for reform.[3] Politically guided by the imperative of NATO membership and widely shared expectations for increased security, SSR, subjected to continuous evaluation, comprises of information on more or less successful policy and analytical reports.

Compared to the experiences of other countries, SSR in Macedonia is more or less specific: it follows the core guiding principles and directions of the concept, while accommodating the process in terms of security and defence system specifics. SSR provisionally followed the country's gaining of independence in 1991 and its reinforcement in 2001. While some concerns were expressed over the issue of whether the process from 1991-2001 was more one of security sector build-up than SSR, it was obvious that the reform process in Macedonia became a serious and comprehensive priority especially after 2001.[4] In this regard, the misleading viewpoint actually prevailed due to vague and divergent definitions of the security sector. For a decade after independence, limited attention was paid to the much broader security spectre of challenges, needs and actors in Macedonia. The crowded security sector, as it was described by Vankovska, consisted of at least two main security guarantees (the Macedonian Army and Police) encircled by a number of different international missions, depending on the circumstances. Up until 2001, these formal force bearing security sector actors were the most obvious and exposed parts of the sector while the issues concerning the intelligence community sporadically appeared on the agenda. However, the need for reform and re-shaping of the security sector, following the principles of civilian and democratic control over the military, transparency and accountability, was wholly apparent.

The reform process was initially reassessed when Macedonia started accomplishing one of its core security policy priorities - inclusion into collective defence and security systems. The Macedonian Parliament voted for NATO membership in December 1993. This should be highlighted as the first expression of political consensus and official institutional support for the process of security sector integration. While this decision marked the country's symbolic commitment to the process of defence reform as a precondition for NATO membership (or at least the need for reform was recognized), Macedonia remained  trapped in the complexities of regional conflict. The process of reforms, frequently exposed to various crisis situations (regional and internal), was recognized predominantly as a military and defence sector matter.[5] The reforms of the

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[3]  See Capparini, M.: Transforming Police in Central and Eastern Europe*: Process and Progress* (Lit Verlag, 2004) available at http://www.dcaf.ch/_docs/tranf_police/Introduction.pdf.
[4]  See Georgieva, L. (ed): The Challenges for the SSRs in Macedonia; DCAF& Institute for Defence and Peace Studies; Makedonska riznica, Skopje 2003
[5]  The way out of the position of complete recipient of international institution security mechanisms during the violent dissolution of the former Yugoslavia Macedonia tracked through PfP and participation in NATO programs that were developed for the countries of Central and South East Europe.[5] Starting as a beneficiary of the PfP function of the inclusive system of confidence-building, mutual understanding, consultation, communication and information

military preceded the reforms of the police and other constituents of the security sector. Additionally, newly established institutions were filling the deficiencies at the same time as internal political/security or ethnic crises; it was typical to perceive that there was more confusion than success in the reform process. Still, public expectations regarding SSR as a precondition for NATO and EU membership remained high.

The 2001 armed conflict between the NLA and Macedonian security forces destroyed all preventive measures undertaken within and around Macedonia and additionally undermined previous reform efforts.[6] The signing of the Stabilization and Association Agreement (SAA) in 2001 created new impetus for more comprehensive reforms within Macedonia's multiethnic society and more intensive reforms in the security sector field were initiated. Since the signing of the SAA, the EU's focus of assistance has shifted from physical reconstruction to support for wider reforms. Under the EU Stabilization and Association Process (SAP), other international programs (the Stability Pact and the OSCE) have focused on strengthening peace building efforts. These initiatives have put the reform process on the right track again. Otherwise, Macedonia faced the threat of entering deep crisis with enormous consequences.

In fact, the complexity of the process of reforms was additionally shaped and specified by the signing of the Ohrid Framework Agreement (OFA), an act that formally put an end to the six-month armed conflict in 2001. It introduced specific post-conflict peace building policies aimed at the rebuilding of security and interethnic confidence, as well as the stability that was destroyed by the armed conflict. Both SAA and OFA provided the guiding framework for the reform process primarily in the sphere of the rule of law, independence of the judiciary, anti-corruption measures, police reform and border security management.[7] This was considered as an essential framework to support and strengthen the necessary process of institution and capacity building, democratic reforms, strengthening the rule of law and economic recovery. Under the CARDS program, a significant number of projects in the field of Home and Justice Affairs were developed in the fields of economic and social development, democratic stabilization, the environment and natural resources and administrative capacity building. The sector of JHA is aiming at supporting reforms in the legal system, the judiciary, the police and IBM. It is building the country's capacity to deal with organized crime and human trafficking and developing asylum and migration policies, legislation and proper law enforcement.

exchange; in order to provide transparency in security and defence affairs, Macedonia continuously maintained its active security and defence policy through the instruments of PARP, IPP and MAP.

[6] See: A. Ackerman: The Idea and Practice in Conflict Prevention; JPR; May 2003; 40: 339-347

[7] See regional Strategy Paper 2002-2006, European Commission, External Relations Directorate General, Directorate Western Balkans

The Republic of Macedonia's application for EU membership overcomes, in a way, the psychological obstacles perceived by the broader public which determine that reforms are an everlasting process, the progress of which is hardly measurable. The Analytical Report for Opinion on the application for EU membership, positive Avis and the candidate status of November 2005, improved Macedonia's capacity to take on the obligations that came out of membership, which were identified as priorities in the 2005 European partnership. The new instrument for financial assistance, the Instrument for Pre-Accession (IPA) should further strengthen the reform process in general, particularly in the sphere of the HJA.

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**Normative issues in the defence and security system and policy**

Under pressure to avoid eventual violent dissolution, the Constitution of the Republic of Macedonia that was adopted on 17 November 1991, immediately following the referendum for independence, normatively determined the political system of the country as a parliamentary democracy. The new Constitutional act followed after vague weighing between the previously demonstrated democratic inexperience of the society and its intentions to legitimize commitment to western democratic standards and fundamental human rights and freedoms. The Constitution, following the separation of power principle, determines the position of the Parliament as a core institution in the legislative branch. This position is strengthened because only the Parliament holds the power for self-dissolution. With respect to the executive branch, the Constitution divides the executive power between the Government and the President of the Republic. Following the constitutional norms, experts view the relations between the legislative and executive branch, or even within them, as a frame for exercising power, more dependent on the current political situation than on the provisions of the constitutional model.

In practice, it appears that relations between the executive and legislative branch are sometimes vague and competitive while the process of policy and decision–making is being practiced. Such situations are possible due to the vague constitutional relations between the Government and the President, but also when the relation between the President and the Parliament are in question. In accordance with the Constitution, the Parliament has significant political and legislative power and decides on war and peace. The Defence Law more specifically determines its role in defence and security matters.

According to the Macedonian Constitution, the President holds significant competences and this position is not only titular unless otherwise determined by the Constitution.[8]

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[8]  The Constitution of the Republic of Macedonia, art.79-87

His/her political legitimacy derives from the general electorate and his/her competences are independent from other institutions of the political system. Only the Constitutional Court is authorized to decide on the President's accountability and only if two-thirds of the Parliamentarian majority support the procedure. The President and the legislature (the Parliament) therefore hold a specific position since the former is in a position to veto the adoption of laws. The President's position regarding foreign policy, as well as regarding electoral function, is also significant. His/her position in the defence sphere is also significant as he/she holds the position of supreme commander of the armed forces both in peace and war time. The competences of the supreme commander during war time or emergency are even more important because he/she is in a position to appoint or discharge the Government and its officials. With respect to the question of how this is to be transferred into a practical procedure, the Constitution is delegating to the Defence Law an obligation to determine the position of the President, the Ministry of Defence and the General Staff. The President also appoints and dismisses generals and the Chiefs of Staff of the ARM.

The Constitution determines the role of the Government in the Macedonian parliamentary system but there are no specific provisions on democratic control of the armed forces. Regular functions of the Government apply to the defence sector as well and the Defence Law should specify the relations among the executive, the President and the Government. This was the contesting question because according to the Defence Law, the President holds a more powerful position but, in practice, cooperation and coordination between the two is necessary, especially in relation to defence plans and strategies. Another sensitive issue was the position of the General Staff. The Chief of Staff appointed by the President is accountable both to him/her and to the Government.

According to the Constitution, ministers at the Ministry of Defence and the Ministry of Interior should be civilians for three years before assuming positions in the respective ministries. The Constitution secures civilian and democratic control over both ministries and makes them accountable to the Government while the Government is collectively and individually accountable to the Parliament. Ministries are responsible for the implementation of national security policies.

The whole issue of normative ambiguity emerging from the constitutional provisions reflects on the security and defence sphere as well. Accordingly, relations among the legislative and executive branch as well as between executive subjects (Parliament, President, Government, ministries) determines the situation that is influencing the state of affairs in security sector formation.

In terms of security and defence issues, the responsibilities of both subjects (legislative and executive) according to constitutional decision-making have been perceived as vague by a part of the expert community. This situation could be overcome by the development of specific and clearly defined relations among security sector actors. Once the Constitution has defined the core parliamentary actors it delegates security and defence issues to the Defence Law and the Law on Police. While the Constitution determines relations between the legislative and executive branch in the security and defence sphere, the Defence Law of February 1992 and the new Defence Law of May 2001 is expected to provide greater clarity of the institutional relations among security sector actors and to strengthen the principle of civil supremacy over the military.[9] Some of the key issues previously recognized as critical in relation to the legislative and the executive, specifically relate to the issue of exercising parliamentary control over the security sector and between the executive parties (Government and President) in their primary role during crisis situations as well as in the coordination of the police and the Army. The 2001 crisis and the complex post-conflict environment continued to bring attention to these contentious issues. There is also the issue of policing and the role of the police in a democratic society. While the Constitution guarantees fundamental human rights and freedoms, in the sphere of law enforcement the police is the main actor and vital force bearing instrument in ensuring public safety. The Law on Police adopted in 1993 (and the amendments adopted in 2002, 2003 and 2004) determines the policing function, the position of the Ministry of Interior and the police.

The development and functioning of the public security sector after independence was also questioned but, it should be mentioned, with less political enthusiasm and attention than the defence sector. Police reforms were deemed necessary for a number of reasons. The most obvious expression of the organization's shortcomings related to the politicization of police functions. Public confidence and trust in the police was significantly eroded during the 2001 crisis not only because of its functioning and the behaviour of its personnel but also because of the lack of representation of certain ethnic communities in the force. The depth of these problems was evident before and during the crisis. While many believed that external threats represented the main challenge to the stability and security of the country, the significance of internal insecurity and regional problems, such as the trafficking of small arms and light weapons, human trafficking, organized crime and refugees eroded any likelihood of internal stability. It became evident that these internal and external factors were

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[9] The Defence Law of May 2001 intentionally more specifically defined the role of the Defence Ministry, the mission of the Armed Forces and the role of the General Staff. While it appeared that civil military relations and civilian control over the military has been accepted as a primary principle other issues questioning the role of the executive branch, especially the Parliament in practicing democratic control over the security sector, its active role in creating national security policy, or the questions of accountability and transparency were not addressed.

simultaneously contributing to potential conflict and immediate improvements in policing were therefore necessary.

**SSR: Introducing police reforms**

The historical background of Macedonia's security affairs and implicit political consensus regarding EU membership greatly influence the country's current status and play a role in determining its future activities. Moreover, these developments mark the ending of the post-conflict peace building and stabilization phase and the beginning of functional democracy with the effective completion of security and defence sector reform. Reforms in the defence sector started at the same time as Macedonia's participation in NATO programmes. Prior to 2001, the reform process yielded some positive effects. However, it was obvious (or it became obvious after the NATO summit in Prague) that certain commitments were yet to be realised if the option of membership was to remain open.

Police reform appeared on the security agenda only after the armed conflict in 2001 when an urgent need for involving the police in a post-conflict peace building settlement was both recognized and prioritized. After the process of demobilization and disarmament was finalised in the aftermath of the amnesty of former NLA fighters (although international representatives were more satisfied with the results of disarmament than the Macedonian public and certain experts) a Rapid Reaction Mechanism and ECJNAT team under the European Commission was established and a Strategy for Police Reforms was drafted. At the same time, the police had to cope with the more immediate issue of rebuilding trust among the local population in the former crisis regions, dismissing the para-police units which had been created during the conflict and reversing a militarized police culture.[10] The concept of community policing was implemented with the main goal of trust building among the multiethnic police units and the local population with the support of international monitors. This was a highly sensitive and extremely difficult process that also implicitly confirmed the urgent need for change if the police force was going to accomplish its basic function.

Compared to the defence reforms that were closer to restructuring and capacity building, the police reforms were a more difficult and challenging task. The traditional, structured, functional but highly centralized police structure was in question. Nonetheless, reform of the police was as a necessary process and it was inaugurated with the:

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[10] T. Stojanovski: Reformite na policijata vo Makedonija: Pretpostavki za efikasnost i prevencija; Stojanovski T.: Police Reforms in Macedonia: Preconditions for efficiency and prevention; in Georgieva, L.(ed):Conflict Prevention: From Idea towards Culture of Conflict Prevention; FES, 2004 PP.197-208

- Implementation of the provisions of the Framework Agreement and introduction of the principle of decentralization and equal representation of minority communities in the police structures;
- Development of a clear division of functions between the police and the defence sector and
- Improvement of the policing function, its preventive role and efficient management of internal security threats.

According to the provisions of the Framework Agreement, the process of decentralization and the transfer of competences from the central to the local community level will contribute to a more responsible local government and to the security of the local community. According to the Law on Self-Government, the Municipal Council adopts the municipal annual public security report and submits it to the Minister of Interior and the Ombudsman. If necessary, the Council provides recommendations for the Territorial Police Services.[11] The Council also decides on the election of the local police department commander taking into account the MoI's proposal. This allows for closer cooperation in the local community and reinforces the community's control over local police activities. At the same time, it increases awareness of public security issues and, at some point, makes the police accountable for the local security situation.

The necessity to clearly divide the functions of the police from those of the military has been another priority task in the area of police reform. In 2001, the police and the Army faced a difficult task and were involved in armed confrontation with the NLA insurgents. A confusing situation developed over issues of control and command. Excessive coordination and cooperation between the police and the military appeared to be more than incidental. Thus, defining a more specific and coordinated role has been necessary.

Improvement of the policing function as a task does not imply reforms for improved policing alone. It also means that the principle of prevention will significantly contribute to more efficient policing. The prevention of crime and illegal trade and human trafficking, arms smuggling and transfer means that the police have had to assume a more proactive role in protecting public law and order and providing for the safety of people and property.

Given the fact that the aforementioned challenges are common threats and are prioritised on the security agendas of the countries in the region, the issue of border control and the prevention of any overlap, in terms of the effects of these challenges, is of real concern. In the case of Macedonia, the issue of effective border control is not new but it has been subordinated. As stated above, the Macedonian Army was responsible for border management and the country's borders were among the last in

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[11] Law on Self-Government, Official Gazette, No.5 2002; art.36

the region to remain under the control of the Army. In this case, the issue of border management is not only about the effective administration of borders but also about significant SSR, the transfer of competencies from the MoD to the MoI and the establishment of completely new structures within the MoI, namely the Border Security Service. The issue of border management was included in the Strategy for Police Reform (PRS) that was adopted by the Government on 11 August 2003. At a later point, the Strategic Steering Group of the Police Reforms Process verified the Action Plan for implementation of the Police Reform Process and set the platform of objectives, implementation concept, financial implications, laws and bylaws necessary for implementation of the reforms.

The Inter-Ministerial Working Group, which was established by the Government, developed the National Strategy for Integrated Border Management (NSIBM). It was adopted by the Government on 22 December 2003.[12] The Action Plan defines specific activities and the timeframe in relation to task implementation, the responsible ministries or agencies, required resources and potential risks and conditions.[13]

## Conceptual and normative overview of the police reforms

For obvious reasons, the introduction and implementation of the concept of Integrated Border Management (IBM) as a component of SSR was extended and shaped within the broader process of police reform. It seems necessary to discuss the functional and organizational changes as well as the recent challenges to the police reform process before outlining the components and functions of the IBM strategy and the Action Plan. The broader framework for both (the police reforms and the IBM strategy) is the National Security and Defence Concept (NSDC). As a first concept related to the country's security and defence policy, the NSDC was adopted by the Government and the Parliament in February 2003. The Parliament also adopted the new Law on Crisis Management. Certain aspects of cooperation and coordination among the police and the military in the case of emergency and crisis situations were also clarified.

During the procedure of drafting the document and later in public debates there were some divergent opinions expressed about the National Security and Defence Concept, especially in relation to the theoretical understanding of the key categories, basic interests and security risks and threats. It was evident that the political and expert

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[12] Ohrid Regional Conference on Border Security and Management (May 2003) through Way Forward Document identified IBM as a long-term overarching objective of the Western Balkans countries. Common short-term objectives and country specific measures were also defined. Three aspects (trade facilitation, border control and border region cooperation) of the process are internationally supported by the EU (CARDS regional programme; NATO (MAP and PfP; PARP); OSCE (training, advice and Regional Border Police Joint Training Programme); EAR; DCAF; Stability Pact (MARRI).
[13] The basis for drafting the NSIBM and the Action Plan for IBM is EU Schengen Catalogue, External Border Control; Removals and Readmissions: Recommendations and Best Practices.

communities shared different opinions on certain topics of the document. The final document, which was adopted by the Parliament, received stronger political legitimacy and it was subsequently used as a basis for the adoption of the Law on Crisis Management. In the area of security and defence, national security policy in general and security policy in particular, the NSDC is the basic document of the Republic of Macedonia. The development of a border service capable of efficiently controlling the border and the border zone is one of the measures defined within the objectives and guidelines for pursuing national security policy. The NSDC is more specific regarding internal security policy, which is directed towards the protection and improvement of national interests, resolution of risks and threats to the democratic order as defined by the Constitution, and human rights and freedoms. Identifying terrorism, organized crime, illegal migration and the illegal trade of drugs, weapons, people and strategic material is an essentially complex task. The objective of security policy is to organize efficient border police and to develop joint operational procedures with the armed forces, especially in the fight against terrorism and establishment of effective border security.[14] In terms of the country's internal security priority, a key priority is that the MoI decentralises the police to the maximum level and reinforces the police's role as a community service. The former Minister of Interior, Mr. Mihajlovski, described the basic goals of the reform process as follows:

- The police should become a safety service for citizens; through active partnership with the public;
- Continue the trend of reducing crime;
- Detect and deal with all types of crime in a fast and timely manner;
- Deal with anti-social behaviour;
- Reduce the fear of crime;
- Provide support and assistance to the victims of crime and
- Establish trust between the citizens and the police.

The SPR and the Action Plan for implementation of the police reform process are strategic documents for reforms of the Macedonian Police both organizationally and functionally. The main objectives of the reforms are as follows: efficiency of the police operation; organization, expertise and cost-effectiveness of the operation; technological equipment; responsibility and motivation of employees; planning, development and education of personnel; appropriate and equitable representation of citizens from all communities; police function as a service to the citizens; fight against organized crime; improvement of regional and international cooperation and defining non-police functions.

The organizational capacity of the MoI has also been reconsidered and a new model of organization has been adopted. The MoI will be organized on three levels: central (MoI); regional (12 internal affairs sectors) and local (23 internal affairs units). As an

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[14] See National Security and Defence Concept of the Republic of Macedonia; adopted available at: www.http//:vlada.gov.mk

executive body of the Government, the MoI is responsible for the implementation of internal security policy as defined in the NSDC and the National Strategy for Integration of the Republic of Macedonia into the EU. The MoI's security policy is coordinated through three pillars:

- Services responsible for coordination, international cooperation and public relations;
- Directorate for Public Security (provides advisory services, responsible for strategic concept planning and the determination of general directions and standards of operation) and
- Operational services (responsible for the operational activities and basic functions of the MoI).

The three pillars of the MoI are responsible for a number of operational functions: the Regional Police, the Border Police and the Central Police Services.

The Border Police Department (BPD) is a component of the Bureau for Public Security. Within the BPD, various sectors are responsible for the following operational issues: Sector for European Integration, Cross-Border Cooperation and Coordination of Foreign Aid; Sector for Analysis; Sector for Border Crossing Points and State Border Surveillance; Sector for Operations; Sector for Support of Border Police Operations and Sector for Administrative and Logistical Support. Four regional centres are responsible for border issues. The director of the Bureau of Public Security appoints the undersecretary of the BPD and the chiefs of the regional centres for border issues all of whom are accountable to the director.

The MoI is responsible for strategic and conceptual planning and for adopting the standards and procedures of operational activities, the expert and general overview, control of the operations and the efficiency, effectiveness and cost-effectiveness of the services. The MoI is also responsible for civilian control and is, therefore, accountable to the Government vis-à-vis the Interior Minister. The main responsibilities of the MoI are in compliance with the provisions of the Law on Police and the Law on Organization and Operation of the Bodies of State Administration.[15]

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[15] Law on Internal Affairs ('Official Gazette of RM', NO. 19/95, 15/97, 55/97, 38/2002, 13/2003) and the Law on Organization and Operation of the Bodies of State Administration ('Official Gazette of RM', No. 58/2000 and 44/2002; According to the provisions, the main responsibilities of the Ministry are: protection of life, personal safety, property and security of the citizens; crime prevention, detection and apprehension of crime perpetrators and their transfer to the competent bodies; protection of freedoms and rights of persons and citizens guaranteed by the Constitution of the Republic of Macedonia; prevention of violent destruction of democratic institutions established by the Constitution, maintenance of public order and peace; prevention of inflammation of national, racial or religious hatred or intolerance; security of certain persons and facilities; regulation and control of traffic on roads and other affairs related to traffic security on the roads; control of passing of state border and residence in the border area; movement and residence of aliens; determining and resolving border incidents; as well as other border injuries;

While drafting and adopting a new Law on Police was set as a priority by the previous Government and a precondition for fostering police reform, the new draft law is still being written. The issues that are yet to be determined within the draft law are less of a professional and more of a political nature. These issues relate to the 2001 crisis and the conflicting opinions that emerged after independence whereby politicization of the police and ethno-political mobilization were divisive factors.[16] As a result, the concept of an independent and professional executive institution was significantly eroded. Politicization of the police (and other executive institutions) is a continuous process that threatens to undermine professionalism of the police structure and the reform process as well. While it is evident that police reform is an ongoing process at the central and local levels, clear provisions in the new draft law are also important for the process of decentralization of police responsibilities. Decentralization will certainly contribute to the development of a more effective police service bringing it closer to citizens and their needs. The responsibility of decentralization lies with the regional police sector of the MoI. It is also responsible for the security of the area that this sector covers, for technical and human resources management, management of the fixed sub-budget in the sector and for implementing police standards and procedures.

positioning, control and maintenance of the signs that are used for demarcation of the border area on land and water; fire and explosion protection; control on conditions related to production, trade, supply, possession and carrying of weapons, parts of weapons and ammunition; production, trade, storage, transportation and protection of explosions and other dangerous materials and storage and protection of flammable liquids and gas; control on citizens registering and reporting departures from dwellings and residences; citizenship and passports for crossing state borders; relief in removing the consequences caused by natural disasters and outbreaks which could endanger the life and health of citizens and their properties; research and development in the areas of its competence and other matters determined by law.

[16] See Stojanovski T.: Police Reforms in Macedonia: Preconditions for efficiency and prevention; in Georgieva L., (ed): Conflict Prevention: From Idea towards Culture of Conflict Prevention; FES, 2004 pp.197-208 and Vankovska, B.: Security Sector Reform in Macedonia; in Trapans, J. and Fluri, P., (eds): Defence and Security Sector Governance and Reforming SEE: Insights and Perspectives, Vol.II, pp.21-35

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# Police Reform in the Republic of Montenegro

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## Background

The tiny mountainous Adriatic Republic of Montenegro[17] has 650,000 inhabitants and covers approximately 14,000 square meters. Its capital Podgorica is inhabited by approximately a third of the country's population. Geographically, three main regions can be distinguished in Montenegro: the coast, the centre and the north. Montenegro borders Albania, Bosnia-Herzegovina, Croatia and Serbia (including its UN-administered Province Kosovo-Metochia).

The Socialist Federal Republic of Yugoslavia—the federation of South Slavonic peoples—fell apart when the Republics of Slovenia, Croatia (1991), Bosnia-Herzegovina and Macedonia (1992) declared independence. Montenegro sided with its closest kin Serbia in the Federal Republic of Yugoslavia (FRY), which was created in April 1992, but gained wider international recognition only after the Dayton/Paris Peace Agreement (1995) which ended the bloodiest armed conflict in post-WWII Europe. After the significant, four-month-long demonstration against electoral fraud in Serbia, a faction of the Montenegrin post-communist regime—led by PM Milo Đukanović—felt the weakness of their patron Slobodan Milošević and decided to distance themselves. After the democratic overthrow of Milošević on 5 October 2000, the Montenegrin regime became openly pro-independence. In 2003, the federation was reconstituted towards a confederate arrangement and renamed Serbia-Montenegro. The new constitutional arrangement allowed republics to secede after a three-year 'trial period.' Montenegrin authorities used this right and organised the independence referendum on 22 May 2006. The newest UN member separated from the joint state with Serbia by 55.5% majority at the referendum.

Montenegro is ethnically and religiously diverse. According to the 2003 population census, 43.16% of population identify themselves as Montenegrins, 31.99% as Serbs, 7.77% as Bosniaks, 5.03 % as Albanians, 3.97% as Muslims and a smaller percentage as others (Croats, Roma, etc.) The majority of Montenegrins and Serbs inconsistently identify themselves—depending mainly on political circumstances. They are basically identical and this constituent ethnicity (which could be described as *Serbophone Orthodox Christians*[18]) of Montenegro makes up 75.15% of the population. The same goes for Bosniaks and Muslims, who jointly form 11.74% of Montenegro's population (they could be described as *Serbophone Muslims*). Albanians—Montenegro's biggest

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[17]  Montenegro is the 10th member of the Association of Small European Countries.

[18]  It has to be noted that the majority are, however, far from being regular churchgoers.

non-Slavonic ethnicity—are predominantly Muslim, while a smaller number is Roman Catholic. The tiny Croatian community is Roman Catholic. While over a half of the *Serbophone Orthodox Christians* supported the survival of a joint state with Serbia at the May 2006 referendum, the pro-independence block gained almost total support of all other ethnic and religious groups, which jointly form almost a quarter of the total population.

The economic crisis of the 1980s worsened during the Yugoslav War.[19] The Yugoslav economic system—predominantly state socialism with some elements of a market economy—was much more open than in the Soviet-dominated portion of the European continent. The economic system of the 1990s was largely a war economy, with a vast grey economy, an omnipresent black market, state-driven hyperinflation, state-sponsored smuggling, state-backed pyramidal schemes, an inefficient fiscal system, an almost complete absence of legitimate foreign investment, and tycoonisation. The UN embargo imposed by Security Council Resolution No. 757 (1992) also significantly contributed to the isolation and economic hardship. Post-Milošević economic recovery is rather slow. Montenegro suffers from high unemployment, low wages, disproportionately high living costs and a low growth rate. The grey economy is estimated to constitute approximately 40% of Montenegro's economy.[20] The state's capacity for dealing with economic crime is very weak.

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Policing in Montenegro heavily suffered from the Yugoslav crisis of the 1990s. Police reforms were delayed by at least a decade in comparison to other Central and Eastern European countries. In addition, the level of police professionalism and expertise developed during 45 years of post WWII peace drastically deteriorated. The isolation of the FRY made it almost impossible for Montenegrin police to keep up with the international policing trends and novelties. The uniformed and paramilitary police components—being primarily the tools for oppression and potential combat—were treated with much more importance than the classical policing areas like criminal investigation, community policing or crime prevention. That period was marked by an enormous increase in organised crime and corruption. However, crime fighting became less important and certain criminal activities (e.g. the smuggling of embargoed goods) were not only tolerated, but even promoted by the elements of the Government. Elements of the police force were forced to ignore illegal activities, which subsequently led to corruption at many levels.

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[19] The Yugoslav War is a generic name for all secession wars, civil wars, armed rebellions, external military interventions and other forms of armed conflict in the former Yugoslavia since 1991.
[20] Institute for Strategic Studies and Prognoses and UNDP. *Human Development Report for Montenegro*, (Podgorica: ISSP/UNDP, 2005) p. 13.

When the pro-Milošević faction of the League of Communists of Montenegro (LCMN) seized power in the late-1980s, more than 200 police officers and secret service agents—loyal to the previous Titoist nomenclature—soon left the force by regular or early retirement.[21] Similar to Tito's period, the police force continued to be the oppressive arm of the regime in the 1990s as well. 'In the armed conflict that took place on the territories of the former Yugoslavia, police forces of all former Yugoslav republics participated but the degree of their involvement differed.'[22] It must be noted, however, that the participation of the Montenegrin police in the Yugoslav War was probably the least among the six Yugoslav republics, but is still difficult to be independently and impartially assessed. Šević and Bakrač claim that '[i]n Montenegro the police archives are still closed and probably 'moderated' (documents implicating the current leadership would be destroyed), as it was often the practice in the socialist Yugoslavia for both police and army security structures.'[23] The black spot on the face of Montenegrin police is the 1992 deportation of 83 male Herzegovina Muslims who went to Montenegro, seeking refuge from the Bosnian-Herzegovinian bloodbath. They were handed right into the hands of Serbian paramilitaries in Herzegovina who executed them later.[24] Since the prosecution did not act, in 2005, the victims' families started private court charges against several allegedly responsible Montenegrin police officers. One of the families won the case, but will appeal due to what they deem as too low financial compensation.

In 1997, part of the ruling Democratic Party of Socialists (DPS – successors to the LCMN), led by Prime Minister Milo Đukanović,[25] broke their bonds with Milošević's regime in Serbia and clashed with his loyalists in Montenegro. The internal DPS power struggle was won by the Đukanović faction, and Montenegrin police again suffered from political turmoil. The regime had managed to maintain total control over the Republic's security services: the Public Security Service (police) and the State Security Service (secret service, usually called 'secret police').[26] At that time, both services were part of the Ministry of Interior (MoI). After Đukanović won the presidency in 1997—defeating his former political partner, Milošević loyalist Momir Bulatović—another

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[21] Šević, Željko and Duško Bakrač. 'Police Reform in the Republic of Montenegro', in: Caparini, Marina and Otwin Merenin (eds.) *Transforming Police in Central and Eastern Europe: Process and Progress* (Münster: Lit Verlag, 2004), p. 250.

[22] Ibid, p. 240

[23] Ibid.

[24] Amnesty International: *Amnesty International calls on the Montenegrin authorities to ensure justice and reparations for victims of human rights violations*. web.amnesty.org/library/Index/ENGEUR700042006?open&of=ENG-YUG

[25] Đukanović had two Prime Ministerial terms: 1991-1997 and 2003-present. Between 1997 and 2003, he was the President of the Republic.

[26] Šević, Željko and Duško Bakrač. 'Police Reform in the Republic of Montenegro', in: Caparini, Marina and Otwin Merenin (eds.) *Transforming Police in Central and Eastern Europe: Process and Progress* (Münster: Lit Verlag, 2004), p. 250.

large group of police officers and secret service agents were marginalised and, again, many left the service.[27]

The security situation in Montenegro seriously intensified after the 1997 changes. Milošević could not have came to terms with losing grip over Montenegro and therefore used the loyalist faction of the Montenegrin ex-communists and the loyal parts of the federal military apparatus attempting to regain control. As the Republics did not have their own armies,[28] the police force was heavily militarised. Several thousands were recruited to perform paramilitary duties – many of them directly from the military. In his 2001 OSCE report, Richard Monk estimated that the paramilitary Special Police Unit numbered as many as 10 000 members.[29] Independent and credible sources estimate that Montenegrin authorities could have potentially mobilised 30 000 armed loyalists.[30] At that time, the military equipment was also procured for the police force – including armoured vehicles and 120mm mortars.[31] Tensions between the Đukanović-led Montenegrin police and the Milošević-led federal military were at the peak during the NATO bombing campaign in 1999. Incidents between the opposing forces were frequent and some of them almost ended in a bloodbath.

When the security tensions relaxed after the democratic overthrow of Milošević, Montenegro was left with an inadequate police force. The influential OSCE's Monk Report characterised the police as oversized, predominantly male, overwhelmingly monoethnic (i.e. Serbian-Montenegrin), corrupt, politicised, inadequately trained, reactive and young. The report outlined six key areas for reform: *community policing*, *police accountability*, *organised crime*, *forensics*, *border policing*, and *police education and development*. These were redefined in 2005, when the Memorandum of Understanding between the MoI and the OSCE Mission to Serbia and Montenegro outlined six new priority areas: *community policing*, *police accountability*, *criminal investigation*,[32] *border policing*, *strategic planning and development* and *police education and development*.

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[27] Ibid. pp. 250-251

[28] The republican Territorial Defence Forces that existed in SFRY were disbanded in 1992 as they proved to be one of the main tools of the separatist republics at the beginning of the Yugoslav War.

[29] Monk, Richard. *A Study on Policing in the Federal Republic of Yugoslavia* (OSCE: Vienna, 2001), p. 34.

[30] Vasić, Miloš. 'Život i podvizi Vasa Mijovića' ('The Life and Heroic Deeds of Vaso Mijović'), *Vreme,* No. 795, 30 March 2006. www.vreme.com/cms/view.php?id=448150

[31] Šević, Željko and Duško Bakrač. 'Police Reform in the Republic of Montenegro,' in: Caparini, Marina and Otwin Merenin (Eds.). *Transforming Police in Central and Eastern Europe: Process and Progress,* (Münster: Lit Verlag, 2004), p. 251.

[32] Which includes: police capacities for the fight against corruption, organised, serious and economic crime – by increasing capacities through special investigative means and methods, criminal intelligence, forensics and ICT forensics

**Normative Framework for Police Reform in Montenegro**

The lack of legal instruments compatible with European standards and best practices slows down the reform process as well. Montenegro has changed many of its laws to meet EU conditions. However, new legislation - frequently just a copy of various foreign legislation - often failed to properly consider Montenegro's circumstances or to accommodate its real needs. One of the largest obstacles to transition has been the capacity to implement new legislation. The lack of state capacities seriously impacted the pace of implementation. This has sometimes been the result of insufficient public and expert discussions during the drafting phases or the lack of developing the appropriate secondary legislation. The EU Feasibility Study assessed the overall legislative performance as noteworthy, yet added that implementation suffered from the lack of human, budgetary and other necessary resources.[33] Moreover, 'in Montenegro, progress has taken place since 2002 in establishing the legislative framework of public administration reform. In practice, weak implementation capacities, both in terms of funds and infrastructure, personnel and training, are coupled with the problems of poor accountability, political interference and patronage.'[34] The slow pace of implementing newly-adopted system reforming laws is a huge problem in many areas, and police reform is no exception.

Institutional and Organisational Changes Brought by the 2005 Law on Police

After more than two years of political deadlock,[35] the Law on Police and the Law on the Agency for National Security were finally adopted in April 2005. New laws radically restructured the security sector. The State Security Service was taken out of the Ministry of Interior and placed directly under the Government, while being renamed the Agency for National Security (ANS). The separation of the secret service from the MoI had been planned during the period of political deadlock, but they are still not physically separated. The ANS headquarters is still in the main MoI building in Podgorica,[36] while some of its branch offices are still in the buildings of the security centres and departments. In addition to structural separation, ANS staff no longer possess policing powers and are not allowed to carry firearms. The exception is a special ANS unit for VIP protection which is still in charge of close protection of the

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[33] European Commission, *Report on the preparedness of Serbia-Montenegro to negotiate a Stabilisation and Association Agreement with the European Union* (also known as the *Feasibility Study*), pp. 8-9.
www.delscg.cec.eu.int/en/eu_and_fry/key_documents/documents/050412_Feasibility_Report.pdf
[34] Ibid p. 10
[35] DPS wanted the Government to appoint the Directors of these two authorities, while SDP wanted the Parliament to elect them.
[36] The new building for ANS is under construction.

three highest government officials: President Filip Vujanović, PM Milo Đukanović and Parliamentary Speaker Ranko Krivokapić.

The Public Security Service (renamed Police Administration, *Uprava policije*, by the Law on Police) was also separated from the MoI, but unlike the ANS did not sever all the structural ties. The MoI kept the 'executive oversight' over the Police Administration, which is formally an independent authority. Under the previous system, the Minister of Interior was effectively the 'first policeman' of Montenegro, but his powers are now much weaker and executive power over the police service belongs to the Police Director.[37] The MoI and the Police Administration are still in a transitional process and restructuring is ongoing. It has yet to be finally decided which MoI units will become part of the Police Administration.

The new Law on Police was intended to be a step towards increasing police accountability and further police depoliticisation. Unlike the previous chief of police, Assistant Minister of Interior for Public Security Mićo Orlandić, a politician from SDP, the new Police Director Veselin Veljović is a professional police officer who was previously the Special Antiterrorist Unit Commander for ten years. Before joining the police in 1992, he was an army officer. However, he is well known as a Đukanović loyalist and a DPS cadre. According to the new Law on Police, the Police Director is the Government's appointee. He subsequently appoints directly subordinate managers without anyone's formal right to interfere. The procedure requires that before the official appointment candidates for the two service's Directors must attend a hearing in front of the Parliamentary Committee on Security and Defence. The candidate is obliged to present his programme and answer questions.[38] However, the Government can appoint Directors regardless of the Parliament's opinion. In a democracy, this process should be transparent and depoliticised, but it completely failed to evolve in this way. The application procedure was not transparent and it is unclear what selection criteria were used. While the Law on Police forbids the Police Director to be a member of a political party, it did not provide any safeguards to prevent politicisation. Director Veljović was heavily criticised, for example, for paying a visit to a DPS campaign headquarters just before the 2005 extraordinary municipal elections in his birthplace Mojkovac[39] and was, therefore, subjected to a special parliamentary hearing. As citizens, police officials cannot be barred from having political opinions, yet must refrain from undertaking politically-biased actions, as well as from those that could even be perceived as biased. It is also interesting to note that the shift of power between the Minister and Police Director was simultaneous with the exchange of positions between DPS and SDP.

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[37] Previously, police and secret service chiefs both had the Assistant Minister of Interior title.

[38] As a rule, all committee sessions are closed, with a possibility to be open to the public in whole or partly. Members are obliged not to expose what was discussed.

[39] The fact that the Directors of both the police and secret services come from the same town has not gone unnoticed in a country with strong clan and local loyalties.

Novelties in Other Police-Related Legislation

The Criminal Procedure Code (2004) introduced legal novelties in accordance with human rights. Yet, the police complained about the Code, stating that it undermined their efficiency, especially the use of covert audiovisual surveillance and the right to conduct searches of individuals and vehicles. To be simultaneously accountable and efficient is a concern for police in many countries undergoing a transition to democracy.

The Criminal Code (also adopted in 2004) criminalised some new forms of crime, which in turn raised concerns over whether the police service was at all capable of suppressing crime. The nature of Montenegro's economic transition requires that the Code be amended in the field of economic crime – especially by introducing the seizure, freezing and confiscation of illegally gained assets. This, however, would be in vain if not paired by increasing police capacities to follow the trace of money.

The Montenegrin Assembly adopted or plans to adopt a number of other laws that affect policing. The first Law on Money Laundering was adopted in 2003. It was amended in 2005 and renamed the Law on Money Laundering and Terrorist Financing. Although it is in accordance with the FATF[40] 40 Recommendations on Money Laundering and Nine Special Recommendations on Terrorist Financing, it is to be amended again, in accordance with the Third EU Directive on Money Laundering. The Law on Weapons (2004) regulates the private possession of weapons by citizens. This law is of immense importance as the private possession of weapons is extremely widespread in Montenegro. Amendments are expected in three areas: defining the list of weapon-related criminal acts, prolonging the amnesty for legalisation of illegally-possessed weapons, and granting an administrative tax waiver to citizens who wish to register weapons. The Law on Detectives (2005) for the first time regulated any aspect of private policing. This area may open possibilities for employment to police officers who will become redundant in the foreseeable future.[41] During the parliamentary debate about the draft of this law, opposition MPs raised concerns over whether private policing companies would be easily controlled. Although not necessarily contradictory to similar legislation in a number of democratic countries, the Law on Public Gatherings (2005) is controversial. It is questionable as to whether it would help the regulation of public expression of political views, or simply serve for the oppression of political freedoms. The law requires organisers of public gatherings to ask the police service for permission three days in advance. It has been used only once to ban a

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[40] FATF – Financial Action Task Force

[41] In early October 2006, after the referendum and subsequent parliamentary elections, the Minister of Interior Jusuf Kalamperovic announced that after formation of the new Government, MoI shall be reorganised and that the number of employees shall be reduced. He justified this as one of conditions set by the international community.

political rally, when police forbid a demonstration during the visit of Slovenian President Jane Drnovšek.[42] The Law on Free Access to Information (2005) is quite restrictive and effectively hinders access to information. Citizens must justify their requests, instead of institutions having to justify why some information is classified. The Law on Protection of Persons and Property was adopted in 2005. The Law on Border Security (2005) regulates the role of police in border security. The implementation of the Law on Traffic Security started on 1 March 2006. This law introduced much needed rigorous measures similar to those in some EU countries. The implementation of this law is extremely important for Montenegro, as drivers are undisciplined, which poses one of the biggest safety threats. The draft Law on Preventing Violence in Sport Events is currently awaiting approval by Parliament. It will oblige sports event organisers to estimate potential security risks and inform the police at least three days in advance. The draft Law on Foreigners is in the process of being ratified by the Government's Legislative Commission. It aims to regulate the status of foreigners in Montenegro and the respective role of the Border Police.

In 2001, Richard Monk assessed that although 'the duties of police in both Serbia and Montenegro are clearly defined in the current Law on Policing, there is no statement of purpose or values that provide guidance on the mode of policing. Such a statement might be expected to include references to such things as impartiality, respect for an individual's rights, responsiveness, fairness and honesty.'[43] Such a statement for Montenegro's police service is expected to be embodied in the upcoming amended Code of Police Ethics, which is scheduled for adoption in 2006.

**Police Organisation in Montenegro**

Before exploring further police organisations in Montenegro, it has to be noted that apart from the Police Administration (*Uprava policije*) there are three other agencies with limited law enforcement capacities: the National Security Agency, the Customs Administration and the Military Police. The National Security Agency (*Agencija za nacionalnu bezbednost*) is the civilian intelligence and counterintelligence service with limited investigative and VIP protection authorities. The Customs Administration (*Uprava carina*) is primarily a fiscal agency—accountable to the Ministry of Finance— but has limited policing authority in the area of customs offences. It is within the Customs Administration competence to ask for IDs and to search for illegal goods. In case the customs notice that a criminal act has been committed, they can restrict the movement of an individual until the police arrive. The Military Police (*vojna policija*)

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[42] Only days before he was to scheduled to visit Serbia-Montenegro, Drnovšek publicly called for the independence of Kosovo. Serbian authorities therefore cancelled his visit to Belgrade, but Montenegrin authorities welcomed him. The opposition called for a protest against the visit, but police banned it. The opposition leaders cancelled the rally, but defied the ban by gathering in front of the Parliament building while Drnovšek was inside.

[43] Monk, Richard. *A Study on Policing in the Federal Republic of Yugoslavia* (OSCE: Vienna 2001) p. 16. www.osce.org/documents/spmu/2001/07/17633_en.pdf

is responsible for policing the small armed forces, and is a part of the Ministry of Defence (MoD). The Ministry of Defence was the federal institution, but after the referendum on independence Montenegro created its own ministry. The portfolio is held by PM Đukanović.

The MoI is now composed of the Minister's Cabinet, Strategic Planning Unit, Central Information System and five directorates: Legal and Personnel Affairs, Common Affairs, General Affairs, Administrative Affairs, and Board and Lodging. The MoI also directly oversees the newly-established Police Academy. Besides supporting the Minister of Interior in managing the MoI, overseeing the Police Administration and co-ordinating it, the Cabinet is also in charge of the MoI's interagency and international co-operation and public relations.

The Strategic Planning Unit was established in May 2003. It is composed of experienced senior police officers and tasked with charting the police reform course. This MoI's 'think-tank' is envisaged to become the permanent planning capacity for the MoI and Police Administration.

The Central Information System (CIS) is in charge of the MoI and police IT department. It conducts tasks such as databases and website administration, equipment maintenance, software development, or data exchange. CIS is also tasked with ensuring the authenticity, integrity and confidentiality of data, as well as with the internal oversight of data or possible misuse.

The Directorate for Legal and Personnel Affairs has a Normative-Legislative Section and Personnel Section. The former provides legal support to all MoI organisational units and deals with other MoI legal issues. In the police reform context, this unit draft laws, by-laws and internal regulations. It also identifies and analyses legal problems and initiates legislative amendments. The Personnel Section is in charge of human resources for the MoI and the Police Administration.

The Directorate for Common Affairs is in charge of finance (i.e. budget, accounting and financial reporting), public procurement, investments and construction. The Directorate for General Affairs is responsible for the maintenance of the MoI and Police Administration facilities and equipment, vehicles and storages. The MoI Health Centre is a part of it. The Directorate for Board and Lodging runs the police restaurants and dormitories. The Directorate for Administrative Affairs is in charge of providing administrative services to the public – primarily by issuing various documents (ID cards, driving licences, passports and licence plates).

The Police Academy evolved from the communist-style Secondary Interior School. It is the only police education institution and delivers basic, specialised, advanced and in-service police training.

The new structure of the Police Administration still reflects the structure of its predecessor, the MoI's Public Security Service. Territorially, it is divided into seven police regions, security centres: Bar, Berane, Bijelo Polje, Herceg Novi, Nikšić, Pljevlja and Podgorica. There are also 14 sub-regions, security departments, subordinate to the security centres, and covering the remaining 14 municipalities in Montenegro. Functionally, the Police Administration is divided in three directorates (Uniformed Police, Criminal Investigation, and the State Border Directorate), five departments (Internal Control Department, Special Verifications Department, Department for Analytical-Information Affairs and Records, International Co-operation Department, and Inspectorate for Prevention against Fire, Explosions and Breakdowns and for Technical Protection of Facilities), and three specialised units (Special Antiterrorist Unit, Special Police Unit and Helicopter Unit). The heads of the security centres, directorates, departments and specialised units report directly to the Police Director. However, within the security centres, the heads of two main police branches (uniformed and CID) report both to the head of their respective security centre *and* to the head of the respective directorate. Unofficially, priority is given to orders coming from the directorates.

The Uniformed Police Directorate has five organisational units: Department for Public Law and Order, Traffic Police Department, Department for Education and Equipment, Duty Operation Centre and Inspectorate for Control of Use of Authority and Legality. The Criminal Investigations Directorate (CID) is made up of five parts: Department for Suppression of General Crime, Organised Crime Department, Economic Crime Department, Centre for the Fight against Drugs, and Criminal Technical Centre. The State Border Directorate has two sectors: Sector for Border Issues and Aliens and State Border Sector. The former is in charge of border crossings and foreign citizens present in the republic, which was the traditional role of the border police in Montenegro. The latter controls the green and blue borders, and also includes the Maritime Police Unit.

The Internal Control Department is in charge of internal affairs. The Special Verifications Department provides analytical support to criminal investigations and a nucleus of the future central criminal intelligence system. The Department for Analytical-Information Affairs and Records maintains the Police Administration's documentation and statistical and analytical reporting. The International Co-operation Department is in charge of international operational co-operation. The Inspectorate for Prevention against Fire, Explosions and Breakdowns and for Technical Protection of Facilities co-ordinates police responses to emergencies, natural and technical disasters.

Montenegro's police service has three specialised units: Helicopter Unit, Special Police Unit (PJP[44]) and Special Antiterrorist Unit (SAJ[45]). The Helicopter Unit provides

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[44] PJP – *Posebna jedinica policije*

airborne support to the police service and other governmental institutions, including the transport of the highest officials. It has three helicopters. The 80-man SAJ is a classic police antiterrorist unit, while the 144-man PJP is a paramilitary police unit inherited from the 1990s. These units should carry out the most complex policing tasks and assist other police units in carrying out other complex tasks (e.g. both have SWAT capacity), and both are self-perceived in the context of the fight against terrorism and organised crime. As their mandates are quite similar, and as Montenegro's resources are scarce for special equipment and training, merging these two units should be a consideration. In some other European police services, special unit officers participate in regular police duties when not carrying out their specialised tasks. 'For instance, the practice in some other countries is for such units to be operational in normal police duties half of the time while continuing their specialist training the remainder of their time.'[46] This would both help save resources and promote career development, as officers would have an easier transition to other police duties once they reach a certain age limit. This would also be important for further police demilitarisation and depoliticisation. SAJ and PJP are—along with the Border Police—the most militarised police units in Montenegro and their members must not be (nor be perceived as) the praetorians.

The key police organisational issue is the issue of centralisation (concentration) and decentralisation (de-concentration). When Milošević took power, the whole system became centralised. His Montenegrin clients followed this course in most aspects, so police centralisation affected the local police, as local authorities lost a great deal of influence. The Police Administration still remains a highly centralised authority, reflective of the structure of the highly centralised state. Furthermore, centralised budget and short-term planning management impede the delegation of decisions. Police at the local level have little room for manoeuvre in addressing specific local issues and working more closely with communities. The size of Montenegro and limited resources, however, require an uncomplicated police organisation, so police decentralisation needs to focus primarily on procedures and functions. Local police need to be empowered to deal directly with other local authorities on community safety and security issues. Such decentralisation would increase police efficiency and enhance the citizens' sense of ownership and acknowledgment of the police service as something that belongs to the public. Like the Police Administration, the police service remains a highly centralised authority. Furthermore, the centralised budget and short-term planning management impede the delegation of decisions. Police at the local level have little room for manoeuvre in addressing specific local issues and working more closely with communities.

The issues of centralisation or decentralisation of a police service depend on many

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[45] SAJ – *Specijalna antiteroristička jedinica*
[46] Downes, Mark. *Police Reform in Serbia: Towards the Creation of a Modern and Accountable Police Service* (Belgrade: OSCE Mission to Serbia and Montenegro, 2004), p. 44
http://www.osce.org/publications/fry/2004/01/18262_550_en.pdf

factors – e.g. demography (size and density of population), geography (size and configuration), legal and administrative tradition, risk assessments, resources, and economic conditions. A modern, democratic police service needs to establish partnership relations with the community. It must treat every human being—citizen or foreigner, victim or perpetrator—equally, regardless of ethnicity, religious beliefs, race or origin. On the other hand, certain police tasks would need to move towards greater centralisation, which is more suitable for smaller systems. The proper balance is crucial. While some parts are too centralised (e.g. uniformed policing), others are not always centralised enough (e.g. investigation). Keeping in mind the size of Montenegro, the limited centralisation of investigation capacities and decentralisation of uniformed policing (while having the UPD for maintaining the standards of uniformed policing in whole Montenegro) should be considered.

The fight against serious and organised crime is a primary area of concern requiring the consolidation of police capacities. The development of specialised, intelligence-driven, strategic capacities is crucial. They are necessary for rapid deployment to support local investigators across Montenegro. All municipal-level police organisations need to have their own investigators to deal with common crime. However, the low crime rates in some parts of Montenegro require the transformation of the role of investigators, so that they are able to perform other police tasks. At present, many investigators are underutilised. Investigation capacities should be functionally concentrated, while simultaneously more decision-making needs to be delegated to operational units and individual officers.

Organisational changes also need to be paired with introducing performance evaluations of organisational units, not only of individual officers. A review of current police practices, procedures and resources should take place as a matter of priority. The focus needs to be placed on issues that directly relate to police ability to perform regular tasks, such as: crime prevention, traffic safety, public order, border protection, issuing personal documents, training, managing crime scenes, finding evidence, and building cases for the prosecution. With adequate resources, the MoI's Strategic Planning Unit could carry out such a review. This, however, must not be a one-off initiative, but a regular task to be done every several years. The Strategic Planning Unit needs to be able to perform regular and *ad hoc* assessments of the units' functioning, based on the targets set by the units themselves. Organisational units should be responsible for providing the results of their work at the end of the annual budget cycle. Given this new responsibility, the police management would hopefully, in time, become more innovative and capable of undertaking realistic planning.

**Financing Policing in Montenegro**

Low police salaries are a major problem and a catalyst of police corruption. Within the

service, it is often perceived as the main impediment for police reform. This must, however, be seen in the context of the overall economic situation of a society in transition.

MoI's 2006 annual budget is more than EUR 57 million, which is over 11 percent of the total budget of almost EUR 519 million. Among the 94 institutions financed from the budget, the MoI is the second largest budget spender, after the Ministry of Education and Science. It is by far the biggest recipient inside the criminal justice and security sectors.

2006 Budget of Criminal Justice and Security Sectors Institutions[47]

| Institution | EUR (million) | % |
|---|---|---|
| Ministry of Interior | 57.35 | 46.08 |
| Ministry of Defence | 42.29 | 33.98 |
| Judiciary | 8.43 | 6.78 |
| Agency for National Security | 7.86 | 6.32 |
| Prison System | 5.51 | 4.43 |
| Prosecution Offices | 1.76 | 1.42 |
| Administration for the Prevention of Money Laundering[48] | 0.33 | 0.27 |
| Ministry of Justice | 0.88 | 0.71 |
| **Total** | **124.46** | **100** |

In 2005, the MoI budget was EUR 48.68 million, 9.67% of the total state budget. The major part of the 17.8% increase in 2006 was allocated to special pay for Border Police officers (working under difficult conditions) and for MoI debt repayment. The vast majority of this debt the MoI accumulated by not providing overtime for employees as well as other additional pay in the last several years. In 2006, ANS has had a separate budget of EUR 7.86 million. Previously, it was part of the MoI budget. Taking these figures into account as well, the combined increase for both institutions in 2006 is EUR 16.53 million (33.96%). Combined, they amount to 52.4% of the budget of all criminal justice and security sectors institutions. When these figures are seen, the criticism that Montenegro is a police state becomes more understandable.

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[47] Montenegro has other authorities related to criminal justice and security, which are, however, not primarily criminal justice and security institutions (National Co-ordinator for the Fight against Trafficking in Human Beings, Regional Centre for Underwater Demining, Misdemeanour Authorities, Directorate for Anticorruption Initiatives, Republican Trade Inspectorate, Tax Administration, Customs Administration, State Audit Institution, and Commission for Determining the Conflict of Interest). The total budget for these authorities in 2006 is over EUR 16 million.
[48] Montenegrin Financial Intelligence Unit (FIU)

Recent budgetary reforms in the Ministry of Finance divided the MoI 2006 budget into three programmes: *Police Service* (EUR 49.86 million – 86.92%), *Police Academy* (EUR 0.63 million – 1.1%) and *Administration* EUR 6.87 million – 11.98%). Approximately three-quarters is allocated to salaries and a quarter to maintenance and debt repayment. Little is allocated to infrastructure or investments. Due to IMF requirements, salaries of public servants in Montenegro have been frozen since 2003, although the costs of living increased during that time. The major investment funds came from international donations, which are difficult to predict and inconsistent. At present, the MoI does not have a complete, centralised overview of donations received, which heavily affects its financial accountability.

The current budgeting process is highly centralised. Budget proposals are being drafted in the MoI Directorate of Common Affairs—without any prior input from organisational units (budget users). Their input is requested only once the budget proposal is already drafted, which leaves very little space for modifications. Only small changes can be made and only after heavy lobbying. Such a lack of budgetary transparency should be brought to an end. Input needs to be required from organisational units at the beginning of the budgeting cycle. During the first few cycles, units would probably provide 'wish-lists' rather than realistic requests, but this would eventually improve. This would also demystify the budget cycle within the police and be an opportunity for police managers to realistically assess the needs of their units. This would lead to increased police planning capacities.

Financial transparency and accountability would also be reinforced by introducing an independent external audit that would not only check the accounts, but would assess the performance of the MoI, Police Administration and their organisational units. The audit should determine whether 'value for money' is provided to a society that allocates more then a tenth of its budget to policing, but it would also determine where money might be saved through more efficient procedures. Performance assessments and financial audits are rather new. They could be conducted by the newly-established State Auditing Institution or by contracted commercial auditors. They need to provide politicians and the public with understandable information. This is especially important for the budget oversight of large reform projects where corruption is more likely to occur. Another benefit is in identifying ways to rationalise the police organisation, as well as making its work more effective. If undertaken in a proper and transparent way, such audits might also increase public and international trust in the police's ability to carry out reforms.

**The Fight Against Crime**

Montenegro appears to be a safe society, safer than many EU countries. It is true that common crime is not such a threat, yet the omnipresent organised crime seriously affects social, economic and political life in Montenegro. Its destabilising role for the political and economic transition must not and cannot be underestimated. It has contributed a great deal to the undermining of public and international confidence in the Government. Due to the continuing Yugoslav crisis, Montenegro entered the transition period worse off than some other post-communist European societies, although—being a part of Yugoslavia—it was economically stronger than many of them. One of the biggest obstacles in its political and economic transition has been, and continues to be, endemic organised crime.

Organised crime in Yugoslavia existed much before the 1990s, but its flourishing and development was a direct consequence of the Yugoslav War. The economic stagnation of the 1960s forced Tito's regime to vent the rising unemployment by opening its borders and encouraging people to look for jobs abroad. Criminals also migrated to Western Europe, finding it easier to operate in democratic societies than in a country with an inadequate rule of law. Many of them were recruited by the federal and republican secret services to infiltrate the political *émigrés* abroad. In return, the state allowed them to use Yugoslavia as the base for their activities in Western Europe. This came as a boomerang in the 1990s, when some criminals immediately offered their 'services' to their respective republics, for which they were allowed to operate freely on Yugoslav soil. Some were even promoted by the media to the 'national hero' status. All of these factors contributed to the general criminalisation of post-Yugoslav societies.

The economic crisis of the 1990s—generated by war, dissolution of Yugoslavia and the UN economic embargo—immensely contributed to the evolution of organised crime. Milošević's regime—as well as his Montenegrin clients—took chances in the emergence of a large grey economic sector by sponsoring the smuggling of various goods, involving security structures in this, while law enforcement and fiscal control were deliberately undermined. Strong social networks in Montenegro enabled organised crime to penetrate institutions. The police and customs services were not encouraged to suppress this development – on the contrary. The EU Commission observed: 'In Montenegro, the rule of law needs to be further strengthened. Links continue to exist between organised crime and segments of the political and institutional system.'[49] The regime was sustained by a pyramid of client-patron relationships that encompassed and enslaved the whole society. This crime pyramid of

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[49] *Report on the preparedness of Serbia and Montenegro to negotiate a Stabilisation and Association Agreement with the European Union* (commonly known as 'The Feasibility Study'), p. 6
www.delscg.cec.eu.int/en/eu_and_fry/key_documents/documents/050412_Feasibility_Report.pdf

Serbia was severely damaged and fragmented by the democratic changes in 2000 and especially by the police operation *Sabre* during the state of emergency, which was imposed after the assassination of Serbia's first post-WWII democratic Prime Minister Zoran Đinđić. However, many of its elements remained untouched. In Montenegro, moreover, organised crime never suffered a similarly strong blow.

<u>Serious and Organised Crime in Montenegro</u>

Several unsolved high-profile organised crime cases have shaken Montenegro in past few years. These cases, and their lack of progress in their investigation, continue to shape perceptions of the state as weak and unstable. In all cases, except for the arrest of a few token individuals, there was no systematic inquiry into the criminal justice system's failure. Another worrying trend involves the blame that has been shifted to those who brought the issues to light, such as NGOs, certain officials and international organisations. Such organised crime flourished in several areas.

Organised crime is a political problem for Montenegro. A prime example is the notorious 2002 case of trafficking for sexual exploitation (the 'S.C.' case, for the initials of the victim, a Moldavian woman) involving senior officials, including the then-Deputy State Prosecutor. Those responsible have never been prosecuted. Even though the 'victims named the police and government officials who were among their clients, […] the government did not take legal action. Prosecutors who were involved in the decision not to prosecute the 'S.C.' case were all dismissed, but with severance pay. The Ministry of Interior's anti-trafficking unit was disbanded.'[50] Based upon recommendations from the joint OSCE-CoE special report on the case, harsher penalties were introduced, and the Government adopted the *Strategy for the Fight against Trafficking in Human Beings*. The police's Anti-Trafficking Team was re-established in 2004. However, the special Government commission which investigated the case released a report which blamed the former Minister of Interior Andrija Jovićević, the then-police chief Mićo Orlandić and the then-Head of the MoI Anti-Trafficking Team, Milan Paunović. This cover-up of high-level corruption was heavily criticised by the OSCE, Amnesty International and the US. After the influential US State Department *Trafficking in Persons Report* was published in June 2004, Vladimir Čejović, the National Anti-Trafficking Co-ordinator resigned, accusing the international community. In its next annual *Trafficking in Persons Report*, the US State Department generally commended the developments, but criticised the weakness of the judiciary.

Smuggling in Montenegro became a state-sponsored activity during the UN economic embargo. Smuggling penetrated politics, administration, business, as well as the

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[50] US Department of State, *Trafficking in Persons Report,* (Washington DC: US Department of State, 2004) p. 171.

criminal justice system. Organised smuggling was approved by some parts of the state apparatus, and the involvement of some of the highest Montenegrin officials—including the Prime Minister—in this type of activity is still being investigated in several EU countries.

The large number of modern vehicles on the Montenegrin streets is, unfortunately, not a sign of economic development, but rather of widespread car theft. It is not such a big problem inside Montenegro, yet it became notorious. In 2003, the German *Bundeskriminalamt* estimated that more than 16,000 cars registered in Montenegro were stolen.[51] Most of them were stolen in Western Europe and smuggled into Bosnia and Herzegovina in the late 1990s, then illegally imported into Montenegro. Some were even found in the possession of the MoI. In 2003, the State Border Service of Bosnia and Herzegovina confiscated a MoI bus that was transporting an official delegation.

Economic crime is a huge problem for any society in transition. The grey economy is estimated to comprise some 40% of Montenegro's economy.[52] Individuals who profited the most, during a time when most of the population had become impoverished, have since used the privatisation process to cleanse their assets by processing them through the legitimate economy. A large portion of foreign investment in industry and real estate come from off-shore tax havens and other funds with dubious origin, which raises the fear of money laundering. At the moment, the CID's Economic Crime Department (ECD) and the Administration for the Prevention of Money Laundering (Financial Intelligence Unit) do not have the capacity to adequately deal with this problem. They require more political support and better resources. Although they co-operate, that is still on an *ad hoc* basis. These two institutions are not yet connected by secure electronic communication. Police ICT capacities are, in general, underdeveloped and vulnerable. Securing evidence in economic crime requires an ICT forensics capacity to be established. No one has yet been convicted of money laundering and a shaky economy is extremely vulnerable to crime. The fight against serious and organised economic crime also cannot be effective without legislative changes – primarily seizing assets gained through criminal activities and shifting the burden of proof in economic crime cases to suspects. People who do not have regular jobs yet drive expensive vehicles and spend large amounts of money need to be targeted, in accordance with the balance of probabilities principle.

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[51] 'Montenegrin Prime Minister Milo Đukanović is facing pressure to either return or pay for the thousands of cars stolen from countries within the EU, the Podgorica daily *Dan* reports today. According to *Dan*, police in Germany have information on some 16,245 stolen cars on Montenegro's roads. The case reportedly surfaced after the Bosnia-Herzegovina branch of Interpol asked for the return of 40 cars, some of which *Dan* claims were registered as vehicles of the Montenegrin Science and Education Ministry.' news.inet.co.yu/index.php?date=20030715

[52] Institute for Strategic Studies and Prognoses/UNDP. *Human Development Report for Montenegro*, (Podgorica: ISSP/UNDP, 2005) p. 13.

<u>Montenegrin Authorities in the Fight Against Organised and Serious Crime</u>

The authorities have for years avoided acknowledging that organised crime exists in Montenegro. Two high-profile murders changed this: the 2004 assassination of Duško Jovanović, Editor-in-Chief of the only non-regime daily *Dan* and the 2005 assassination of Slavoljub Šćekić, Head of the Department for the Suppression of General Crime (*de facto* position number two within the CID). Solving these[53] crimes will be the test of the Police Administration's and criminal justice system's capacity to deal with serious and organised crime. It will be crucial for gaining public confidence and support.

The government adopted its *Programme of the Fight against Corruption and Organised Crime* in 2005, but the results are yet to be seen. The Action Plan for the implementation of this programme is currently being developed. Currently, the small size and narrow scope of work of the four-man CID Organised Crime Department (OCD) is not reflective of the Government's publicly-expressed commitment to fight organised crime. At the moment, the OCD cannot be considered a proper unit in charge of suppressing organised crime in Montenegro, but rather as an investigative team working on a small number of organised crime cases.

Montenegro's CID is composed of six organisational units: Department for the Suppression of General Crime, OCD, ECD, DCIE, Centre for the Fight against Drugs, and Criminal Technical Centre (in charge of forensics). Outside of the CID, MoI's Special Verifications Department and Anti-Trafficking Team, as well as the Customs Administration, FIU and the ANS Department for Organised Crime and Terrorism also perform some criminal investigation roles. Approximately 570 investigators work in CID's headquarters and field branches in seven security centres and 14 security departments.

<u>Introducing New Methods to Fight Crime</u>

Enhancing the fight against organised crime depends on developing new methods and modes of work. New crime fighting methods are especially important for countering new modes of crime. In Montenegro, there are four key areas to be developed: criminal intelligence, forensics, special investigative means, witness protection and border policing. Criminal intelligence supports investigation through analyses that identify linkages between different criminal activities and organised crime groups. Forensics, special investigative means and witness protection assist in finalising criminal procedures by obtaining credible court evidence that cannot be obtained through traditional criminal investigation methods. In addition to fighting cross-border crime, border policing is instrumental in fighting trans-national organised crime. In developing

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[53] Some 30 high-profile murders committed in Montenegro after 1990 are still unsolved. Šćekić was the third senior security official among them.

these areas, great care needs to be taken to ensure that assistance is compatible with the rest of the criminal justice system. In that regard, the recent initiative to form a joint police-customs forensic laboratory is commendable.

Criminal intelligence never existed in Yugoslavia, so the Montenegrin police service heavily depends on international experience and support in establishing it. After a long search for an appropriate model, Montenegro decided to build its national criminal intelligence system on Scandinavian lines. Towards this goal, in 2005 the MoI concluded a three-year co-operation agreement with the Swedish National Police Board. The project includes advising, training and equipment. This endeavour should result in developing a strategy, rules and procedures, organisation, structure, methodology, a database and adequate control system. CID at the moment has very scarce technical resources. The lack of analytical IT support seriously hinders criminal investigations. For example, if paper documentation is seized it currently cannot be digitalised and automatically searched. Analytical IT tools are also important for establishing links between different crime cases and criminals that may not seem connected. They are also used to translate vast amounts of numbers in crime statistics into useful data. Of course, equipment is not enough on its own and must be paired with police officers who accept criminal intelligence as a method of policing. Technology can also be abused if its use is not safeguarded, which should lead to regulations on who and in which way individuals can provide input and to which levels of access they can retrieve information. Some specialised training has been provided through different international initiatives, but not a coherent training programme. Apart from training in the use of modern technical tools, police officers need training in both information gathering and information management and analysis. The use of criminal intelligence may raise ethical, legal and human rights questions. In a post-communist society, merely the word 'intelligence' is associated with the state spying on its own citizens. The central criminal intelligence system needs to be secure and to operate within professional standards, police ethics and law. The MoI and Police Administration leadership also must assure the public that the criminal intelligence system will not be subject to misuse or abuse. Such a system needs to be the basis of criminal investigation in Montenegro, but it also needs to be the basis for intelligence-led work in all areas of policing, not only in the fight against crime. Strategic and operational analysis of gathered information is equally important in areas such as traffic safety or community policing. It is essential that all police units are beneficiaries of the criminal intelligence system, but that they also to contribute to it.

For more than a decade, the development of forensics and crime scene management capacities had been marginalized. The Montenegrin police were using obsolete and inadequate equipment and techniques and were thus unable to produce good quality evidence to be used in court. Enhancing these capacities was seen from the very beginning of the reform process as a direct investment in the overall strengthening of the rule of law in Montenegro. Lately, evidence for particularly important cases (such as high-profile murders) is being processed in Belgrade, Ljubljana and Wiesbaden.

Montenegro's Police Administration is in the process of integrating the forensic laboratory in Danilovgrad, a small town 20km from Podgorica, where the Police Academy is also located. It will be also used for educational purposes and also by the Customs Administration. The building up of the forensic laboratory is supported by the OSCE, Norway, the EU and the US. It will also contain a US-funded DNA laboratory, whose sustainability is however in question, as the annual supply for the DNA laboratory costs half a million Euros. The US is also funding the Automated Fingerprint Identification System (AFIS). What is, however, probably the most needed, is the development of a quality management system for an unbroken chain of evidence. With the upgrading of the police capacities for securing and producing good quality evidence, a challenge remains in the area of co-operation between the pillars of the criminal justice system. Clarification of procedures needs to be ensured among those in charge of evidence gathering, investigation and prosecution.

The aim of police investigative work is to obtain information and credible evidence about criminal activities, and to prepare them for prosecution to use them in courts. Since organised crime activities are planned and conducted in closed and secretive groups, classical policing means often fail. Organised crime and corruption cases are seldom easy to prove. Fighting them is often effective only with special investigative techniques and equipment for the interception of communications and money flow, surveillance of suspects (audio-visually and following movements) and engagement of covert investigators and witnesses. The 2004 Criminal Procedure Code formally gave police the authority to use special investigative means—upon obtaining a court order—but the lack of capacities effectively prevents this from taking place. Special investigative means can be applied only to cases where the potential punishment for the crime under investigation is more than 10 years of imprisonment. This makes it difficult for the currently underdeveloped CID to determine when and to whom to apply it. Montenegro's police service, at present, also does not have the technical capacity to use special investigative means. Procurement of specialised equipment is needed, while a group of ANS specialists will be transferred to CID to perform these duties. Until now, only the ANS has full capacities for covert audiovisual surveillance. However, just as with criminal intelligence, the use of special investigative means is not only a technical, but also an ethical, legal and human rights issue. It is often controversial even in developed democracies. In order to avoid undermining public and international support, the Police Administration must prove to be depoliticised and capable of protecting the privacy of Montenegrin citizens. Montenegro does not have an independent supervisory authority dealing with the protection of personal data, nor with unannounced *ad hoc* reviews of orders for interception.

Another important new method for fighting organised crime is the protection of key witnesses in high-profile cases. However, Montenegro cannot employ this method on its own, due to the size, strong social networks and the scarcity of resources. A witness protection programme needs to be developed in co-operation with other police services, especially with the neighbouring ex-Yugoslav police services (Federation of Bosnia

and Herzegovina, Croatia, Republika Srpska and Serbia). This is would ensure that protected witnesses would be sheltered in areas into which they could more easily integrate due to shared language.

The fight against crime could be significantly enhanced if the unnatural separation of uniformed and investigative elements is overcome. This could be addressed at least in part by investigators in communities with small crime rates perform uniformed policing duties while not investigating. The effective fight against crime depends heavily on intelligence-led community policing. Closer work with the local community could be the basis for gathering more information on criminals and criminal activities. Common crime often serves as the training and recruitment ground for future serious and organised criminals as well. This is the case in Montenegro, where many of the most notorious criminals originated from urban gangs. In turn, enhancing crime prevention and investigation capacities would have a positive effect on community safety in Montenegro.

The fight against crime will fail if seen only as a police task. It must be seen as a responsibility of the entire criminal justice system, including the prosecution (especially the Special Prosecutor for the Fight against Organised Crime), judiciary, penal institutions and FIU. The very nature of the fight against crime in a transition society requires a multidisciplinary approach. At the moment, police investigators, intelligence analysts, prosecutors and investigative judges[54] do not work together closely enough either operationally, or in developing criminal justice policies and practices. The Bar Association's Court of Honour also needs to be active in conducting regular oversight of possible connections between attorneys and criminals. It needs to respect client-attorney confidentiality, yet also to aim to suppress corruption and ties to organised crime.

In addition to operational co-operation and mutual support, relevant authorities need to work on a comprehensive joint approach. They need to be jointly developing strategies and action plans for the suppression of organised crime. During this process, there is a need for participation of the Police Administration (CID, border and uniformed police, and Strategic Planning Unit), prosecution, judiciary, Customs Administration and FIU. Besides developing the mechanisms of multilateral co-operation, strategies and action plans need to outline: the *aims* of this co-operation, the *methods*, and the *resources* to fulfil these aims. Legislative initiatives also need to be included, especially in terms of defining and sanctioning new forms of crime. There would be little benefit if this were an occasional initiative—it needs to be a permanent co-operation forum, institutionalised in a sustainable way. In order to succeed, strategies and action plans need strong and uncompromised support from the political sphere.

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[54] Upcoming reform plans envisage giving the lead of investigations to the prosecution, while the institution of investigative judge would be abolished in proposed changes of the Criminal Procedure Code.

**Police Accountability in Montenegro**

The lack of police oversight mechanisms was one of the most prominent reform challenges and Montenegrin police still have a long way to go in the fight against corruption. The Internal Control Department was established only a few years ago, and it lacks human and technical capacities and support.

In addition to effective internal oversight, accountability will have to be supplemented with effective and efficient external oversight, which is still declaratory but not fully practiced. External parliamentary oversight is still at a rudimentary stage. The Parliamentary Committee for Defence and Security—in charge of police oversight *inter alia*—is only formally performing its role. Its members do not possess sufficient knowledge of the area, and the Committee does not have sufficient professional expertise at its disposal.

Montenegro officially established an independent external police oversight body in October 2005, yet the Council for Citizens' Control of Police is actually a quasi-independent body. The Council has five members representing three quasi-civil society organisations (Bar Association, Doctors' Chamber and Association of Lawyers), the University of Montenegro, and NGOs dealing with human rights. The Government never gave up their Tito-era control of the first four entities, while the human rights NGO representative was nominated by phantom NGOs organised by the regime only for this purpose. The similar method was employed for the election of Ombudsman and members of the public broadcasting council. The Ombudsman's office does not have specific responsibilities for the police service, and police-related breaches of human rights are being treated as other cases.

With regard to accountability, the Law on Free Access to Information (2005) is quite restrictive and effectively hinders access to information. Citizens have to justify their requests by explaining why they need certain information, rather than institutions having to justify why information is classified. This law has not yet been fully implemented in relation to the MoI or the Police Administration.

The Montenegrin media scene is highly polarised, and pro- or anti-regime options dictate reporting on police. In addition, the media is unfortunately quite incompetent when it comes to policing issues. There are no journalists specialised to cover security issues, and there seems to be no interest in developing such specialised skills.

**Police Education Reform**

The only police training institution in Montenegro is the newly-established Police Academy. It evolved from the previous Secondary Interior School. The Secondary Interior School was an institution of secondary education inside the MoI, established in 1995. Previously, all Montenegrin police officers were trained in other Yugoslav republics. It was a boarding school that exclusively enrolled 14-year-old male students who graduate and start working as police officers at the age of 18. Apart from the police-related curricula, the students also used to learn general and military courses. Studying and boarding was free of charge. Police recruits requiring higher education would study at the Police Academy and Police College in Belgrade. The major problem with this type of education was that 'the socialisation and isolation of police recruits from the general public at such a young age is counterproductive to the development of a police officer in tune with the values of society and an understanding of the needs of the public.'[55] Simply put, 18-year-old police officers who just left a semi-military boarding school found it difficult to adjust to the community.

In 2005, the Government adopted *The Programme of Montenegrin Police Education*, laying the groundwork for transforming the Secondary Interior School in Danilovgrad into the Police Academy. The Academy will open basic training to people who have a secondary school degree and are at least 18 years of age. However, due to the already excessive number of police officers and the fact that many of them are not adequately trained to perform the job (for instance, 40 percent of all Border Police officers have no police training at all), the Academy will need to concentrate on upgrading the policing skills of serving officers.

**Strategic Planning and Development**

Police planning in Montenegro is currently twofold: police reform strategic planning and planning of policing activities. The MoI and Police Administration still need to develop both.

The first aspect aims to adapt the Montenegrin police to transition and ensure organisational consolidation. It needs to develop the new police identity, mission, goals and guiding principles and to plan concrete steps for achieving these elements in a reasonable time. Police reform planning needs to be formalised in a police reform strategy, which should define measurable actions for the organisational development by identifying goals and available resources for fulfilment.

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[55] Downes, Mark. *Police Reform in Serbia, Towards the Creation of a Modern and Accountable Police Service*, (Belgrade: OSCE Mission to Serbia and Montenegro, 2004) p. 33
http://www.osce.org/publications/fry/2004/01/18262_550_en.pdf

Effective police reform depends on the institutionalisation of permanent planning capacities, such as the MoI Strategic Planning Unit. It has so far played a significant role as the intellectual engine and catalyst of police reform, but needs to be reinforced in its future role as the MoI's permanent planning capacity.

Police reform in Montenegro cannot succeed if it is isolated from overall criminal justice reform. In addition to operational co-operation, all relevant authorities need to advance a comprehensive integrated approach to criminal justice reform. They need to jointly develop strategies and action plans that outline: the *aims* of co-operation (e.g. increasing traffic safety in a given period of time), the *methods* (e.g. more frequent patrols in traffic 'black spots'), and the *resources* to fulfil these aims. Police also need to contribute to legislative initiatives that regulate their work. Authorities in Montenegro have already benefited from consulting local experts from civil society and academia in the reform process. Criminal justice reform ultimately requires strong and uncompromising support from the Assembly and its Committee on Security and Defence, the Prime Minister and the Ministers of Interior, Justice and Finance.

There were a couple of international and MoI efforts in the area of strategic planning, especially at the beginning of the police reform process. Most notable was the work with the Danish Institute for Human Rights that led to the Vision Document. Another was within the framework of the regional association Southeast European Police Chiefs Association (SEPCA),[56] which was assisted by the Royal Canadian Mounted Police (RCMP). The RCMP facilitated several workshops on strategic planning which were supposed to result in an environmental scan and overall MoI strategic plan. The aim was too ambitious for the RCMP mandate and the allotted budget. RCMP pulled out two years ago, and strategic plans were not finalised, although some individual capacities for strategic planning remained.

The overall social turbulence which culminated in the independence referendum has settled, so attention needs to be focused on the future. The Vision Document should be used as a starting point for evaluating what has been achieved so far, and possibly using some of its material for developing other operational strategies. Special attention needs to be paid to tangent issues between operational strategies towards defining common issues.

**Montenegro's International Police Co-operation**

In Montenegro, organised crime has international—especially regional—implications. Many criminals of Montenegrin origin operate abroad, but Montenegro is also the victim of international organised crime. During the 1990s, the Apulian *Sacra Corona*

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[56] Nine police services are SEPCA members: Albania, Federation of Bosnia and Herzegovina, Bulgaria, Croatia, Macedonia, Montenegro, Republika Srpska, Rumania and Serbia.

*Unita* used Montenegro's coast as a base for their smuggling activities and as a safe haven. The Italian Central National Bureau of Interpol opened an office in the port city of Bar in 1999, which was instrumental for extraditing dozens of mafiosi and for cutting trans-Adriatic tobacco and drugs smuggling lines. Montenegro is also a transit area for international organised crime.

International police co-operation and exchange of data was almost non-existent between 1992 and 2001. A major obstacle was the expulsion of FRY from Interpol in 1992. It was readmitted in 2001, after the democratic changes in Serbia, and the Interpol National Central Bureau (NCB) became part of the Federal MoI's CID. After the Federal MoI was dissolved in 2003 when Serbia-Montenegro was formed, all law enforcement competences were placed under the jurisdiction of the republics, so the Serbian MoI took over the NCB. Montenegro disagreed with this decision and declined an offer to open a sub-NCB in Podgorica, which would have enabled a direct link to Interpol's I-24/7 database in Lyon. Montenegro applied for separate membership, with the support of the then-Serbian Minister of Interior Dušan Mihajlović, but Interpol's 2003 annual assembly in Barcelona rejected it as only internationally-recognised states were allowed to be members, not the individual police services of sub-national entities.[57] Instead, a Department for Co-operation with Interpol and Europol (DCIE) was created within the Montenegrin CID in 2004. After the adoption of the new Law on Police in 2005 it was placed within the Police Administration's newly-created Department for International Co-operation. After Montenegro became independent in May 2006, it was admitted to Interpol at the annual assembly in Rio de Janeiro.

Police Administration also maintains bilateral operational co-operation with other, mainly regional, police services through a series of agreements or direct contact with foreign police liaison officers situated in Belgrade.

Montenegro has managed to attract many donations for police reform, with the US and EU countries as the biggest donors. The international community has, as a rule, focused its reform efforts on developing the Border Police, without necessarily placing it in the context of overall political and economic transition, including reform of the criminal justice and security sectors. Efforts could be multiplied if more attention was given to planning, regional harmonisation and donor co-ordination. Investment in infrastructure and segmented training efforts have not always been tailored to the recipient's real needs. Aid should be conditioned by demanding the development of: functional strategies and action plans, recruitment standards, training curricula, interagency co-operation and intelligence-led policing. There have been cases of outdated and used equipment being donated, whose maintenance sometimes costs more than the procurement of new equipment. Newly donated equipment often requires certain

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[57] In Bosnia and Herzegovina, for instance, police competences (except border policing since 2000) belong to two entities – Federation of Bosnia and Herzegovina and Republika Srpska. However, their police services created a joint NCB in Sarajevo.

infrastructure investment by the MoI, e.g. staff training or installation. Assistance should be given to areas that are part of an overall reform strategy.

**In lieu of a Conclusion**

Proper police reform started only in 2001—being facilitated only by the fall of Slobodan Milošević—and has always been primarily a political issue. The political sphere, however, failed to support police reform through consistent reform policies. During this period, Montenegro had five Ministers of Interior: Vukašin Maraš (DPS, 1998-2001), Andrija Jovićević (DPS, 2001-2002), Milan Filipović (SDP,[58] 2003), Dragan Đurović (DPS, 2003-2005) and Jusuf Kalamperović (SDP, 2005-present). Political instability led to inconsistency in police reform, since priorities were set by issues often not related to domestic affairs. The overarching political issue at the time was the issue of Montenegro's status – whether it would remain part of a joint state with Serbia or become independent. Months before the referendum, the majority of the state apparatus, including the police service, was preoccupied with this issue, slowing the progress of reforms. The political elite of today's independent Montenegro have no more excuses, but to undertake the four 'Ds' – de-politicisation, de-militarisation, de-criminalisation and de-centralisation of the police. It is yet to be seen whether they will be mature enough in this respect. Police culture and values need to evolve to accommodate the changing social values of a society in transition, striving towards the EU. Montenegro's post-communist police service—which has never been subjected to democratic lustration—still needs serious rehabilitation, primarily through the change of service culture and mentality, and through accountability to democratically elected institutions.

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[58] Social Democratic Party is a junior member of the Đukanović-led governing coalition. It originates in the League of the Socialist Youth of Montenegro – the LCMN youth branch.

**Border Management Reform – the Republic of Montenegro**

The dissolution of socialist Yugoslavia and the emergence of new countries created new borders. In 2000, the Army and Navy were securing the FRY green and blue borders, while the republican MoIs were tasked with controlling border crossing points (BCPs). In 2000/2001 the Federal MoI 'intended to create a Border Police Service (BPS) in order to transfer responsibility for the task of border security from the military to the police.'[59] However, Montenegro has not acknowledged the federal institutions since July 2000. In addition, the signing of the Belgrade Agreement in March 2002 announced restructuring of the FRY into Serbia-Montenegro. With such a political constellation, the federal BPS was never created.

In February 2003, the FRY was transformed into Serbia-Montenegro, and the Constitutional Charter of Serbia-Montenegro was enacted. Consequently, the Federal MoI ceased to exist. The Serbia-Montenegro Ministry of Defence and its military remained one of the few institutions governed from the union level. Hence, the security of the Montenegrin international borders remained under the two-level responsibility of the Serbia-Montenegro military and the Montenegrin police service.

The issue of the demilitarisation of Montenegrin borders also needs to be seen from a wider prospective of overall security sector reform and the impending accession of the Western Balkans[60] to the EU, where border protection is not seen as an issue of defence, but rather of home affairs. At the EU – Western Balkans Summit in Thessaloniki, 'the EU reiterated its unequivocal support to the European perspective of the Western Balkan countries.'[61]

The whole process demanded both commitment and support not just from the Western Balkan countries themselves, but also from the international community. Bearing in mind that, in early 2003, 'following a NATO initiative, the EU, NATO, the OSCE and the Stability Pact worked jointly to develop a coherent and concerted approach to the border security and management issue in the region.'[62] The international community's interest in border protection reform also lay in the fact that Montenegro is located on the infamous Balkan Route – one of the main roads of illegal trafficking in human beings, weapons, drugs and other hazardous substances to Western Europe. The Balkan

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[59] Monk, Richard. *A Study on Policing in the Federal Republic of Yugoslavia* (OSCE: Vienna 2001) p. 27.
[60] Western Balkans countries are Albania, Bosnia and Herzegovina, Croatia, Macedonia, Montenegro and Serbia.
[61] http://www.mfa.gr/english/foreign_policy/eu/EU-WBalkans_en.pdf
[62] http://www.nato.int/docu/conf/2003/030522_ohrid/c030522a.htm

Route is also an important road for terrorists, connecting the Middle East and Central Asia with Europe.

The initiative resulted in the Ohrid Process on Border Security within which the countries and international organisations agreed on a way forward regarding all crucial aspects of the process at a conference held in May 2003. Its long-term overarching goal was to develop Integrated Border Management (IBM) in the Western Balkans. IBM should provide the right balance between open but secure and controlled borders – i.e. borders open for trade, tourism and other forms of legitimate movement of people and goods, but secure and controlled to prevent crime, terrorism and illegal migration.

The demilitarisation of the state border and introduction of the IBM system in line with the EU and Schengen standards is an enormous challenge. The conditions at many BCPs are still rather poor, although some were built or refurbished with US and EU funds. Before the break-up of Yugoslavia, Montenegro had a 260 km-long international border with Albania (comprising two infrequently used BCPs), a 93km-long coast (with one international seaport), and two international airports. Today, Montenegro has 30 BCPs. Police had two border-related tasks: checking passengers at the five BCPs and monitoring foreigners on Montenegro's territory. They were usually very busy during the summer tourist season, but much less throughout the rest of the year.

| Type of BCP | Before 1991<br>*break-up of Yugoslavia* | After 2004<br>*demilitarisation of international border* |
|:---:|:---:|:---:|
| **Land** | 2[*] | 23[**] |
| **Sea**[***] | 1 | 5 |
| **Air** | 2 | 2 |
| **Total** | 5 | 30 |
| | | |

[*]     One railway and one road BCP.
[**]    Two railways and 21 road BCPs.
[***]   The international seaport in Budva is active only during the summer tourist season.

Most of the State Border Sector staff members were recruited from the paramilitary Special Police Unit (PJP). None were directly recruited from the ranks of the previous Army border guards, and very few naval officers joined the Maritime Police Unit. Previously, a number of PJP staff members were professional soldiers, NCOs and officers – many of them were war veterans. Such conversion and 'demobilisation' represented a sound and commendable shift towards demilitarisation, but it needs to

continue, as the State border sector is still the largest militarised component of the Montenegrin MoI.[63] Almost 40% of the current 1,381 border police officers do not have any police training. A significant number of border police officers have military, rather than policing skills. Although the 2004 study on *Relationship between the Police and Local Community: Survey Report, Based on Focus-Group Interviews*[64] primarily aimed to identify the public's views on uniformed police potential for community policing, it also identified interviewed citizens' concerns about the number of poorly-trained police officers, including border police officers. Training is needed in intelligence-led policing and modern border policing methods, such as profiling or identifying counterfeited and forged documents. The possibility of discovering and handling the victims of human trafficking requires special training in anti-trafficking and human rights. Since corruption is so often linked to borders, training aimed at increasing awareness of accountability is needed.[65] The IBM Strategy also identifies the need for training in the normative framework.[66] Learning at least the basics of foreign languages spoken by tourists is also vital. In sum, it is essential to ensure that the takeover of borders from the military entails *policing the border*, rather than *militarily guarding the borderline*.

Border security reform is one of the main areas of the criminal justice and security sectors reform in the EU-striving Balkans. Border policing is the area of police reform in Montenegro which has enjoyed the fastest and most comprehensive development. Border transformation was placed at the top of the reform priorities, which—apart from improving border protection—had primarily a political aim of demonstrating the capacity of the pro-independence Government to take over responsibility for border security.[67] In 1998, the Government decided to create its own customs service,

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[63] Two other militarised components of the police service in Montenegro are the Special Police Unit (downsized from 2700 to 144 members during 2002 and 2003) and the Special Antiterrorist Unit (80 members).

[64] Bešić, Miloš. *Relationship between the Police and Local Community: Survey Report, Based on Focus-Group Interviews* (CEDEM: Podgorica 2004)

[65] This should to be paired with appropriate internal oversight. Two specific areas in which internal oversight should focus on are corruption and harassment. While corruption is often associated with cross-border transport, harassment may be twofold: against the public and within the police service. Modern border policing incorporates an understanding that all people crossing the border—legally or illegally, regardless of citizenship, ethnicity, faith, mother tongue etc—possess equal human rights and should therefore be treated with dignity. Harassment within the service may be higher than in other police branches due to the geographical isolation of many border police posts.

[66] The Government of the Republic of Montenegro: *Strategija za integrisano upravljanje granicom* (*Integrated Border Management Strategy*), (Podgorica 2006) p. 13
www.mup.vlada.cg.yu/vijesti.php?akcija=vijesti&id=12153

[67] The name of the organisational unit in charge of border policing: *State Border Directorate*, rather than *Border Police Directorate* – is also a sign of emphasising Montenegrin statehood. Their official MS PowerPoint presentation in 2003 highlighted that the 'state border becomes symbol of statehood and independence.'

separated from the then-Federal Customs Directorate, while in 2001, it decided that the Montenegrin MoI should take over responsibility for the Republic's international borders (with Albania, Bosnia and Herzegovina and Croatia) from the Federal Ministry of Defence. The handover process lasted several months and was completed on 1 January 2004.

**Towards Integrated Border Management**

The EU concept of Integrated Border Management (IBM)[68] entails inter-agency co-operation with clear, legally binding definitions and division of tasks and responsibilities, co-operation mechanisms (including information exchange at the international, national and local levels), and interoperable technical means and common infrastructure to meet their joint goals and responsibilities. It also means that the border services of all of the Balkan countries must maximise their limited capacity and co-operate. Overdeveloping the border police service with a main purpose of implementing EU and Schengen regulations should be avoided. This would then require huge personnel and infrastructure cuts once the Balkan Peninsula is integrated into the Schengen area.

Although belatedly, the Montenegrin Government adopted the IBM Strategy in February 2006, which represents a tangible break-through for further planning and interagency co-operation. The beginning of this document is dedicated to describing the geopolitical characteristics of Montenegro. For each of the four border-related authorities (Police Administration, Customs Administration, Veterinary Inspection and Phyto-Sanitary Inspection[69]), the IBM Strategy assesses the current situation and proposes future activities in the areas of legal framework, management and organisation, procedures, human resources and training, IT and communications, infrastructure and equipment, and budget and timelines. It proposes co-ordination mechanisms and defines interagency and international co-operation. The IBM Strategy also discusses available resources, the timeline for implementation and proposes activities for detailed Action Plans (to be developed and adopted by an inter-ministerial working group).

The State Border Directorate led the process and provided a draft to the three other authorities to contribute with their input. The Government adopted the Strategy only several days after the 62 page draft was submitted, without much time to thoroughly assess it and realistically plan implementation resources. In its assessment of resources to implement the IBM, the Strategy lacks an estimation of costs, but seems to rely on potential foreign donations, which are a rather unstable source.

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[68] *Guidelines for Integrated Border Management in the Western Balkans*, europa.eu.int/enlargement/cards/pdf/publications/ibm_guidelines.pdf
[69] The latter two are part of the Ministry of Agriculture and Fishery.

Probably due to the short timelines imposed on the State Border Directorate, it started developing the Strategy without sufficient internal consultations inside the MoI. Border Police need to be perceived as an integral part of Montenegro's police service and not as a separate authority. Effective border protection on a small territory like Montenegro can be important not only for the fight against cross-border crime, but also against organised crime. Border Police must have access to the CID and customs criminal intelligence systems – both as users and as input providers. A separate Border Police criminal intelligence capacity would be expensive and unnecessary. A central criminal intelligence system would require specialised training for Border Police and customs officers. In all other crime prevention and investigation issues, it is essential that the Border Police (and other three IBM services) closely co-operate with the CID and uniformed police. In turn, these other police branches also need to learn about border policing. In Slovenia, for example, all non-border police officers were trained in week-long awareness courses. Joint training of police and custom officers would also enhance their interoperability.

To ensure the free movement of people, goods and assets across open, yet controlled and secure borders—which is the stated IBM goal—four agencies need to develop comprehensive mechanisms of co-operation. They also need to co-operate with other authorities: e.g. Ministries of Health, Trade, Labour and Tourism.

Cross-border police co-operation which fosters communication, dialogue and involvement at the central, regional and local levels is also a necessity. The Montenegrin Border Service has already established ties with neighbouring border services, yet this could be further enhanced by more field-level co-operation for operationalising high-level declarations about co-operation. Field-level co-operation is always more effective if border services members personally know their counterparts. Regular cross-border meetings and exchange of information, learning each others' procedures and joint patrols would be beneficial. In the EU accession process, neighbouring services also need to work on developing a higher level of harmonisation of normative frameworks and procedures.

**International Support to Border Security Reform in Montenegro**

The EU has often reiterated its intention to integrate the whole of the Balkan Peninsula, and implementing IBM is one of the main preconditions. The demilitarisation of borders throughout the region and the subsequent establishment and consolidation of Border Police services have garnered massive international investment for infrastructure, equipment and training. There are three main reasons for this: first, the

Peninsula is a major transit zone for illegal trafficking to Western Europe. Developed countries have an interest in preventing trans-national organised crime, terrorism, illegal migration and illegal proliferation. Second, as the borders between the post-Yugoslav countries are new, most of the borders in the region are lacking proper infrastructure. Countries devastated by war and economic crisis, now undergoing transition, do not always have resources to invest in this. Thirdly, not all borders in the Balkans have yet been completely agreed upon, which further complicates the border security reform process.

Montenegro has managed to attract many donations for border security reform, with the US and EU as the biggest donors. The international community has, as a rule, focused its reform efforts on developing border services, without necessarily placing it in the context of overall political and economic transition, including reform of the criminal justice and security sectors. Efforts would be multiplied if more attention were given to planning, regional harmonisation and donor co-ordination. Investment in infrastructure and segmented training efforts have not always been tailored to the recipient's real needs. Aid should be conditioned by demanding the development of: functional strategies and action plans, recruitment standards, training curricula, interagency co-operation, intelligence-led work and scenarios of Schengen area enlargement. There have been cases of outdated and used equipment being donated, whose maintenance sometimes costs more than procuring new equipment. New equipment that is donated often requires certain infrastructure investment by the MoI, e.g. staff training or installation. Assistance should be given to areas that are part of an overall reform strategy or plan.

**Annex I: List of relevant international codes and conventions to which Montenegro subscribes**

United Nations: As a part of Serbia-Montenegro, Montenegro was obliged by the following UN conventions. Since only Serbia has legal continuity of Serbia-Montenegro, Montenegro will need to sign them.

- The Civil and Political Rights Pact
- Convention against Torture and Other Cruel, Inhuman or Humiliating Punishments and Procedures
- Convention on the Fight against Trans-National Organised Crime
- Protocol on Prevention, Combating and Penalising Human Smuggling, Especially Women and Children
- Single Convention on Narcotics
- Convention on Psychotropic Substances
- Convention against Illegal Trade in Narcotics and Psychotropic Substances
- Convention on Criminal and Other Acts Done in Aircrafts (The Tokyo Convention)
- Convention on Combating Illegal Hijacking of Aircrafts
- Convention on Combating Illegal Acts Directed towards the Safety of Civil Aviation (The Montreal Convention)
- International Convention against Taking Hostages (The New York Convention)
- 1979 UN Resolution: Code of Conduct for law-enforcing officers

The Council of Europe (CoE): As a part of Serbia-Montenegro, Montenegro was obliged by the following CoE documents. Since only Serbia has legal continuity of Serbia-Montenegro, Montenegro will need to sign them.

- European Convention on Human Rights and Fundamental Freedoms
- Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
- European Convention on Mutual Assistance in Criminal Matters
- European Convention on Combating Terrorism
- European Convention on Violence and Unruly Behaviour of Fans at Sports Events and Criminal and Criminal Law Convention on Corruption
- Serbia-Montenegro has signed the CoE Convention on Personal Data Protection, but its ratification is in dispute

OSCE: All decisions in the OSCE Permanent Council are made by consensus hence all decisions oblige member states of the OSCE, including the Republic of Montenegro.

Interpol: As the newest member of Interpol, Montenegro abides by all relevant rules and regulations.

Europol: Montenegro is not a member of Europol, and thus not obliged by any of its documents.

**Annex II: Chronology of Main Police Reform Related Events in Montenegro**


October 2000          Slobodan Milošević toppled in a democratic overthrow in
                      Serbia, after refusing to recognise Vojislav Koštunica's
                      electoral victory for the President of the FRY. This leads to
                      the easing of security tensions in Montenegro, which
                      enables police reform to tentatively begin.

July 2001             Minister of Interior Vukašin Maraš (DPS) replaced by
                      Andrija Jovićević, from the same party.

July 2001             Publishing of the influential OSCE report, *A Study on
                      Policing in the Federal Republic in Yugoslavia*, written by
                      Richard Monk. The report outlined six areas for police
                      reform: *community policing*, *police accountability*,
                      *organised crime*, *forensics*, *border policing*, and *police
                      education and development*.

November 2002         A high-profile sex trafficking case involving a Moldovan
                      woman, 'S.C.', caused a major political crisis. Several
                      involved senior officials (including the Deputy State
                      Prosecutor) were arrested, yet no one was indicted. The
                      OSCE and CoE submitted a joint report on the case in
                      October 2003.

January 2003          Minister of Interior Andrija Jovićević replaced by Milan
                      Filipović (SDP) when the new Government was formed
                      after parliamentary elections. He claims that the Prime
                      Minister removed him to hinder the investigation in an
                      attempt to protect the officials involved. 'S.C.' evacuated
                      from Montenegro, and all those arrested were released the
                      next day.

February 2003         After strong public and international pressure, the National
                      Anti-Trafficking Co-ordinator—a close friend of one of
                      those arrested in the 'S.C.' case—resigned.

February 2003         FRY reconstituted into Serbia-Montenegro. All law
                      enforcement competencies devolved to the republican level
                      and the Federal Ministry of Interior ceased to exist.

February 2003         The State Prosecutor resigned due to strong public pressure
                      over the 'S.C.' case.

May 2003              Organised Crime Department established within the CID.

May 2003              Strategic Planning Unit established within the MoI.

July 2003             MoI established the post of Spokesperson.

November 2003         Milan Filipović resigned citing dissatisfaction with political
                      deadlock over new police and secret service legislation. He
                      was replaced by Dragan Đurović (DPS) who kept the post
                      of Vice Prime Minister in charge of the political system.

| January 2004 | The police takeover of Montenegro's international borders from the Federal Military was completed. |
| May 2004 | Duško Jovanović, Editor-in-Chief of *Dan*, the only anti-regime daily newspaper was assassinated. |
| April 2005 | The MoI *Vision Document* published. |
| April 2005 | The Law on Police and Law on Agency for National Security was adopted after more than two years of disputes within the ruling coalition. The MoI's Public Security Service renamed the Police Administration and separated from the MoI, which kept executive oversight over it. The MoI's State Security Service was renamed the Agency for National Security and was completely taken out of the MoI, under direct government supervision. The police chief's title changed from *Assistant Minister of Interior [in charge of Public Security]* to *Police Director*. |
| June 2005 | Slavoljub Šćekić, the Head of CID's Department for the Suppression of General Crime (and *ex-officio* Deputy Head of CID) was assassinated. |
| July 2005 | Establishment of the Assembly's Committee for Security and Defence, in charge of parliamentary oversight of the MoI and ANS under the new police and secret service legislation. |
| August 2005 | The Government adopted *The Programme of Montenegrin Police Education*, laying the groundwork for transforming the Police Secondary School in Danilovgrad into the Police Academy. The Government also adopted *The Programme of the Fight against Corruption and Organised Crime*. The subsequent *Action Plan* is still being developed. |
| October 2005 | Establishment of the Council for Citizens' Control of Police, a quasi-independent external police oversight body. |
| October 2005 | Minister of Interior Dragan Đurović replaced by Jusuf Kalamperović who kept the post of Vice Prime Minister in charge of the financial system. The MoI portfolio again went to the SDP. |
| November 2005 | Assistant Minister of Interior for Public Security Mićo Orlandić (SDP) replaced by the Police Director Veselin Veljović, Commander of the Special Antiterrorist Unit for the previous 10 years, famous as a firm Đukanović loyalist. Orlandić becomes a Minister without Portfolio. |
| November 2005 | Memorandum of Understanding between the MoI and the OSCE Mission to Serbia-Montenegro signed. It redefined police reform priorities and outlined six new joint priority areas: *community policing*, *police accountability*, *criminal* |

|  |  |
|---|---|
|  | *investigation*, *border policing*, *strategic planning and development*, and *police education and development*. |
| February 2006 | Government adopted the Integrated Border Management Strategy. |
| May 2006 | Montenegro became independent. |
| Summer 2006 | After the referendum on independence, dozens of ethnic Serb police officers reportedly transferred to work away from their places of residence. |
| September 2006 | Montenegro accepted as an Interpol member at the organisation's annual assembly in Rio de Janeiro. |

# Police Reform in the Republic of Serbia

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## Introduction

Police reform, as an integral part of Security Sector Reform (SSR), is one of the main prerequisites of the transition from an authoritarian regime to a democratic polity. One of the biggest challenges Serbia faced after the democratic shift on 5 October 2000 was the reform of the police force and its transformation into a service accountable to citizens.

The overarching challenges of police reform in Serbia were politically articulated following the changes in 2000, and were marked as the four 'Ds' – de-politicization, de-centralization, de-criminalization and de-militarization.

The 'Ds' were often publicly declared by both administrations after 2000, but they were not systematically developed as government policy. The lack of policy and a clear implementation strategy, led to lack of internal capacity and precise time-frames for steering towards the proclaimed goals.

Reform has been ongoing with varying intensity. However, due to the legacy of the conflicts in the former Yugoslavia, internal political instability and the present regional security challenges (i.e. the unresolved status of Kosovo), the Ministry of Interior (MoI) remains the executive branch of the highest political importance. Thus, political influence is still present. The recently adopted Law on Police has made a division between political and operational components and all necessary by-laws are to be adopted by November 2006.

The Serbian police still have a way to go in the fight against corruption. The internal affairs unit was established only a few years ago, and lacks capacity and support. In addition to effective internal oversight, accountability will have to be supplemented with effective and efficient external oversight, which is still declaratory but not fully practiced. External parliamentary oversight is still at a rudimentary stage. The Parliamentary Committee for Defence and Security – in charge of police oversight *inter alia* – is only formally performing its role. Its members do not possess sufficient knowledge of the area, and the Committee does not have sufficient professional expertise at its disposal. The idea of establishing an independent external oversight

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[1] The authors work with the Law Enforcement Department of the Organization for Security and Cooperation in Europe (OSCE) Mission to Serbia, but the views expressed in this report belong solely to the authors and do not necessarily reflect the views of the OSCE.

body has yet not been pursued; this is still a missing link in the police oversight structure. Public and media interest will have to evolve in order to support these accountability mechanisms.

The lack of legal instruments compatible with European standards and best practices slows down the reform process as well. The slow pace of implementing newly-adopted system-reforming laws is a huge problem in many areas, and police reform is no exception.

Pending the issue of the new constitution, the police service will remain a centralized authority, reflecting the structure of the highly centralized state. Furthermore, centralized management of the budget and short-term planning impede the delegation of decisions. Police at the local level have little room for manoeuvre in addressing specific local issues and working more closely with communities.

The dissolution of socialist Yugoslavia and the emergence of new countries created new borders. Until recently, the Army and Navy of the Serbia and Montenegro state union were securing the state's green and blue borders, while the Serbian Ministry of Interior was tasked with controlling border crossing points. The process of the police take-over of the state border from the military started in 2005, and is planned to be finalised by the end of 2006. In parallel, the implementation of the Integrated Border Management system was initiated, and there are many challenges yet to be addressed in this respect.

Police culture and values need to evolve to accommodate to the changing social values of a society in transition, striving towards the European Union (EU). Although the vast majority of high-ranking Milošević-era police officers, who were involved in paramilitary operations, have retired, Serbia's police service still needs a long and serious rehabilitation, primarily through a thorough reform of education and training. Modernization and the institutionalization of training, being the foundation of ongoing professional development and advancement, are the current focus.


*Constitutional framework*

The Constitution[2] of the Republic of Serbia was adopted on 28 September, 1990 by the National Assembly of the then Socialist Republic of Serbia. At that time, Serbia was the constituent republic of the Socialist Federal Republic of Yugoslavia (SFRY). The Serbian Constitution states that the work of state agencies shall be open to the public and that the publicity of such work may be restricted or precluded only in cases

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[2] English translation of the Constitution of the Republic of Serbia can be found at http://www.srbija.sr.gov.yu/cinjenice_o_srbiji/ustav.php

provided by law. In addition, the Constitution prescribes that the Cabinet supervises the work of the ministries and other state agencies.

The turbulences in the Balkans and the Yugoslav War[3] created new realities, and the final dissolution of the former Yugoslavia culminated with the dissolution of the State Union of Serbia and Montenegro following the referendum on independence in Montenegro in May 2006.

Currently, adoption of the new Serbian constitution is on the top of the political agenda. There are intensive inter-party consultations on the draft of the new constitution. The new constitution will heavily influence the organisation of all state authorities, police being one of the most important among them. The issue of the decentralisation, especially with regards to constitutional solutions for the Serbian Autonomous Province of Vojvodina will have a bearing on the organisation of policing especially in terms of the development of the community safety concept. According to the recent reports of the Serbian daily papers, the final draft of a new Serbian Constitution will be presented to the parliamentary Constitutional Subcommittee by the end of September 2006, hence it is expected that the new constitution will be adopted by the end of the year.

**The national police agencies**

The national police agency in charge of public security is placed under the General Police Directorate (*Direkcija policije*). As mentioned above, with the adoption of the new Law on Police in 2005, division was made between the political and operational components and the General Police Directorate replaced the Public Security Sector. The General Police Directorate is part of the Ministry of Interior (MoI). Apart from the General Police Directorate, there are three larger organisational units – Division for Finance, Human Resources and Common Affairs, Division for Internal Control of Police and the Division for Protection and Rescue.

Regarding the establishment of the new police units in the recent past, it should be highlighted that in mid-2001 a standing paramilitary police unit – the Gendarmerie was formed as a part of the Public Security Sector. The core of the new unit came from the Special Police Unit (PJP), which employed regular uniformed police officers who were brought in and out on a shift basis. A number of Gendarmerie newcomers were recruited from outside the police service. The Gendarmerie is tasked with performing anti-terrorist activities and the most complex security tasks, securing peace and order in

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[3] The Yugoslav War is a generic term for all secession wars, civil wars, armed rebellions, external military interventions, and other forms of armed conflict in the former Yugoslavia from 1991 to 1999.

high-risk situations and providing assistance to other state bodies as well as providing assistance in emergencies.[4]

The most important change that occurred during the re-structuring process after the adoption of the new Law on Police was the establishment of the Organised Crime Directorate (UBPOK) in 2001, which became the part of the General Police Directorate. Prior to this, the Organized Crime Directorate existed outside the police service structure (Public Security Sector) and reported directly at the political level to the Minister of Interior, the only operational unit of its kind. Placing UBPOK under the General Police Directorate's umbrella is seen as a positive step in the process of the de-politicization of police service.

The Security-Information Agency (*Bezbednosno-informativna agencija* - BIA) is the national civilian intelligence and counter-intelligence agency. The creation of the Security-Information Agency in 2002 was the most important structural change in terms of policing in the past decade. The state security apparatus (State Security Sector) was extracted from the Ministry of Interior with the adoption of the Law on Security-Information Agency in 2002. Since it originated from the MoI structure (MoI consisted of the State Security Sector, i.e. secret police and Public Security Sector, i.e. police service), state security was placed under the direct control of the Serbian Government. As a result of this change, 500 officers were transferred from state to public security.

As previously mentioned, the Security-Information Agency is directly accountable to the Serbian Government. The Agency is obliged to submit a work report and the security status of the Republic of Serbia to the Government of Serbia twice yearly. In performing its official duties, the Agency is obliged to comply with the basic principles and directives of the Government, which refer to the security intelligence policy of the Republic of Serbia.

With regards to the important structural changes within the national police services, one additional change deserves attention. Following the rebellion of the secret service's paramilitary branch – Special Operations Unit (*Jedinica za specijalne operacije* - JSO), in November 2001, JSO was taken out of the State Security Sector and placed under the direct supervision of the Serbian Government. In March 2003, following the assassination of the Serbian Prime Minister Zoran Djindjic, JSO was fully disbanded because the prime suspects were the former commander and the then deputy commander of JSO. The majority of JSO members were transferred to the Gendarmerie, a smaller number to a Special Antiterrorist Unit (*Specijalna antiteroristicka jedinica* – SAJ) and VIP Protection Unit – all of which were within the Public Security Sector, while some left the service.

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[4] The Vision Document on the Reform of the Ministry of Interior of the Republic of Serbia, p. 254 (hereinafter the MoI Vision Document)

Other services with limited policing authority are the Tax Police Directorate (*Direkcija poreske policije*) responsible for the investigation of tax fraud and the Customs Administration (*Uprava carina*), which is responsible for the investigation of customs offences. Both these authorities work within the Ministry of Finance.

The Customs Administration had no policing powers until 2003. It was strictly a fiscal agency. After 2003, it was within the custom's competence to ask for IDs and to search for illegal goods. In cases where customs notices that a criminal act has been committed, officials are permitted to restrict the movement of an individual prior to the arrival of the police. The Tax Police Directorate was formed in 2003 when the former Financial Police Directorate was transformed into the Tax Police Directorate. The tax police cannot exercise any police powers unless they act in concert with the police service.

The Tax Police Directorate is accountable to the Serbian Government through the Ministry of Finance and its Tax Administration. Similarly, the Customs Administration is accountable to the Serbian Government through the Ministry of Finance.

The Military-Police Department is responsible for the policing of the armed forces. It is a part of the Serbian Armed Forces within the Ministry of Defence (MoD). The Ministry of Defence, which used to report to the federal, i.e. state union level prior to the referendum on Montenegro independence, is now reporting to the Serbian Government.

The first half of this paper will mainly give an account on the reform of the police service, which is responsible for public safety. The reform of the border management services, which possess some policing powers, will be covered in the second half of the paper.

**Political documents stating the role of the police within defence and security policy**

With regards to the political documents stating the role of the police within defence and security policy it is essential to keep in mind that the Republic of Serbia was, until recently, a part of the state union of Serbia and Montenegro. There are a few political documents that were adopted at the state union level, such as, the Defence Strategy and the White Paper on Defence of the state union of Serbia and Montenegro. Those documents need to be reviewed bearing in mind the new political circumstances. The Republic of Serbia has **not** yet adopted a National Security Strategy.

The Defence Strategy of the State Union of Serbia and Montenegro, adopted in November 2004, does not mention the role of the police; the document only refers to

civil defence, and speaks about the role of other government authorities in broad terms. Also, the policing element is not tackled in the White Paper on Defence of the State Union of Serbia and Montenegro.[5]

**Police policy/planning documents and coordination**

One of the most serious efforts aimed at defining, prioritising and managing police reform was the development of the Vision Document, with the assistance of the Danish Centre for Human Rights (DCHR).[6]

The MoI in co-operation with the DCHR and the League for Experts (LEX)[7] established a think tank to lead the reform process in September 2001. The think tank gathered experts from the police, human rights NGOs, judiciary and legislature aiming at 'carrying out an extensive survey of reform issues and producing a document defining long term strategy and a reform framework.'[8] Working groups were established for 14 reform areas,[9] reflecting the then organisational units of the Ministry of Interior.

The work of the groups on the development and compilation of the Vision Document took more than a year and a half (2001-2003). In April 2003, the Vision Document was officially presented to the Serbian government and the international community.

The development of the almost 600 page long Vision Document was an enormous and commendable endeavour. Each of the 14 working groups developed chapters offering analysis on the current situation, main obstacles and suggested measures to overcome them. The document also gave an overview of services provided by the Ministry of Interior organisational units and deficiencies in the prevailing legal framework. Mid and long-term objectives were outlined, as well as the key success criteria and

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[5] (http://www.mod.gov.yu/000english/01%20index-e.htm)
[6] Monk, Richard 'A Study on Policing in the FRY,' July 2001, p. 34
www.osce.org/item/17633.html
[7] League of Experts (LEX) is an independent think tank. Experts gathered under the LEX umbrella represent a group of civil society leaders (www.lex.org.yu).
[8] The MoI Vision Document, Introduction.
[9] Cabinet of the Minister; Operational Centre; Control and Oversight; the Police, including subgroups: (a) Fight against Crime, (b) Public Peace and Order, (c) Traffic Safety, (d) Protection of VIPs and Facilities and (e) Community Policing; Organised Crime; Special Units consists of: (a) Gendarmerie and (b) Special Antiterrorist Unit; Migration and State Border Control; Emergency Preparedness; Administrative Proceedings; Human Resources and Education; Information and Telecommunication Systems and Technologies; on Financial-Administrative Matters and Technical Support; Analytics; and Helicopter Unit.

indicators. Furthermore, the Document was proof that there was awareness of the gravity of challenges that confronted the reform process.[10]

As an accessory to the Document, the Ministry of Interior developed the Police Reform Projects Catalogue consisting of 174 projects. However, the projects were just outlined and no prioritisation was made. Only overall goals were detailed in a few sentences. Neither a budget nor realistic implementation plans were included.

The body which was designed to steer the reform process has never met.[11] The Vision Document was not developed further in terms of 'detailed plans, timelines, specific milestones, realistic goals and practical steps to realise the vision of a new police service'[12] nor used as a starting point for a new revised document. The whole process did not result in a deeper mental shift towards strategic planning.

Even though many years have passed since the adoption of the Vision Document, the Republic of Serbia does not have an overall police strategy or National Security Strategy, as mentioned previously. The only document which is regularly made public is the Ministry of Interior's annual report for the National Assembly in which general guidelines for the forthcoming period are made available to the members of the Assembly's Defence and Security Committee.

More recently, however, some strategic documents have been adopted, such as, the Strategy on Integrated Border Management and the Strategy on the Reform of Police Education. In the 2005 report to the National Assembly, the Ministry of Interior reported on the development of a draft strategy in the fight against organised crime, however, this strategy has yet to be adopted. The only mentioning of the budget is within the annual Law on the Budget of the Republic of Serbia where the overall expenditures for the main budget lines, such as, salaries for police personnel, and other operational costs are detailed in a dozen or so lines.

With regards to the coordination of different services, the Serbian government established the National Security Council in January 2006. According to the

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[10] Many issues were highlighted, such as, links between the state and MoI officials with organised crime, outdated legislation, centralisation, militarised system, politicisation, non-existence of parliamentary and internal oversight, lack of professional attitude, lack of capable managers, obsolete selection of recruits, unrepresentative police service, etc.

[11] Milosavljević, Bogoljub, 'Reform of the police and security services in Serbia and Montenegro: attained results or betrayed expectations,' in Fluri, Philipp and Miroslav Hadžić (eds.), p.257

[12] Downes, Dr. Mark, *Police Reform in Serbia: Towards the creation of a modern and accountable police service*, Belgrade, 2004: Law Enforcement Department, OSCE Mission to Serbia and Montenegro, p. 45

Government's decision, the members of the Council are: the President of the Republic, Prime Minister, Deputy Prime Minister, National Assembly Speaker, Minister of Interior, Minister of Justice, Minister of Foreign Affairs, Minister of Defence, and the directors of civilian and military security services. However, the Council has not met, since the President of the Republic has asked the Government to revise its decision to establish the body. In the President's view, the presidency should not rotate between the President and the Prime Minister. Rather, the President of the Republic should preside over the Council.[13]

**Police Reform Priorities – an overview**

The priority areas of police reforms were established as a result of the concerted activities of the Ministry of Interior and the Organization for Security and Co-operation in Europe (OSCE), which was one of the major international partners in this process. Based on the two reports, published in 2001, 'A Study on Policing in the FRY' by Richard Monk ('The Monk Report'), on behalf of the OSCE, and 'Council of Europe and OSCE Final Joint Report on Police Accountability in Serbia,' by John Slater on behalf of the Council of Europe (CoE) and Harm Trip on behalf of the OSCE ('The Slater Report'), the Ministry of Interior established six priority areas of police reform in 2002, which were:

- Accountability (internal and external oversight);
- Police Education and Development;
- Organised Crime;
- Forensics;
- Border Policing;
- Community Policing.

These were declared the nucleus of reform activities. In June 2004, the six priority areas were re-confirmed and two new areas were added:

- War Crimes, and
- Strategic Planning and Development.

The following chapters aim at providing an account of what has been achieved in the listed priority areas of police reform with a special emphasis on the developments in border management.

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[13] http://www.bbc.co.uk/serbian/news/2006/01/060113_serbiasecurity.shtml

**Accountability**

The lack of police oversight mechanisms was one of the most prominent reform challenges. Following the political changes in 2000, insufficient political will to push for the development of such mechanisms stalled reform in all state authorities responsible for police oversight.

Oversight must not only be the responsibility of the police service. In a democratic society committed to anti-corruption and transparency in public administration, the issue of establishing a police service accountable to the public revolves around the social values of democratic policing. Values such as 'moral consensus, integrity, fairness, sensitivity and accountability are all underpinned by trust, which needs to be checked regularly.'[14]

In order to apply mechanisms which regularly examine the trust citizens have in the police, it is important to clearly discern the facets of accountability and properly link them to oversight mechanisms. If simplified, it can be said that there is *horizontal accountability* which means that the police act in accordance with the law when exercising authority and adhere to professional standards, (e.g. Discipline Code and the Code of Ethics). According to Article 31 of the new Law on Police: '… In exercising police powers, authorized law-enforcement officers shall proceed in accordance with law and other regulations, and shall respect the standards set out in the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Basic UN Principles on the Use of Force and Firearms by Law-Enforcement Officials, the European Code of Police Ethics and other official international documents relating to policing.'[15]

An Internal Affairs Unit of the police service is a mechanism for overseeing this aspect of accountability. In addition, assuring the legality of police performance rests with line managers and the judicial branch. The accountability of police agencies to the courts of law is generally the same as accountability of all other state institutions. With regards to specific powers, the courts have to approve the use of special investigative means when they violate the secrecy of correspondence and other communications.

There is also *vertical accountability* to the democratically elected representatives of the citizens. In this respect, the police and its Internal Affairs Unit are to be overseen through external mechanisms, primarily through the relevant parliamentary committee (in Serbia that is the Defence and Security Committee) and an independent External

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[14] *'Council of Europe and OSCE Final Joint Report on Police Accountability in Serbia,'* by John Slater on behalf of the Council of Europe (CoE) and Harm Trip on behalf of the OSCE, September 2002, p. 4

[15] Law on Police (http://www.parlament.sr.gov.yu/content/lat/akta/zakoni.asp)

Oversight Body. Vertical accountability needs to be permanently complemented by the wider social interest exercised through various community groups and the media.

In March 2001, the MoI established an Internal Affairs Unit - the Inspector General Office (IGO) of the Public Security Sector with an internal act of the MoI. In the organisational sense, the IGO is part of the MoI, but the Inspector General (IG) is appointed by the government of Serbia. IG is also an Assistant Minister of Interior and reports directly to the Minister of Interior and the government. IGO's scope of work was to oversee the police, to ensure they acted in accordance with the law and to investigate citizens' complaints against the police. However, the first IG was appointed only two years after the law was passed. In the meantime, the Office existed only on paper.

In the vacuum created by the belated appointment of an IG, the CoE and the OSCE produced a Joint Report on Police Accountability in Serbia.[16] Based on this, the OSCE proposed Strategy on Police Accountability in the Republic of Serbia in March 2003. Almost at the same time, the MoI presented its Vision Document, covering the internal affairs (IGO) aspect as well. Basically, the recommendations in these documents relate to the all-encompassing process of building up the capacities for an effective and efficient accountability programme. The programme entailed enhancing the capacities and procedures of the Security and Defence Committee of the Serbian Parliament in its external oversight function. An independent external oversight body that would be accountable to the Committee was also recommended.

In addition 'there needs to be an internal police unit […] its role is to investigate allegations of crime, corruption and inappropriate behaviour by police.'[17] All these mechanisms need to be constantly supported by adequate basic and in-service training of police on human rights, code of conduct and ethics. The documents strongly advise enhancing relations between the police and media through relevant policies and practices as the crucial support mechanism. Sustainability of the recommendations was feasible only through enhancing and institutionalising dialogue with local communities. Another crucial precondition was the de-politicisation of the post of the national Chief of Police, i.e. Head of Public Security Sector.[18]

The assassination of Prime Minister Djindjić in March 2003 and the subsequent declaration of a State of Emergency and launching of the police operation *Sabre* against organised crime linked to the assassination signalled a tragic wake-up call for Serbian society and underlined the urgent need for oversight of the police force. The only

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[16] *'Council of Europe and OSCE Final Joint Report on Police Accountability in Serbia',* by John Slater on behalf of the Council of Europe (CoE) and Harm Trip on behalf of the OSCE, September 2002, p. 4

[17] Ibid, p. 5

[18] Head of Public Security Sector of the Serbian MoI is an Assistant Minister of Interior.

oversight which was exercised during this period was at the two Defence and Security Committee sessions where the Minister and the Chief of Police informed the members of parliament of *Sabre*.

A positive development in 2003 was the adoption of the Directive on Police Ethics[19] as the most important reform document elaborated thus far.[20] The Directive stipulated that its provisions would become a compulsory part of the curricula within police education institutions from 2003/2004, and a part of mandatory in-service training programs.

**Internal Oversight**

In June 2003, the Serbian Government appointed the first Inspector General, even though the Act on IGO was adopted in 2001. The first IG assumed the office without personnel, without office space and without any other resources.

Staffing of the IGO was gradual, due to the nature of the internal affairs tasks and need for the careful selection of experienced personnel. The provision of office space and other resources also took time.

In April 2004, the new Serbian Government appointed the second IG. When the new IG assumed his post, the Office had staffed 31 out of an envisaged 59 posts. Even though the IGO had been established one year earlier, office space and equipment remained a pressing problem. The under funded office was to cover the whole of Serbia.

The protracted establishment of the IGO coincided with the slow onset of international assistance aimed at IGO capacity building. With funding provided by the Netherlands Government, the OSCE facilitated the provision of expert advice, specialised training, 'stand alone' IT and technical equipment for the Office in mid-2004.

In 2004/2005, the IGO received its own offices. It staffed its offices and conducted outreach to the public. Progress was gradual, but noticeable. The Office has filed 107 criminal charges against 152 police officers for 200 criminal offences. They have received more than 6,000 complaints and processed approximately 89%.[21]

The MoI in 2005 established the Commission for the Follow-up of the Implementation of the CoE Convention for the Prevention of Torture and Inhuman or Degrading

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[19] *Instruction on Police Ethics*, adopted by Minister of Interior on 15 April 2003, published in the Official Gazette of the Republic of Serbia No. 44/91, 79/91, 54/96, 25/2000 & 8/2001.

[20] Milosavljević, Bogoljub, 'Reform of the police and security services in Serbia and Montenegro: attained results or betrayed expectations,' in Fluri, Philipp and Miroslav Hadžić (eds.), p.257

[21] Presentation of the 2005 Annual Report of the IGO, MoI February 2006

Treatment or Punishment. An IGO staff member is the Chair of the Commission. The Commission inspected detention facilities across Serbia and it is expected that it will issue a report on its findings in 2006. Based on the work of the Commission presented to the media, the state of detention in some facilities in Serbia is deplorable.[22]

With the enactment of the new Law on Police in November 2005, internal police oversight was regulated for the first time by law. The Law established the Division of Internal Control of Police which: 'monitors the legality of police work, especially with regards to respect and protection of human rights. The Division is managed by the Division Head who regularly reports to the Minister of Interior. At the request of the government and the parliament, the minister submits a report on the work of the Division. Also it is within the minister's remit to prescribe more closely forms and methods of internal oversight.'[23]

Internal oversight of the police service still has a way to go. The gradual building up of the Division's capacities will require more specialised training and equipment for the growing personnel. Furthermore, development of internal procedures, in accordance with EU professional standards, needs to be high on the agenda. Plans to boost the work of the regional internal control departments are the focus of the upcoming period.

Since the Division is a part of the Ministry of Interior, in general terms, the modalities of accountability to the higher levels of the executive branch come down to submitting reports to the Government. Specially commissioned written and oral reports are provided as required to the other ministers, the Prime Minister and/or the Government. In practice, all of the formal arrangements are respected; however the Government does not have at its disposal independent expertise to assess the quality of reports. Publicly accessible reports are not analytical enough, and mostly provide statistical data.

**External Oversight**

Although there were ideas to establish an External Oversight Commission[24] in 2001, the concept has not yet materialised. There were several proposals on how to tackle the issue of external oversight. One proposal stated that any future Ombudsman's office would need to have a deputy responsible for overseeing the police.[25]

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[22] Ibid.

[23] The Serbian 'Police Law,' Articles covering internal oversight pp. 171-181; http://www.parlament.sr.gov.yu/content/cir/akta/akta_detalji.asp?Id=296&t=Z

[24] The Monk Report, p. 9.

[25] Downes, Dr. Mark *Police Reform in Serbia: Towards the creation of a modern and accountable police service*, Belgrade, 2004: Law Enforcement Department, OSCE Mission to Serbia and Montenegro (www.osce.org/serbia)

The administration seems to have resorted to another solution. In November 2004, the Minister of Interior announced before the parliamentary Security and Defence Committee[26] that the MoI would put forward a draft Law on the Parliamentary Oversight of Police which would establish a parliamentary Commission for the Oversight of Police. While the draft law has not entered parliament, the recently adopted Law on Police has re-opened such prospects.[27]

The Ministry of Interior, which is in charge of the General Police Directorate, is accountable to the legislature through the designated Defence and Security Committee. The primary role of the Committee comes down to examining regular reports of the Ministry of Interior and the Security-Information Agency.

The parliamentary Rules of Procedure (Article 46) prescribe the following Terms of Reference to the Defence and Security Committee: 'The Defence and Security Committee considers draft laws, other draft regulations and by-laws in the field of public and state security, reports on the work of the Ministry of Interior on the state of security in the Republic of Serbia, submitted to the National Assembly at its request, performs control over the work of the security services as well as other issues in the field of security in accordance with law.'[28]

The assessment given in the national strategy for EU integration perhaps provides the best view on the practice: 'The Parliamentary Defence and Security Committee has plenty of potential for improving its work and still does not perform preventive control over the work of the services – its work is limited to a post facto discussion. The primary role of the Committee comes down to examining the regular reports of the Ministry of the Interior,'[29] as well as, according to the law, those by the Security-Information Agency. External oversight remains a great reform challenge for both the Serbian Parliament and the Government.

**Accountability to the media and society at large**

An important positive step in ensuring the accountability of state authorities to the media and society at large was made with the adoption of the Law on Free Access to Information of Public Importance in November 2004. According to the law, the print

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[26] http://www.danas.co.yu/20041118/dijalog1.html *Slutnje obračuna*, Daily Danas, 18 November 2004

[27] Article 170 of the Serbian Law on Police, www.parlament.sr.gov.yu http://www.parlament.sr.gov.yu/content/lat/akta/akta_detalji.asp?Id=296&t=Z#

[28] http://www.parlament.sr.gov.yu/content/lat/akta/poslovnik/poslovnik_5.asp

[29] National Strategy of Serbia for the Serbia and Montenegro's Accession to the European Union, (EU), p. 185 http://www.seio.sr.gov.yu/code/navigate.asp?Id=73

and broadcast media and individual citizens have the right to access state information about police services among other bodies.

State agencies are often unresponsive to requests for access to information, and persons who make such requests are permitted, in such cases, to address the Commissioner for Information of Public Importance. According to the law, the Government is responsible for carrying out the Commissioner's decisions. However, the Commissioner has limited capacity and legal means at its disposal. An effective[30] mechanism for enforcing the Commissioner's decisions is yet to come into existence.

According to the Law on Ombudsman, which was adopted in September 2005, there should be an office empowered to receive and investigate complaints and grievances in cases where a citizen believes his/her rights have been violated. However, although the Law on Ombudsman was adopted almost a year ago, the National Assembly has not yet elected or appointed an Ombudsman even though the deadline for the appointment had passed. The only Ombudsman in Serbia is the one in the Autonomous Province of Vojvodina, but he has no jurisdiction over the institutions at the national level.

With respect to the level and quality of the media coverage on police service activities, a report on the completed part of the joint OSCE and the MoI's project called Improvement of Communication between Media and Police can shed some light.

The report from November 2005 concludes that 'relations between police and media have improved, but they are still far from wanted standards applied in a democratic society. […] Unevenness in the process of reform of the MoI influences the lack of systemic solutions that would help improvement of communication between media and police and other linked projects (community policing etc). This is best reflected in the centralized model of the police structure, the absence of local and regional influence on police and safety related issues, bureaucratic procedures and the low capacity of ordinary police officers and local police chiefs in the decision-making process, partially caused by an overly hierarchical system inherited from the previous times. '[31]

Main problems that the report stipulated in 2005 in this field are:
- Non-existing strategy of police relations with the media;
- Disorder and undefined procedures (within the police service);
- Authority and responsibility of police officers on local and regional levels (needs to be defined);
- Disorganization of unit for communication with the media;
- Lack of technical equipment;

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[30] http://www.poverenik.org.yu/vesti_eng.asp?ID=263

[31] Kešetović, Želimir for the OSCE Mission to Serbia and Montenegro, Media Department/Law Enforcement Department , November 2005

-   Imprecise regulations on secrecy of data;
-   Irresponsibility for public word;
-   Lack of educated journalists/ editors covering police work;
-   Lack of police officers informed about the essence, character and aims of media.[32]

Following the recommendations from this report, the Ministry of Interior, supported by the OSCE issued Guidelines on Basic Standards in Relation to the Media in December 2005. Training for journalists started in September 2006, and the training for police is scheduled in the foreseeable future.

**Police Education and Training**

From the very beginning, reform of police education and training was one of the least disputed long-term reform priority areas. However, the complexity of the structure of the education institutions inherited from socialist times, and the lack of a modern police training system contribute to the fact that the process is taking time. The main institutions of the old system are: (1) Police High School, (2) Police College and (3) Police Academy. In addition, there are several training facilities across Serbia, primarily used for basic police training courses.

The Police High School is an institution of secondary education which is administratively part of the MoI. It is a boarding school that exclusively enrols 14 year old male students who graduate and start working as police officers at the age of 18. Apart from the police related curricula, the students also used to learn general and military courses. Studying and boarding was free of charge.

The Police College was established by a special law in 1972 as an independent post-secondary educational institution. In 1992, it became an organisational unit of the MoI, but is also part of the wider educational system. The curriculum covered higher education, vocational and specialised training for the needs of the MoI. Courses last for three years – six semesters and both male and female students may apply.

As an integral part of the MoI, the Police High School and Police College until recently reported directly at the ministerial level. Since late 2004, they have been under the Division for Financial, Personnel, Common and Technical Affairs.

The university-level Police Academy was established by a special law in 1993, following the model of a Military Academy. Formally, the Academy was an independent institution but in practice through financing the MoI influenced all aspects of its work. An important handicap was that the Academy was outside the university system, although it abode by university laws.

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[32]   Ibid.

National and international assessments[33] conducted in 2001 and 2002 mainly underlined the weaknesses which related to lack of relevant legislation and related by-laws. There was no vision of education and training as well as no job task analysis leading to incompatibility between job descriptions and education profiles, which was an obvious result of the lack of any strategic approach. All educational institutions functioned independently of each other and there were no mechanisms for the common use of resources, which led to high costs. Although MoI had three education institutions at its disposal, there was a lack of institutionalised police training. Teaching methodology was obsolete and 'teacher-centred'. Moreover, curricula were outdated and militarised. The Police High School and Police Academy had semi-military regimes of boarding and study and there was an evident lack of female and minority candidates and students.

These weaknesses demanded a strategic approach and an action plan that would deal with the issues of organisation (structures and legislation), development of current and future personnel, curriculum and the ministry's assets.

The biggest positive innovation in terms of human resources development and creating a representative police service was the inclusion of female uniformed police officers. Starting with only 29 female uniformed police officers in 2001,[34] the MoI organised several basic police courses for female cadets which resulted in an increase of female uniformed police officers to 2, 726 by January 2006.

At the end of 2004, a new organisational unit – the Directorate for Police Education, Professional Development and Science (DPEPDS) – was established within the new Division for Financial, Personnel, Common and Technical Affairs. Education and training institutions no longer reported to the minister. The new administration kept the reform of police education and training as one of its priorities.[35] DPEPDS was given the role of steering the reform process and co-ordinating all education and training activities across the service.

At the joint MoI-OSCE Roundtable on Police Education Reform in Serbia held in December 2004, a draft strategy was discussed. The reform goals in the final *communiqué* mainly relate to establishing an independent Police Faculty (by merging the Police College and Police Academy) that would join Belgrade University while maintaining relations with the MoI. Standardising basic vocational training in a Basic

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[33] Monk, Richard, 'A Study on Policing in the FRY', July 2001;
http://www.osce.org/documents/spmu/2001/07/17633_en.pdf; The MoI Vision Document.
[34] Monk, Richard, 'A Study on Policing in the FRY', July 2001, p. 43;
http://www.osce.org/documents/spmu/2001/07/17633_en.pdf
[35] In the Memorandum of Understanding signed in November 2004 between the MoI and the OSCE, the reform of police education and training system was included as one of eight priority areas.

Police Training Centre and developing a system of ongoing professional development were highlighted as absolute priorities.

In February 2005, the DPEPDS further developed the draft strategy which had been presented at the Roundtable. Subsequently, in December 2005, the MoI adopted the Strategy for Development of Police Training and Education.[36]

In parallel, the MoI, with the assistance of the OSCE, prepared for the transformation of the Police High School into a basic entry-level training facility for secondary-level graduates from civilian high schools. The adopted strategy provided the basis for the four aspects of transformation, namely organization, human resources, curriculum and infrastructure. The MoI and OSCE initiated re-training of the teaching staff and development of a new curriculum. Initial assessment for the transformation of the school's infrastructure was completed and the donor meeting for the infrastructural part of the transformation was organised. The Norwegian Government pledged a third of the funds needed, and refurbishment has been scheduled. It is expected that the first pilot generation of the new recruits will be admitted to the new Basic Police Training Centre in Sremska Kamenica in spring 2007. One of the important novelties is that female students will be admitted as well.

In the years to come, further attention will have to be given to specialised, in-service and advanced training. Such efforts must entail the creation of new or transformation of existing Training Centres to cover the whole of Serbia. According to the strategy, the MoI needs to re-define the curricula for specialised training by October 2007. Capacity for delivering in-service training has been partially developed through the OSCE Trainer Development Programme.[37] There is a growing understanding of the importance of the MoI's internal training capacity.

The adoption of the new Law on Police in November 2005 opened the door for drafting secondary legislation that would more closely regulate police education and training, which is still pending. The Law on Police defines generic issues related to vocational training and professional development.

With regards to restructuring post-secondary institutions specialising in police education, i.e. merging the Police College and Police Academy into one institution, the National Assembly adopted the law on abolishing the special law on the Police

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[36] http://prezentacije.mup.sr.gov.yu/upravazaobrazovanje
/strategija/Strategija%20razvoja%20sistema%20obuke%20i%20obrazovanja_221205-.htm
[37] The OSCE Trainer Development Programme consists of four components: Trainer Development Course (6 week generic training-of-trainers course), Curriculum Development Course, Training Evaluation Course and Advanced Trainer Development Course. The whole package is a long-term programme for creating internal capacity for delivering modernised basic and specialised in-service training.

Academy in July 2006. The law stipulates that the Police Academy on Crime, which was established by a governmental decision, will assume the responsibilities of the Police Academy.[38]

## Community Policing

The social values of the 1990s were reflected in the public image of a police officer as an untouchable figure dressed in a semi-military combat uniform. The Serbian police service adopted a new vision which aimed to modify that image both within the police force and among the public by taking steps towards the creation of a police force accountable to the citizens it served.

Fairly early on in the reform process, the concept of community policing, which aimed at reaching out to the public, was seen as the new philosophy of policing. Community-based policing needs to be seen as part of the wider concept of community safety,[39] which focuses on fostering police-community partnership relations.

Although the idea has been promoted by the international community as the new philosophy of policing, the Serbian police force has consistently underlined that a similar model of working closely with the public existed in the form of sector policing in socialist Yugoslavia. Territorial policing was developed in line with the socialist Yugoslav concept of People's Defence and Social Self-Protection and this was part of the relatively decentralized society of that time. In an effort to restore the best practices from the past, in mid-2001 the MoI reinitiated sector policing and reinstated the 825 security sectors with 1,456 beats.

In June 2002, the Ministry adopted a bottom-up approach by establishing a pilot community policing project in co-operation with the OSCE, the UK Department for International Development (DFID) Balkans Safety, Security and Access to Justice Programme (SSAJP), the Norwegian National Police Directorate and the Swiss Agency for Development and Co-operation (SDC). Several pilot sites were selected throughout Serbia. In February 2003, DFID launched the initiative in four pilot sites – Novi Bečej (Vojvodina), Vrnjačka Banja and Kragujevac (central Serbia) and Zvezdara (an urban municipality in Belgrade); in 2003, the Norwegian National Police Directorate launched a police assistance project with some community policing elements (mainly problem oriented policing) in Bačka Palanka (Vojvodina), and a similar project was conducted in 2004 in Novi Sad (capital of Vojvodina); in late 2003, the OSCE launched a community policing project in Bujanovac, Preševo and Medvedja, in the south of

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[38] http://www.parlament.sr.gov.yu/content/lat/akta/akta_detalji.asp?Id=379&t=Z#

[39] Community safety is the partnership process undertaken by the community including the police in order to achieve safer communities, reduce social disorder and prevent crime. (*Joint Evaluation Report on Community Safety and Community Policing in Serbia*, Serbian MoI and DFID Balkans Security, Safety and Access to Justice Programme).

Serbia and, in early 2004, SDC launched the police assistance project in Požega (west Serbia).

The pilot project was expected to last from three to five years, with hopes that MoI would move towards the creation of a community policing model suitable for national roll-out. This plan was preceded by the creation of the national strategy.

Public and police opinion surveys in the pilot sites were conducted in late 2002 representing an important initial stage in the process. 'Maybe for the first time somebody asked the citizens about their trust in the police, the quality of police work and the level of crime,'[40] the then MoI co-ordinator of community policing project Colonel Miloš Vojinović discerned. The surveys were used as the important initial assessment that would be used for the subsequent evaluation.

The implementation of the pilot project lasted with varying intensity until the end of 2004 in all pilot sites apart from those in south Serbia (Bujanovac, Preševo and Medvedja). The project is still the focus of the OSCE as an ongoing confidence-building measure.

In late 2004, the results were published in the Joint Evaluation Report conducted by the Serbian MoI and the UK DFID. In conclusion, the report states that 'a great deal has been achieved, and the implementation (of community policing) thus far must be regarded as a success [...] the piloting process has provided a strong foundation for further development and expansion to other parts of Serbia.'[41] However, the recommendations show how much more needs to be done in order to move towards a sustainable concept.

Community safety is an overarching concept that firstly requires policy decisions at the government level. Since the police service is only one of the actors involved in the process of establishing partnerships among various institutions, there is a need for consensus in society as a whole on the formation of the National Safety Council.[42] Subsequently, a National Community Safety Strategy on how to engage relevant authorities at the national, regional and local levels needs to be developed.[43] Only then would the police have the capacity to tackle many aspects of community safety.

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[40] Vojinović, Miloš 'Community Policing', in *Security*, Belgrade: MoI of the Republic of Serbia, 3/2004, p. 431
[41] '*Joint Evaluation Report on Community Safety and Community Policing in Serbia*', Serbian MoI and DFID SSAJP, December 2004: Hereinafter referred to as the MoI/DFID Report
[42] Ibid
[43] Ibid

The Joint Report outlined the most important steps to be taken, such as the development of relevant legislation and procedures, the establishment of the Community Policing Department to steer and oversee the process, an internal and external communications strategy in order to inform all stakeholders, education and training across the police service, especially at the senior management level and the creation of an organization which is able to suitably respond to the new demands.

What has been achieved since the Joint Report? In 2004, the MoI established the Crime Prevention and Community Policing Department within the Uniformed Police Directorate.[44] The Department is in charge of following up the pilot sites, compiling lessons learned and working on preventive and problem-oriented policing. The Department is seen as an important link in the impending top-down national roll-out of community policing.

Another positive development was that the MoI launched the project Safe Communities for the whole Autonomous Province of Vojvodina in December 2004. The project was supported by the Norwegian Government in terms of building up the capacities for problem-oriented policing and strategic crime analysis and planning.

The above-mentioned project Improvement of Communication between Media and Police was also part of the community policing portion of the reform efforts. In addition, the OSCE and the MoI are set to launch a Minority/Diversity Project which intends to heighten community awareness of the police service. The project relates to issues concerning citizens who are from the minority community or minority groups.

The conclusion of the pilot-sites phase made it apparent that the police should not be seen as the sole bearers of community safety. The primary driving force should be society's demand and interest in raising the level of safety. In 2005, the community policing concept was mentioned in Serbia's National Strategy for EU integration as a means of co-operation between the MoI and the local government. Furthermore, the strategy recommends that the 'work on decentralization of the MoI and development of the 'community policing' concept should continue.'[45] Hence, the executive branch needs to work on developing co-ordination among all stakeholders (such as the Ministry of Education and Sports, the Ministry of Science and Environmental Protection, the Ministry for Public Administration and Local Government, the Ministry of Health, etc.) and on developing the National Community Safety Strategy.

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[44] http://prezentacije.mup.sr.gov.yu/upravapolicije/index.htm
[45] 'National strategy of Serbia for the Serbia and Montenegro's accession to the European Union,' p.186, www.seio.sr.gov.yu

**The Fight Against Organized Crime**

The politicization, militarization and criminalization of the police forces in the 1990s led to neglect of crime fighting. Uniformed and paramilitary police components were heavily favoured over the CID and many professionals left it. The level of police professionalism, developed during 45 years of peace in socialist Yugoslavia, rapidly decreased.

Organized crime in the former Yugoslavia existed much before the 1990s, but its current scale developed as a direct consequence of the Yugoslav War. The economic crisis of the 1990s - generated by war, the dissolution of Yugoslavia and the UN economic embargo - immensely contributed to the evolution of organized crime. Milošević's regime monopolized the period's large grey economic sector by sponsoring the smuggling of various goods, involving security structures, while law enforcement and fiscal control were deliberately undermined. The regime was kept on a pyramid of client-patron relationships that encompassed and enslaved the whole society. The system engaged thousands.

This crime pyramid was severely damaged and fragmented by the democratic changes in 2000. However, many of its elements remained untouched. The transitional government which was created to bridge the vacuum after the events from October 2000 formed the Special Unit for the Fight against Corruption and Organised Crime (termed by the media as 'POSKOK' – *Posebni odred za borbu protiv organizovanog kriminala i korupcije*)[46] in November 2000. The unit included 15 experienced police officers and 'its aim was to analyse criminal structures in Serbia and to fight against organised crime.'[47]

POSKOK produced the White Book that mapped out 123 organised criminal groups with 844 members[48] as well as the persons responsible for some of the most serious criminal acts - mainly politically motivated assassinations prior to October 2000. Having scanned the underground to the best of its abilities at the time, POSKOK was disbanded in April 2001. The Organised Crime Directorate (UBPOK) was established in its place. UBPOK was a stable structure existing outside the police service (Public Security Sector) that reported directly to the Minister of Interior. It was the only operational police unit which reported directly at the political level. The intention was to recruit some of the best and most experienced Serbian investigators.

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[46] In Serbian, POSKOK means *viper*.
[47] 'Report on management, organisation and functioning of the system of close protection of the Prime Minister of the Government of Republic of Serbia Zoran Djindjić, with recommendations,' p.19.
[48] Đorđević, Ivan 'Pregled procesa reforme Ministarstva unutrašnjih poslova Republike Srbije,' in: Janković, Pavle (ed.) *Druga škola reforma sektora bezbednosti: zbornik predavanja* (G17 Institute: Belgrade, 2003) p. 182

Another important step in 2001 was the readmission of FRY into Interpol, following its exclusion in 1992. This development laid the grounds for the renewal of Serbia's international co-operation in the fight against trans-national organized crime. The Central National Bureau was placed within the Federal MoI's CID, to be shifted into the Serbian MoI's CID after the constitutional transformation of the FRY into Serbia-Montenegro.

In 2003, UBPOK was also tasked with investigating war crimes, due to the connection of certain war criminals to organized crime and war profiteering.[49] The role of the War Crimes Department has been particularly important and sensitive keeping in mind the connections of certain police elements to war crimes.[50] Milošević's Police Chief during the armed conflicts in Kosovo, Vlastimir Djordjević, was indicted by the ICTY. Sreten Lukić, the chief of police forces in Kosovo at that time, and later the national Chief of Police, was also indicted. A number of low-ranking police officers have also been indicted by the Serbian courts. Some have been processed and convicted. In 2001, a mass grave of 980 ethnic Albanians from Kosovo was discovered on the premises of the police service's Special Antiterrorist Unit (SAJ) in a Belgrade suburb. Establishing war crimes investigation capacities also has a political significance in the light of Serbia's intention to try war crimes in domestic courts. The Special War Crimes Prosecutor's Office and the Special War Crimes Chamber of the Belgrade District Court have been established for this purpose. A small police unit will need additional support in an effort to build up domestic capacities for investigating war crimes.

The most serious blow that organized crime inflicted on Serbia was the 12 March 2003 assassination of Prime Minister Djindjić. The assassination shook Serbia and shocked the world. In contrast to other forms of political terrorism, this event was a direct consequence of the pyramid which connected parts of Serbia's security structures to organized crime. The person responsible for pulling the trigger, JSO Deputy Commander, held an official police badge. The prime suspects for organising the assassination were the former JSO Commander and two main figures of the notorious Zemun Gang. The latter were killed by the SAJ several days after the assassination, while the former surrendered to the gendarmerie a year later. Some of Djindjić's close associates claimed that he was murdered only days prior to the launching of a massive counter-organized crime operation.

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[49]  Brunhart, Reto and Novak Gajić, 'Policing the Economic Transition in Serbia: Assessment of the Serbian Police Service's Capacities to Fight Economic Crime' (Belgrade 2005, OSCE Mission to Serbia and Montenegro), pp. 28
[50] Balkan Investigative Reporting Network: *Net Closes on Alleged Suva Reka Killers*
http://www.birn.eu.com/investigation01.php

The state immediately responded by proclaiming a State of Emergency that lasted 40 days. The MoI launched *Sabre*, a massive police operation. JSO was disbanded and its commanding tier arrested, while the majority of its members were reassigned to the gendarmerie, SAJ or the Close Protection Directorate. Police detention during the state of emergency was unlimited and more than 11,000 people were arrested throughout Serbia. Operation *Sabre* was a severe blow to organised crime, a shock it has never fully recovered from. However, post-*Sabre* calm lasted some two years, the period in which Serbian organized crime was licking its wounds. Nowadays, Serbia faces a serious revitalization of organized crime and consolidation of gangs.

In 2005, UBPOK was integrated into the CID and renamed the Organized Crime Service (*Služba za organizovani kriminal* – SOK).[51] Its internal structure did not change very much from UBPOK's, with the exception of the War Crimes Department which has become the Service for War Crimes Investigation, hierarchically on the same footing as SOK. This reorganization was aimed at a rationalization and consolidation of Serbian crime-fighting capacities, and also de-politicization by assembling all police units within the police service, out of direct political control.

Introducing new methods to fight organized crime is strongly supported. In this regard, witness protection was introduced into Serbian legislation and, in 2005, a special Unit for the Protection of the Participants in Criminal Proceedings was established within the police service. Witness protection is quite costly for a relatively small country and largely depends on international co-operation. Over 11 million euros were committed to the program from the 2006 budget.[52] The US Government and OSCE supported this unit by sharing experience and providing donations. This has also been significant with respect to the government's intention to transfer certain war crimes cases from the ICTY to the national judiciary.

Enhancing the fight against organized crime immeasurably depends on developing a comprehensive national criminal intelligence system, forensics and border policing. Such a system did not exist in Yugoslavia even prior to the CID deterioration in the 1990s. Consequently, the Serbian police service heavily depends on international experience and support. After a long search for an appropriate model, Serbia decided to build its national criminal intelligence system along Scandinavian lines. In 2005, the MoI concluded a three-year co-operation agreement with the Swedish National Police Board.

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[51] Interview of Milorad Veljović, Head of CID, to Politika, 18 October 2005
http://www.transparentnost.org.yu/ts_mediji/stampa/2005/10OKTOBAR/18102005.html
[52] Marković-Subota, T., *Za zaštitu svedoka 11 miliona evra*, Blic, 2 April 2005
http://www.blic.co.yu/arhiva/2005-04-02/strane/hronika.htm

SOK has achieved some impressive results, but it could not have always met the high expectations of the public. That was not because its members did not do their job properly, but for several other reasons – mainly due to lack of resources, SOK's special status, and the lack of proper co-operation within the criminal justice sector. These factors inevitably hampered the effectiveness of the fight against organised crime. SOK's good operational police work was often in vain because of inefficiency in the prosecution and judiciary. According to police estimates,[53] only 16% of criminal charges submitted by the police service end up with a court verdict and half of those are suspended sentences.

It yet remains to be seen and evaluated whether the restructuring process will increase the police service's effectiveness in combating organized crime.

**Forensics**

For more than a decade, the development of forensics and crime scene management capacities had been marginalized. The Serbian police were using obsolete and inadequate equipment and techniques and were thus unable to produce good quality evidence for use in court. Enhancing these capacities was seen from the very beginning of the reform as a direct investment in the overall strengthening of the rule of law in Serbia.

Much has been achieved in upgrading the criminal-technical service within the CID since 2000. Aiming at providing preconditions for the unbroken chain of material evidence from a crime scene to the laboratory environment the main focus has been on:
- developing a quality management system for processing evidence and crime scene investigation policy,;
- creating a national centralized criminal-technical service;
- developing a regional network of forensic laboratories;
- implementing the Automated Fingerprints Identification System (AFIS) and Face Identification System (FIS);
- building a national DNA laboratory;
- enhancing the skills and knowledge of the MoI staff.

The Serbian CID is in the process of integrating its criminal-technical service in Belgrade, which is supported by regional forensic laboratories in Niš and Novi Sad. The establishment of both forensic laboratories in Novi Sad and Niš was supported by the Norwegian Government. The project in Niš was managed and coordinated by the OSCE.

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[53] Nikolić-Đaković, Tanja, *Svaki tajkun ima svoje poslanike* Interview of Josip Bogić, Head of UBPOK's Organised Financial Crime Department, to Blic, 28 October 2005.

The establishment of a functional DNA laboratory, a Community Assistance for Reconstruction, Development and Stabilisation (CARDS) funded project, which is expected to be finalised in 2006, represents a major step forward. The MoI is using its own capacities in the implementation of the AFIS and FIS. In addition, there is on-going training for all crime scene investigators and a quality management system is being developed to support an unbroken chain of evidence.

With the upgrading of police capacities for securing and producing good quality evidence, a challenge remains in the area of co-operation between the pillars of the criminal justice system. Clarification of procedures needs to be ensured among those in charge of evidence gathering, investigation and prosecution.

**Strategic Planning and Development**

The issue of strategic planning and development is still to be tackled in a more structured way. The reform activities covered above sustain the argument that only recently have a few operational strategies been developed, mostly after realising that the fragmented approach led to fragmented and unsustainable developments.

There were international and MoI efforts in the area of strategic planning, especially in the beginning of the police reform process. Most notable was the work with DCHR that led to the Vision Document. Another was within the framework of regional involvement – the Southeast European Police Chiefs Association (SEPCA),[54] which was assisted by the Royal Canadian Mounted Police (RCMP). The RCMP facilitated several workshops on strategic planning which were supposed to result in an environmental scan and an overall MoI strategic plan.[55] The aim was too ambitious for the RCMP mandate and the allotted budget. RCMP pulled out two years ago, and strategic plans were not finalised, although some individual capacities for strategic planning, especially in the MoI's Analytics Directorate, remained.

It should be reiterated that there was not enough vigilance in 2003 to make the leap towards a deeper mentality shift and acknowledgment of strategic planning initially as a tool for reform and subsequently for managing the police service. One has to be fair, and take into consideration the moment when the leap was expected to be made – exactly at the time when the Prime Minister was assassinated, and the flywheel strength was exhausted in operation *Sabre*. There was a change of administration in 2004, and many of those who participated in the workshops on strategic planning were no longer

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[54] Eight police services are SEPCA members: Albania, Bulgaria, Croatia, Bosnia and Herzegovina, Republic of Srpska, Macedonia, Serbia, and Montenegro

[55] *Izveštaj o radu Ministrastva unutrašnjih poslova Republike Srbije u 2003*, www.mup.sr.gov.yu, Archive.

occupying high-level managerial posts. Personnel discontinuity also affected possibilities for sustainable building on achievements.

The overall social turbulence which culminated with the assassination has since settled, and attention needs to be focused on the times to come. The Vision Document can still be used as a starting point for evaluating what has been achieved so far, and possibly using some of its material for developing other operational strategies. Special attention needs to be paid to tangent issues between operational strategies towards defining common issues.

Need still remains for the strategic planning units at both the MoI and police service levels. The MoI organisational chart displays the Bureau for Strategic Planning and Analytical Reporting within the minister's cabinet and in mid-2006 the head of the bureau was appointed. However, there is no publicly accessible information on whether the Bureau for Strategic Planning is operational.

**Border Management Reform – the Republic of Serbia**

The dissolution of socialist Yugoslavia and the emergence of new countries created new borders. In 2000, FRY Army and Navy were securing the Federal Republic of Yugoslavia (FRY – Serbia and Montenegro) green and blue borders, while the republican MoIs were tasked with controlling border crossing points.

Also, in 2000/2001, the Federal MoI 'intended to create a Border Police Service (BPS) in order to transfer responsibility for the task of border security from the military to the police.'[56] However, since July 2000, Montenegro has not acknowledged the federal institutions. In addition, the signing of the Belgrade Agreement in March 2002 gave rise to the re-structuring of the FRY into a state union of Serbia and Montenegro. In such a political constellation, the federal BPS was never created.

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[56] The Monk Report, p. 27.

*However, in 2001 and 2002, the Serbian MoI within its Directorate for Border Police, Aliens and Administrative Affairs initiated some strategic documents with the assistance of the Geneva Centre for the Democratic Control of Armed Forces (DCAF), the OSCE, the European Agency for Reconstruction (EAR) and the Stability Pact which included analysis of human resources and technical/infrastructure equipment at border crossings, as well as the Action Plan for Taking Over and Securing Green and Blue Borders from the military.[57]*

The FRY Supreme Defence Council at its session in November 2002 'considered transferring authority concerning state border security and concluded that this can be realized after the adoption of the 'Law on the State Border.''[58]

In February 2003, the FRY was transformed into the state union Serbia and Montenegro (SaM), and the Constitutional Charter of Serbia and Montenegro was enacted. Consequently, the Federal MoI ceased to exist. The SaM Ministry of Defence and its military remained one of the few institutions governed from the state union level. Hence, the security of the Serbian international borders remained under the two-level responsibility of the SaM military and the Serbian police service.

The issue of the demilitarisation of Serbian borders also needs to be seen from the wider perspective of overall security sector reform and the impending accession of the Western Balkans[59] to the EU, where border protection is not seen as an issue of defence, but rather of home affairs. At the EU – Western Balkans Summit in Thessaloniki, 'the EU reiterated its unequivocal support to the European perspective of the Western Balkan countries.' [60]

The whole process demanded both commitment and support not just from the Western Balkan countries themselves, but also from the international community. Bearing in mind that, in early 2003, 'following a NATO initiative, the EU, NATO, the OSCE and the Stability Pact worked jointly to develop a coherent and concerted approach to the border security and management issue in the region.'[61] The international community's interest in border protection reform also lay in the fact that Serbia is located on the infamous Balkan Route – one of the main roads of illegal trafficking in human beings, weapons, drugs and other hazardous substances to Western Europe. The Balkan Route is also an important road for terrorists, connecting Middle East and Central Asia with

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[57] 'Way Forward Document' Ohrid Regional Conference on Border Security and Management 22/23 May 2003, http://www.un.org/spanish/docs/comites/1373/ohrid2.doc
[58] Ibid
[59] The Western Balkans includes: Albania, Bosnia and Herzegovina, Croatia, Macedonia, and Serbia and    Montenegro.
[60] http://www.mfa.gr/english/foreign_policy/eu/EU-WBalkans_en.pdf
[61] http://www.nato.int/docu/conf/2003/030522_ohrid/c030522a.htm

Europe. The only survivor suspect of the Madrid 11 March 2004 bombing was arrested on a train in Serbia when he was travelling towards the Middle East.

The initiative resulted in the Ohrid Process on Border Security within which the countries and international organisations agreed on a way forward regarding all crucial aspects of the process at a conference held in May 2003. Its long-term overarching goal was to develop Integrated Border Management (IBM) in the Western Balkans. IBM should provide the right balance between open but secure and controlled borders – open borders for trade, tourism and other forms of legitimate movement of people and goods, but secure and controlled to prevent illegal migration, human trafficking, criminal activities and terrorism. [62]

The demilitarization of the state border and introduction of the IBM system in line with the EU and Schengen standards[63] was an enormous challenge in a complex state structure such as SaM, especially since the adoption of the Law on the State Border, a precondition for the start of demilitarization, is still pending. In addition, the IBM is particularly challenging in relation to the unresolved issue of border delineation with the former Yugoslav republics of Croatia, Bosnia and Herzegovina and FRY Macedonia.

The conditions at 71 border crossing points, of which 60 are international, were and still are very poor. 'Infrastructure at border crossings on borders with former Yugoslav republics is not satisfactory, and at a number of them there is no infrastructure at all, no electricity or a telephone line, water or sewage.'[64]

Regardless of all the obstacles and in addition to the initial strategic documents, the MoI has made efforts to create the necessary preconditions for the transfer. In 2003, the upgrading of the MoI's BPS started with strengthening the human resources capacity and the MoI organised several basic courses for border police officers. In 2004, new curricula for Border Police Training were adopted.[65] It is envisaged that the BPS will have 6,000 border police officers. BPS will be partially manned from the SaM military, and partially from new recruits. However, irrespective of the number of BPS staff, unless modern monitoring equipment is in place, the BPS cannot be fully successful.

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[62] http://www.feio.sv.gov.yu/code/navigate.php?Id=173
[63] In June 1990 the 'Convention Implementing the Schengen Agreement' was signed. Its key points relate to measures designed to create, following the abolition of common border checks, a common area of security and justice enhancing the free flow of people and goods across borders in Europe.
[64] 'Integrated Border Management Strategy in Republic of Serbia', p. 21
http://www.seio.sr.gov.yu/code/navigate.asp?Id=207
[65] 'Monitoring Tool for the Serbian Government's Action Plan for Meeting the European Partnership Priorities'
http://www.seio.sr.gov.yu/code/navigate.asp?Id=177 (Hereafter: 'Monitoring Tool')

In parallel, the MoI worked on the restructuring of the Directorate for Border Police, Aliens and Administrative Affairs into a Border Police Directorate (BPD) with regional centres and police stations. The BPD has undergone substantial reorganization aiming at 'performing all duties related to control of crossings and securing the state border while suppressing illegal immigration, trafficking of human beings, smuggling of drugs and weapons as well as all other duties regarding suppression of cross-border crime.'[66] Recently, administrative affairs were extracted from the BPD, and moved into a newly-restructured Administrative Affairs Directorate.

The co-ordination of activities in combating the trafficking of human beings has been the focus since 2001. The international community acknowledged the efforts made by the government in establishing a legal framework and setting up a unique Inter-Agency Co-ordination Body tasked with the effective combating of trafficking. According to the OSCE, 'the police in Serbia have demonstrated the biggest development and leap forward. The MoI has also adopted necessary regulations […] putting the country in line with modern standards.'[67]

With the strengthening of the possibilities for EU processes, the Serbian government adopted a decision on establishing a Commission for the development of the national 'IBM Strategy' in October 2004.

In an effort to overcome the lack of a Law on State Border, in January 2005 the SaM Council of Ministers decided that, 'Until a 'Law on State Border' is brought, the SaM military is temporarily transferring the duties of securing the state border of the territory of the Republic of Serbia to the MoI of Republic of Serbia.'[68] Based on this, the SaM MoD and the Serbian government signed An Agreement of Transferring the Duties of Securing the State Border in February 2005.

In line with the commitments stemming from the Ohrid Process and pursuant to the above documents, the MoI developed a Dynamic Plan for the take-over which envisaged a clock-wise transfer starting with the take-over of the border with Hungary, as the only EU border, in early 2005. Through the EU-funded programme CARDS, refurbishment of three border crossing points is being finalised on the borders towards Hungary, FRY Macedonia and Croatia. However, further refurbishment of border crossings will require substantial infrastructural investment beyond the country's current capacities.[69]

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[66]  'Strategy on Integrated Border management in Republic of Serbia', p. 11
      http://www.seio.sr.gov.yu/code/navigate.asp?Id=207
[67]  http://www.osce.org/item/14745.html
[68]  'Official Gazette of SaM,' n°4/05
[69]  Monitoring Tool

CARDS funds are also being used for the project of strengthening the digital radio network to TETRA standards.[70] Since 2003, the MoI is using its own resources for introducing the new ID card system.[71] In July 2006, the National Assembly adopted the new Law on IDs.

Setting up an integrated IT system is in the pipeline as well. However, integrating all those systems into a functional network still has a way to go, considering the poor conditions at a substantial number of border crossing points.

Although belatedly, the Serbian government adopted the 'IBM Strategy' in January 2006, which represents a tangible breakthrough with regard to possibilities for further planning the demilitarization process and enhancing inter-agency co-operation.

The take-over of the Serbian border from the military by the police commenced with the Hungarian border. In early 2006, the MoI took over the Romanian border, which entails securing the 230 km-long blue border on the Danube. The MoI lacks patrol vessels and monitoring equipment for that task. Following this, the MoI assumed control along the border towards Bulgaria and it is finalizing the take-over of the border towards Croatia.

After the referendum on Montenegro independence in May 2006, and the subsequent dissolution of the state union of Serbia and Montenegro, the length of the international border lines increased. Until that point, the total length of the state border of Serbia was 2,158 km, of which 174 km were with Hungary, 594 km with Romania, 394 km with Bulgaria, 112 km with Albania, 258 km with Hungary, 391 km with Bosnia and Herzegovina, and 280 km with FRY Macedonia.

The newly introduced model of integrated border management entails four border services:

- **Border Police Directorate – '**Border police, as an organizational unit in the Ministry of Interior (General Police Directorate) performs duties related to control of crossing and securing the state borders; it undertakes measures to suppress cross-border crime […].

- **Customs Administration -** as an administrative body of the Finance Ministry carries out the measures of customs surveillance and control of customs goods and executes the customs procedures […].

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[70] Terrestrial Trunked Radio (TETRA) is a digital trunked mobile radio standard developed by the European Telecommunications Standards Institute.
[71] 'Report on the work of the MoI of the Republic of Serbia in the period November 2004 – April 2005' www.mup.sr.gov.yu

- **Veterinary Inspection and Phyto-Sanitary Inspection** - within the Ministry of Agriculture, Forestry and Water Management through its inspection services at the border and in the country (Veterinary, Phyto-Sanitary and Agriculture Inspection) is responsible for the cross border traffic of the plants, animals, and agricultural plants and animal origin foodstuffs [..].'[72]

In addition to these four border services, the Border Service within the Operational Directorate of the Serbian Armed Forces (Ministry of Defence of Serbia) 'is also competent, among other things, in cases of non-military challenges, risks, and threats to security such as: terrorism, national and religious extremism, organized crime and corruption, natural disasters, industrial and other catastrophes, and epidemics.'[73]

Border police responsibilities were expanded from working on border crossing points only, to the protection of green and blue borders. While army border guards had competencies on border lines and in the rather narrow border belt (usually not deeper than 100 meters), border police officers have jurisdiction on the whole territory of Serbia. Military border units have been disbanded on Serbia's borders with Hungary, Romania, Bulgaria and (partially) Croatia, as indicated above. Custom officers' competences were expanded in 2003 whereby they were granted some policing powers – such as search, requesting identification documents, and withholding suspects in the absence of police officers.

The focus in 2006 has also been on deriving other sector strategies and action plans based on the IBM. The Commission for Preparation and Organisation of National Strategies for Management of Security and Control Services in Crossing the State Border of the Republic of Serbia was formed as an interim body 'for preparing the strategies at the governmental level; giving opinions on draft laws and by-laws which regulate matters concerning security and control of crossing the state border; initiating harmonisation of legal acts with EU standards and Schengen Accords; proposing measures for ascertaining further directions in developing the integrated cross-border management services, as well as measures for determining other procedures, processes and methodologies for bodies authorised for cross-border management; and co-operating with competent representatives of the European Union, and with other international and foreign bodies and organizations. In March 2006, the Government appointed the Co-ordinator for all IBM-related activities.'[74]

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[72] 'Integrated Border Management Strategy in Republic of Serbia'
(http://www.seio.sr.gov.yu/upload/documents/strategy_border%20eng.pdf)
[73] 'Integrated Border Management Strategy in Republic of Serbia'
(http://www.seio.sr.gov.yu/upload/documents/strategy_border%20eng.pdf)
[74] Ibid.

Serbia has become 'the outer border of the European Union.'[75] Taking into consideration its important geo-political position, and the fact that the country is at the crossroads of major trans-national organised crime routes, strengthening of the overall capacities of the border services contributes significantly to a more efficient and effective fight against organised crime in Europe. A great deal of time has been lost due to unclear competencies in the unique state of Serbia and Montenegro. The political elite has finally opened up the possibilities for laying initial foundations, such as the IBM Strategy, however major activities are needed in terms of the further development of necessary laws and regulations, joint training programs for the four border services and the reconstruction and strengthening of the border crossing points, which will be of significant focus in the years to come.

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[75] 'Europe's Leaky Outer Frontier,' IWPR,
http://www.iwpr.net/?p=bcr&s=f&o=156010&apc_state=henibcr2004

**Annex 1**

List of international codes and conventions to which Serbia subscribes:

-       United Nations (UN)

  - The Civil and Political Rights Pact,
  - Convention against Torture and Other Cruel, Inhuman or Humiliating Punishments and Procedures,
  - Convention on the Fight against Trans-National Organised Crime,
  - Protocol on Prevention, Combating and Penalising Human Smuggling, Especially Women and Children,
  - Single Convention on Narcotics,
  - Convention on Psychotropic Substances,
  - Convention against Illegal Trade in Narcotics and Psychotropic Substances,
  - Convention on Criminal and Other Acts Done in Aircrafts (The Tokyo Convention),
  - Convention on Combating Illegal Hijacking of Aircrafts,
  - Convention on Combating Illegal Acts Directed towards the Safety of Civil Aviation (The Montreal Convention),
  - International Convention against Taking Hostages (The New York Convention).
  - 1979 UN Resolution: Code of Conduct for law-enforcing officers

-       Council of Europe (CoE)

  - European Convention on Human Rights and Fundamental Freedoms,
  - Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment,
  - European Convention on Mutual Assistance in Criminal Matters,
  - European Convention on Combating Terrorism,
  - European Convention on Violence and Unruly Behaviour of Fans at Sports Events and Criminal and Criminal Law Convention on Corruption.
  - Serbia-Montenegro has signed the Council of Europe Convention on Personal Data Protection, but its ratification is in dispute.

-       OSCE


-      All decisions in the OSCE Permanent Council are made by consensus hence all decisions oblige member states of the OSCE, including the Republic of Serbia.

- Europol

- Serbia is still not a member of Europol. Please note that the Decision of the EU Council for Home Affairs and Justice of 13 June 2002 started the process of entering into the Agreement on Cooperation between the EUROPOL and five EU non-member states, among them Serbia-Montenegro. In order to join EUROPOL in the near future, Serbia-Montenegro needs to meet a number of conditions regarding the harmonisation of its national legislation with EU standards. In addition to this, it has been discerned that joining the Convention on Personal Data Protection and developing it in the national legislation are of great importance (information taken from the National Strategy of Serbia for Serbia and Montenegro's Accession to the European Union p. 185 http://www.seio.sr.gov.yu/code/navigate.asp?Id=73)

- Interpol

- As a member of Interpol, the Republic of Serbia abides by all relevant rules and regulations.

**Annex 2**

Key laws referring solely to border management services:

- Law on Ministries;
- Law on State Administration;
- Law on the Police;
- Law on Crossing the State Border and Movement in the Border Zone;
- Law on Movement and Stay of Foreigners;
- Law on Travel Documents of Yugoslav Citizens;
- Law on Asylum;
- Law on Maritime and Inland Navigation;
- Law on Air Traffic;
- Law on the Basics of Road Traffic Security;
- Law on Road Traffic Security;
- Law on Transport of Hazardous Materials;
- Criminal Procedure Code;
- Law on the Execution of Criminal Sanctions;
- Law on the Organization and Jurisdiction of Government Authorities in Combating Organized Crime;

- Law on the Organization and Jurisdiction of Government Authorities in the Proceedings Against Perpetrators of War Crimes;

The detailed list of all relevant laws, regulations, decrees, international codes and conventions which Serbia has subscribed is provided in Annex 3, Serbian IBM Strategy. This can be found at:
www.seio.sr.gov.yu/upload/documents/strategy_border%20eng.pdf

# Annex I: The Role of Security Sector Governance in the EU's Enlargement Strategy

*Hervé Bougé, Commission Européenne, Brussels, Belgium*

The Commission welcomes all Security Sector Reform (SSR) initiatives in the Western Balkans. This conference offers an opportunity to raise awareness of the importance of SSR-related issues and to explain the Commission's EU approach.

What is our doctrine? The Commission issued a concept paper on SSR that was published in May 2006 which set out principles and norms for the EU community's engagement in SSR. It defines the role of the community in terms of the wider framework of the EU's external action in the area of SSR in order to ensure that EC activities and those undertaken by the EU as part of the CFSP: ESDP and by MS bilaterally are complementary.

It is important that the EU pulls together the different instruments at its disposal in support of SSR, given the multi-sector and multi-faceted nature of SSR, and the need for long-term engagement to achieve success in its reform efforts.
It includes the following chapters:
- The needs of SSR
- Definition of SSR actors
- Areas of engagement
- Principles guiding EC support for SSR
- The role of the EC to strengthen support for SSR
- Recommendations to strengthen the EC's contribution

One important element of this concept paper outlines the EU's comparative advantage and how it can complement the work of other international actors in support of SSR. What are these aspects?
- The EU combines external assistance with ultimate integration through its enlargement policy.
The EU combines political dialogue with assistance programmes.

The EU has the ability to combine support and expertise in the more downstream parts of the SSR process, such as reforms of the police, justice system, and support to the more upstream aspects of reform, such as giving strategic advice on long-term sector reform strategies, as well as support to strengthen democratic oversight of security services which is an essential aspect of SSR.

We also have to consider that the Western Balkans is a particular case in the SSR context, as the countries of the region share an accession perspective. The overarching EU policy framework for the Western Balkans is the Stabilization and Accession

Process. The policy of Stabilisation and Association, including the Stabilisation and Association Agreements, constitutes the overall framework for the European course for the Western Balkan countries. In this context, SSR acquires alignment in the EU acquis (chapter 24 of the accession negotiations) and in the best standards and practices of EU member states. Other EU policies and priorities must complement and fit into this context. Coordination of any new initiative or undertaking must ensure the Stabilisation and Association Process (SAP). SSR activities must build on existing EU instruments and structures. Otherwise, there is a risk of duplication and little added value.

The SAP promotes a number of SSR-related activities. In the area of JHA affairs, the Commission covers much of what today falls under the SSR heading, to the exclusion of military aspects. Under the CARDS programme, the EU is already extensively helping with reforms in the JHA sector in all western Balkan countries. This includes justice system reform, police reform and the fight against organised crime, border management and asylum, as well as migration and visa issues. This is also achieved at the regional level.

*Concretely from 2001 to 2006, CARDS allocated 624 M € to the JHA sector. (That is 14 % of the global allocation of 4340 M €. It ranges from 6 % (Kosovo) to 48 % (Albania).*

The Commission reports extensively on JLS-related activities in the progress reports of pre-accession. SSR issues are also associated with the documents titled 'European partnerships.' Furthermore, the Stabilisation and Association Agreements contain chapters on cooperation between the EU and the Western Balkan countries in the area of justice, freedom and security. The Commission also extensively coordinates its activities and assistance in the sector with the EU MS (CARDS Committee) and the ESDP missions. There is also extensive ongoing coordination with non-EU actors.

*As an example, the first SAP agreements were signed with the former Yugoslav Republic of Macedonia and Croatia in 2001 and cover SSR-related issues through references to the principle of the rule of law as well as cooperation in the field of Justice and Home Affairs, the establishment of political dialogue and the objective of reinforcing institutions at all levels.*

*Another example is the progress report of 2006 on Serbia, which has a specific chapter on civil-military relations, illustrating that the EU applies the instrument of political dialogue in typical SSR areas.*

To achieve maximum impact, a well-coordinated approach in terms of the EU's assistance to the region is crucial, particularly in developing institutional capacities in the area of justice, the police, etc. Duplication with new structures should be avoided.

*As an example of good practice, I would refer to Albania, where an international steering committee meets regularly to exchange information on the concrete implementation of their projects.*

The EU will continue to fund SSR activities in the Western Balkan region through the new instrument for assistance, the IPA (instrument for pre-accession), and will address this issue with the great variety of instruments and means it has at its disposal. In this region, where countries have a European perspective, and where a great deal has been achieved through community funding, any new approach to SSR should not alter the current framework for addressing Justice and Home Affairs but only separately address those non-JHA areas such as the military.

# Annex II: EU Support to SSR – Concept and Practice

*COL Christophe DEHERRE, Strategic Planning, Civ/Mil Cell, EU Military Staff, Brussels, Belgium*

I.

## Introduction

(*Remerciements - Présentation*)

The Civ/Mil Cell
- New entity within the European Union (EU).
- Incorporating military and civilian expertise, including representatives from the European Commission.
- Primarily a planning unit, its main tasks are prudent civilian-military advance planning at the political-military-strategic level and, on the other hand, generating the capacity to conduct an autonomous European Security and Defence Policy (ESDP) operation through the EU Operations Centre.
- Contributing to the development of the conceptual framework in which the EU, under its Common Foreign and Security Policy and ESDP (CFSP/ESDP) actions conducts its external activities.
- Developing the EU concept for ESDP support to SSR and the EU Concept for Support to Disarmament Demobilisation and Reintegration (DDR).

## SSR concept: a new concept?

Let me first address the concept of Security Sector Reform (SSR). This concept has been an important subject for two or three years now and has attracted broad interest from the whole international community. It is also worth noting that a great deal of work has been conducted on the subject. However, it is sometimes suggested that SSR is not a new concept and that SSR was established a long time ago. So, is SSR really a new concept?

Despite the fact that there is truth in the claim that support to reform the armed forces, to develop border control and customs capacities, as well as to give assistance and advice to the police and judicial systems have been undertaken by many actors for many years in countries throughout the world, my answer to the question is definitely yes.

The concept of SSR is based on three main findings:
- Development remains a virtual process as long as security is not ensured, especially when local capabilities are not able to ensure lasting security, which is a prerequisite to establishing lasting stability and necessary for development.

- Security can only be ensured through an accountable, effective and efficient ('whole government') security system. In many crisis locations, reform of the security sector is therefore needed, both for ensuring peace and for building local capabilities to manage the security sector.

- The security sector needs to adopt a comprehensive approach, taking into account all the sectors that are linked to security (defence, police, justice, customs, border control, civilian control, budgetary control, etc.), taking into account all aspects (the fight against spread of small arms and light weapons, DDR, good governance, human rights, etc.). When a comprehensive approach is not taken, experience has shown the limits of international action in this field. Isolated missions do certainly achieve some results. However, greater coordination of activities, increased cooperation between international actors and donors, and coherent initiatives are necessary to fill what was termed in a previous seminar 'the security gap' that exists in post-conflict countries.

It is this necessary comprehensive approach to the concept of SSR that is new – the link between good governance, capacity building and security. I would even say that if you do not take this comprehensive approach, you are not undertaking SSR.

**SSR: What is needed to effectively undertake SSR**

SSR contributes to the establishment of an accountable, effective and efficient security system. This includes civilian control, transparency and consistency in establishing democratic norms and the principles of good governance. SSR thus concerns both the reform of bodies which provide security - armed forces, police, border guards, etc. - and the reform of state institutions responsible for their management and oversight, including ministries, parliaments and the media. We have to address the issues of how the security system is structured, regulated, managed, resourced and controlled. An effective system must deliver safety and security for three essential 'clients:' citizens, democratic state institutions, as well as neighbours and the wider region. SSR should thus go beyond the notion of effectiveness of individual services and address the functioning of the security system as part of broader governance reform.

Previous experiences have shown that the commitment of local authorities to the reform process remains crucial, including their active support for the different strands of SSR initiatives. Implementing and sustaining SSR must be their responsibility. Permanent consultation between the international community and local authorities at all stages of the process should make local ownership possible. Support of SSR should be defined in relation to dialogue with partner governments and the process itself should be adapted to specific country conditions. In the absence of a legitimate partner government in crisis situations or in the immediate aftermath of a conflict, early initiatives should pave the way for locally-owned long-term SSR based on a

participatory and democratic process. In this case, local ownership would need to be strengthened gradually and steadily with the <u>involvement of civil society.</u>

It is clear that DDR will, in most cases, constitute a significant element of SSR and remains the key to conflict resolution and internal stability.

SSR and DDR activities will not be sustainable unless action is taken to re-establish the <u>rule of law</u>. The challenges to this endeavour are well-known and overwhelming. Organised crime, including the trafficking of drugs, weapons and human beings, impunity and corruption, to name a few, are significantly delaying sustainable political and economic development. There is thus the need to identify the requirements for basic functioning police, judicial and penitentiary systems and to establish, once again, a comprehensive development strategy. In many cases, transitional justice institutions such as special tribunals and truth/reconciliation commissions will be necessary in the early stages of the process.

Establishing and implementing strategies and policies for the management of border control and customs is also necessary, as well as taking the appropriate actions to recuperate weapons that circulate or remain stocked in a particular country.

When assessing the SSR needs of a specific partner country, one has to take into account all these points and assess them realistically by developing coherent strategies and planning and evaluating the desired end state of the process. If these sectors are not taken into consideration, as well as the legal framework needed to build a security system, something will be unaccounted for. The establishment of a national security plan that embraces all major security needs, involves both the security institutions and civil society, and is 'locally owned' by the authorities and society, are essential ingredients for success.

It is, however, true that in many cases, the partner country does not have the capacity to assess and define its SSR needs or even draft a national security plan. This is why support from the international community is needed. Such a process requires assessment capacities, planning capabilities and sound financial backing.

**SSR in the European Union (EU**)

Among the community of international organisations that are supporting SSR, the EU has a particularly broad spectrum of instruments at its disposal. Either in the framework of the European Community (EC), or in the framework of CFSP/ESDP, these capacities are able to complement the bilateral support of member states.

The EU's overarching policy framework which was agreed on last June unites the EC and the ESDP concept, which both recall what has been previously discussed, reiterate the key principles and separately list the areas in which support could be envisaged in each pillar. The two concepts also call for greater coordination between the two pillars and envisage that the EU could coordinate the activities of EU member states. Nevertheless, although *everybody is calling for co-ordination, nobody really wants to be co-ordinated.*

The ESDP concept also establishes some modalities to deal with support for SSR: to integrate the military and the civilian aspects, define benchmarks to measure the progress of the SSR process and assess the efficiency of the support that is being provided, etc.

In the final analysis, the main objectives of developing an ESDP concept have been reached: on the one hand, bring the 25, soon-to-be 27, member states to a common understanding of what defines SSR, what could be offered to partner countries in the framework of ESDP, what are the key challenges, principles and modalities to be applied and on the other hand, facilitate a process of mutual understanding and, consequently, allow for enhanced cooperation and coordination with other actors.

Since these developments, what has been achieved?

Two main tasks have been undertaken.

Firstly, an EU Concept of Support to DDR has been developed and a joint concept between the Council and the Commission has been successfully drafted, which should be approved by the Council on Monday.

Secondly, specific countries have been targeted, mainly in Africa. The most advanced SSR project is being administered in the Democratic Republic of Congo (DRC). Following the presidential elections and the redeployment of EUFOR RD Congo, a military EU operation in support of MONUC during the electoral period, a comprehensive approach to SSR in DRC has been initiated. This work is ongoing. It is not easy and it has to be ensured that any follow-up ESDP action in this field would build on the achievements and enhance the effectiveness of EUSEC and EUPOL Kinshasa, the two missions that we are currently conducting.

We have also started studying other countries, but I will not list them for the time being. As tasked by the Council, we are trying to make the policy framework operational.

**Conclusion**

To conclude, I would like to highlight three points:

It is accurate to say that SSR is a new concept. It is also correct that SSR demands a comprehensive approach. It is a difficult process that requires real expertise. It is not enough to bring together the military, police and justice experts. SSR experts are also needed.

SSR is also a constructive process which can succeed in bringing peace and stability when it is well conceived from the outset. However, in specific circumstances, and I think in relation to the Balkans especially, it is difficult to bring this concept into play when so much has already been achieved or initiated by so many different actors and is ongoing. It is also complicated to take a regional approach when, in the end, you have to develop specific country plans and ensure that these plans are owned nationally.

SSR needs a tailored approach and this is dependant on the region you are dealing with: easier in Africa than in the close European neighbourhood because you are often starting from scratch, more difficult in the former USSR due to the attention that has to be paid to Russia, difficult in the Balkans for the reasons already mentioned, but also easier because the countries in the region have a final objective: Euro-Atlantic integration.

I would also like to highlight that no SSR process can succeed if confidence is not restored: confidence between states, communities, individuals, as well as between individuals and state authorities. In almost every country that needs SSR, endemic corruption exists at all levels and organised crime monopolises the situation. The re-establishment of the rule of law and justice is, from experience, the first step that is needed in order to restore confidence and ensure that other SSR aspects will also succeed. Only then will the way be paved for successful development, which will itself contribute to the establishment of security. For this to be achieved, it is necessary that all reform efforts, including those at the political level are undertaken within the framework of political dialogue with the local authorities.

**Annex III: Enhancing security sector governance through Security Sector Reform (SSR) in the Western Balkans - the role of the European Union (EU)**

*Kimmo Lähdevirta, Director, Unit for Security Policy, Political Department, Ministry for Foreign Affairs, Helsinki, Finland*

**Welcoming Remarks by the EU Presidency**

Ladies and Gentlemen, Excellencies,

It is my great pleasure and honour to welcome you, on behalf of the Finnish EU Presidency, to this seminar on Security Sector Reform in the Western Balkan region. I would also like to thank DCAF as well as the IMO for organising this event. We have gladly supported and participated in this endeavour, as we are convinced of their expertise.

Let me start my presentation by focusing on some key issues that are topical for the Western Balkan region from the point of view of the EU Presidency.

In my view, the future of the area lies in the European Union. The EU is strongly committed to supporting the European perspective of the countries in the region. And, indeed, all the countries in the Western Balkans have made progress towards realising their European perspective.

Each country advances on its own merits, depending on its success in meeting the requirements. The fulfilment of the Copenhagen criteria and a country's track record in implementing its obligations under the Stabilisation and Association Process are important elements in progressing towards European integration.

I would like to take the opportunity at this point to mention one example of the measures the EU is taking to make the European perspective more concrete - namely visa facilitation for which the Presidency has supported forcefully in the past months. Negotiations with the countries of the region were opened in a joint ceremony one week ago, on November 30th. The former Yugoslav Republic of Macedonia and Serbia were the first to start the negotiations and others will follow. The Finnish Presidency sees the agreements as an encouragement of people-to-people contact and thus an important contribution to the further deepening of mutual trust and understanding.

Ladies and Gentlemen,

In recent years, Security Sector Reform has gained prominence in the EU's external assistance policies and programmes. There is increased recognition that weak or malfunctioning security institutions, problems in the rule of law, and a lack of confidence between citizens and the local authorities lead to insecurity and greater risk of crime and conflicts. This hampers good governance, sustainable development and prosperity. Weak constitutional and legal frameworks, a lack of capacity and knowledge in relation to defence and other security sectors and the absence of informed national debates on security-related issues (between decision makers and civil society actors) can prevent progress in the field of SSR.

The EU wants to assume a higher profile in promoting SSR in the region. With its wide range of instruments, the EU has the potential to be the most holistic of any of the international actors in SSR.

The evolution of European Security and Defence Policy has been especially impressive. Operational activity in the field of crisis management has continued to expand and the EU is now undertaking a wide range of civilian and military missions. Starting with the European Union Police Mission (EUPM) in Bosnia and Herzegovina in 2002, the total number of operations under the ESDP increased to 12 in 2006. Both the geographic and the functional range of operations have expanded. Today, operations vary from the strong presence in the Western Balkans, in peacekeeping and institution-building, to border control in Gaza and Moldova, security sector reform in

the Democratic Republic of Congo and monitoring of the peace agreement in Aceh, Indonesia.

The Finnish Presidency has also put a lot of effort into promoting civilian-military coordination, in order for the EU to be able to use the whole range of crisis management tools coherently. We have also finalised the EU concept on Disarmament, Demobilisation and Reintegration (DDR) that will provide the EU with a coherent policy framework also in this field.

Coming back to the Western Balkans, Kosovo is perhaps the biggest challenge at the moment. The European Union fully supports UN Special Envoy Martti Ahtisaari and his efforts in conducting the political process to determine Kosovo's future status. The future status must enable Kosovo to develop in a way which is both economically and politically sustainable. Also, it must provide all citizens in Kosovo with a secure and dignified life.

The EU has declared its intention to replace the United Nations in Kosovo, pending the result of the status negotiations. The magnitude of this operation will be of a different order both in size and complexity compared to past ESDP missions. It will consist of police and rule of law elements as well as other civilian components and require close cooperation with the NATO-led KFOR operation. The envisaged transfer of tasks in the field of public security and the rule of law will be an important test case for the EU in the field of SSR. The challenge is indeed huge: it therefore gives me particular pleasure to confirm that the planning of the future ESDP operation in Kosovo is progressing well and that the EU remains fully committed to meeting the challenge. Also for Kosovo, the European perspective is crucial as it offers to all parties involved a vision of a common future as members of the EU.

So, the EU is already heavily engaged in a range of SSR-related activities - although under a different name - in the Western Balkan region and is the most important single contributor of resources.

But if so much activity is already taking place, what is the role of SSR in EU policies?

First, EU's insistence on SSR must be understood as directed towards accelerating the accession process through need-oriented advice as well as human and financial support. A comprehensive but flexible strategy for SSR in the countries concerned is therefore an essential part of the EU's efforts to help enhance stability, as well as social and economic progress in the region. Hence, it is not about creating additional conditions to membership. By focusing on SSR, the EU is not imposing a new burden but is rather trying to facilitate prioritisation.

Second, the EU also tries to focus its own, somewhat dispersed efforts in this field. This will bring benefits to its partners as it will improve the consistency and coherence of messages the EU seeks to convey.

It must also be underlined that SSR is a long term process that needs to be owned and managed by the country concerned involving different stakeholders. This is the only way to ensure sustainability of the reform process. The role of external actors is only to assist. During this seminar, we will have a useful opportunity to hear from colleagues and experts from the region as to how the EU Policy Framework on SSR could be implemented.

Ladies and Gentlemen,

We will have a full programme today discussing this very important topic, which is important not only for the stability and prosperity of this region, but also for the whole of Europe. I am convinced that the day, although it may be full, will also be fruitful.

So, please be welcomed again. I wish you a very successful seminar.