

# The Macedonian Question:

## *20 Years of Political Struggle into European Integration Structures*

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**Zhidas Daskalovski, Marija Risteska (Editors)**

*With contributions of:*

Biljana Vankovska, Aleksandar Mitreski, Nedzad Mehmedovic,  
Didem Ekinci, Dragan Tevdovski, Christopher K. Lamont

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Phone +49 7471 984996-0, fax +49 7471 984996-19  
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In cooperation with:

Center for Research and Policy Making (CRPM),  
St. Cico Popovic 6-2/9,  
1000 Skopje, Macedonia,  
Phone: +389 2 3109932  
eMail: [crpm@crpm.org.mk](mailto:crpm@crpm.org.mk)  
[www.crpm.org.mk](http://www.crpm.org.mk), [www.policy.mk](http://www.policy.mk)

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## **Introduction by the Editors**

**Zhidas Daskalovski<sup>1</sup>, Marija Risteska<sup>2</sup>**

Modern Macedonia emerged in 1945 as one of six constitutive republics of the Socialist Federal Republic of Yugoslavia (SFRY). When Yugoslavia disintegrated in the second half of 1991, Macedonia chose to assert its own independence rather than remain in a truncated Yugoslav state likely to be dominated by Serbia without the counterbalancing influences of Croatia and Slovenia. Macedonia declared independence on 8 September 1991, and today is a democratic multiparty state with a population of around 2 million.

According to the 2002 census results, Macedonians make up 64% of the total population, while Albanians are the biggest ethnic minority with 25%. Macedonia's reforms in the last 15 years

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<sup>1</sup> Zhidas Daskalovski holds a PhD from the Political Science Department, Central European University. Besides policy studies, he has published numerous scholarly articles on politics in the Southeast European region, as well as co-edited the books *Understanding the War in Kosovo* (Frank Cass: London, 2003) and *Ten Years after the Ohrid Framework Agreement: Lessons (to be) Learned from the Macedonian Experience*, (CRPM and Friedrich Ebert Stiftung: Skopje 2012). A professor of political science, and one of the most prominent political scientists in the country, he is Director of the Council of Europe supported School of Public Policy [Mother Theresa]. Dr. Daskalovski is the 2008 *Young Scientist of the Year* of the Macedonian Academy of Science, one of the *Distinguished Persons of Bitola* of the University of Kliment Ohridski and a recipient of a number of distinguished research fellowships including the Lord Dahrendorf Fellowship at St. Antony's College at the Oxford University, the School of Slavonic and East European Studies Macedonian Studies Fellowship, and the Social Science Research Council / Ethnobarometer Fellowship at the University of North Carolina. His expertise is prominent in the fields of policy analysis in general and decentralization, democratization, ethnic and multicultural issues in particular. Dr. Daskalovski has a thorough policy research experience working for the Center for Research and Policy Making, War Torn Societies Project (WSP), Local Government Initiative, United Nations Department of Economic and Social Affairs (UNDESA) and the European Stability Initiative. Contact: [daskalovski@hotmail.com](mailto:daskalovski@hotmail.com)

<sup>2</sup> Marija Risteska holds a PhD in political science. She is the founder and works as Senior Analyst at the Centre for Research and Policy Making. Her research work is in the area of public administration reform, public management, good governance, policy transfer and European integration. She teaches public policy, comparative public administration and public management at NY College in Skopje. Besides numerous policy studies on European integration of Macedonia, good governance in health, education, gender, and migration, Marija has edited the book *Mapping the leaders in Macedonia and Albania: can elites promote positive social change?*" and co-edited the book *European Law for SMEs*, which appeared on behalf of the Macedonian Ministry of Economy. She has contributed to four specific public sector reforms in Macedonia on public policy development, strategic planning, and better regulation reforms. Marija Risteska has 10 years of consulting experience with the EU and all UN agencies. She managed a program in NDI from the USA, and the education portfolio of the World Bank in Macedonia.

have been focused simultaneously on three issues: state building, democratic development and establishment of a functioning market economy. During the 1990s Macedonian political elites clashed with their ethnic Albanian counterparts over the basic idea behind the concept of the state. Various elements in the constitution, the census taking, laws on education, local self-government, and public display of national minority symbols, the ethnic make-up of the police, army, as well as the public administration, were all contested by ethnic Albanians in this period, pitting ethnic Albanian grievances against Macedonian fears for “their” country’s security and integrity.

While ethnic Macedonians have insisted on a unitary nation-state, ethnic Albanians have refused to be considered as an ethnic minority in a Macedonian nation-state and have advocated for an official bi-ethnic state system. Political transformation was formulated as a zero-sum game,

Armed conflict erupted between Albanian rebels and government forces in 2001 but was quickly ended through an EU- and U.S.-mediated agreement, signed in August of that year. The so-called Ohrid Agreement envisioned a series of political and constitutional reforms, fulfilling much of the demands raised by the Macedonian Albanians throughout the 1990s and introducing some features of power sharing, such as a system of double majorities requiring consent from minorities represented in the parliament to key decisions of parliament, a substantial degree of municipal decentralization, equitable representation in the public administration of the non-majority communities, as well as confidence-building measures to overcome the immediate consequences of the 2001 conflict. Furthermore, the agreement established the principle of achieving equitable and just representation in public administration at the national and local level as the highest priority, a key reform in the public sector.

The process of interethnic consolidation based on the Ohrid Agreement is supported by the European Union. The European Union uses the Ohrid Framework Agreement as a key conditionality for further integration of Macedonia. In 2001 Macedonia signed a Stabilization and Association Agreement (SAA) with the European Union that envisaged the successive liberalization of trade and established an institutional framework for cooperation.

Since December 2005 Macedonia has been an official candidate for EU membership. Due to Greek objections, the admission of Macedonia to membership in the United Nations in April 1993 required the new member to be “provisionally referred to for all purposes within the United Nations as ‘the former Yugoslav Republic of Macedonia’ (or: FYROM) pending settlement of the difference that has arisen over the name of the state.” Although the reference to the former Yugoslav past was to be used within the United Nations as a result of Greek pressure, other international institutions have kept referring to Macedonia as a “former Yugoslav republic.” Despite reaching a U.N.-backed interim agreement in 1995 normalizing relations between the countries, since 2008 Greece has deliberately blocked Macedonia’s admission to the North Atlantic Treaty Organization (NATO) and the beginning of negotiations for EU membership.

The view from Athens is that the name Macedonia implies territorial irredentism on the part of Skopje. Greece claims the name to be exclusively part of its cultural and historical heritage.

Macedonia has renounced territorial ambitions over Greek territory but refuses to change the name of the country, treating it as a part of its identity. The view from Skopje is that Macedonians have a right to self-determination and that ancient Macedonian history is as much a heritage of the Republic of Macedonia as it is of the Republic of Greece.

This book is an important contribution to the study of the new political history of Macedonia. It deals with a number of important issues since independence including the problem with the Greek objections to the name of the country and the impossibility to brand the nation on the global scale. Issues such as war crimes, the role of international organizations, economic successes and failures, problems of democratization and consolidation are all dealt by the authors of the book. It identifies challenges, failures and successes, but most importantly it also provides important recommendations for the future.

Skopje, May 2012

*Zhidas Daskalovski*

*Marija Risteska*

# The Procrustean Bed of the State Building in the Republic of Macedonia (1991-2011)

Biljana Vankovska<sup>3</sup>

## Abstract

*This chapter focuses on the process of state-building in the Republic of Macedonia in the period of two decades (1991-2011). The basic premise is that there have been wavering between the wishful thinking of the domestic and international protagonists and the objective impediments typical for a weak state in a divided society. The political architecture has been an outcome of “top to the bottom” interventions. While in the first decade, i.e. prior to the violent conflict, the copy/paste methodology (from the Western democracies) was widely used in order to import the parliamentary model, during the next decade the system shifted more toward a power-sharing model. If liberal democracy was supposed to be the ultimate end in the first period of the political development, the second one has focused on the constitutional and extra-constitutional mechanisms for conflict resolution. For the sake of peace and stability, some of the basic principles and values of liberal democracy are sacrificed, while the process of politicization has moved toward permanent politics of fear and securitization. In sum, arbitrary (political) standards of evaluation of success and failure of democracy-building are still at place which makes scholarly analysis more than necessary.*

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<sup>3</sup> Biljana Vankovska is Full Professor of Political Science and deputy Head of the Department for Defence and Peace Studies, at the Faculty of Philosophy, University of Skopje, Macedonia. Faculty staff member at European Peace University (EPU), Austria. Board member of the Macedonian Helsinki Committee for Human Rights (2005/2006). Senior Fellow at the Geneva Centre for the Democratic Control of Armed Forces (DCAF) in 2001-2002. Guest Senior Research Fellow at Copenhagen Peace Research Institute (COPRI) between 1997-2000. International Advisor of Transnational Foundation for Peace and Future Studies (TFF) in Lund (Sweden). Nominator for the Seoul Peace Prize. Authored seven and edited three books and published over 80 book chapters and scholarly articles in Germany, Bulgaria, India, Romania, Croatia, USA, Switzerland, Austria, UK, etc. She is a member of numerous international associations, such as: ISA, IPRA, IPSA, IUS. She is a member of the Executive Board of IPSA/Research Committee on Armed Forces and Society. Her research and teaching focus is on civil-military relations, Balkan security, international relations and peace research.

## **1. Democracy-Building and/or State-Building: Some Theoretical Deliberations**

As with many other concepts of political studies, the notion of democracy has never been seen as neutral i.e. freed from normative and ideological connotations. Throughout history democracy has appeared in many different forms and it was also differently valued depending of the epoch's characteristics. Even in the 21<sup>st</sup> century it is still an undefined and multidimensional concept despite the efforts to make it a synonym of a whole civilization. In other words, many authors claim that the modern democracy is nothing but a product of the Western civilization. Yet according to Dahl, the democracy curve has never been even but rather discontinuous. Also, democracy is not an invention of one epoch or generation: she has been invented many times and on various places.<sup>4</sup>

Paradoxically enough, it has never been more difficult to define what democracy means and which state fulfils the necessary criteria to be included in the family of democratic states than since the “third wave of democratization” as Huntington put it.<sup>5</sup> In this alleged era of democracy out of the total number of recognized states as many as 120 declare themselves as democratic (according to the Freedom House database of electoral democracies<sup>6</sup>). Obviously she has become the most desired form of governance on a planetary level. This is the very cause that makes it so difficult to differentiate democratic from undemocratic political systems. Some 60 years ago, it was George Orwell who pointed out that advocates of every regime claim it is democratic<sup>7</sup> - and this assessment has never rung more accurate than today. In addition to its immanent political dimension, modern democracy gains a moral one too. Such situation discourages any essential debate over the democracy's substance. Giovanni Sartori believes that democracy is an extraordinary name for something that does not exist at all.<sup>8</sup> The problem of recognizing functional democracies has a very practical meaning apart to its theoretical aspect. Democratic principles have become main criteria for admission of states in many international organizations, while disrespect of the democratic norms (especially, human rights protection) often becomes a legitimacy basis for justification of international interventions, including the military ones.

One of the most important but at the same time most neglected issues is the one that concerns the societal context of democracy-building. The political effects of globalization have contributed to reduction of the definition of democracy, which is most often acknowledged as existence of formal procedures for legitimization of those on power. A contentious debate held by

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<sup>4</sup> Robert Dahl, *O demokraciji*, Zagreb: Politicka kultura, 2000, pp. 15

<sup>5</sup> Samuel P. Huntington, *The Third Wave: Democratization in the Late Twentieth Century*, (Norma: University of Oklahoma Press, 1991)

<sup>6</sup> See: <http://www.freedomhouse.org/reports/century.html>

<sup>7</sup> George Orwell, *Selected Essays* (Baltimore: Johns Hopkins University Press, 1957): 149

<sup>8</sup> Giovanni Sartori, *Democratic Theory* (Westport, CT: Greenwood, 1962): 3

transitologists centres on the issue if democratic institutions could be imported from the Western societies where they had deep historical roots. The advocates of the first position argue that democracy is universal not only in terms of its value dimension but also as a set of institutions. In other words, there could be no democracy without elections, multi-party system, rule of law, separation of powers, individualism, etc. This dimension of uniformity is being stressed especially by the development of the international standards in the sphere of human rights protection. The opposite standpoint puts an accent on the fact that each society has its own history, traditions in resolving societal conflicts and allocation of values and resources. In this view, democracy means much more than its formal dimension displays. Also, institutions (especially if imposed and/or imported) may have dual effect: they may promote but also they may suffocate democratic politics.

Behind the alleged spontaneity of democracy-promotion all over the world, the significant if not ultimate influence of the so-called external factors is another contested issue. Till the last decade of 20<sup>th</sup> century, the conventional wisdom read that democratic transformation of a society depends mostly on internal factors and currents. As of today, it reads that there is interplay of internal and external factors, or even that democratic system could be engineered and constructed in spite of the internal context. Liberal democracy has gained undisputed seductive power especially in the eyes of the peoples who live under authoritarian and poor countries. This is usually a rationale of the various international actors' agendas that can be summarized under the label of democracy-promotion. The aim of such interventions is two-fold: export of democracy is seen as "enlightened self-interest" of Western states, which believe that democratization is treatment *in situ* of troublesome societies and at the same time the best way to preserve their own security (from refugees, economic migrants, etc.). The thesis of democratic peace is supposed to prove that introduction of democratic government equals to peace and stability. The democratic peace thesis has been widely applied on countries in transition. But the critics rightly point out that democracies have never been set up instantly. To the contrary, they are products of long and often painful evolution and never built on "clean plate". Mansfield and Snyder prove that the likelihood that the countries of transition between authoritarian to democratic regime will to slide into conflict or war is much higher than the one in authoritarian systems.<sup>9</sup> But in such situations it is again the so-called international community that intervenes under a new "hat" - from democracy-promoter it transforms into a state-builder who now engages into stabilization of the post-conflict societies.

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<sup>9</sup> Edward Mansfield and Jack Snyder: "Democratization and War", *Foreign Affairs*, vol.74, no. 3, May/June 1995, p. 79-97. Johan Galtung argues that democratic states think of them as just and self-righteous, which is why they believe that their mission is to export democracy (See: Johan Galtung, *Peace by Peaceful Means*, Oslo: PRIO, 1996: 49-59).

## 2. Macedonia's Endless Transition

The popular dictum on democracy as government by the people, of the people, and for the people has regularly been challenged. The political process even in developed democracies is rarely spontaneous and/or incited from the bottom to the top. The crisis of democracy and global protests apparently display citizens dissatisfied with “democracy without demos”. The global political landscape appears even more complex in the light of the latest developments in the Arab world. While participants of the Arab spring call for more liberal democracy, the young protesters in the West chant “we are not against the system, the system is against us.” Somewhere in between are the post-conflict Yugoslav successor states, including the Republic of Macedonia. The 20<sup>th</sup> anniversary of the independent Macedonian state is a good occasion for an honest evaluation of how successful was the transition to democratic system. Yet in this very case any analysis faces two-fold challenge. Macedonia has been going through double transition - once from the *ancient regime* and later, since 2001, from a conflict-torn society towards a more peaceful one. The question is now how successful these two simultaneous transitions have been?

In the modern world nascent democracies cannot afford something that mature democracies had in abundance at the time of their childhood: i.e. time and learning from one’s own mistakes. Having been on a fast-track towards NATO or EU membership (something that is usually seen in Hamletian way - “to be or not to be” a member) by default they by default opt for a shortcut: the constitutional reforms and declaratory acceptance of a series of international conventions and standards comes first as well as acceptance of all ready-made recipes prescribed by the international community. Having been under a strict international monitoring, the end result is often a protectorate democracy or state-building medicines in a form of therapeutic governance.

Theoretical discourse on democratic transition has opened the dilemma: is it possible to make a clear-cut differentiation between democracies and non-democracies, or it is more suitable to talk on gradation? Advocates of the gradualist approach argue that the dichotomy democracy/non-democracy is false and that the political systems could be evaluated only according to the degree to which they comply with democratic principles, and mostly the relationship between ruling elites and the majority of citizens as well as the responsiveness of the government to its citizens’ needs.<sup>10</sup> In opposite, others (such as Sartori) claim that there has to be a line that differentiates democracies from non-democracies (i.e. these are exclusionary categories); yet among the democracies it is possible to make a gradation. Some authors<sup>11</sup> list the conditions that have to be fulfilled in order for a political system to be democratic: 1) selection of executive and legislative power on competitive elections, 2) party pluralism and 3) peaceful rotation of the power holders

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<sup>10</sup> Robert A. Dahl, *Polyarchy: Participation and Opposition*, New Haven: Yale University Press, 1971.

<sup>11</sup> Alvarez et al, “Classifying Political Regimes”, *Studies in Comparative International Development*, 1996, vol. 2, no. 31, p. 19.

in a determined (rational) time period. The question on the adequacy of dichotomous or gradual approach in classification of democracies got in significance simultaneously with the increase of the states in transition. It resulted in growth of so-called transitional literature that mainly focused on the moment/act of transition from autocracy towards democracy. O'Donnell and Schmitter define transition as an interval between one political regime and the next one.<sup>12</sup> They obviously favour the dichotomous approach by insisting of the time of the break with the old regime. In practice, however, it is often difficult to determine that exact moment and even more to conclude if that transformation was final or reversible. The experience of the countries in transition proves that democratization is such a long process that many even speak of a specific political system endures with no clear perspective of the final outcome.

Twenty years after the “moment/act” of transition, Macedonia is in a limbo. The assessment of her success (or failure) is not an easy task. Indeed she fulfils all formal criteria of democracy: there are regular elections, party pluralism is undeniable and even the peaceful rotation of the power holders has been confirmed by the third consecutive parliamentary victory of one political party under conditions that were evaluated as fair and free by external monitors. The institutional mechanisms are at place but their functioning is imperfect. Understandably, the public trust in (especially in governing) institutions and judiciary is not satisfactory. By default the most trusted institutions are the church and the army, while a significant percent of the population thinks that the state should be run by strong hand of a just ruler. Interestingly, the country gets positive evaluations for its progress in EU integration in terms of the fulfillment of the (political part of) Copenhagen criteria, but it still it was unable to carry out even a simple statistical operation such as a census due to ethnic bargaining and allegations of illegal conduct.<sup>13</sup>

Also given the decades long dispute over the so-called “name issue”,<sup>14</sup> the country has been stopped on its path towards NATO and EU. Actually, the assessments vary largely: for some, Macedonia is a survivor of the long regional turmoil, while others tend to see it as a weak (failing) state. But majority observers agree that the democratization process is still ongoing.

According to Ralf Dahrendorf's prognosis of post-communist transformation, six months are needed to reform the political system, six years to change the economic system, and sixty years

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<sup>12</sup> Guillermo O'Donnell and Phillippe C. Schmitter, *Transitions From Authoritarian Rule: Tentative Conclusions About Uncertain Democracies*, Baltimore: Johns Hopkins Press, 1986.

<sup>13</sup> The census was stopped on 11 October 2011, following the State Census Commission members' resignations four days prior to the census' scheduled ending date. The census had been marred by troubles, blackmails and threat of boycott by the ethnic Albanians who were afraid that the final results would show their smaller share in the general population. Namely, some institutional arrangements within the power-sharing system are linked with the figure of 20% of the population, while due to the large number of Albanians work abroad this percentage was likely to be below this threshold.

<sup>14</sup> More about the name issue see: Biljana Vankovska, “David vs. Goliath: Macedonia's Position(s) in the ‘name Dispute’ with Greece”, *Südosteuropa*, vol. 58, no. 3, 2010, pp. 436-467.

to effect a revolution in the peoples' hearts and minds.<sup>15</sup> In terms of the first goal, obviously the great sociologist had in mind legal reforms i.e. introduction of the new form of the democratic political system. It is the only requirement that the Republic of Macedonia fulfilled in time. In order to change an economic system a country should have economy, while the revolution in the peoples' hearts and minds is uncertain as it depends of the success of the previous two prerequisites.

At the time being, on a global scale, capitalism is going through one of its most serious crises while it seems that the people have changed their minds when it comes to the dominant liberal democratic model.

### **3. Constitutional Set-Up and Its Challenges**

Crafting a constitution is seen as the initial and the most important step in the process of the creation of any political community. Being simultaneously the highest law and the most important political act, the constitution is intended to resolve the crucial issue of who constitutes a certain community and regulates all relations of power. In reality, transition rarely took place on totally new foundations. A nation acquires its political traditions and culture through its existence within different state entities, no matter if its separate national identity was recognized or not. Recent Macedonian history revolves around three historical events, nationally heralded as "three Ilindens": the Kruševo Republic created by the Ilinden Uprising on 2 August 1903, the Antifascist Council of National Liberation of Macedonia (2 August 1944), and the referendum for independence (8 September 1991). Soon it became clear that the Third Ilinden was not the apotheosis of the final struggle but the overture to a long and uncertain period.<sup>16</sup>

Against the general belief that the Macedonian leadership was lagging behind the elites in the other Yugoslav republics,<sup>17</sup> the facts show a different picture. Following the 1990 constitutional reform which introduced liberal democratic principles, parliament adopted the Declaration of Sovereignty of the Socialist Republic of Macedonia by consensus in January 1991, referring to Article 1 of the 1966 International Covenant of Political and Civic Rights. In August 1991 the Macedonian parliament gave notice that it would conduct a referendum on independence, which was held on 8 September. The turnout was 76% of eligible voters, of whom 95% voted affirmatively - or 72% of the entire electorate. Parliament enacted the Declaration of Independence on 17 September 1991. Constitution drafting had already been underway. The official proposal came from President Kiro Gligorov as early as May 1991 and parliament tasked the

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<sup>15</sup> Ralf Dahrendorf, *Reflections on the Revolution in Europe*, NY: Times Books, 1990

<sup>16</sup> See Biljana Vankovska and Hakan Wiberg, *Between Past and the Future: Civil-Military Relations in the Postcommunist Balkans* (London and New York: I.B. Tauris, 2003).

<sup>17</sup> Gligorov is still blamed for his attempt to save Yugoslavia (through the so-called Gligorov-Izetbegović proposal) instead of leading the process of establishing the state's independence, something that the other republic leaders had been doing for quite some time before federation's final demise.

parliamentary Commission for Constitutional Issues to draft a new constitution. It was accepted by majority vote on 23 August, while the public debate lasted until 15 September. The Constitution was enacted on 17 November 1991, again by a majority vote.<sup>18</sup> A good deal of the work took place in the halls of the Law Faculty at the Cyril and Methodius University. The boastful statements of then young assistant professor Ljubomir Danailov-Frčkoski (one of the members of the expert group formed by Gligorov) were remembered: constitution-making was “a piece of cake”. The other members were also university professors but critics pointed out that none was a constitutional lawyer. The Albanians objected they were not represented in the expert team. The period for crafting as well as for deliberation was too short. The drafts were of dubious quality: the first one made by the appointed experts was a good starting point despite some shortcomings; the second draft, discussed by a wider audience that included a few constitutionalists, had some improvements, but during the process of political bargaining many solutions remained half-resolved. The constitutionalists agreed that the proposal promoted a majoritarian model while the Albanians insisted on consensual democracy. Not many of the proposals raised during the public debate were accepted.

*Post festum*, i.e., after the 2001 conflict, many claimed that 1991 had been a missed opportunity to establish a new “social contract” between Macedonians and Albanians. To have expected a different outcome under such historical conditions is naïve. Macedonia could have not avoided typical “children’s diseases”. Critics disregard a few important facts: 1) the Macedonians not only had weak statehood traditions but this was the first time in their history to have an opportunity to form an independent state and to fully exercise the right of self-determination; 2) the Albanians were reluctant with regard to the new state context awaiting a resolution of the “Integral Albanian Question”, or at least resolution of the Kosovo issue which was a part of their (post-Yugoslav) imagined community; 3) the desire to design a ‘true’ democratic model led the drafters of the constitutions of 16 developed democracies; 4) the Badinter Commission issued a positive opinion with regard to Macedonia’s international recognition, partly because of its liberal constitution and respect for minority rights. As elsewhere, the democratic categories “travelled east”, to quote Dvornik,<sup>19</sup> but there was nothing much to institutionalize except the authentic will of a nation for an independent state. The political revolution was made in the name of something that was still to come. For instance, Article 1 of the Constitution defines the Republic of Macedonia as an independent, democratic welfare state. Twenty years later all attributes are still questionable in practice.

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<sup>18</sup> Out of a total of 120 MPs, only 92 voted. The MPs from the Albanian parties (23) boycotted the vote, although they had taken part in the previous parliamentary procedures. As a reason they pointed out three major issues, such as constitutional status for the Albanian nation, higher education in the mother tongue, and the use of the Albanian language in Parliament.

<sup>19</sup> Srdjan Dvornik, *Actors without Society. The role of civil actors in the post communist transformation*, Heinrich-Böll-Stiftung, Publication Series on Democracy, vol. 15 (2009), p. 37

During the first decade, the country struggled with immense difficulties, starting with its gaining international recognition. It was a process that began at “ground zero” and with almost no international assistance. In addition to some inherently internal factors, unfavourable regional and external pressures had a strong impact on the country. The preservation of peace was an achievement with its own merits. What is disputable is the way the ‘gratis period’ of ten years of peace was used to consolidate the nascent democracy. Buffeted by an assortment of European concepts of statehood, Macedonia’s challenge was immense: she was expected to bring together the idea of nationhood with the concept of multiculturalism and liberal-democratic values. Ethnic Macedonians faced huge societal (identity) insecurity because of the problems that steamed in the regional and international relations. The initial intention to strengthen national identity markers with regard to unfriendly neighbours had a boomerang effect internally. That was the beginning of the ethnic security dilemma between the majority (65% Macedonians) and ethnic Albanians (25% of the population).

Soon Macedonia faced a cold welcome and the double standards of the international community. Despite the EU Badinter Commission’s recommendation that only Macedonia and Slovenia met all the requirements for international recognition, the country was forced, due to Greece’s objections, to embark on a long and as yet unfinished battle to preserve its constitutional name and national identity. The first concessions that Macedonia made with regard to Greek (and European Union) demands were articulated in constitutional amendments of January 1992. Amendment I declares that the Republic of Macedonia has no territorial pretensions vis-à-vis any neighbouring state, while Amendment II states that the Republic will not interfere in the sovereign rights of other states or in their internal affairs. The latter is an addendum to the provision from Article 49 that declares that the Republic cares for the status and rights of those persons belonging to the Macedonian people in neighbouring countries, as well as Macedonian expatriates, assists their cultural development, and promotes links with them. These bizarre amendments are not only rare in a comparative constitutional perspective but also ridiculous having in mind the size and the weakness of Macedonia in comparison to the NATO member-states. They did not satisfy Greece, however. The next step was compliance with the demand to change the state flag allegedly because it offended this neighbour’s national feelings.

The organization of power introduced by the 1991 Constitution had a few inherent shortcomings, which later on proved to be far from benign:

- 1) The envisaged model was parliamentarism with liberalism as its philosophical foundation. Power and sovereignty were supposed to derive from the citizens and to belong to them. At the same time, according to the Preamble of the Constitution, the Republic of Macedonia was an emanation of the Macedonian people’s right of self-determination. The Albanians feared that this signified the establishment of a nation-state, in spite of the fact that the normative part of the

Constitution outlined a liberal model. They boycotted not only the referendum of independence but also the vote on the Constitution. Later on, they boycotted the national census as well.

2) The central position of the citizen was supposed to be guaranteed by the mere fact that the chapter on human rights has the largest number of provisions (46 articles out of 134 in total), directly incorporated from the European Charter on Human Rights. This concept met serious difficulties in practice. The weak socio-economic basis and the lack of democratic traditions prevented full implementation of the declared human rights. In a weak state they were more of a wish-list than a constitutionally guaranteed reality, especially concerning socio-economic rights. Violations of civil rights were frequent, due to deficiencies in the rule of law, while political rights were basically limited to freedom of association and right to vote, both already ethnically determined with establishment of ethnic political parties. There were also different understandings of the constitutional balance between individual and collective rights. The opposite positions of Macedonians and Albanians were deeply embedded in the society.

3) The principle of separation of powers was applied in an inconsistent way due to the immaturity of the elites in the process of constitutional bargaining as well as the lack of democratic institutional experience. One of the crucial distortions from the parliamentary model was with regard to the position of the legislature vs. executive power. Government is elected by the parliament, which exercises a political-control function through the institutions of confidence votes, interpolation, fact-finding commissions, and parliamentary questions. Yet it has no power to dissolve the parliament. The model prescribes the incompatibility of the executive and legislative functions. In addition, the judiciary was (and still is) under strong political pressure, while the relations between the government and the president of the Republic remained entangled and dependent on the relative authority of the current holder. The fact that the president of the Republic is elected in a popular vote and holds a veto power with regard to the organic laws, accompanied with the personal charisma and power relations of certain presidents (such as Gligorov), provides a foundation for claims that there are elements of presidentialism too. The problem of defining the model is obviously very complex; so scholars speak about a constitutional hybrid.<sup>20</sup> According to Siljanovska-Davkova, the “constitutional cocktail”<sup>21</sup> is even more intricate when it comes to the functioning of institutions. The parliament is largely marginal and more of rubber-stamp for the decisions made elsewhere (in the government or in extra constitutional bodies). Also, the exercise of the principle of separation of powers confirms the problematic methodological value of the classical dichotomy “parliamentarism vs. presidentialism”. The functioning of the political institutions often depends on the personal qualities of the power-holders. Prior to the 2001 constitutional reform, one could identify the

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<sup>20</sup> Biljana Vankovska, *Politicki sistem*, Skopje: Bomat, 2007.

<sup>21</sup> Gordana Siljanovska-Davkova, “The Contemporary ‘Models’ of Government: Dilemmas and Challenges”, in *Iustinianus Primus Law Review*, vol. 2, no. 1( 2011), p. 1, (accessible at <http://www.law-review.mk/pdf/02/Gordana%20Siljanovska-Davkova.pdf>, last accessed on 19 October 2011).

parliamentary system with the emphasized role of the President, which some characterized as a semi-parliamentarian/semi-presidential system. The major systemic weaknesses, nevertheless, have always been disrespect for the “rules of the game” and replacement of the rule of law by rule of men (party leaders). *Lex* has always been interpreted in accordance to the current political liking of the *rex*. Depending on regional or internal conflict dynamics, the international community was also wavering between insistence on legality and insistence on personal power in order to secure “peace and stability”.

#### **4. The International State-Building in Macedonia**

The constitutional order in the period 1991-2001 suffered from a lot of deficiencies, equally in formal, institutional and functional terms. Realistically speaking it was an extremely hard period for Macedonia. The 2001 conflict escalation raised a new question: why did the violence occur? A number of Albanian analysts and scholars have been unanimous in pointing out the constitution as a *casus belli*. In the fall 2001 assistant professor Teuta Arifi argued that the violence served as a catalyst for the democratization process and advancement of the Albanians’ collective rights. The writer Kim Mehmeti believed that the Albanian rebels fought not against the Macedonian people but against the Constitution. So the constitution, regardless of its abstract nature, became a military target, while living people were portrayed in abstract terms. The Ohrid Framework Agreement brokered among the leading party leaders through the mediation of European Union/US envoys paved a way for the major constitutional reform in November 2001.

Unlike the mature democracies that are not prone to frequent changes of the country’s basic law, the young feeble democracies witness abrupt changes with no deliberation and public consultation. According to Berger and Luckmann, institutions cannot be created instantaneously: they have a history of which they are the products. It is impossible to appreciate an institution adequately without an understanding of the historical process in which it was produced.<sup>22</sup> The institutionalized world is experienced as objective reality because tradition gives it a character of objectivity. No matter how massive, the institutionalized world is still humanly produced, constructed objectivity.<sup>23</sup> Marx rightly argued that men make their own history, but they do not make it as they please; they do not make it under circumstances of their own choosing, but under circumstances existing already, given and transmitted from the past.<sup>24</sup> The legitimacy of the institutions is all about justification of the existing order and a *conditio sine qua non* for the functioning of the political system. In any democracy it is of utmost importance for the people to think of the institutions as of *opus proprium* and of themselves as political actors with full sovereignty. In the opposite case, institutions would be seen as *opus alienum* and such a political

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<sup>22</sup> Peter L. Berger and Thomas Luckmann, *The Social Construction of Reality. A Treatise in the Sociology of Knowledge*, (London: Penguin Books, 1991) , p. 72

<sup>23</sup> Ibidem, p. 78.

<sup>24</sup> Karl Marx, *The Eighteenth Brumaire of Louis Bonaparte*, 1852, available at:

<http://www.marxists.org/archive/marx/works/1852/18th-brumaire> [accessed on 23 November 2011]

community is nothing but a dehumanized entity.<sup>25</sup> Scholars agree: “institutions are a socially constructed set of arrangements routinely exercised and accepted. They are building blocks of democracy.”<sup>26</sup> Political competition and bargaining are possible only in an environment made up of institutionalized rules and arrangements that are deeply entrenched. Only such institutions are able to generate stable, recurring, predictable patterns of behaviour.<sup>27</sup> March and Olsen argue that political institutions are “political actors in their own right.”<sup>28</sup> Institutions allegedly change outcomes, and alteration of formal political institutions can result in changes in political behavior and political practice.<sup>29</sup>

As soon as it became clear that transitions in some countries could be messy and sometimes violent, the international actors started frequently using political and societal engineering as a remedy, especially in the context of the transformation of the post-authoritarian and/or post-conflict countries. Sartori offered an explicit advice to embark on “constitutional engineering”, proposing institutional arrangements that challenged the conventional wisdom on constitution-making.<sup>30</sup> The political/constitutional engineering thus joined a series of buzz words invented by the democracy-promotion community, such as democracy-building, institution-building, capacity-building and, most often, state-building. In the pages which follow, the terms political and constitutional engineering are being used as synonyms for state-building. Today’s engineering and state-building processes are mainly constructivist endeavours. Engineering is a form of rational choice but one that often does not have anything to do with the people concerned because ‘state-builders’ know what is best for them. State-building is just a new name for an old phenomenon, i.e. interventionism in international relations and states’ internal affairs. The novelty is in the final outcome: state-building efforts allegedly revive the centrality of state but it is no longer the entity we used to know, i.e., a sovereign and independent actor. On the surface, these entities may look modern and designed according to the Western principles, but the outcome is often a ‘soulless state’.<sup>31</sup> Conventional wisdom reads that the failing (or failed) states should be protected from their own rotten societies. Democratic institutions may be in place but a ‘small detail’ is missing: there is no space for democratic politics. These states become hollow and cut off from their own essence. State-building is a story of inequality: outsiders are “state-builders”, while the residents (“locals”) are supposed to be

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<sup>25</sup> Berger and Luckmann, *ibidem*.

<sup>26</sup> Robin Luckham et al., “Democratic Institutions and Politics in the Context of Inequality, Poverty, and Conflict”, *IDS Working Paper 104* (Brighton: IDS, January 2000), p. 10.

<sup>27</sup> See Robert E. Goodin “Institutions and Their Design”, in Robert E. Goodin (ed.), *The Theory of Institutional Design* (Cambridge: Cambridge University Press, 1996), pp. 4-23

<sup>28</sup> James G. March and Johan P. Olsen, “The New Institutionalism: Organizational Factors in Political Life”, in *American Political Science Review*, vol. 78, no. 3 (September 1984), p. 738

<sup>29</sup> Benjamin Reilly (ed.), *Democracy in Divided Societies. Electoral Engineering for Conflict Management* (Cambridge: Cambridge University Press, 2004), p. 6

<sup>30</sup> Giovanni Sartori, *Comparative Constitutional Engineering: An Inquiry into Structures, Incentives, and Outcomes*, 2<sup>nd</sup> ed. (Washington Square, N.Y.: New York University Press, 1997).

<sup>31</sup> David Chandler, *Empire in Denial. The Politics of State-building* (London: Pluto Press, 2006).

“local stakeholders”. The former set the agenda, methodologies, and criteria of failure or success but avoid taking any responsibility for the prescribed actions. This chapter intends to show the specific transition of Macedonia from one form of a “success story” (1991-2001) to a product (and ”success”) of international state-building, from 2001 onwards.

The myth of the “oasis of peace” that fell apart in 2001 came about as a self-fulfilling prophecy. The real question at the time was not why a violent conflict occurred, but why so late?<sup>32</sup> The conflict was quite peculiar by infamous Yugoslav standards: it lasted no longer than 6 months, and it finished as the most bloodless in the region. It was fought between organized, uniformed formations (state security structures) and the Albanian paramilitary (National Liberation Army - NLA), which was and still is considered an offspring of the Kosovo Liberation Army with a political leadership from the diaspora. There were no cases of inter-communal violence between the members of the ethnic communities. Analyses of the possible conflict causes reveal more paradoxes. In February 2001, public opinion polls indicated a high level of satisfaction among Albanians with regard to inter-ethnic relations as well as with other aspects of their lives.<sup>33</sup> Macedonians perceived the situation differently but did not consider inter-ethnic relations as the gravest problem. In general, citizens were (and still are) more concerned about unemployment, crime, corruption, and poverty.

The international community looked as if surprised, which is strange given the long-term military and intelligence presence in the region. In March 2001, the NATO Secretary General as well as the EU High Commissioner praised “Macedonia’s functioning multiethnic democracy” and endorsed the legitimate government to deal with the “thugs and murderers who preferred bullets to ballots.” In less than a month, having seen that the state could not counter effectively the paramilitary groups, they started pleading for “proportionality” and “restraint”. The “thugs and murderers” were miraculously transformed into “freedom fighters” against “the Slav oppressors” (terminology used by some corporate Western media).

Following the spread of rebellious activity, the international community encouraged dialogue among major political parties to enact constitutional reforms. A government of national unity, formed under EU pressure in May 2001<sup>34</sup> was supposed to ease the legislative process. In effect it involved a suspension of parliament (despite the constitutional provision that it is in continuous session) and introduction of non-institutional forums of decision making (so-called summits

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<sup>32</sup> Biljana Vankovska, Current Perspectives on Macedonia: The Struggle for Peace, Democracy and Security” (Berlin: Heinrich-Böll-Stiftung, 2003)

<sup>33</sup> International IDEA Project SEE: *New Means for Regional Analysis* ([www.idea.int/balkans](http://www.idea.int/balkans)) and SELDI *Regional Report on Corruption in SEE countries* ([www.seldi.net](http://www.seldi.net)), [both sites last accessed on 27 January 2012].

<sup>34</sup> The government summoned the representatives of four major political parties (two from each ethnic block). In addition to the two ruling parties, Internal Macedonian Revolutionary Organization - Democratic Party for Macedonian National Unity (IMRO-DPMNU) and the Democratic Party of the Albanians (DPA), it embraced also the Social-Democratic Union of Macedonia (SDUM) and Party for Democratic Prosperity of Albanians (PDP).

under the auspices of the president of the Republic). This step blurred accountability among the elected political leaders and between them and the international actors. Even worse, the government was not only politically fragmented but also increasingly dysfunctional with different factions holding sharply different views on crisis management. Communication between conflicting parties was carried out by OSCE envoy Robert Frowick. Under international pressure the government agreed to consider constitutional reforms in early July.

The ‘peace envoys’ (Francois Léotard on behalf of the EU and US diplomat James Pardew)<sup>35</sup> presented the representatives of the key political parties with a framework document to form the basis for further discussion.<sup>36</sup> The parties agreed to work on the document based on an earlier proposal made by Robert Badinter himself. This proposal was used as a crown argument that an eminent lawyer suggested the power-sharing model as a solution for the Macedonian constitutional order. In the view of Badinter’s statements, one can hardly resist asking if he was misinterpreted, misinformed, or simply changed his mind.<sup>37</sup> This proposal has never been made public, nor was public or expert debate ever organized to discuss it. The framework document was “ready-made” by foreign actors whose names are still not known. The negotiation was carried out far from public eyes and even today the list of experts and consultants is not known. Two experts were hired by the President, both of them “founding fathers” of the 1991 Constitution: Frčkoski who holds a Ph.D. in political science and Vlado Popovski, a Ph.D. in history. No name of an Albanian expert has ever been mentioned. Then leader of the Democratic Party of Albanians (Arben Xhaferi) stated that his party had used the services of a hired US expert who prepared the platform for consociational model.<sup>38</sup> Allegedly, Xhaferi managed to

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<sup>35</sup> Pardew was a former officer of US military intelligence, and Léotard a former French defence minister. According to their bosses, they could combine diplomacy and security expertise in their activities for resolution of the conflict. Yet, the Ohrid negotiation process was supposed to be focused on a constitutional reform.

<sup>36</sup> Gligorov gave the following statement regarding the Draft Agreement: “I am not satisfied with the Ohrid Agreement, as I have publicly said so on several occasions. The first draft of that Agreement was brought to our President by the US Ambassador who said: ‘for such documents in America we say – take it or leave it. This has to be implemented or you will have a civil war’. The next day Boris Trajkovski proclaimed that document as his own plan.” See Kiro Gligorov, “Ohridska senka” (Ohrid Shadow), in *NIN* (Belgrade), 17 July 2003, p. 55.

<sup>37</sup> In Badinter’s own words, “thinking within ethnic borders cannot be a qualitative and effective solution. It paralyzes administration and initiates other problems with a package of advantages and privileges instead of creating common people and one joined nation. This over-ethnical approach risks to worsen what is already bad in the country.” (Robert Badinter, “Une approche trop ethnique risquerait d’aggraver le mal actuel”, *Le Monde* (Paris), 29 June 2001, p. 3). Two months later, he said that the Framework Agreement included the principles which he had proposed in such a manner that he felt as if he was a co-author of the document. In the same statement to the media, however, he denied that the Framework Agreement introduced elements of consensual democracy. See: (<http://listserv.acsu.buffalo.edu/cgi-bin/wa?A2=ind0108e&L=maknws-l&P=307> [last accessed on 2 July 2007]). Given the fact there is no single official body entitled to give authentic interpretation of the Framework Agreement, no wonder its implementation has been followed by so many controversies and (mis)interpretations.

<sup>38</sup> Few in the Macedonian public have ever heard the name of the expert who worked for the DPA, Paul Williamson, but his bio on Wikipedia states: “During the course of his legal practice, he has assisted nearly a dozen states and sub-state entities in major international peace negotiations, and has served as a delegation member in

convince the National Liberation Army's leader Ahmeti to abandon the idea of secession. The NLA did not obtain legal status of a conflict party in the civil war.

The overall expert input was questionable in two aspects: 1) the unclear relationship between the domestic and foreign experts; and 2) the level of influence of the expert advice and constitutional knowledge on what was fundamentally a diplomatic process based on pressure and unprincipled bargains. As a Macedonian proverb puts it, with too many midwives, the child is likely to be born with deformities.

The truth about the 2001 conflict (its causes, the goals of the fighters, the size of the rebel army, operations, and even the exact death toll) have not been disclosed. If so many details about 2001 are still murky, it is logical to ask how one can be sure that there was a truthful diagnosis, prognosis, and therapy of the conflict? Up to 2001, Macedonia had been left alone in its political journey and democracy-building. Since then, however, the international state-building remedies have become dominant. The imposed peace agreement introduced a constitutional arrangement with institutionalized ethnicity. In spite of the involved experts' denial, it involved a *de facto* and *de jure* replacement of the liberal model with power-sharing, or better, the creation of a mix of oil and water. Prior to its formal ratification, some experts were desperately trying to explain why the famous "Lijphart recipe" would not work democratically in a bi-nationally divided Macedonia. According to the model, in order for consociation to be successful it is necessary to meet at least four conditions: a small territory, a multi-party system, cross-cutting cleavages, and more than two segments. Macedonia does not meet the last two requirements. Furthermore, the multiparty system is highly fragmented and ideologically amorphous, while the two main groups (ethnic Macedonian and ethnic Albanian) are segregated with few points of contact.

Undeniably the Ohrid Framework Agreement addressed some of the Albanians' justifiable grievances. But its subsequent impact on the constitution-making process delivered another important message. As many Albanian intellectuals and politicians have argued, it has once again been proved (as in the case of Kosovo) that violence can be worthwhile as a means for political change.

## 5. The Challenges of Post-Ohrid Macedonia

Adoption of the Ohrid Framework Agreement on 13 August 2001 was followed by further violent incidents, a rather improvised disarmament campaign under NATO auspices ("Essential Harvest"), and strong pressure to speed up the constitutional reform. Disarmament was allegedly

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the Dayton negotiations (Bosnia-Herzegovina), the Rambouillet/Paris negotiations (Kosovo), the Lake Ohrid/Skopje negotiations (Macedonia), and the Belgrade/Podgorica negotiations (Serbia/Montenegro)."

([http://en.wikipedia.org/wiki/Paul\\_Williams\\_%28professor%29](http://en.wikipedia.org/wiki/Paul_Williams_%28professor%29) [last accessed on 27 January 2012]). (See "NAAC Sends Constitutional Law Scholar to Macedonia on Peace Mission", <http://www.naac.org/pr/2001/06-27-01.html>)

completed by November 2001. Again no public or even expert debate took place, while the MPs were allowed to alter not a single letter of the Framework Agreement's section containing the constitutional amendments, except the preamble. According to the Framework Agreement, the constitutional procedure had to be completed within 45 days. The constitution is meant to be *lex superior* not only in legal terms but also in political terms ("by the people"). In this case the constitution-making process was but constitution-mocking: it had been alienated from the only bearers of sovereignty (the people) and *materia constitutionis* had to be adopted through an urgent procedure. Well-known constitutionalist Pierre Wigny argued that the constitution is a sacred text, which should be touched rarely, and, even then, by a trembling hand. His warning was obviously ignored in Macedonia, or to put it differently the hand was trembling for reasons Wigny never had in mind. Instead Macedonia lost its constitutional independence.

Institutional change followed, more or less, the Lijphart model, with one difference. The grand coalition had already been part of the political tradition of independent Macedonia without any legal imposition. All governments have been inter-ethnic coalitions. In this regard, the 2001 constitutional amendments did not introduce any change. As far as adequate representation of the societal segments is concerned, the list of fundamental values of the constitutional order (Article 8) introduced "equitable representation of persons belonging to all communities in public bodies at all levels and in other areas of public life".

In practice, however, the term "equitable" (which is a philosophical rather than legal category) caused problems in its interpretation and implementation. Ethnicity was institutionalized not only in the context of protection of one's cultural and ethnic identity, but in all spheres of state organization and functioning of the state institutions, including ones which deal with human rights protection. This principle is applied on the composition of the Constitutional court, the Judicial Council, the National Security Council, and even the Ombudsman's office. The double majority vote (the so-called Badinter principle) in decision-making has a power of a hidden veto: "For laws that directly affect culture, use of language, education, personal documentation, and use of symbols, the Assembly makes decisions by a majority vote of the Representatives attending, within which there must be a majority of votes of the Representatives attending who belong to communities not in the majority in the population of Macedonia." In case of a dispute among the MPs regarding the application of this provision, the Committee on Inter-Community Relations shall resolve the dispute. Finally, the requirement of segments' autonomy is fulfilled by wide decentralization and an increase of the competence and financial autonomy of the municipalities.

The Framework Agreement has become Macedonia's best achievement in 20 years of transition as far as international and domestic officials are concerned. It overshadows the "oasis of peace" tribute (probably because it proved to be unwarranted). Conspicuously, there is not a single attempt to make an honest reality-check. In what sense is post-Ohrid Macedonia better off than

during the “oasis of peace”? Are the roots of violence and conflict potential eliminated or eased? Is the power-sharing system as effective and/or democratic as its god-fathers expected? What is the share of success and responsibility of the internationals and what of the locals? Who are the real stakeholders? Who gains what and how? Too many questions, but few wish actually to go into a deeper analysis.

Despite the opposite perception, post-Ohrid Macedonia has not changed much. The peace of the first decade has been replaced with a myth of another (negative) peace. The not-quite-successful democratization of the first period has been replaced by the political rules of a semi-protectorate and overt ethnic bargaining between ethnic elites. In spite of the rhetoric that emphasizes human rights and freedoms, the Constitution has institutionalized and entrenched ethnic differences. Macedonia is already a bi-national and probably federal state, which came about as a self-fulfilling prophecy - there is no third segment to create the necessary balance in a divided society.

The newly established system also suffers serious defects, especially in terms of undermining the two crucial democratic principles: the rule of law and the separation of powers. In regard to the former, the Framework Agreement remains a “Holy Bible”. It still overshadows the constitutional and legal norms because not only domestic actors, but also the international community, keep talking about “the implementation of the Framework Agreement” instead of implementation of the Constitution. Continuous re-interpretation of the “letter and spirit of the Framework Agreement” leads in the direction of undermining the legal system.<sup>39</sup> On far too many occasions, the rule of law principle has been a ‘hostage’ of ‘peace and stability’ including the deal on amnesty that would include war crimes, which was a condition for the formation of the government coalition in 2011.

The system is under constant threat of institutional and decision-making paralysis. Whenever there is an inability to enact an important decision by the parliament or the government, the internationals call for “political dialogue”, which is by default removed into informal forums of party/ethnic officials. Law-making has been significantly downplayed: even the MPs do not pay much attention to the so-called “Ohrid laws”, which, in their mind, are to be adopted as quickly as possible because “it is a requirement arising from the Framework Agreement and the international community” and because they had already been agreed between the ethnic leaders.

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<sup>39</sup> The Macedonian Helsinki Committee has repeatedly pointed out the following: 1) The FA is not a Constitution (nor a part of the Constitution), not a quasi-Constitution; 2) The FA is neither a law nor a rule; 3) The FA is not an agreement in the sense of an international agreement (it was not ratified by the Parliament, among other things), collective agreement or agreement by the Law on Contractual Relations; 4) The FA is not a legal but a strategic document, i.e. (inter)party agreement and political compromise. “Explaining adoption of laws and introduction of legal amendments with the need to implement the Framework Agreement instead of implementing the Constitutional amendments may be considered a drastic example of derogation of the principle of rule of law.” (*Makedonski Helsinski Komitet za čovekovi prava, Posebna analiza, Ramkovniot dogovor ne e vladeneenje na pravoto [The Framework Agreement Not a Rule of Law]*, Skopje: MHK, 2005).

The international actors stimulate various forms of non-institutional dialogue. The quality of laws enacted under time or other pressure is often very low. They are more a matter of political negotiation between the ethnic leaders rather than documents based on rational and comparative analysis. In numerous cases, the international community's representatives have given ambiguous statements in terms of "yes, the quality of laws is truly important as well as the speed with which they are enacted".<sup>40</sup> Consequently, their implementation is doubtful.

In order to make sure the system works, the US and the EU more or less discreetly interfere in the functioning of all three branches of power. In terms of legislative power, they often have the final say about the time-frame and some ethnically-related solutions in the draft laws. Their approval is often far more important than expert and public opinion (which was the case, for instance, with the Law on Territorial Organization in 2004). Appraisals from Brussels and Washington often precede the public revealing of the agreed legal documents. The EU Ambassador is often seen in the parliament building trying to negotiate some solutions among the parliamentary groups (such as composition of the Juridical Council). In terms of executive power, the international community has been directly involved in the government-formation process since 2001. However, it had limited success after the 2006 parliamentary elections. In spite of the EU Ambassador's plea for inclusion of the party which had won the majority vote in the Albanian electorate (i.e., the Democratic Union for Integration or DUI), the winning International Macedonian Revolution Organization (IMRO) decided to enter into a coalition with the Democratic Party of Albanians (DPA). The DUI felt betrayed and began obstructions, including a boycott of the parliament's work. At first sight, despite the external meddling, it may look as if it is politics as usual. However, that is only a chimera: at the end of the day, having played 'politics', the political leaders go home, while it is the external proposals that count. In case of domestic resistance, the 'internationals' warn (if not threaten) about the consequences – mostly in terms of NATO/EU membership.<sup>41</sup> No wonder that one can speak about "therapeutic governance" and "guided sovereignty"!

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<sup>41</sup> Chandler could not be more right: "In fact, the governments which resisted this external assistance could, in the Orwellian language of international state-builders, be accused of undermining their own sovereignty... Here is the vicious circle of intervening powers, one that was not possible in the post-conflict interventions of the 1990s: the more intervention there is the more the target state is held responsible and accountable for the consequences of these practices." (*Chandler, Faking Democracy*, p. 36)

Formally and constitutionally, Macedonia is still a parliamentary democracy. However, the role of parliament has been deeply undermined. The most indicative sign is the absence of the Albanian party leaders from the parliamentary debates.<sup>42</sup> One would expect them to use the opportunity to speak in order to promote their oratorical skills. Obviously, it is easier to play by the rules of a secretive consociational politics than to deal with politics as *res publica*.

The decision-making process resembles more blackmail and unprincipled trade-offs than a consensual and meaningful process of reaching agreements over the most important issues. The elites do not possess the necessary political culture of dialogue and negotiation. Furthermore, the consociational arrangement is perfect for staying in power politics eternally. Policy-making is non-transparent, which makes it hard to identify the bearers of responsibility for any decision. Pre-electoral engineering and internationally influenced government-formation have caused elections to lose their democratic and legitimizing function. Power remains concentrated within the party top-brass, which facilitates cronyism, corruption, and centralism within the political parties.

The case of Macedonian state-building proves the following conclusion: “International intervention that sets aside the principle of sovereignty is unlikely to foster democratic political arrangements... The very nature of democratic governance casts doubt on the likelihood that international actors can construct sustainable democratic institutions... what is critical for purposes of building democracy is the process by which people learn to be ‘democrats’.”<sup>43</sup> The Framework Agreement has proved to be a very flexible document, which has gone through many “creative” interpretations.

The Framework Agreement was not written in English and in Byzantine-like style by mere accident. Its wording gives maneuvering space to the local and even more to the international players to ‘successfully manage’ the conflict (which neither started nor ended in 2001). It was meant only as a transitional solution: it is just a starter in a post-conflict situation. This model usually ends up in three possible ways: a) it may create conditions that would make it superfluous through the revival of liberal democracy; b) it can lead to dissolution or to c) federalization.

In 2011, the Republic of Macedonia celebrated two anniversaries with mixed feelings. This situation can be best explained by the political leaders’ statements. With regard to the 10<sup>th</sup> anniversary of the Framework Agreement, the prime minister said that Macedonians respect the occasion but they do not celebrate. The Albanian coalition partner got his moment on the eve of

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<sup>42</sup> During his two mandates as MP, Ahmeti has attended just two-three sessions. Most of the time he runs his party policy from his ‘headquarters’ in the village of Shipkovica, where he also receives visits of foreign diplomats and journalists. His speech of 16 July 2007 was his first ever given to the Parliament.

<sup>43</sup> Kimberly Staton, “Pitfalls of Intervention. Sovereignty as a Foundation for Human Rights”, in *Harvard International Review*, vol. 16, issue 1 (Fall 1993).

the 20<sup>th</sup> anniversary of the independence: “We Albanians respect Macedonia’s independence but do not celebrate it.” Probably the best indicator of state capacity and the general situation is the cancelled census operation just three days before the planned end of the statistical operation. One analyst made a witty comment by pointing out that the bad news arrived on a national holiday, the Day of National Uprising (11 October): “Obviously the uprising is still at place - and uprising by default means unrest, disorder. Order (i.e. state) is still a too difficult task.”<sup>44</sup>

Transition is over when abnormality is no longer a central characteristic of political life, when basic procedures and rules, or more precisely, the constitutional, economic and political system are established. Foreign observers and Macedonian citizens often wonder if the country has passed the transition period defined in this particular way.

Macedonia’s state-building process has gone through two different stages but the common trait of both was prescriptive democracy. In the first period the elites uncritically embraced the Western model of liberal democracy. From 2001 onwards the international state-builders have uncritically applied a power-sharing medicine. Thorsten Gromes points out the most important issue that many avoid facing: “In many cases, at least one of the conflict parties refuses to be single *demos* together with the other party and coexist with it in the same political community. There can, however, be no success in building or re-modeling democratic institutions as long as one of the conflicting parties rejects the state, its borders or internal structures. Likewise, an absence of common democratic institutions prevents all the conflicting parties from accepting the state as their own.”<sup>45</sup> On the surface the situation does not look dramatic and there is general consensus over the TINA principle: “There Is No Alternative” for the Framework Agreement even if it does not produce democratic outcomes. Stability is more important.

Having failed to build a *demos*, Macedonia has fixed its destiny as a divided society in which “ethno-cultural diversity translates into political fragmentation.” Democracy is doomed to be formal and elitist unless there is a breakthrough toward more integrative power-sharing or a turning back toward a civic democracy based on citizens’ equality. Until then, engineers and their political collaborators (national elites) will have their hands full of work but not the citizens themselves. They are still out of the picture despite Article 2 of the Constitution, which reads that sovereignty derives from the citizens and belongs to the citizens.

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<sup>44</sup> Comment made by prof. Zarko Puhovski in a personal communication with the author.

<sup>45</sup> Thorsten Gromes, “Between impositions and promises: democracy in Macedonia”, in *PRIF Report*, no. 91(2009), p. 1

# On Macedonia's Nation Branding

Aleksandar Mitreski<sup>46</sup>, Nedzad Mehmedovic<sup>47</sup>

## Abstract

*The objectives of nation branding are, but not limited to, promoting domestic products abroad, boosting tourism, attracting investors, prestige and public diplomacy. In the case of Macedonia, certain challenges arise by the recent political and economic situation that the country is in, but also due to the regional issues. What Macedonia is doing to achieve these goals is avoiding the country's recent socialist past while underlining its ancient history. Also, promotional videos and other commercials with economic content and messages are sporadically aired in the global media without an evidence of them being part of a national strategy. Moreover, these actions seem to fail to attract the support of all political factors in Macedonia. This suggests a need for an analysis of the current Macedonian branding process. Although evaluation of the nation branding strategy is quite difficult due to its intangible results, this paper aims at pin-pointing some, if not all of the mistakes. Ultimately, the analysis will also suggest solutions and try to set a direction for future policy changes in the national strategy.*

## What is nation branding?

It is a common practice to start nation branding analysis with the ‘warning’ that the idea behind branding the nation is recent, not fully developed and - probably most important – not evaluated or even proved to be more than a myth. Yet it seems that no country in the world is indifferent to its image in the eyes of the other nations and many of them have strategies for managing those opinions. The image of the nation is created by its people and serves as a long-lasting promise to the world about the distinctiveness of the country. The goal should always be earning that desired image rather than inventing it. In fact, the promise about the distinctiveness of the

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<sup>46</sup> Aleksandar Mitreski obtained his Bachelor's degree in Political Science at the University "Ss. Cyril and Methodius" in Skopje, Macedonia. Afterwards he moved to London where he graduated with Distinction at HULT International Business School and became Master of Arts in International Relations. Aleksandar has professional experience and has worked on projects in different countries (USA, UK, Jordan). He is currently teaching at the Social Science department at NOVA International Schools. Contact: [mitreski.a@gmail.com](mailto:mitreski.a@gmail.com)

<sup>47</sup> Nedzad Mehmedovic obtained his Bachelor's degree in Political Science at the University "Ss. Cyril and Methodius" in Skopje, Macedonia. He is finishing his graduate studies in Public Policy at the same university. From 2009 he works as a researcher in the Center for Research and Policy Making (CRPM) in Skopje. Currently he works as Program Coordinator for the School of Public Policy "Mother Theresa". Contact: [mehmedovic@crpm.org.mk](mailto:mehmedovic@crpm.org.mk)

country is met by country's reputation which is "a particular type of feedback received by the nation from the outside world, concerning the credibility of the nation's identity claims" (Fan 2010). The outlined need for balance between the emitted national image and its reputation stipulates internal dialogue to identify the real and relevant strengths of the nation, careful creation of necessary policies, establishing good macroeconomic climate, while at the same time the positive changes have to be communicated with the world. A strategy for nation branding allows a country to achieve its desired image and at the same time it can make it believable for the world. On the other hand, some countries are already seen different than others, but often they want to change their image due to a negative perception in the world (e.g. deconstructing or changing negative stereotypes). Such tasks are not easy, since it takes a lot more than TV commercials aired in global media to alter the reputation of a country. The message remains the same for those countries: "communications are no substitute for policies, and that altering the image of a country or city may require something a little more substantial than graphic design, advertising or PR campaigns" (Anholt 2008). Thus a nation branding strategy starts to deem necessary.

The authors of this paper adopt the definition of nation branding offered by Ying Fan: "Nation branding is a process by which a nation's image can be created, monitored, evaluated and proactively managed in order to improve or enhance the country's reputation among a target audience" (2010). If understood as a process for presenting the country as a whole, as a comprehensive strategy inclusive of all political and cultural dimensions, than there is no danger of looking at the nation brand only in terms of foreign investments, exports or tourism.

When attempting to narrow our understanding of the nation branding it is worth mentioning some of the specific aims of the process: "to create or advance the 'country-of-origin' effect, to promote exports (outward direction) or attract investors or a skilled workforce (inward direction)" (Szondy 2006). Clearly, these aims can be achieved by communicating the messages with the business community and the political actors. Tourists are also 'invited' by the country brand although they serve as the primary target group of the destination branding strategy.

In addition, it is important to mention that a branding process affects the domestic population of the country, although there is a strong focus on foreign nations. The international audience can be divided and looked at in terms of three broad groups: businesses, politicians and tourists (Marat, 2009). For each target group there can be a different method for conveying the message, but that must not change the fact that there has to be a unifying strategy which coordinates the multiple channels of communication. It is the only way to avoid distortion of the nation brand or create confusion.

There are many limitations to the power of nation branding. It can help the development of a country but it is unlikely to be the driving force of development; it can assist in facilitating

markets for exporting goods, but it cannot make up for the qualitative advantage of the fierce competition by other countries' products, etc. But although nation branding is not a countries' panacea for all possible problems it seems that "[e]very time a country name is mentioned, there is ..an opportunity to add or subtract value to its equity" (Gertner 2007).

### **Branding challenges for Macedonia**

The upper outlined concept of nation branding can be an important tool in the hands of the Macedonian government. If used right it can significantly aid not only the image of the country but the country's developing process too. In order to better understand the challenges presented to Macedonia and the ongoing branding activities we will apply a critical and interpretative approach as we would not be able to make a quantitative assessment of the Macedonian branding process.

The relatively small size of Republic of Macedonia does not make the country a real eye-catcher. For one unaware of where this independent landlocked country is few tips to pin-point Macedonia on a political map might help, for example 'the country is a neighbor of Kosovo' or 'it is in the same region with Bosnia'. By using such pointers a negative reference is given to the country of Macedonia. Not only it is in the region with troubled countries, but there is a possibility that in the near future Macedonia is left outside of the EU which will further strengthening the link with the aforementioned two countries.

Being a young independent country is seen by some as an advantage offering the explanation that "the weight of history does not hang so heavily" meaning that people have "fewer negative perceptions to contend with" (Institute of Policy Development 2006). Although Macedonia can define itself as young independent country, the weight of her (disrupted) history is far from advantage. The fact that the recent past points to Yugoslavia is a problem since socialism is considered a negative attribute in the Western world – and that is exactly where the Macedonian focus is in the external communication with foreign audiences. The advice given to countries in such situation is for them to decide whether to embrace the past and integrate it in the branding process or divert attention from it. Macedonia seems to have one mind when it comes to following a path of a definite break up with the socialist past. For example, the five-pointed star was waived from the coat of arms just few years ago, in 2009. However, a serious challenge for such policy is the international name of the country (FYROM) which includes a reference to Yugoslavia and it serves as a frequent reminder to the world about the Macedonian participation in the Federation under the guidance of Tito.

When moving away from the 20<sup>th</sup> century history and discussing Macedonia's ancient past, a national branding consultant faces an even bigger challenge. There is little doubt that the Macedonians would love to see their current brand blended with the worldwide fame of

Alexander the Great. The only problem is that such scenario is impossible without having to vex one of the neighboring countries. An obvious obstacle is Greece and the expected immediate opposition which can also be in a form of political and economic sanctions. This situation fosters dichotomy in the brand – one for the rest of the world (purged from strong references to Alexander the Great) and another one offered to the domestic population (nationalistic messages for the right to claim the ancient glory of Macedon). The problems of this dichotomy will be discussed later in this analysis.

Other world-wide references to Macedonia are hard to find and one could easily argue them to be non-existing. Peter van Ham says that: “Microsoft and McDonald’s are among the most visible U.S. diplomats, just as Nokia is Finland’s envoy to the world.” After the break-up of Yugoslavia Macedonia was left without a brand which can be used as a signature brand when promoting the country. Although there is existing potential (e.g. in Macedonian wine production) we are yet to witness the full development of such brands.

Thus, it is not surprising that the Macedonian branders are repeating the ‘washed-up’, overused and exploited messages for having “skilled labor”, “good food” or “sun, beach and mountains”. Not only this has little influence to the foreign audiences but since too many countries in the region are sending similar messages to the world they make Macedonia difficult to distinguish.

### **Macedonian response**

The aforementioned challenges for the brand ‘Macedonia’ demand a carefully chosen action to form a proper response which will ameliorate the situation. The following is interpretative analysis of the current actions of Macedonia which are relevant for the branding of the nation.

#### *Agency for Tourism Promotion*

In the early stage of development of marketing initiatives directed towards promotion of Macedonia as a country, a special campaign has been developed and branded as *Macedonia Timeless*. *Macedonia Timeless* is the formal promotional campaign carried out on behalf of the Government of the Republic of Macedonia with the purpose of promoting awareness of Macedonian tourism opportunities worldwide.

At this first stage of formal marketing initiatives, having set building awareness as a first promotional goal, the country itself has been branded as being *Timeless*. Macedonia’s country brand (*Macedonia Timeless*) is designed to serve as an umbrella brand for branded services/products that will be pulled out from the country brand itself.

In this context, Macedonian ancient history, unique archeology & traditional arts, combined with tourism opportunities are set to be strategic areas of focus for further development. Under this initiative there are several ongoing promotional campaigns using elements focused specifically on: Macedonia as a tourist destination; Ohrid as the City of Light; Macedonian temples, vine, mountings, food and archeology. Branding PLACES (cities, areas) should be considered as sub-products coming out of the umbrella brand. This initiative should not be limited to the example of the city of Ohrid, branded in “*The City of Light*”. Many other places should follow this strategy accordingly.

As a second strategic step in the marketing management of Macedonia as a country, after the awareness building stage it has been detected a need for development of a separate Agency for Tourism promotion, under the Ministry for Economy that will be focused exclusively on Tourism potentials and Tourism development in Macedonia.

#### *Agency for Investments and Export Promotion*

The Agency for Investment and Export Promotion - Invest Macedonia (Invest in Macedonia 2009) is the primary government institution supporting foreign investment in the Republic of Macedonia. Only recently export promotion has been added in its portfolio of responsibilities. It is focused on several business sectors i.e. agriculture and food processing, automotive components, IT, healthcare, mechanical, textile, metal, real estate industries. These are set as potential areas due to Macedonia’s current and past experiences in these industries.

The Agency is organized in such a way that despite the head, coordinative office in Skopje, it has its network of representatives (so called promoters) in foreign countries dedicated to a) promotion of Macedonia as an investment location and b) promotion of export potentials of Macedonian products/services in the representative countries abroad. In addition to these main objectives the promoters are required to reach targets of promotional meetings with tourist agencies abroad to negotiate tours with them and attract organized groups of foreigners to visit Macedonia and its tourist locations. Although, this has a positive intention and purpose of increasing the frequency of in/out-flow of tourists in/out of Macedonia, these promoters mostly having no logistic support in the representative countries, no organized office<sup>48</sup> nor its own team; in contrary functioning as individuals with limited operational budget are actually de-focused and overloaded with diverse tasks which strategically results in inefficiency.

From a sales and system/organizational perspective this is to be criticized for its no-effectiveness as well due to the existence of diversity in tasks, targets and activities without specific focus. A sales force consisting of individuals, with a) a complex sales product i.e. a country in hands,

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<sup>48</sup> Only those promoters based in capital cities of those countries where Macedonia has its Embassies or Consulates can use the already limited resources of the respective Embassy/Consulate.

mixed with b) a full portfolio of classic products/services for export and c) tourist locations cannot be functional on a longer run. All of these activities have to be separated under separate and focused bodies with their own and empowered systematic organizations that can support the required sales initiatives.

The head office's job is to manage all potential projects that may arise from promoter's initiatives although this functions in reality without any further involvement of the responsible promoter and no coordination between the promoters from different countries. This naturally causes overlaps of tasks and responsibilities. In addition, the Agency is responsible for administration, marketing, handling of inquiries and requests on any level of interest and value (FDI, M&A, export, partnerships with suppliers and etc.), after-sales and client's servicing.

The Promoter's efforts are simultaneously supported by marketing activities governed by the head office based in Macedonia. In terms of mass media marketing campaigns, the agency's more recent activities were characterized with the CNN serial: "Eye on Macedonia" (CNN 2011). It is used as an advertising mechanism focused on observing Macedonia's development in movement during the last couple of years while simultaneously capturing its current status. Moreover, it illustrates the realistic situation in the country in the social, political and business sectors. Being an expert's driven objective critic, it leaves no space for suggestive perception.

In the context of these marketing initiatives, a refreshment of the first marketing initiatives from couple of years ago is to be planned. New tender has been posted for commercial marketing agency to develop a new 5 years marketing strategy and plan for the Agency. Although, being outsourced to a creative studio this should be controlled in order not to fly away from the core messages set in certain period of time and the fundaments that have been set to assure message consistency over time.

#### *Cabinets of Ministers without portfolio, responsible for FDIs*

Today, there are already two Cabinets of Ministers without portfolio in the Government of the Republic of Macedonia responsible for attracting just Foreign Direct Investments<sup>49</sup>. With the mission to "*Attract the largest manufacturing and service companies to invest in Macedonia by identifying business and investment opportunities and using deliberate speed to solve problems*" these Cabinets are focused only on attracting FDIs in the Free Technological Industrial Development Zones under special tax holiday incentive packages.

These are small bodies, of up to 10 people, civil servants based in Macedonia as part of the Government organization, opposite to the structure and organization of the Agency for

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<sup>49</sup> <http://msi.gov.mk/>

Investments and Export Promotion. Two kinds of strategies should show which one functions better over time and to suggest a transition towards an improved model.

#### *Directorate for Technological Industrial Development Zones*

As a representative authority of the Government of the Republic of Macedonia, the Directorate for Technological Industrial Development Zones<sup>50</sup> (DTIDZ) manages the administrative affairs of all Zones in Republic of Macedonia.

For now there are four Technological Industrial Development Zones (TIDZ) established by the Government of the Republic of Macedonia: TIDZ Skopje 1, TIDZ Skopje 2, TIDZ Stip, and TIDZ Tetovo. Simultaneously, seven TIDZs intended for equal economic development of all regions on the territory of the Republic of Macedonia are in their planning phase.

DTIDZ's duty is establishing a service center within each of the Zones, which provides consultation and service for the Users of the Zones. In all of the Zones administrative departments and customs offices provide commodity administrative services and convenient and fast customs clearance.

#### *Potential (2025)*

“[F]or a nation brand to have credibility and integrity the country must create the macroeconomic climate required to nurture successful business, otherwise attempts for business to exploit nation branding will seem sadly quixotic.” (Fan 2005)

The team of 2025 is an organized body, consisted of successful Macedonian businesspeople (Macedonia 2025) worldwide that functions as a supervisory and advisory board that networks, helps, facilitates, supervises, advices all the initiatives of the 2025 with the sole purpose of enhancing the Macedonian economic development.

The 2025 initiatives are to position Macedonia as a preferred destination for FDIs; promote transparent government and corporate practices; create a flourishing climate for entrepreneurship; instill a new attitude towards competitiveness; and make Macedonia the gateway to regional markets. Through short-, mid- and long-term strategies this undertaking is planned to guide Macedonia’s progress for the next years by developing consistent and holistic country-specific programs that build on Macedonia’s strengths and resources. The tasks of the 2025 initiative are to:

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<sup>50</sup> <http://fez.gov.mk/>

- Help identify, develop and promote several key Macedonian industries;
- Help educate and inspire entrepreneurship and economic/business development in Macedonia;
- Advice, comment, aid and meet with governments on the development of Macedonian policies that ensure the consolidation of an open and transparent democracy;
- Provide the Diaspora with an opportunity to strengthen and improve linkages of the Macedonian community worldwide.

### **Analysis of the Macedonian response to the branding challenges**

Our understanding of what a nation branding strategy should represent and include goes along the same line as the following definition:

*“Strategy, in its simplest terms, is simply knowing what a nation is and where it stands today (both in reality and according to internal and external perceptions); knowing where it wants to get to; and knowing how it is going to get there. The two main difficulties associated with strategy development are (a) reconciling the needs and desires of a wide range of different national actors into a more or less single direction, and (b) finding a strategic goal that is both inspiring and feasible, since these two requirements are frequently contradictory.”* (Anholt 2008)

The interpretation suggests that Macedonia does not have a fully developed brand, unified strategy, or even a coordinative governmental body to facilitate the process. It can be argued that there has not been enough time for the Macedonian brand to be well-established. **It is true that there is no clear data which demonstrates what the ideal timeline for the development of the brand is. In fact one can suggest it might take up to a decade, or even a generation. There is not a simple way how to address the world audiences, be convincing and consistent, and at the same time successful in delivering the desired image of your country. But there can be found enough examples of success stories which demonstrate that finding and applying the right strategy can shorten the path towards a quality nation brand.** In search for a relevant example one might look at Croatia’s ability to portray itself as a desired tourist destination shortly after the bad reputation gained in the ‘90’s.

One advice that Macedonia has got in the past is to pursue a nation brand strategy of peacefulness. It was argued that establishing a peace study centre where many diplomats will be trained will promote Macedonia as “the place that makes peace” at the Balkans (quoted in Aronczyk 2008). This is not impossible to achieve but it is not very likely to be the best strategy; after all, Macedonia is a country with many unresolved disputes with her neighbors, while one of those – the ‘name issue’ – is a burden for both UN and the EU.

Before discussing any recommendations for the Macedonian branding process there is a need to stress out the irreplaceable role of the peoples living in Macedonia. Among the essential tasks of a strong country's brand is that "it must strengthen national identity and increase self-respect" (Moilanen, Rainisto 2009).

Desired results thus include an 'army' of 'brand ambassadors' spreading the message. They are imagined as free of charge, voluntary mediums that represent the country and repeat the story about their home country. The coherence of the narrative they will learn and reproduce is dependent on the national branding strategy. That is a "story" of who the nation is, where it is going and how it is going to get there – which honestly reflects the skills, the genius and the will of the people" (Anholt 2010). Also, the 'brand ambassadors' have now an increased mobility due to enablement of low-cost flights to and out of Macedonia and allowing visa-free entries to the Schengen zone. But Macedonia's protracted transition is a hostile environment for the hopeful-about-the-future but welcoming for pessimistic ideas and attitudes. It is not an easy task to convince the Macedonian public in common brand (not only a logo and a catch phrase, but actual policies which will improve the real image of the country). If the national strategy fails to achieve this, we can expect that the Macedonian public will adopt a version of the Nigerian joke on their nation branding process and use it to mock the process: 'Got a problem with your car, or your generator's stopped working? Don't fix it! Rebrand it!' (Economist 2009)

A widespread disapproval can occur if the branding strategy is not inclusive of most (if not all) ethnic groups in Macedonia. Leaving out part of the domestic population blows directly in the face of the suggestion that "the brand must simultaneously elicit emotional attachment, to 'humanize the brand' – that is, inspire loyalty from its users – and be justifiable on a rational level, as the core of a strategy designed to generate political and economic capital" (Aronczyk 2008). So instead of uniting people around the idea of the brand "Macedonia" the process might buttress existing differences and cause a significant damage. Ultimately, Macedonian citizens unable to identify with the national brand are sure to be disloyal "brand ambassadors".

In addition, a successful strategy should also include all relevant political actors regardless of them being a part of the government. United around the projection of a desired image of Macedonia, all political factors can contribute towards the process of achieving the strategic goals. The opposition throughout its exposure to the international community can and should significantly aid this process. On the other hand, the opposition might not share the idea of what the national image should look like which can be a consequence of lack of an inclusive debate and coordination or simply because the opposition sees the nation branding strategy as propagandist, as a tool for self-promotion of the government and its policies. In such case at least three undesirable scenarios are possible. The first one is a situation when a large share of the political actors in Macedonia are mostly passive outsider observer-critics of the branding and at the same time those political parties are likely to focus their attention to the flaws in the strategy.

This is likely to be the case of Macedonia due to the strong critique by the political opposition to the Skopje 2014<sup>51</sup> project. The second scenario is where important political actors have an alternative idea of what the campaign for the brand ‘Macedonia’ should be like. Such political rift and, consequently, possible parallel branding not only can send a distorted image to the international audience but it also has a potential to be subversive to the national strategy run by the government. It is important to be noted that the alternative image emitted by the opposition can also be used as a tool for international self-promotion and/or gaining political advantage at home by improving its popularity among the domestic population.

The last scenario can become real if the opposition wins at one of the next parliamentary elections and change, radically modify, or even cancel the nation branding strategy<sup>52</sup>. This is highly undesirable since the branding is a protracted process.

Also, as we suggested earlier in this paper, Macedonia has many governmental bodies and non-governmental agencies with different responsibilities. We warn that their tasks can easily overlap and agencies could simultaneously transfer responsibilities from one to another, thus being detrimental to the process. It becomes obvious to the critical eye that the branding process in Macedonia requires a strong coordinative system. For now, all of these initiatives are only being controlled by the government and directed as considered beneficial for the governing parties. In this sense Macedonia can easily be compared to Ireland, as the latter country is seen as one which has to coordinate its branding process much better: “In Government departments, the brand architecture really breaks down. Each department has a different visual identity, varying in color, style, language (Irish versus English) and every other aspect. Collectively, they look chaotic.” (Lambkin 2010)

In short, our analysis arrived at the following conclusions:

- Macedonia does not have a unified and long-term strategy;
- There is no assessment of the results that the ongoing nation branding produces both at home and abroad;
- There is no coordinative body which will shape and promote the brand ‘Macedonia’;
- Lack of evidence for implementation of creative solutions to the challenges of the branding process;
- Unsatisfactory support of the branding process by the domestic public, led by part of the opposition.

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<sup>51</sup> For more on Skopje 2014 see the *Recommendations: what should Macedonia do and what should be avoided* section of this paper

<sup>52</sup> In 2003 after the change of government in Estonia the “Branding Estonia” project was canceled. It was labeled as expensive and the justification for ending the program included an accusation for nepotism (Szondi 2007)

## **Recommendations: What should Macedonia do and what should be avoided**

We have tried to detect and outline some elements which should be part of the future branding strategy. They will be discussed as follows.

**Coordinate.** From an organizational perspective of a country the branding process and strategy require a strong coordinative body which will plan tasks and delegate responsibilities; it will coordinate activities which would be clearly stated and will not overlap, target audiences and focus will be tracked and adjusted according the evaluated feedback and etc. “Without strong leadership any campaign in nation branding, like a vehicle ‘with no one at the wheel’, is doomed to fail” (cited in Fan 2005). This coordinative body should assure that country’s core branded message will be consistently communicated through all marketing and promotional means addressed at both, domestic and foreign audiences. The creation of such institutions aims at the “harmonisation of goals, themes, communications and behaviours in the long term” (Anholt 2008).

**Educate.** All diplomats must be educated on the overall strategy as well as on the detailed information on the message that needs to be conveyed abroad. Diplomats and support services of the embassies abroad serve as an ‘informational gate’ towards Macedonia. To support this claim we offer the example from Norway, in particular, the Norwegian experience with the advancement of their black metal culture, now part of the brand of the country. Norwegian black metal bands have sparked the interest of enough fans abroad to become their country’s top musical export (Markessinis 2011). This tendency was noted by the Norwegian foreign ministry hence their training and educational programs for the current and aspiring diplomats on “TNBM – True Norwegian Black Metal”.

**What to avoid.** Before Israel decided to launch its branding campaign “Israel starts with I” they had been very careful not to make any “reference to religion or to the country’s long-lasting conflict with the Palestinians” (Kahn, 2006). Ukraine is also avoiding pointers to the 2009 gas crisis in its brand. War-torn Croatia had put accent on the tourism and lovely beaches which is another case of a country which was assiduous in not including any buzz-words relevant to the breakup of Yugoslavia. These examples should serve as lessons for the Macedonian branders: reminding the world of the ‘name dispute’ with Greece strengthens the image of a typical Balkan country expected to have problems with the neighboring countries. Thus, regardless whether the project Skopje 2014 is an official part of the nation branding attempts or not, it surely has become part of the national brand, in particular, the brand of Skopje. The new look was addressed as “controversial facelift” while the monumental sculpture placed at Skopje’s city center although officially called Warrior on a Horse it did not avoid the reminders by the global media about the ‘name dispute’ (The Economist 2010; 2011; Davies2011; MacDonald2010). Maybe the comforting fact concerning the damage done with the promotion of the Warrior on a

horse is that the “international public opinion, and in consequence the media, is far more interested in new things that suggest a clear and attractive pattern of development and ability within the country or city, than in the rehearsal of past glories.” (Anholt 2008)

**Innovate.** We suggested at the beginning of this paper that the field of nation branding is relatively young, hence not explored enough. There is a lot of room for creative and innovative ways to contribute to the development of this concept and Macedonian nation branders can make use of this. Other good news for Macedonia include that many possible innovations do not require preconditions such as being a large or rich country, or even a country with a well-established brand, and many creative and well-thought campaigns can be inexpensive.

Calling it “the sports solution”, Rein and Shields rightly note that “sports receive widespread free media coverage, which generates valuable visibility that can attract tourists, residents, and investors at a low cost” and thus they offer three place branding platforms: event, team, and place platform (2006). Although organizing sporting events (e.g. the Olympic Games) is presented as the ‘best practice’ for this type of branding strategies we believe that Macedonia has certain limitations for competing with other potential host nations. The place platform implies designing and building sports amenities which makes it a costly investment. Thus, from all three offered platforms Macedonia can easily adopt and implement the team place branding idea by ‘attaching’ its nation brand on sport achievements, for example, the recent success of the national basketball team at Euro2011. The Government of Macedonia managed to organize a successful ‘Welcome back’ event where the emotional bond between the team and the people was reinforced while at the same time the success of the national team was linked to the image of Macedonia. While this used to foster domestic support, such actions can be aimed at people abroad – of course, in other forms. A good example is given by the Brazilian soccer federation. Their Copa de Cultura which was simultaneously organized with the 2006 World Cup offered the world a glimpse into the Brazilian culture. The Culture Cup included many concerts, dance performances, exhibitions, films, used the popularity of the Brazilian football team and linked it to the image of the country trying to promote its brand - Brazil.<sup>53</sup>

“The sports solution” is likely to be considered by any national branding strategy, as the national teams could win the hearts and minds of many sport enthusiasts on the international scene. But there is also a lot of room for bolder branding steps. Interesting banding attempt is seen in the Lithuanian efforts for establishing a national fragrance named Lietuvoskvapas<sup>54</sup>. For as much as 30.000 Euros a perfume was developed, 1.000 bottles produced, while fragrance samples reached all Lithuanian embassies, hotels, but also the airports where guests were being introduced to the

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<sup>53</sup> See <http://www.cultura.gov.br/site/2007/03/02/balanco-da-copa-da-cultura-2/>

<sup>54</sup> Describing the perfume, at the official webpage of the product is explained that “[s]cent is a strong emotional factor which invokes memories and associations” at the same time suggesting that “The Scent of Lithuania holds the entire history of the nation: our past and present, the objects of our pride and the reasons for which we are respected” (The Scent of Lithuania 2011)

national scent upon arrival to the country (Markessinis 2010). Not only that such action will immediately spread via the global media, but also it will remain to be more than symbolic actions – part of the permanent national brand.

**Regional approach or not.** Outlining the challenges to Macedonia's branding process we discussed the regional context - the Balkans - as troubled. In our recommendations we suggest two ways to respond: implement a strategy for distinguishing Macedonia by dissociating it with the neighbors; or, use a regional approach which includes the nation branding of Macedonia and the branding of the region.

The V4 group (the Czech Republic, Slovakia, Hungary and Poland) is an example of a regional cooperation. Presenting themselves as The European Quartet these countries have projected unified image when attempting to invite tourists from distant parts of the world. But the V4 group is not the only one. "In the mid-2000s the post-Soviet Baltic states launched [...] a double strategy, promoting each nation, as well as the region as a whole" and the same advice is given to the Central Asian countries (Kazakhstan, Kyrgyzstan, Uzbekistan etc.) (Marat, 2009). Needless to say, a regional approach is not a decision solely left to one country. On the other hand, a country can choose to dissociate with the regional context and what is more important the recent troubled past. "Some good examples of symbolic actions are the Slovenian Government donating financial aid to their Balkan neighbours in order to prove that Slovenia was not part of the Balkans" (Anholt 2008). Slovenian behavior is neither surprising nor wrong since the idea of regional Balkan collaboration is still suffering due to the sentiments of the people. Ideas for creating a joint brand can be seen as returning to the Yugoslavian past which will surely encounter strong opposition at home.

**Evaluate.** Complex strategies of great importance to a country must include an evaluation stage. But evaluation of the nation branding strategy is quite difficult due to its intangible results. Moreover, the branding is a process, not a project with a due date, thus a continuous and simultaneous reevaluation is desired (as opposed to post-completion evaluation of the achievements). More often than not, the branding campaigns for branding the nation are neither evaluated nor have their effectiveness measured. Anholt notes that considering "it is usually taxpayer's or donors' money being spent on such campaigns, this is surprising" (2008). Another issue is the lack of an agreed reference point to what the brand should include and look like. Thomas Cromwell and Savas Hadji Kyruacou are marketing experts who conclude that although many countries "currently seek to establish their brands, [...] none has yet developed a successful one." (Marat, 2009) And while there is no consensus over the one successful country brand, everyone tends to agree that some country brands and nation branding strategies are more successful than others.

One way for making the assessment of the nation brand is to use the data from The Anholt-GfK Roper Nation Brands Index – a ranking list of the most valuable country brands in the world. The project was established by Simon Anholt and a polling firm named Global Market Insite which will later be replaced with a new research partner GfK Roper. The Nation Brands Index uses a methodology which stipulates conducting a global survey in twenty developed and developing countries where citizens are interviewed on their opinions and views for other countries' areas of: exports, governance, culture and heritage, people, tourism, and investment and immigration (GfK 2011). The list is composed of the top fifty nation brands (originally started with only thirty-five), which leaves no space for Macedonia. This is not surprising considering the fact that the very top of the list is usually reserved for well-established brands such as those of the United States, Germany, France, United Kingdom, Japan<sup>55</sup>. However, there is an option for ordering a custom report and depending on the type of the requested report its price varies from \$50.000 to \$150.000 (Aronczyk 2008).

Unfortunately, at this point The Nation Brands Index remains to be unmatched in its relevance and credibility for information on how countries are perceived by a global audience, all of it translated into numerical data. There are, however, other attempts for researching the perceptions of the nations. East West Communications (EWC) launched their own version of an index but with a lot of different methodology. The East West Nation Branding Global Index 200 includes all of the 193 UN member countries but few non-members and territories are also included in the research. According to the words of the president of EWC: "The index and the technology that produced it [...] enables countries to analyze scientifically how they are viewed in world media, including the competitiveness of specific sectors such as tourism and investment" (Cromwell 2008). Being published quarterly and annually, the Index aids governments' research if the media (global or regional) is reporting in a positive or negative context each time they mention the name of the country. This 'tool' can be used for monitoring the damage to the brand caused by an incident or a scandal, especially though the quarterly reports where many fluctuations occur. For example, at the beginning of 2011 Macedonia was at the 91<sup>st</sup> place and it rose up to the 49<sup>th</sup> in the second quarter. During the 3<sup>rd</sup> quarter the country managed to drop all the way down to the 112<sup>th</sup> ranking position (EWC 2011).

Additional method which can be employed for the evaluation can be focus groups. For example, the tourists who visit Macedonia might serve as a focus group which can provide valuable information about the national brand and about the appeal which it has to the foreign tourists.

Although it is said to be a preliminary version, the "framework for developing and maintaining successful destination brands over time" proposed by Giannopoulos, Piha and Avlonitis (2011) can be of great value to future developers of the destination branding in Macedonia (e.g. Ohrid). The process is imagined to take place in two stages, the first one being development of brand

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<sup>55</sup> See <http://nation-branding.info/2010/10/13/nation-brands-index-2010/>

inclusive of the brand analysis, positioning, and establishing the brand as shared values among the internal stakeholders. The second stage ensures the durability of the well-positioned brand hence it includes the mechanisms of continuous coordination and management, long-term Governmental commitment, and periodical assessments to evaluate the process in terms of existing gap between what is promised to the tourist and what the destination offers as an experience.

## **Conclusion**

While trying to define the still vague nature of nation branding and offer an existing definition which will correspond to our understanding of what this process represent, we have also explained the importance of having a strong national brand. Also, we have demonstrated the urgency of undertaking such activities due to the fact that almost all countries are engaged in branding themselves.

With this paper we have interpreted the ongoing branding process in Macedonia and detected the flaws in it. Starting with the need for a unified national strategy and gaining national support for the same, continuing with the need of forming a coordinative governmental body to lead, evaluate and improve the strategy, we finished our analysis with the conclusion that Macedonia lacks innovative branding ideas.

Complementary to the problems are our recommendations for creating a strategy, strengthening the brand by gaining wider domestic support to promote the message to the foreign audiences. By providing examples but comparisons between Macedonia and other countries too, we have tried to suggest some ideas which can become part of the future national branding strategy.

By implementing some or all of the offered recommendations we believe that the brand ‘Macedonia’ can become well-established and purged from provocative associations. At the same time the national strategy will set the path for a successful branding process which at the same time will be controlled and regularly evaluated. By early detection of the inconsistencies the strategy can be simultaneously improved.

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# Rethinking the Role of International Organizations in State Building: The UN, the OSCE, and the EU in Macedonia since 1991

**Didem Ekinci<sup>56</sup>**

## Abstract

*Although the lancement of state-building after the Cold War initially met much enthusiasm, it later could not avoid criticisms that it was a new way of exerting power and influence by external agents in failed/weak states, as in the colonial times. This study shall seek to build on the state-building concept, looking at the Macedonian case. It posits that international engagement by three agents in Macedonia has functioned as an important catalyst, considerably impacting the country's development. The process was not without problems and challenges faced by Macedonia may not have been solved in their entirety yet; however the brokership of these three agents in Macedonia should merit more credit than criticism. In this framework, following a descriptive account on state-building and its actors, the present study shall seek to elucidate on how the three agents fit in the said process in Macedonia and assess the resultant pros and cons. It concludes stressing the need for a more informed state-building agenda.*

Keywords: Macedonia, state-building, UN, OSCE, EU.

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<sup>56</sup> Didem Ekinci, Ph.D. was born in Ankara in 1976, obtained a B.A. at Hacettepe University (Ankara) in 1999 and received her M.A. and Ph.D. in International Relations at Bilkent University (Ankara), in 2002 and 2009. She taught courses as teaching assistant and as instructor at Bilkent University during her Ph.D. candidacy. In September 2009, she joined the Political Science and International Relations Department of Çankaya University (Ankara) working as assistant professor. The undergraduate courses she teaches include Balkan Politics, Foreign Policy Analysis, Eurasian Politics, Turkey-EU Relations, Environmental Politics, Russian Politics and Foreign Policy. At the graduate level, she teaches Politics in the Balkans and the Caucasus, and Greek Politics and Foreign Policy. Ms. Ekinci has published both in scientifically indexed (SSCI and AHCI) and other indexed (EBSCO, etc) journals, mostly in English. The publications are primarily on the Balkans and Turkish – Balkan relations, and at the second level on the Caucasus. She has participated in several conferences on the Balkans both in Turkey and abroad. She speaks English (professional), French (advanced) and German (intermediate) and is learning Russian.

## **Introduction**

Post-Cold War era has brought to fore two thorny issues for the scholars and practitioners of International Relations to deal with: one is the problem of failed/weak states, and the other is its solution coined as ‘state-building’. The latter has been at the forefront in academic and policy debates since 1991 as it denoted the most important and desired condition in international politics: peace. The agents to materialize state-building proved to be leading international organizations, mostly pioneered by major powers. *Prima facie*, the tasks and normativities of the concept made it appear idealistic and led to high expectations from it. However, critical accounts started to take form in time, from moderate to harsh, the latter often likening state-building practices in post-conflict venues to colonial practices of the past.

Against this backdrop and building on the Macedonian example, this study argues that state-building by external agents has not amounted to such levels in the Macedonia. In doing so, it first presents a concise conceptual background, to be followed by an account as to how international organizations have fit into this picture after the Cold War. It then highlights in retrospect how the three external agents assumed and practiced their state-builder roles in Macedonia and addressed a combination of considerations that cover both positive and negative arguments on the process itself and their implications on Macedonia. In the final analysis, it underscores the obvious need for a more informed state-building agenda.

## **Conceptual Backdrop**

The accustomed introductory accounts on state-building themes have so far produced similar remarks which attest to the fact that it has become an inseparable theme in international politics, and more so following the end of the Cold War. As Bickerton correctly argues, it has become the “leading form of international intervention in recent years” and that it influences the policy-making process at very high domestic and international levels (2007:94). The post-Cold War temporal and spatial changes not only altered the scope of state-building, attesting to a change of thinking its normative aspects, but also led to palpable bureaucratic outcomes such as the creation of new agencies within national governmental structures to deal with this fashionable – if you will - phenomenon as in the USA and the UK - not to mention certain international organizations as the World Bank (WB) and International Monetary Fund (IMF) which devoted considerable amounts from their sources (2007:95).

Yet, despite the developed means and relatively more advanced policy agenda concerning state-building, the concept and its application suffered from criticism as it evolved. Suffice it to mention three here. First, it has been criticized on the grounds that it resonates with colonial practices of the past, putting into question the normative aspects of the concept itself (Wilde, 1997:29). Second, and related with this criticism, is that international intervention might be

exploitative in the sense that it was imposed on the target states' peoples regardless of whether or not they approved it, and that their policies were not universal – but sometimes viewed as not matching the post-conflict conditions in those states (1997:33). Finally, there is the argument that state-building reflects a “Sisyphean task” (Bickerton, 2007:96), in other words, an effort in vain; because bringing in outside agents naturally limits the political capabilities and creativity of the people of the target state and leave them out of the process; while it is supposed to be inclusive and embrace the locals.

What, then, are the essentials of state-building? Arguably, no one category in the process of state-building should outweigh another or be prioritized by any means. Regardless of the way the state is identified; weak, soft, collapsed, rogue or developing (the descriptions of which fall out from the scope of this study); the features of state-building process in one way or another are expected to influence the internal and external standing of that very state. Borrowing from Brian Smith, there are at least four essential aspects of state-building. The first aims at building political order which lacks if there is bad/failed governance or outside intervention. Here, the main concern is to ensure security of that state, introduce good governance practices such as free elections for a functioning parliamentarian system (2008:235). The second concerns building a developmental state which has three limbs in itself: building sound political institutions; state-society relations; and the type of regime in that state. Irrefutably, states with functioning bureaucracies in their political institutionalization are doing far better than others. Similarly, they provide the basic infrastructure for the industry to advance, presenting an interdependent relationship between private entrepreneurship and the state itself. Equally importantly, although it has been often posited that remarkable economic advances have been possible during authoritarian administrations, democratic regimes may well accelerate economic progress with the incentives and liberties they offer (2008:238). The third integral aspect of state-building has to do with institution building. Simply put, a state's development on many fronts goes hand in hand with its strong institutional development (2008:239-40). Finally, state-building rests on building policy capacity. This involves policy-making and implementation (2008:242-45). Following this brief account on the basics of state-building, we will now seek to understand in what ways international organizations relate to the concept in conceptual and practical terms.

## **International Organizations and State-Building**

In fact, “state-building” as a concept was preceded by “peace-building” as a frequently used term in the immediate aftermath of the Cold War, when the international organizations were emanated from the Cold War constraints and embarked into a new era in respect of both maintaining their established policies and practices and devising new ones in the ensuing years. To reiterate, what was primarily targeted was to build peace in conflict-ridden places of the world; and the fundamental document in this regard was proposed by former United Nations (UN) Secretary General Butros-Gali: “An Agenda for Peace”. The main idea here was the “action to identify and

support structures which will tend to strengthen and solidify peace in order to avoid a relapse into conflict" (Lanz and Péclard, 2011). Subsequently, initial peace-building missions were established in Namibia, Angola, Cambodia, El Salvador, Rwanda, etc (Lanz and Péclard, 2011).

International organizations' scope of mandate for peace-building eventually took on a new form that has come to be labeled as state-building, which includes a quite comprehensive agenda ranging from security and political to economic, financial, social, cultural issues, among others. Following the failures encountered in Rwanda and Angola, which presented a backlash for international peace-building efforts, arguments calling for a more sustainable and lasting solution revolved around a peace-building strategy based on capacity and institution-building. A decade from 9/11 on, this idea was furthered with two considerations: weak states should be fixed with state-building as they provide necessary sources and conditions for terrorists; and they should be fixed since such states constitute a barrier in economic development and increase risks for more conflict (Lanz and Péclard, 2011).

As international organizations' agendas on state-building broadened, the tasks they were supposed to undertake also became more complex and challenging. This, in turn, increased expectations from them. This may be why the multiplicity of criticisms against them could be taken as an indicator that their success record to date has presented mixed results.

Paradoxically enough, while primary criticism has been that state-building practices echo with old colonial practices, the main motto of international agents have almost always been framed around the importance of consolidating sovereignty and legitimacy of the target state and the ultimate need to help it become strong on as many fronts as possible. At work here are many normative arguments and tangible prescriptions which allow us to speak about a redundancy of the relevant literature. However, the all-critical accounts on the role of international organizations in state-building so far have not produced conclusive alternatives as to what should be done instead of what the international organizations are currently doing.

Central to the state-building efforts in many parts of the world have been the UN, the Organization for Security and Development in Europe (CSCE/OSCE), the European Union (EU), North Atlantic Treaty Organization (NATO), World Bank (WB) and International Monetary Fund (IMF). Parallel to its scope, this study shall focus on the first three in the succeeding sections in an effort to seek to elucidate on how they fit in the peace- and state-building process in Macedonia after 1991.

## **Macedonia and International Intervention: Preventive Mission, Peace-building, and State-Building in Retrospect**

Choosing Macedonia as the subject matter of this analysis is mainly because Macedonia qualifies as the only former Yugoslav republic that was born peacefully as an independent state after 1991. Assessing the tumultuous situation in the Balkans, the Macedonian President Kiro Gligorov appealed to the UN requesting a peace-keeping mission to be deployed in his country in November 1992. This marked the first ever UN preventive mission sent to a state in the entire history of the UN. As such, being not a *post-factum* deployment, it was *sui generis*.

The UN involvement was later accompanied by OSCE, EU, as well as International Conference on the Former Yugoslavia's (ICFY) Working Group on Ethnic and National Minorities. In line with its scope, this section focuses on the ways the first three organizations contributed to the state-building process. It starts with the UN due to the fact that the state-building process in Macedonia started with the UN involvement.

### ***The UN***

The story of the international involvement in Macedonia can be examined as falling into three periods which Macedonia went through: (1) the first phase which included preventive diplomacy (1991-2000), (2) the second phase in which third party mediation was observed, and (3) the third phase identified as the post-peace agreement period after 2001 (Ackermann, 2003:107-115). The UN existence in the country corresponds to the first phase. The beginning of this phase is marked by Gligorov's appeal to the UN for the deployment of a preventive mission in Macedonia. The overall mandate of United Nations Preventive Deployment Force (UNPREDEP), which was deployed soon, was summarized as monitoring the border with Albania and the Federal Republic of Yugoslavia, monitoring the situation in Macedonia, deterring foreign aggression, preventing the escalation of the conflict in the country, using good offices, and preventing the spill-over risk of the hot war condition to Macedonia (Grillot, reviewing Sokolski, 2003:131). Specifically, the UN mission was not only tasked with military mandates which included border monitoring and reporting, early warning, fact-finding, patrolling and so forth, but also with civilian mandates after 1994 which included supporting ethnic reconciliation and humanitarian activities, monitoring elections in Macedonia, as well as facilitating other UN projects on humanitarian, social, and economic issues (Stefanova, 1997:113).

The UNPREDEP's deterrent feature was its strength, rather than its size which was not more than 1,000 in total. The fact that it received an overall support from the UN Security Council and international community, notably the USA, made it appear more advantageous. It worked in collaboration with the CSCE/OSCE due mainly to the similarities of their mandates (Ackermann, 2003: 107-115).

The UN mandate has been praised on several grounds for its handling of the situation in the country and overall fulfillment of its tasks. For instance, its efficient guarding of Macedonian-Albanian border during the crisis in Albania that followed the collapse of the pyramid schemes in 1997 was much hailed. In addition, UNPREDEP was quite functional in contributing to the signing of an agreement with Belgrade in 1996 which concerned a boundary between Macedonia and Serbia for delimiting the area of operation of the UNPROFOR. The agreement was welcome as it was a relief on the country's northern border (Stefanova, 1997:113).

The end of this *sui generis* preventive mandate came in 1999, when the UN Security Council did not extend its duration of mission due to the Chinese veto. The reason why China rejected the extension of the mandate had to do with Macedonia's official recognition of Taiwan some weeks earlier. Following this, the only remaining international agent in Macedonia was the OSCE as the ICFY's Working Group mandate had also come to an end.

This was an immature withdrawal and even before the termination of the mandate, commentators pointed at the significance of the role the UNPREDEP played, especially in containing the spill-over risk in the Balkans. There was already some apprehension by the end of 1996 that the mandate might not be extended. Before Boutros-Gali was to leave office those days, he successfully got another extension of six months accepted by the UN and a year later the Albanian crisis took place, which confirmed fears. It was common to hear that Russia was restless about the existence of the US soldiers in the task force and there was also the argument that Macedonia was trying to improve its military structures. Read together, these implied that the task force would not last long in the country (Stefanova, 1997:114; Eldridge, 2002:56). The fluid time during the 1998-1999 crisis in Kosovo was testament to how vulnerable Macedonia was both internally and externally. Regarding the mandate's duration of stay, both favorable and unfavorable views do exist. The former set of accounts mostly mention that the governing elite of the country almost always cooperated with the UN task force, refraining from extreme nationalism and exclusionary behavior and supporting a pluralist approach which embraced third party agents (Ackermann, 2003:110). Conversely, accounts such as by the head of the UNPREDEP mission Henryk Sokalski reveal a more mixed record. The experienced Polish diplomat has been noted arguing that

*"... troop deployment faced difficulties on occasion with command and control, that the political actions were faced with domestic-political challenges and a frequent lack of support in some of the Macedonian political parties, and that crime, corruption, drug abuse and other problems plagued the activities focused on enhancing the human dimension. Moreover, UNPREDEP often had to enhance its public image, convince members of government and society that it was there to help not dictate, remain persistent*

*and consistent, and regularly emphasize the collective efforts were needed in the country to produce the common good of peace and security.”* (Grillot, reviewing Sokolski, 2003:132).

Despite varied accounts on the mandate’s assessment, it can be argued that this first example of prevention, which served as a milestone for state-building practice in Macedonia, functioned quite effectively in terms of helping maintain the country’s sovereignty and preventing the spill-over risk of external crises. Significantly, in retrospect, Sokalski’s construal of the UNPREDEP mission in Macedonia reflected the following assessments: prevention facilitated transition to statehood, it confined conflict and built confidence, it had a multidimensional approach and not just military, and it led to the development of other similar preventive diplomacy ideas within the UN (Grillot, reviewing Sokolski, 2003:133).

The UNPREDEP in Macedonia was the first of its kind in peace- and state-building history after the Cold War. This is perhaps why so much was expected from this newly tested force and so many responsibilities rested on the mandate’s staff. It successfully defended Macedonia from external regional threats (as this was the substantial objective) and yet it left the dormant internal ethnic community issues unaddressed. The issues between the Macedonian and Albanian communities were to be settled after the armed violence in the country following the Kosovo War. Put differently, the external security problems were prioritized over domestic ones. This was also evident in the US decision to keep the US UNPREDEP elements in the country – although they were under Macedonian control – and to transform the force’s composition by March 1999 that coincided with the start of US-led NATO attacks in the Kosovo War. The following month, the US forces once part of the UNPREDEP were put under NATO command as, again, a defender of Macedonia’s external borders against any possible assault by Milosevic.

Under the NATO flag, more emphasis on external security matters would follow (Eldridge, 2002:57). Meanwhile, the UNPREDEP mission did not produce an impressive record as regards persuading the Greek government to agree to a consensus on the name issue during its stay in Macedonia.

### ***The OSCE***

The OSCE had taken the stage in Macedonia back in 1992 during the first phase along with the UN; and indeed reciprocated as swiftly as the UN by sending its spill-over mission. This was accompanied by the activities of High Commissioner on National Minorities (HCNM). Compared to the UN and EU (and NATO) involvement in Macedonia, the OSCE involvement has sometimes been interpreted as at secondary level. This, perhaps, can be taken as a consequence of its conflict prevention method which was largely a soft field of activity – a theme that raised arguments in mid-1990s that the organization should be allowed by majority vote to decide on military options as need be (Zaagman, 1996:47).

It is known that the OSCE acts on the basis of priority issues defined by its member states and the most demanding decisions are taken by consensus. This was observed in Macedonia's case and the mission's prompt actual involvement in the country (Stefanova, 1997:114). By and large, the OSCE mandate was based on the prevention of spill over of conflict in Yugoslavia and protection of territorial integrity of Macedonia (Ackermann, 2003:108). In line with these, ethnic intolerance cases were recorded and reported to international community and organizations (Stefanova, 1997:114). Specifically, the mission frequently found itself dealing with Serbia's attempts such as border incursions into Macedonia and the official Serbian statements questioning the existence of Macedonia as an independent state in the future (Ackermann, 2003:108).

In face of such external volatility, the HCNM Max van der Stoel took many efforts addressing ethnic issues. In his recommendations, he underscored issues such as employment discrimination, demands for broadcasting in Albanian language, citizenship law, and educational rights for the Albanians. Van der Stoel also drew international attention to the Kosovo conflict in May 1999 and its possible ramifications for Macedonia (2003:109).

Viewed through the larger perspective, despite the OSCE transcended its initial characteristic of being a "diplomatic process rather than a consistent and continuous organization ... (which) ... consisted of infrequent meetings between participating states" and adapted itself to post-Cold War security challenges in Europe and elsewhere, its operations did not escape from criticism both from target and participating states (Stewart, 2008:269). The most evident in this respect may be taken as the large autonomy given to the HCNM and the fact that his mandate was not clearly-contoured about certain themes such as early warning and preventive diplomacy (Ackermann, 2003:108) – the latter being more open to a wide range of interpretation. Moreover, the fact that the OSCE and the EU cooperate(d) (as well as the Working Group) could mean that the OSCE achievements should be seen as a product of joint efforts of the EU and the OSCE, and not solely as its individual organizational efforts.

In addition to technical drawbacks such as lack of staff, resources, and inadequate mandates; mission mandates are observed to be vague and suffering from duration problems. The target states in which the OSCE mandates are deployed are often reported to offend OSCE's interference and its recommendations after some time lapse, which might be discouraging on both that state itself and the OSCE. Furthermore, there is the allegation that the OSCE has been prioritizing the transitional states and ignoring the problems of the developed countries. However, the most significant among these has perhaps been that at times it can be selective and patronizing on the target states (Stewart, 2008:269-70).

During the second phase, OSCE involvement in Macedonia mostly focused on crisis management and curbing it however, it again took a back seat in comparison to the EU (and NATO) and it was during this phase that the ethnic Macedonian population and the political leaders in Macedonia often criticized what they described as “pressure” from the international actors in their country, not to mention the arguments that they were at times supportive of the Albanian community in Macedonia (Ackermann, 2003:112). In the third period following the settlement of the conflict with Ohrid Framework Agreement (OFA), the OCSE and EU would augment their cooperation levels and the OSCE functioned as a substantial agent in Macedonia, with more staff than before and an enhanced agenda. Confidence-building measures, reporting on the humanitarian issues, monitoring arms- and human-trafficking and deployment of police in the country make up its agenda, among other issues (2003:115). Currently, the OSCE mission in Macedonia focuses largely on police development, rule of law and good governance issues.

### ***The EU***

Indeed, the EU involvement in Macedonia could be described as a belated involvement since the EU (and the USA) initially was supportive of individual military handling of the crisis by Macedonia itself. However, it soon was recognized that outside military support would be crucial, and so the EU became increasingly engaged (Ackermann, 2002:73). The EU mostly showed itself in bilateral negotiation processes between the Macedonians and the Albanians during the crisis and eventually proposed a Stabilization and Accession Agreement (SAA) with Macedonia. The agreement rested on providing at first a \$30 million aid package and putting Macedonia in the potential candidacy list. It envisaged allowing Macedonia to have access to European markets and to impose taxes on imports from the EU. These and other terms of the agreement were of course conditional as the EU made it clear that the assistance, both in cash and in kind, would be provided as long as the ethnic Macedonians and Albanians continued the negotiation process (Eldridge, 2002:62).

What characterized the EU involvement were the mediation efforts, largely by two representatives: EU’s foreign and security policy chief Javier Solana, accompanied by NATO’s Secretary General George Robertson. In May 2001, Solana functioned as a substantial mediator during the deliberations for establishing an all-comprehensive national unity party and later on also in the prevention of its dissolution. Solana, along with Robertson, was influential in ceasefire negotiations and they convinced Macedonian Prime Minister Ljubco Georgievski at least twice in May and June the same year, not to announce a state of war (Ackermann, 2003:112).

The EU welcomed the signing of the Ohrid Framework Agreement (OFA) in August 2001 and pledged a donors’ conference for Macedonia. It set mid-October 2001 as the date for this conference but again, this was tied to the fulfillment of the terms and conditions of the OFA (Kim, 2003:119) and was postponed several times. The EU meanwhile announced that it would

extend an additional \$42 million in aid if the Macedonian parliament supported the reform plan and Germany extended an additional \$2,3 million unilaterally. The donors' conference eventually convened in Brussels on 12 March 2002 and donors pledged a total of \$515 million, in fact more than what was estimated. Although this was perceived as a substantial step, it carried with it criticism from Macedonia that these were economic and financial "blackmails" (Eldridge, 2002:67). The donor programs aimed at assistance in balance of payments, rehabilitation projects, implementation of the OFA and various development programs in the future (Kim, 2003:119). Although past experiences had shown that pledged amounts were not extended immediately in other cases, the EU had approved in late 2001 an emergency aid package of \$12 million for Macedonia, after the \$12,8 million pledged in the immediate aftermath of the fighting (Dyker, 2003:417). These funds were to be used for the reconstruction of damaged house dwellings, electricity and water supplies.

The fast-paced diplomacy of the EU in Macedonia coincided a time when the organization demonstrated a visible enthusiasm aimed at more involvement in the reconstruction of its immediate periphery; the Balkans. Hence, the OFA was not surprisingly construed as a very significant diplomatic success for the EU's then evolving common foreign and security policy, in the presence of Solana, and later French politician François Léotard and diplomat Alain le Roy. The EU also undertook police missions in the country after 2003. Since 2009, the EU is expected to announce a date to start negotiations with Macedonia.

If the EU has endeavored, the criticisms against it with regard to state-building merit attention as well. The EU, despite being the strongest supranational entity, was attacked as lacking credibility in the eyes of the target states' peoples in certain areas which they are trying to improve, for instance minority and human rights. Also, the technical fact that the terms of office of relevant staff were not assigned long enough to allow thorough learning about that particular place and conditions of conflict was another niche to be corrected. Last but not least, the EU's occasional decisions postponing the start of accession negotiations sometimes lead the target states' governments not to prioritize their EU bid as wholeheartedly as before (Koinova, 2011:826). Although these were general criticisms against the EU's state-building activities, the Macedonian experience has demonstrated that it applied to state-building process in Macedonia as well.

## Evaluation

This concise descriptive account of how the UN, the OSCE and the EU fit in the state-building practice in Macedonia certainly unveils several consequences concerning both the external agents and the host state. What follows is an overview of the skeptical and critical accounts, to be followed by more favorable ones. The first thing to be mentioned is that the knowledge and experience of peace- and state-building is a quite recent phenomenon, about which the actors in this game did not possess any know-how before the end of the Cold War. The concept evolved as

post-Cold War conjunctures evolved and players in the state-building eventually found themselves adapting to this process. As local conflicts throughout the world attracted more attention from the major international actors, more learning was recorded about the phenomenon. It was only after some learning and experience that these actors gradually came to comprehend the limits of the process. Two decades from 1991 on, knowledge and practice on state-building is still evolving and does not rest on rigidly prescribed do's and don'ts. The 1992 appeal by Gligorov to the UN marked the beginning of this process in Macedonia and compared to that specific year, the country's state-building has come a long way. Despite the lack of any precedent and experience of preventive mission mandate, the UN for its part was able to guard the country against external threat, which the governing elite had set as the primary objective. Qualifying as the first mission with preventive tasks, it has been successful, despite the challenges it faced in ensuing years. The state-building in Macedonia was also new for the OSCE and later the EU, who mostly worked jointly. Although the former remained more on the sidelines, the latter effectively explored paths of civil reconstruction and later engaged in hard security-related issues such as police training. This coincided with a time when the EU was broadening its policy agenda to cover its immediate vicinity in an effort to have more saying over European issues. In short, what was new for Macedonia in terms of state-building was also new for these external agents. Therefore, any criticism leveled against the state-building experience in the country must take this fact into account.

Second, the often heard criticism about ignoring the local people and making no account of them as a result of introducing state-building mechanisms that operate just between the external agents and the governing elite of the target country draws parallelisms between the new state-building and old colonial practices (Bickerton, 2007:93-109). Yet, the conditions may not be as clear-cut as assumed in such an argument. In specific terms, depending on the vehemence of the violent condition in a given state, the conditions introduced by the external agent would vary. The more acute the violence, the more authorized the external agents are likely to be. It is at this point that the process might be described as colonial-like and exploitative on the locals. But again, the conditions would vary; who is imposing what, to what extent, and to whom? And finally, does this amount to coercion at all times or imply occasional coercion? Before declaring all external agent activities as straight "colonial" practice in any target state right away, the specificities of individual conflicts must be paid due attention. In Macedonia, as mentioned above, the practice of three external agents in charge of reconstructing the state have so far not amounted to colonial practices – despite occasional problems encountered between them and the rulers - because the country was not born after a severe fighting that would require harder options to bring together the warring parties and introduce stricter policies for the reconstruction of the country like in Bosnia and Kosovo. Macedonia's state-building did not require these, which, if employed, would bring forth arguments that it was a protectorate.

Third, so much external intervention can create over-dependency. This is a paradoxical situation because the intended outcome for the target state is to enable it to stand on its feet and claim sovereignty. Again, this would depend on the degree of intensity of violence in the country. If there has been a long fight, if there is no prospect for consensus other than without the 3<sup>rd</sup> party intervention, and if the state's operating mechanisms have collapsed or about to, then strong external agent existence with large powers should be expected, as in Bosnia and Kosovo. These two states epitomize state-building examples almost from scratch and run through minds of longer 3<sup>rd</sup> party engagement in the future in governance structure of these states with high levels of dependency. However, although there is considerable external engagement in Macedonia, their mandates in the past have been temporary and currently being implemented as the scope of the tasks call for. As such, over-dependency on international involvement can be seen as a low probability.

Fourth, while trying to introduce democratic and liberal governance traditions in a given target state, state-building practice might prompt nationalistic tendencies and produce resistance if policy-framing of domestic actors and external agents do not converge on vital matters. In such cases, the outcome is likely to be determined according to the power of leverage of the two sides. In Macedonia, the first phase of international involvement did not indicate much resistance due to established stability and absence of internal conflict. Resistance and nationalist fervor were rather observed during and after the crisis at the turn of the century. This attitude was a product of dormant internal disagreements between the two major ethnic communities and between them and the 3<sup>rd</sup> parties. This may qualify as the period regarding which the allegations of imposing and dictating prescriptions on the ruling elite were at their peak and perhaps this was inevitable from the perspective of the international agents in order to bring an end to the actual chaos in the country.

Fifth, the frequently debated concept of "shared sovereignty" seems to be at work while addressing state-building cases with arguments for and against it. Unlike Krasner's positive interpretation of shared sovereignty as a solution for establishing and keeping stability by engaging international agents permanently in at least some aspects of state-building in a given state (Krasner [2005] cited in Bickerton, 2007:106), this study takes the view that it should be intended for temporary periods because if not, it is likely to harness nationalist tendencies among the governing elite and the society, not to mention the risk for the target state's governing elite to become willingly dependent on the international mechanism thinking that it is going to function as a trusteeship under all circumstances and act as a protector. This would definitely be erosive on the state's existence itself and would amount to colonial practices. Shared sovereignty thus would be the last step on the way to colonial state-building practices. So far, the state-building practice has fortunately not attained "shared sovereignty" levels in Macedonia while the picture in Bosnia and Kosovo is quite different.

As far as the positive consequences are concerned, the external agent involvement in state-building process has been observed as the most instrumental factor in ending actual crisis conditions. Indeed, this has gained pace in the post-Cold War era as humanitarian intervention came to be tested in various conflict spots of the world. The capacities of different international agents have pointed to different accounts of success in different conflict spots. Despite total failure episodes as in Rwanda and Angola in the early 1990s and another one in Srebrenica in 1995, the UN's intervention record indicates a relatively consistent picture in Macedonia. Where the state lacks military means to suppress and handle a conflict, the UN (along with NATO) has been one of the most appealed agent(s) to bring an end to the conflict situations. Given that termination of the actual fighting condition is the pre-condition and the first step in state-building, external intervention shall remain as the first consulted mechanism, and UN (and NATO) as the main agent(s) to bring stability. Macedonian case qualifies as a to-the-point example in showing how stability was preserved during UN's presence and lost after it left, only to be fixed by renewed international intervention again in 2001.

Second, the states experiencing conflict often suffer from poor economic conditions and as such they need financial aid. The external agents are the most reliable actors that provide assistance in cash and kind to such states, which they otherwise would not be able to have access. Provision of monetary aid is equally significant as providing basic military security in states experiencing conflict. Although financial aid usually ends up being tied to conditions which call for reforms, it still does constitute an important ingredient of the future development of the target state. Macedonia has received considerable amounts of aid from external agents and from their members through donors' conference activities, as well as individual grants.

Third, the state-building process in a given state facilitates the integration of that state into the international community. Since external agents are stationed within the territory of the target state, there is almost constant contact between the two actors, and this in turn allows voicing the issues concerning that state's domestic and foreign policies at international fora and carve a space for that state in the international arena. Solely comparing the level of Macedonia's present links with international organizations to those in 1991, and particularly those with the EU, would lay bare how closely affiliated the country has become with international community.

Finally, it goes without saying that the most challenging post-conflict management domain, i.e., institution building, would not be fulfilled if it were not for external agent involvement. The international agents are more experienced than before and have introduced considerable know-how on state-building in several post-conflict regions in the world. Having inadequate and sometimes almost no resources for building institutions, states that emerged from conflict have but to consult external actors. All aside, the example of police training activity handled by external agents in Macedonia would be self-explanatory in this respect.

## **Concluding Remarks**

It can be argued that the way the above considerations conditioned Macedonia's pre- and post-conflict times since 1991 and how they shaped the state-building process in the country reveal a mixed picture, rather than a clear black-and-white one; and demonstrate that external agent intervention has become a dominant trend in post-Cold War state-building policies and practices. Both positive and negative by-products and consequences of state-building have been evident since it has been employed in various conflict spots of the world. Having coincided with a tumultuous period of post-1991, the concept and its implementation evolved from being just peace-building to state-building with formal inclusion of several development fields. Due mainly to the absence of any precedent regarding the implementation of the concept and high expectations from it, it has given way to criticisms that it amounted to colonial practices in a new era, with different actors and venues. Building on the example of Macedonia, this study has taken the view that it has not reached such levels in the country, due to a combination of factors touched upon above, while they may hold valid for such states as Bosnia and Kosovo owing to the severe fighting that preceded, which proved to be largely determinant on the degree and content of the state-building process that followed.

As things stand, it should be borne in mind that every state-building should be treated individually, taken into account its particularities. Circumstances in Rwanda and Angola certainly necessitated different types of action and policies than circumstances in Bosnia or Kosovo, and Macedonia for that matter. The case of Macedonia is *sui generis* as it invited foreign intervention, so external agent presence was not imposed on the country. Nowadays, perhaps due to its strong supranational character, most criticism about outside intervention in western Balkans targets the EU in particular - by arguing that it introduces too much conditionality - often ignoring that the EU is also evolving and trying out state-building policies. Still, if the EU targets permanent security and stability in its vicinity and more significantly, if it wants to avoid allegations about practicing colonial policies, it should award the countries such as Macedonia by announcing a date to start accession negotiations. Above all, the criticisms should offer alternatives as to what should be done for more effective state-building, rather than offering nothing more than expostulation. Only then, the desired state-building agenda might start taking a satisfactory shape and content, for both scholars and practitioners.

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# Economic Development in Macedonia: Issues and Challenges

**Dragan Tevdovski<sup>57</sup>**

## Abstract

*The economic challenges facing Macedonia in 2011 are considerable. Macedonian economy is under-performing. The key problems with Macedonia's economic policy are elusive growth and huge unemployment. Average real gross domestic product (GDP) over the past twenty years is slightly above one percent. The level of the GDP per capita is 65% lower than the average of the European Union. One third of the labour force is unemployed. To overcome these challenges the reforms should be made on use of the scarce resources to maximize future economic growth.*

*The paper applies the “growth diagnostics” analytical framework, developed by Hausmann, Rodrik and Velasco (2005), for figuring out the policy priorities. Its goal is to identify the most binding constraints on economic activity, and to set policies that will target these constraints. This strategy is opposite than the prevailing approach today, which is a “laundry list” approach (“any reform is good”, “the more areas reformed, the better”).*

*The paper examines the factors and constraints that affect recent and potential economic growth in Macedonia. The main economic growth determinants in Macedonia are compared with the selected economies in South Eastern Europe (SEE), other peer economies in Central and Eastern*

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<sup>57</sup> Dragan Tevdovski is Assistant Professor at Faculty of Economics, University “Sts. Cyril and Methodius”. His primary research interests include econometrics, economic policy, and financial econometrics. He teaches Statistics for business and economics (undergraduate studies) and Financial Econometrics, Multivariate statistical methods, and Time series analysis (postgraduate studies). Professor Tevdovski received his M.S. in Statistics from Faculty of Economics, University of Belgrade, Serbia, and his Ph.D. in Economics from Faculty of Economics, University “Sts. Cyril and Methodius”. He is coauthor of the two editions of the University text book: “Statistics for business and economics”, part of the team of authors of the monograph “Nobel prize winners in economics 1969-2008” and together with professors from the EU author of the scientific monograph “Labour Market Characteristics in Selected Economies”. He is also author of 22 scientific papers and 3 policy papers. Co-authors of some of the papers are professors from USA and the EU. Professor Tevdovski successfully realized six study visits abroad. The most important is the study visit at the George Washington University, Washington DC, USA, which was financed from the U.S. Department of State’s Bureau of Educational and Cultural Affairs. He participated in eight scientific conferences and thirteen seminars abroad. Also, he worked on six international projects. Contact e-mail address: [dragan@eccf.ukim.edu.mk](mailto:dragan@eccf.ukim.edu.mk)

*Europe (CEE), and the Euro area. The findings of the paper have important implications for the economic policy makers from Macedonia.*

Keywords: economic growth, economic reform, growth diagnostics, binding constraints, Macedonia.

## **1 Introduction**

The economic challenges facing Macedonia are considerable. The key problems with Macedonia's economic policy are elusive growth and huge unemployment. Average real gross domestic product (GDP) over the past twenty years is slightly above one percent. The level of the GDP per capita is 65% lower than the average of the European Union. Official rate of unemployment is 31% in 2011. To overcome these challenges the choices to be made have to use the scarce resources to maximize future economic growth and employment opportunities.

The “growth diagnostics” approach to reform is much more contingent on the economic environment and also avoids an “anything goes” attitude of nihilism. Hausmann, Rodrik and Velasco (2005) argue that the standard policy reforms included in the Washington Consensus have the potential to be growth-promoting. However, the experience of the last 15 years has shown that the impact of these reforms is heavily dependent on circumstances. Policies that work wonders in same places may have weak, unintended, or negative effects in others.

The “growth diagnostics” approach is motivated by three considerations. First, reform strategies should be principally targeted at raising rates of economic growth, because higher levels of living standard are the most direct route to achieving improvements in social and human indicators. Second, economic growth strategies should differ according to the country's opportunity and constraints. There is no identical economic growth strategy for all countries. But, there are some general principles – such as property rights, the rule of law, market-oriented incentives, sound money, and sustainable public finances – which are desirable everywhere. Third, economic growth strategies require a sense of priorities. It is seldom helpful to provide governments with a long list of reforms, many of which may not be targeted because of the administrative and political limitations that governments faced.

In order to find the reform priorities for Macedonia, the comparisons of main growth determinants are made with: selected economies from Southeastern Europe (SEE): Albania, Bosnia and Hercegovina, Bulgaria, Croatia, Kosovo, Montenegro, Romania and Serbia; other peer economies from Central and Eastern Europe (CEE): Czech Republic, Estonia, Hungary, Latvia, Lithuania and Poland; and the Euro Area.

This paper is organized as follows. The “growth diagnostics” approach is discussed in the section 2. The section 3 applies this approach to Macedonia, and identifies the binding constraints on growth. The final section provides conclusions.

## 2 Theoretical Approach: A “Growth Diagnostic”

The “growth diagnostics” approach is developed by Hausmann, Rodrik and Velasco (2005). It is used for an economy that is under-performing. “Growth diagnostics” is a strategy for figuring out the policy priorities. The strategy is aimed at identifying the most binding constraints on economic activity, and setting policies that will target these constraints. This strategy is opposite than the prevailing approach today, which is a “laundry list” approach. It means simply to go for whatever reforms seems to be feasible, practical, political doable and enforceable through conditionality. The “laundry list” approach is based on the notions: (i) any reform is good; (ii) the more areas reformed, the better; and (iii) the deeper the reform in any area, the better.

Hausmann, Rodrik and Velasco (2005) show that the “laundry list” approach is faulty in its economic logic because of three considerations. First, the principle of second-best indicates that we cannot be assured that any given reform taken on its own can be guaranteed to be welfare promoting, in the presence of multitudes of economic distortions.<sup>58</sup> Second, the welfare need not be increasing in the number of areas that are reformed – except in the limiting case of “wholesale” reform.<sup>59</sup> Third, a more extensive reform in any area is likely to fall because of the presence of the second-best interactions.

A more sophisticated version of the “laundry list” approach is the “second-best” reform. It takes into account the second-best interactions. “Second-best” reform strategy is less ambitious than the “wholesale” approach, but that recognizes the presence of the possibility that interactions across distorted markets have the potential to both augment and counter the direct welfare effects. Under this strategy, one would give priority to reforms that engender positive second-best effects, and downplay or avoid altogether those that cause adverse effects. The problem with this reform strategy is that many of these second-best interactions are very difficult to figure out and quantify *ex ante* (Hausmann, Rodrik, & Velasco, 2005).

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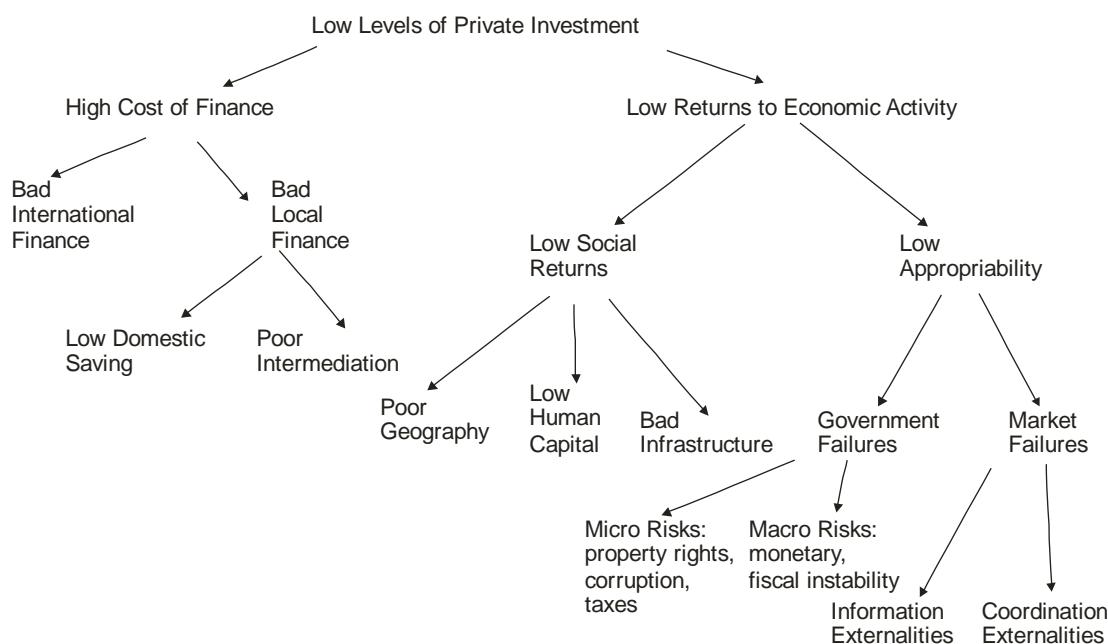
<sup>58</sup> The second-best principles concern what happens when one or more optimality conditions cannot be satisfied. Lipsey & Lancaster (1956) showed that if one optimality condition in an economic model cannot be satisfied, it is possible that the next best solution involves changing other variables away from the ones that are usually assumed to be optimal. This means that in an economy with some uncorrectable market distortions in one sector, actions to correct market distortions in another related sector with the intent of increasing overall economic efficiency may actually decrease it.

<sup>59</sup> “Wholesale reform” is a strategy to simultaneously eliminate all distortions. The best possible economic growth rate is achieved by eliminating all obstacles that stand in its way. But, in reality this strategy is impossible to implement.

If the second-best interactions cannot be fully figured out, the approach could be elimination or reduction of the biggest distortions in the economy. This is an application of what is known as the “concertina method” in the literature on trade theory: order distortions from largest to smallest in proportional terms, start by reducing the largest of these to the level of the next largest, and proceed similarly in the next round. However, this strategy has two severe shortcomings. First, it does require us to have a complete list of distortions, even those that do not take the form of explicit taxes or government interventions. Distortions that arise from market failures or imperfect credibility, for example, are unlikely to show up on our radar screen unless we have reasons to look for them. Second, the concertina method does not guarantee that the reforms with the biggest impacts on economic welfare and growth will be the ones undertaken first (Hausmann, Rodrik, & Velasco, 2005).

The “growth diagnostics” strategy focuses on the most binding constraints. The idea behind the strategy is simple: if (i) for whatever reason the full list of requisite reforms is unknowable or impractical, and (ii) figuring out the second-best interactions across markets is a near-impossible task, the best approach is to focus on the reforms that alleviate the most binding constraints, and hence produce the biggest bang for the reform buck. Rather than to utilize a spray-gun approach, in the hope that we will somehow hit the target, we should focus on the bottlenecks directly. In practice, the approach starts by focusing not on specific distortions (the full list of which is unknowable), but on the proximate determinants on economic growth (saving, investment, education, productivity, infrastructure, and so on). Once we know where to focus, we then look for associated economic distortions whose removal would make the largest contribution to alleviating the constraints on growth.

Figure 1: The Growth Diagnostic Decision Tree (*Adapted from Hausmann, Rodrik and Velascso (2005)*).

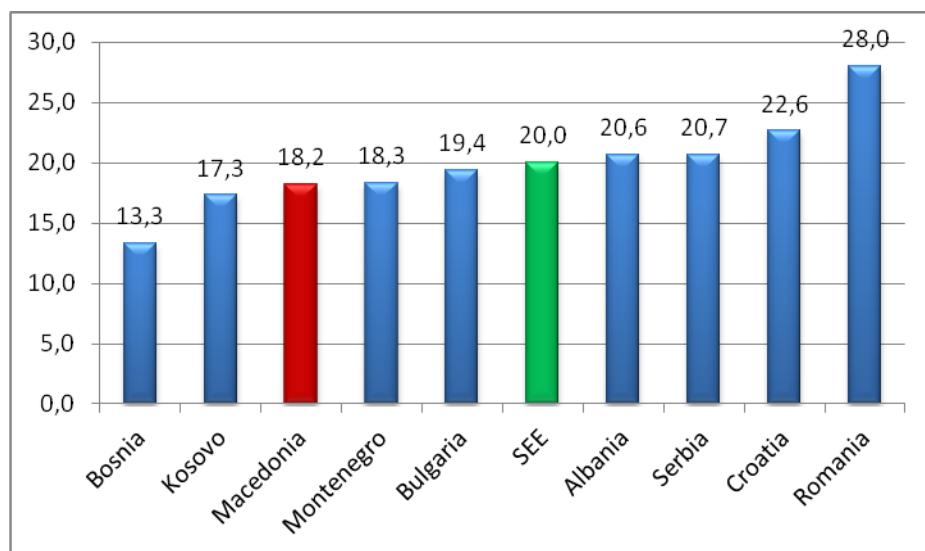


The “growth diagnostics” strategy can be conceptualized as a decision tree (Figure 1). A process of elimination can help identify binding versus non-binding constraints (Moore & Vamvakidis 2007). Economic growth depends on the returns to economic activity and on the cost of finance of the economic activity. The first stage of the “growth diagnostics” strategy aims to uncover which of these two factors pose the greater impediment to higher growth. The next stage is to uncover the specific distortions that lie behind the more severe factor. If it is a case of low returns, it could be due to low social returns (insufficient investment in complementary factors of production such as human capital or infrastructure) or poor “appropriability”, which could be due to public sector problems (high taxation, poor property rights and contract enforcement, corruption, and financial, monetary and fiscal instability) or market failures (learning and coordination externalities). If it is a case of poor finance, the problems could be due to domestic financial markets or external ones.

### **3 Identifying the Binding Constraints**

Macedonia has significantly lower gross fixed capital formation in recent years in comparison to average of SEE region. In 2009, the country’s gross fixed capital formation is 20,8% of GDP and the average of SEE comparator countries is 25,8% of GDP. Highest levels are in Romania and Albania, 30,3% of GDP and 29,0% of GDP, respectively, and lowest level is in Bosnia, 19,7% of GDP. The situation was almost the same in 2007. Macedonia’s gross fixed capital formation was 20,2% of GDP (lowest in SEE region) and the average of SEE comparator countries was 28,2% of GDP (highest in Montenegro 32,3% of GDP). Figure 2 shows that private investments in the country are lower than SEE average. In 2009, Macedonia’s gross private investments are 18,2% of GDP and the average of SEE comparator countries is 20,0%. Only, Bosnia and Kosovo have lower investment activity in the private sector.

Figure 2: Gross fixed capital formation, private sector (% of GDP), 2009 (*World Development Indicators, WB*)



The starting point of “growth diagnostic” approach is to determine whether low levels of private investments are being inhibited by high cost of finance or low returns to activity. Or with other words, investment and growth is constrained because entrepreneurs and investors cannot get the capital they need to start a business or to expand operations, or because investors do not want to invest as they do not expect to retain a sufficient share of their efforts (Enders, 2007).

### **3.1           High cost of finance?**

Are the cost and access to finance the binding constraints to growth in Macedonia? The World Bank’s Enterprise Surveys find out that 27.73% of Macedonian firms are identifying access to finance as major business constraint. This percentage is third highest in the region and it is higher than the average of SEE (20,45%) and CEE (19,75%) countries. Therefore the importance of access to finance is analyzed in more details by examination of the role of international finance and domestic finance as constraints of private investments in Macedonia.

#### *3.1.1 Bad international finance?*

Access to international finance is not the most important constraint to growth at current moment. Macedonia had enjoyed access to international finance. There is significant increase in the external debt. The external debt was 40.9% of GNI in 2003 and increased to 62.2% of GNI in 2009. As comparison, the rate of increase is slightly lower than in Albania and much higher than in Bosnia, Serbia and Bulgaria (Table 1). The average interest on new external debt commitments is 6.7% and it is much higher than the other countries from SEE, except Albania. The average interest on new external debt commitments is: 1,2% in Serbia, 1,6% in Bosnia, 2,4% in Bulgaria, 3,0% in Romania, 5,5% in Montenegro, and 9,9% in Albania. There are two main reasons for this high price: no acceptance of the Government to make arrangement with the IMF and the uncertainty of the country’s integration process in NATO and EU. In addition, the country’s capability for attracting foreign direct investments is not satisfactory. The level of foreign direct investment (2,7% of GDP) is the second lowest in SEE region in 2009. The average level of FDI is 8,9% of GDP. Also, in 2007, the year before the global crisis, the level of FDI in Macedonia was significantly lower than the average of SEE countries. It was 8,8% of GDP in Macedonia, while 14,2% of GDP was the SEE average.

*Table 1: External debt stocks (% of GNI), 2003 and 2009 (World Development Indicators, WB)*

Country	2003	2009	Increase
Bosnia	50.1	54.6	9.0%
Serbia	71.8	79.7	11.0%
Bulgaria	65.7	90.4	37.6%
Macedonia	40.9	62.2	52.1%
Albania	25.5	40.3	57.9%
Romania	38.5	71.6	86.1%

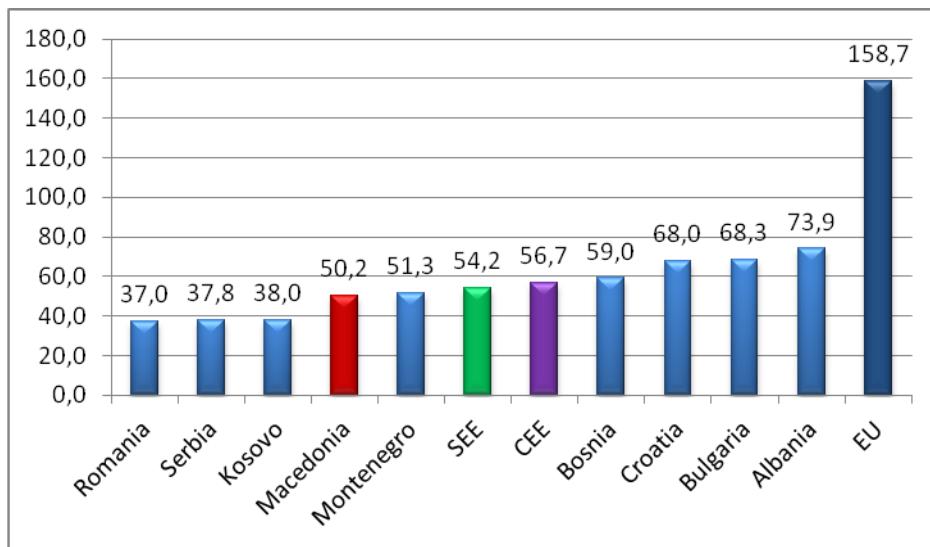
### *3.1.2 Bad domestic finance?*

The problem of poor domestic finance could emerge for two reasons: low domestic savings and poor financial intermediation. The gross domestic savings averaged 3,1% of GDP through 2003-2009, very low for regional and international standards. In 2009, its value was 3,5% of GDP, which was almost three times lower than SEE average. For example, gross domestic savings of Albania, Bulgaria and Croatia are 7,4%, 17,7% and 23,3% of GDP, respectively. Macedonian low domestic savings can be explained in part by the low growth rate of the economy and the negative impact of the 2001 war conflict in the country. Despite the weak domestic savings, the financial deepening in Macedonia, measured as money and quasi money (M2) as percentage of GDP, is on the average level of the SEE region (Figure 3).

There is also an upward trend in the M2 to GDP ratio from 22,5% in 2002 to 50,2% in 2009. Domestic credit to private sector is 44,3% of GDP in 2009, which is 10,4 percentage points lower than SEE average. For example, Croatia has the rate of 66,3% and Bulgaria of 75,6%. However, domestic credit to private sector is characterized by continual annual growth, which starts with 17,7% of GDP in 2002. These two upward trends (M2 to GDP and domestic credit to private sector) exclude the volume of financial intermediation as the most important constraint to growth in the future.

The spread between lending and deposit rates is a reliable indicator of the efficiency of financial intermediation, with low spreads indicating a more efficient financial system (Sen & Kirkpatrick, 2011). Macedonia's interest rate spread is the lowest in the region. In 2009, the interest rate spread for Macedonia was 3,0% compared to 5,6% in SEE region. In addition, Macedonia's interest rate spread is decreasing with the time, starting with 8,8% in 2002 to 3,0% in 2009.

**Figure 3: Money and quasi money (M2) as % of GDP, 2009 (World Development Indicators, WB)**



Also, the lending rate in Macedonia is slightly lower than the average rate in SEE through years. For example, in 2009 it is 10,1% in Macedonia and 11,7% in SEE, or in 2005 it is 12,1% in Macedonia and 13,2 in SEE. These facts reject the possibility that the financial intermediation is the key barrier to growth.

### 3.2 Low return to economic activity

The analysis focuses in more detail on low returns to economic activity. The low returns to economic activity could be due to low social returns, that is low total economic returns on factor accumulation, regardless of their ultimate recipient, or low “appropriability”, i.e. low private returns even if social returns are high because of, for example, taxes, corruption, market failures or some other cause (Moore & Vamvakidis, 2007).

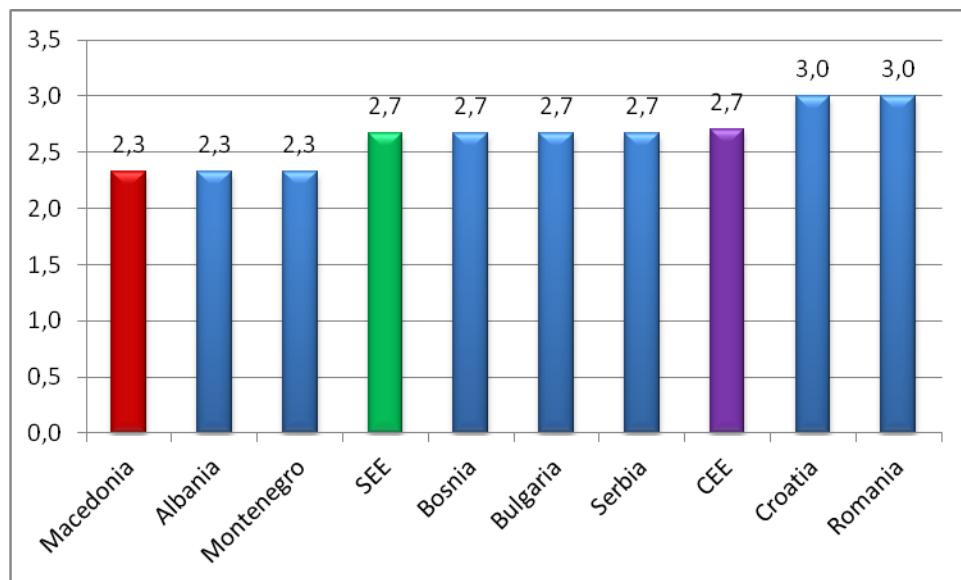
#### 3.2.1 Low Social Returns

Three factors can explain low social returns: geography, infrastructure and human capital. The first factor is geography. Macedonia is a landlocked country, a geographical characteristic which has often been seen as an obstacle to growth (Collier, 2007). The country's energy resources are poor, with modest hydro energy potential and low potential of fossil fuels, only lignite. However, Macedonia belongs in a temperate climatic zone, a geographical characteristic which is favorable to growth (Sachs, 2003). Finally, the country's location, a major transportation corridor from Western and Central Europe to Southern Europe and the Aegean Sea, and its proximity to the large European Union market suggest that geography cannot be seen as major obstacle to economic growth.

The second factor for low social returns is the lack of appropriate infrastructure in the country. Infrastructure indicators of EBRD point out that the country's infrastructure is a possible key binding constraint for growth. The index of road infrastructure is the lowest in the region, together with the indexes of Albania and Montenegro (Figure 4). The same is with the index of railway infrastructure (Figure 5). Index of electric power infrastructure is equal to SEE average. But, the country is faced with very uncertain future in respect to electric power, if the big energy projects are not taking now. The Government is building a huge project of monuments and museums instead of building infrastructure, which is obvious example of allocative inefficiency. In the literature major projects like this serving to increase the prestige of those who order their undertaking, are so-called white elephants (International Monetary Fund, 1991, p. 30).

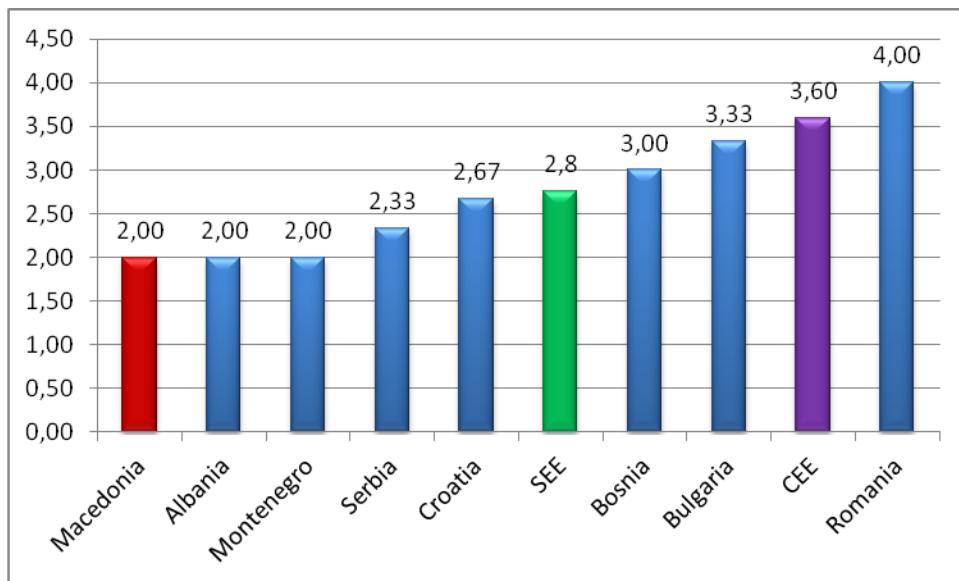
The third factor is human capital. The European Commission point out that the level of education and training of labour force is still low and there is significant difference between the qualification profile of workers and the needs of the private sector (European Commission, 2008). In addition, the Government in the last years forces the process of opening the faculties in

**Figure 4: Roads (index, increasing from 1 to 5), 2009**



*Source: European Bank of Reconstruction and Development.*

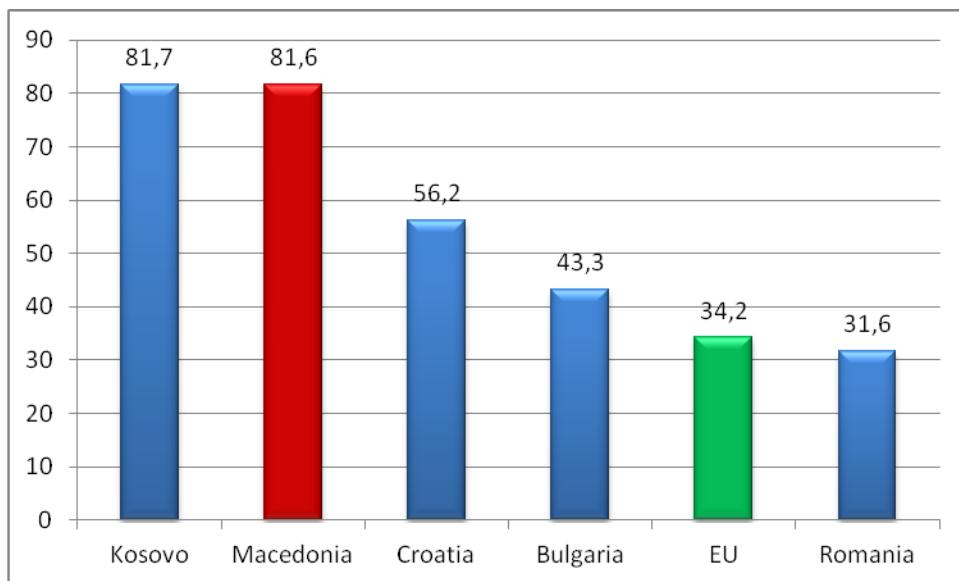
**Figure 5: Railways (index, increasing from 1 to 5), 2009**



*Source: European Bank of Reconstruction and Development.*

every city. The declarative goal is to increase the percentage of the people with high education. But, opening of the university studies with a questionable quality only improves the situation “on paper”, and in the same time reduces the number of people which are needed in Macedonian economy, especially industry.

**Figure 6: Long-term unemployment (% of total unemployment), 2009**



*Source: World Development Indicators, World Bank.*

The labor market is far from equilibrium. The rate of unemployment is the second highest in Europe (32,0%). According to official statistics, the number of employed is 637.855, and the number of unemployed is 300.439 (in 2010). The number of employed for which are paid social contributions are much lower, 413.797.

The unemployment is mainly long-term: Huge 81,8% of unemployed are waiting for employment more than 1 year (Figure 6). In this group dominate the unemployed which are waiting for unemployment more than 4 years (63,8% of unemployed). As comparison, in EU only 34,2% of unemployed are waiting for employment more than 1 year (World Bank, 2010).

The time of waiting is an important indicator of the labour market function. When the labour market is functioning well, unemployment is short term and the workers easily move from one workplace to another. Long-term unemployment is a signal that the obstacles for unemployment are from structural nature. Also, the very long period of waiting for employment influence the reduction of human capital (the workers lose acquired capabilities in the educational process). This leads to conclusion that shortage of skills and low human capital formation is not yet a binding constraint to growth, but it may become so in the foreseeable future.

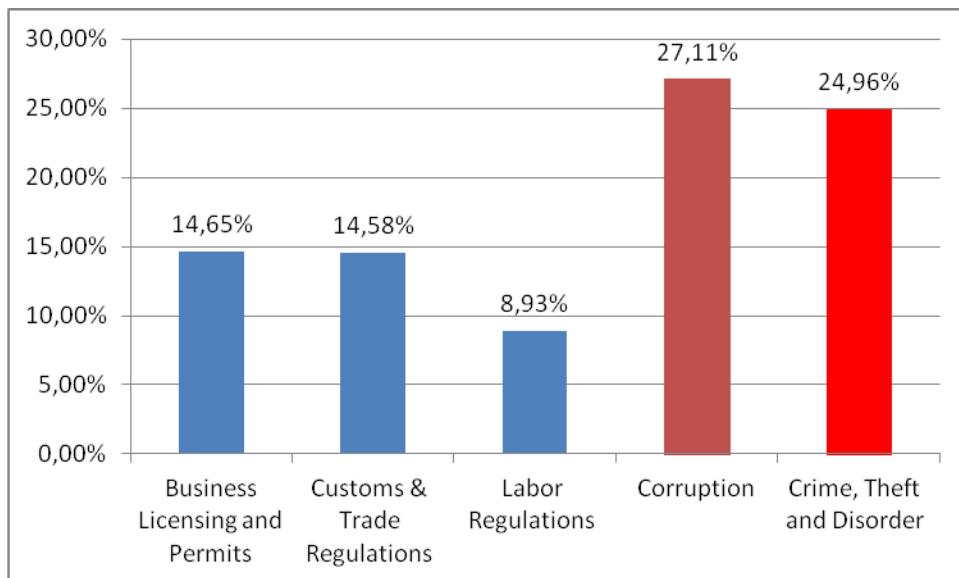
### *3.2.2 Low appropriability?*

At the end, the focus is on the factors that may have led to weaknesses in the appropriability of returns, and by doing so, weakened the incentive to invest, especially in high productivity activities. Weaknesses in appropriability of returns could be due to government failures or market failures. With respect to government failures, this could be due to macroeconomic risks such as monetary and fiscal instability, which increase investors' uncertainty about the future path of the economy, or due to microeconomic risks such as high rates of taxation, corruption and regulatory and bureaucratic red tape that may increase the costs of doing business. With respect to market failures, this could be due to absence of informational externalities as a lack of innovation and self-discovery by entrepreneurs or the absence of coordination externalities such as a financial system that does not reward risk-taking (Sen & Kirkpatrick, 2011).

Macroeconomic risks are not binding constraints for the growth. The Central Bank has successfully maintained exchange rate stability and delivered consistently low inflation since the mid-1990s. Fiscal policy of the country meets the Maastricht deficit and debt criteria. However, the quality of public spending is not on satisfactory level. The European Commission underline that the overall macroeconomic policy mix suffered from the low quality of government spending, with many measures geared more to election-related promises than to combating the crisis (European Commission, 2009); or, while overall spending has remained largely unchanged, the quality of spending deteriorated (European Commission, 2010). Also, the public debt is increasing without significant investments in the infrastructure.

Microeconomic risks could be due to high rates or taxation, an inefficient tax administration which increases the implicit rate of taxation (due to delays in refunds of VAT proceeds), bureaucratic red tape linked to business licensing or customs administration, corruption, weak enforcement of contracts and property rights. In Macedonia, some elements of these micro risks from the public sector are possible binding constraints for growth. The first element excluded from above statement is the rate of taxation. Tax rates are generally low, with the VAT rate almost on average of SEE region, and flat corporate and personal taxes (both rates are 10%). In some periods significant delays in refunds of VAT have been observed. The three aspects of the regulatory apparatus – business licensing, customs and trade regulations, and labour regulations are not seen by companies as constraints for growth. In the World Bank's Enterprise Surveys 14,65% of Macedonian firms identify business licensing, 14,58% customs and trade regulations and 8,93% labor regulations as major constraints for growth (Figure 7). These percentages are significantly smaller than percentages of firms identifying corruption as major constraint for growth, which is 27,11%. This difference makes corruption a possible binding constraint in Macedonia. On this finding, two elements should be added. First element is crime, which is identified by 24.96% of the firms as major constraint. Second element is the politicization of institutions. It could be seen in every European Commission report for Macedonia: (1) the large-scale dismissals of officials following the change of government in 2006 illustrated the politicization of appointments at all levels in the public administration and disrupted its functioning well into 2007. Time and expertise were lost in reorganization and extensive changes of personnel in the public administration (European Commission, 2007); (2) little progress has been made to ensure that senior recruitments are based on professional qualifications. Staff appraisals and promotions are not transparent and there is insufficient scope for career development. The politicization of the senior levels of the police in some areas raises serious concerns (European Commission, 2008); (3) The increased recruitment of temporary staff, which does not fall under the Law on the Civil Service, undermines merit-based recruitment. Many of the temporary staff are junior, lack appropriate office space and have no clear job descriptions. This practice takes place across State administrative bodies (SABs) and municipalities, and is discouraging for regular civil servants (European Commission, 2009); and (4): Concerns remain regarding politicization of the public service. There have been reports of replacement of trained professionals with appointees of limited experience in several institutions. Also, senior management positions have been filled in the absence of appointment criteria, sometimes with staff under temporary contracts (European Commission, 2010).

**Figure 7: Major constraints for growth, % of Macedonian firms, 2009**

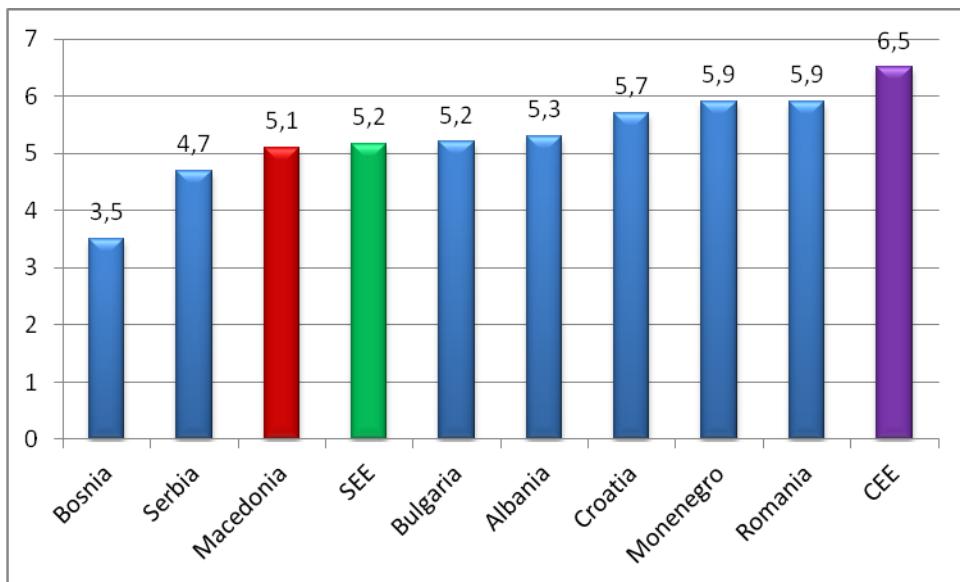


*Source: Enterprise Surveys, World Bank.*

Strictly related with the politicization of the public sector is the efficiency of judiciary system: some documented irregularities regarding recent judicial proceedings have raised questions about the independence and impartiality of parts of the judiciary (European Commission, 2009).

The last element of micro risks of public sector is the property rights, where situation is opposite from the situation in business licensing. The time required to start a business is equal to three days, and it is shorter in the region. Contrary, the time to register a property is almost the double of EU average and several days higher than SEE average. In addition, property right index of Macedonia is lower than indexes of the most SEE countries (Figure 8). Also, average time to resolve insolvency in Macedonia is 2,9 years which is one year more than the EU average.

**Figure 8: Legal Structure and Security of Property Rights (index, increase from 1 - 10), 2008**



*Source: Economic Freedom of the World.*

Market failures may be due to information externalities related to inability of firms to diversify into and export new products, or coordination failures that may arise from ineffective coordination between the government and the private sector, or between the national and sub-national governments (Sen & Kirkpatrick, 2011).

Macedonian export structure is highly concentrated. Export of iron and steel, textiles, food, beverages and tobacco account for about 60% of total (Gutierrez, 2007). The main characteristics of the Macedonian export are: (1) low level of products processing (mainly intermediate goods and raw materials); (2) the big exporter work in traditional industries with price as primary driver of competitiveness; (3) dependency from import of raw materials. Moreover, the share of Macedonian exports has increased in which is specialized, but these are sectors with a declining share in world manufacturing trade (Gutierrez, 2007).

The investment in research and development of Macedonian firms almost do not exist. With respect of the second failure, the recent global crisis shows serious coordination problems between small and medium enterprises and government. The economic policy lagged behind the needs of the SMEs sector.

## 4. Conclusions

This paper has presented an application of the Hausmann, Rodrik, & Velasco (2005) “growth diagnostic” methodology, which seeks to identify the key binding constraints to economic growth in a particular economy by taking into account the institutional context and realities of the economy in question. The methodology is opposite than the prevailing approach today, which follows the “laundry list” approach.

The “growth diagnostic” methodology is applied to the Macedonian small open economy within the SEE region. It indicates that the lack of appropriate infrastructure in the country is the key binding constraint for growth. The diagnostic also points to corruption and politicization of institutions as an additional constraint for growth.

The analysis has focused on the current constraints to economic growth. As the current constraints are relaxed, new binding constraints will emerge, and to maintain an improved growth performance over time will require a continuous process of diagnostic analysis (Sen & Kirkpatrick, 2011).

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# **Forging Transitional Justice: The Reconciliation of Law and Transition in Macedonia**

**Christopher K. Lamont<sup>60</sup>**

## **Abstract**

*Macedonia's brief civil conflict in 2001 not only brought about the landmark Ohrid Framework Agreement (OFA), but it was also an impetus for international and domestic efforts to prosecute individuals for violations of international humanitarian law committed on Macedonian territory. These prosecutorial efforts attracted significant interest both within Macedonia and abroad, in particular because democratic consolidation and prosecutorial justice are often perceived as intrinsically linked. Furthermore, the post-Ohrid period was also marked by the adoption and implementation of lustration legislation that aimed to screen public officials for human rights abuses. In relation to both prosecutions and lustration, Macedonia's experience with transitional justice initiatives illustrates how domestic contestation over the application of international legal standards can produce outcomes that are far removed from international norms. Given that since independence Macedonia has undergone multiple transitions, Macedonia presents an important case study for understanding how prosecutorial confrontations with the past and attempts at lustration impact upon political transitions. In sum this chapter will argue that despite the turbulent implementation of transitional justice initiatives, these initiatives have nonetheless served to open public debates and brought about a growing assertiveness on the part of the Macedonian judiciary.*

**Key Words:** Transitional Justice, International Justice, Human Rights, Democratization

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<sup>60</sup> Christopher K. Lamont is an Assistant Professor of International Relations at the University of Groningen in the Netherlands. His book *International Criminal Justice and the Politics of Compliance* (Ashgate 2010) constituted the first comprehensive exploration of state cooperation with the International Criminal Tribunal for the former Yugoslavia among all states and entities under the Tribunal's jurisdiction. In addition to his book, Lamont has also contributed to a number of peer reviewed journals including *Politics*, *International Studies Review*, *Europe-Asia Studies*, *Balkanistica*, *Journal of Balkan and Near Eastern Studies*, and the *Journal of Communist Studies and Transition Politics*. Moreover, he has a wide range of experience in transitional justice having been a postdoctoral fellow in the Transitional Justice Institute at the University of Ulster in Northern Ireland (2009-2011) where he was also a member of the Steering Group overseeing the Committee on the Administration of Justice and British Irish Rights Watch report on the Cory Inquiries. Prior to his appointment at Groningen, Lamont lectured on international relations at the University of Glasgow, University of Stirling and the University of the West of Scotland. He was also a Fulbright Fellow at the University of Zagreb's Faculty of Political Science (2002-2003) and more recently the recipient of an IREX short term research fellowship for field research in Croatia (2010). Lamont received his PhD from the University of Glasgow (2008), MSc from the University of Edinburgh (2005) and his BA from the University of Mississippi (2002).

## Macedonia's Transitional Justice Dilemmas

On 19 July 2011 the Macedonian parliament voted to apply its 2002 *Amnesty Law* to four cases of suspected serious violations of international humanitarian law which were referred in 2008 to the Macedonian judiciary by the International Criminal Tribunal for the former Yugoslavia (ICTY). The application of the *Amnesty Law* to these four cases stemming from Macedonia's 2001 civil conflict provoked an immediate condemnation from international human rights groups. *Amnesty International*'s Sian Jones argued that the "...decision is clearly inconsistent with international law and will leave the victims and their relatives without access to justice" (Amnesty International 2011). Jones' statement echoes an increasingly articulated normative legal standard that imposes upon states an obligation to confront war crimes, crimes against humanity, and other serious violations of international humanitarian law through criminal prosecutions (Cassese 2008: 3). However, this normative legal standard, grounded in international law, is uncomfortably situated alongside a post-cold war peace-building landscape that is marked by immunity agreements and amnesties (Bell, Campbell and Ni Aolain 2004: 314-315). Indeed, within Macedonia the invocation of amnesty legislation to terminate the four ICTY cases is largely defended in extra-legal terms as a necessary act to ensure the survival of a Macedonian-Albanian parliamentary coalition government and maintain post-conflict stability (Lutovska 2011).<sup>61</sup>

Furthermore, in addition to the amnesty debate, the Macedonian Constitutional Court's curtailment of contentious lustration legislation in March 2010 was condemned by Macedonia's governing party, the Internal Macedonian Revolutionary Organization (VMRO-DPME), as a "serious blow to the young Macedonian democracy" (Marusic 2011a).

Macedonia's contested *Lustration Law*<sup>62</sup> highlights a second underexplored transitional justice debate in relation to the confrontation of human rights abuses that occurred outside the context of armed conflict.<sup>63</sup> The screening or vetting of public officials after regime transition in the aftermath of the collapse of the Socialist Federal Republic of Yugoslav sparked significant debate across the territory of the former Yugoslavia; however, in stark contrast to the emergent consensus around the prosecution of international crimes, former Yugoslav states have diverged widely in relation to how they have confronted the legacy of human rights abuses stemming from

<sup>61</sup> Although some recent literature presents compelling arguments as to why international criminal courts should not challenge domestic amnesties reached through consensus (Mallinder 2007: 227-228), in relation to the broad corpus of transitional justice literature prosecution remains the dominant method for dealing with the past (Lutz and Rieger 2009: 275-294; Neier 1998; Orentlicher 1991), while amnesties are often associated with impunity (Roht-Arriaza 2009: 52).

<sup>62</sup> Macedonia's lustration law is officially known as Закон за определување Дополнителен Услов за Вршење Јавне Функција, trans. Law on the Establishment of Additional Conditions for the Performance of Public Office (Official Gazette 2008). For purposes of clarity, this chapter will also refer to this law as the *Lustration Law*.

<sup>63</sup> David defines lustration as "the screening or vetting of public officials against the archives collected by secret police under their socialist regimes" (2011: x).

the Socialist Federal Republic of Yugoslavia or the post-transitional regimes of the 1990s.<sup>64</sup> Moreover, much like Macedonia's *Amnesty Law*, the implementation of the *Lustration Law* diverges widely from international legal norms.

This chapter will address the aforementioned amnesty and lustration debates through an exploration of Macedonia's post-conflict and post-transitional experience. For the purpose of conceptual clarity, transitional justice will be used here not just in reference to attempts to deal with past human rights abuses,<sup>64</sup> but rather transitional justice will be more broadly defined as "the range of dilemmas relating to the role of law in societies attempting to emerge from violent politics" (Bell, Campbell, and Ni Aolain 2004: 305). As such, transitional justice is nested within the process of transition itself, and it is within this wider transitional context transitional justice initiatives constitute sites of political contestation and accommodation. While Bell, Campbell and Ni Aolain argue that the role of international law is particularly important during transition because of international law's externality to conflict, which is argued to be a product of the "autonomous quality of international law," transitional justice discourses in Macedonia challenge their image of international law as "not an infinitely malleable set of standards, the meaning of which states are free to appropriate according to their whims at any particular time" (2004: 323). Indeed, Macedonia's application of amnesty legislation to cases referred to the domestic judiciary by an international criminal tribunal and its application of lustration legislation to the *post-transitional* period both challenge international legal standards on the prosecution of individuals for serious violations of international humanitarian law and lustration respectively.<sup>65</sup>

In order to understand transitional justice in Macedonia, this chapter will engage with both prosecutorial transitional justice efforts emanating from the 2001 conflict and attempts to lustrate public officials. However, before discussing these bifurcated transitional justice initiatives, transitional justice debates will first be contextualized through an introduction to the Macedonian and regional transitional context. Then, there will be a discussion of international and domestic justice in relation to the legacy of the 2001 conflict. Next, Macedonia's 2008 *Lustration Law* will be discussed. In conclusion, it will be argued that although transitional justice has been highly contentious within the context of a state that has experienced multiple transitions and a brief civil conflict, these transitional justice contestations have nevertheless facilitated an opening for public debate on the recent past *and* the present. Furthermore, while Macedonia's transitional justice initiatives may diverge significantly from international standards, contestations over amnesty and lustration now constitute a reference point for a growing assertiveness on the part of the Macedonian judiciary.

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<sup>64</sup> In relation to attempts at lustration, or the vetting of public officials, this is particularly the case if Macedonia is contrasted with Serbia and Croatia. While Serbia adopted lustration legislation in 2003, this legislation was never implemented. Croatia, on the other hand, never adopted lustration legislation.

<sup>65</sup> For international legal standards for the prosecution of international crimes see Cassese 2008. For lustration see OHCHR 2006.

## Macedonia's Transitions meet Transitional Justice

The Republic of Macedonia, while often excluded from regional studies of transitional justice (Grodsky 2010; Subotić 2009), constitutes an important case study for understanding the role of law during transition. Skopje's interaction with the ICTY, the initiation and abrupt termination of domestic judicial proceedings against participants in the 2001 civil conflict and the adoption of lustration legislation serve to underline the domestic salience of transitional justice debates.

In relation to the prosecution of individuals responsible for serious violations of international humanitarian law, Macedonia challenges regional trends. Croatia, Bosnia-Herzegovina, and Serbia's judiciaries are in the process of confronting a myriad of war crimes cases stemming from a range of armed conflicts from 1991 until 1999.<sup>66</sup>

In fact, Croatia, Bosnia-Herzegovina and Serbia have all established specialized war crimes chambers for the prosecution of crimes committed during armed conflict.

Macedonia, along with Slovenia, which experienced only a brief conflict in 1991 between Slovene Territorial Defense units and the Yugoslav National Army, and Montenegro, which exited the State Union of Serbia and Montenegro to become an independent state in 2006, constitute the only states to not have established special war crimes courts. Nevertheless, the Montenegrin judiciary has launched prosecutions in relation to cases involving the abuse of prisoners of war during the conflict in Croatia.

In addition, and somewhat paradoxically, while all former Yugoslav states, with the exceptions of Macedonia and Slovenia, have to varying degrees pursued criminal prosecutions against individuals implicated in alleged war crimes committed during the conflicts that followed the breakup of Yugoslavia, no other former Yugoslav state has aggressively pursued lustration in relation to officials who served either under presidential authoritarian regimes in Croatia and Serbia during the 1990s or under the Socialist Federal Republic of Yugoslavia.

Bosnia-Herzegovina implemented vetting processes, however, these processes targeted individuals responsible for human rights abuses during the 1991-1995 armed conflict and were externally imposed upon domestic elites through the Dayton Peace Agreement.

**Table 1<sup>67</sup>** provides a regional snapshot of transitional justice initiatives in the former Yugoslavia

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<sup>66</sup> To be sure, there have been significant obstacles to prosecution and often prosecutions remain selective within Croatia, Bosnia-Herzegovina, and Serbia. Nevertheless all three judiciaries regularly prosecute war crimes cases.

<sup>67</sup> Data compiled by author

**Table 1: Transitional Justice and the Former Yugoslavia**

	Former Yugoslav States/Territories (1991-2011)						
Transitional Justice Initiatives	Bosnia-Herzegovina	Croatia	Kosovo	Macedonia	Montenegro	Serbia	Slovenia
Specialized War Crimes Courts	Yes	Yes	Yes	No	No	Yes	No
War Crimes Prosecutions	Yes	Yes	Yes	No	Yes	Yes	No
Lustration Legislation	Yes	No	No	Yes	No	Yes	Yes
Implementation of Lustration Legislation	Yes	No	No	Yes	No	No	No

Macedonia's divergence from regional prosecutorial trends can in part be explained in reference to Macedonia's almost unique post-Yugoslav experience of having exited the Socialist Federal Republic of Yugoslavia in the absence of violent conflict.<sup>68</sup> Of course, it is also important to emphasize in terms of duration and intensity the 2001 conflict in did not come close to the ferocity and devastation of conflicts elsewhere in the former Yugoslavia. As such the size and influence of veteran's and victim's groups within the Macedonian polity is much smaller than in Croatia, Bosnia-Herzegovina and Serbia (Lamont 2010: 100), and therefore it could be argued the pressure to pursue, or mobilize against, transitional justice initiatives has been considerably less acute.

Nevertheless, the Republic of Macedonia, much like other former Yugoslav republics, experienced multiple regime transitions during its first two decades of independence. In the Macedonian context two transitions stand out. The first marked Macedonia's establishment as an independent state and the ratification of the state's first post-communist constitution in 1991. The second was marked the acceptance and implementation of the 2001 Ohrid Framework Agreement (OFA). While the focus of this chapter is on post-Ohrid Macedonia<sup>69</sup>, it is important to note that one defining feature of Macedonia's initial transition was Skopje's invitation to external actors to guarantee the Republic's security.<sup>70</sup> Throughout Macedonia's first two decades of independence, the preoccupation with the maintenance of security on the part of external

<sup>68</sup> The other former Yugoslav republic to have achieved this was the Republic of Montenegro.

<sup>69</sup> This paper's focus on the post-Ohrid Framework Agreement period reflects the fact the necessity to deal with the legacy of armed conflict only emerged after 2001.

<sup>70</sup> In Bosnia-Herzegovina an international peacekeeping presence was deployed during the 1992-1995 armed conflict (UNPROFOR); however, it was only after the Dayton agreement that NATO deployed a robust peace enforcement mission (IFOR/SFOR).

actors meant that external demands in relation to human rights were considerably less salient than elsewhere in East and Central Europe (Koinova 2011: 827). The relative absence of external human rights conditionality means that Macedonia's transitional justice initiatives have largely been endogenous, unlike in Bosnia-Herzegovina, Croatia and Serbia where, as Subotić observed, transitional justice initiatives were adopted by local actors as a strategic response to external demands (2009).

However, significantly, the OFA did include measures to internationalize the process of judicial reform, and in particular provide judicial training for underrepresented minorities. Article 5.4 of the OFA states:

The parties invite the international community to assist in the training of lawyers judges and prosecutors from members of communities not in the majority in Macedonia in order to increase their representation in the judicial system (Ohrid Framework Agreement 2001).

To be sure, in the years following the OFA a number of external actors, which ranged from USAID, the OSCE, the European Commission, individual EU member states, to the International Criminal Tribunal for the former Yugoslavia, have been involved in the promotion of judicial reform or the provision of legal training. Yet even in the context of the OFA, which differed substantially from Bosnia's Dayton agreement in that Ohrid rejected the rigid ethnic-division of state, Macedonia remains deeply polarized (Koinova 2011: 807-832). It is within this domestic post-conflict context that transitional justice measures stemming both from the 2001 conflict, and from Macedonia's transition a decade earlier, have been introduced. This chapter will address both; however, it will begin first with the legacy of the 2001 conflict.

### *Amnesty*

In the immediate aftermath of the 2001 conflict, Macedonia began the process of drafting amnesty legislation to protect former combatants from prosecution for crimes committed in the context of the 2001 conflict. A parliamentary bill was introduced to amnesty former combatants in February 2002 at a time when the International Criminal Tribunal for the former Yugoslavia was becoming increasingly active in the prosecution of international crimes, this legislation, which was strongly supported by a broad range of external actors, including the EU, NATO, the OSCE, and the UNHCR (UNHCR 2002),<sup>71</sup> may seem to have defied a regional trend toward prosecution. This was not the case. Rather than enact a blanket amnesty, the amnesty offered under the 2002 *Amnesty Law* was in fact restricted. The amnesty issued for combatants excluded war crimes, crimes against humanity and other violations international law under the jurisdiction of the International Criminal Tribunal for the former Yugoslavia. The 2002 *Amnesty Law* states:

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<sup>71</sup> Also see (CNN 2002). In relation to NATO on 6 March 2002 NATO Secretary General Lord Robinson described the Amnesty Law as a "huge milestone in the peace process for Macedonia" (NATO 2002).

The provision of paragraphs 1, 2, and 3 of this Article do not apply to persons who have committed criminal acts related to and in connection with the conflict year 2001, which are under the jurisdiction of and for which the 1991 International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law in the Territory of the former Yugoslavia, will initiate proceedings (Official Gazette of the Republic of Macedonia 2002).

As such the 2002 *Amnesty Law* was similar to that which was adopted by Croatia in aftermath of Operation Storm. However, there are two notable differences between the two amnesty laws. Croatia's 1996 amnesty legislation provided much greater detail in terms of listing crimes not covered by the amnesty. Furthermore, Croatia's legislation did not make direct reference to the jurisdiction of the ICTY.<sup>72</sup>

Nevertheless, despite the adoption of amnesty legislation, the initial impact of the *Amnesty Law* was limited given that serious crimes under investigation by the Macedonian judiciary contained elements of international crimes under the jurisdiction of the ICTY. And, as will be noted below, the ICTY intervened in 2002 to ensure that these cases were deferred to the ICTY for further investigation. One of these cases would result in a prosecution before the Tribunal, while the other four would be referred back to Macedonia in 2008.

#### *International Justice – Five Investigations, One Prosecution*

In relation to the international legal obligation to prosecute noted in the introduction, it was the ICTY that played a leading role in assembling a post-cold war prosecutorial consensus that eventually led to the emergence of the contemporary infrastructure of international criminal justice, which now includes the International Criminal Court (ICC). In addition to prosecutions in the ICTY's own trial chambers in The Hague, the ICTY, often through the referral of cases to domestic judiciaries for prosecution through Rule 11bis, triggered a number of states to initiate domestic judicial proceedings in relation to cases that might otherwise been left uninvestigated.<sup>73</sup> Thus, through its prosecutorial and investigative functions, the ICTY established itself as a formative actor in the former Yugoslavia.

Furthermore, external actors such as the United States, NATO, and the European Union frequently imposed conditionality upon states in order to compel recalcitrant governments to cooperate with the Tribunal (Peskin 2008, Subotić 2009, Lamont 2010). Often the rationale behind conditionality was not just to punish perpetrators, but also the expressed belief that a

<sup>72</sup> Croatia 1996 Amnesty Law was ratified on 5 October 1996. The full text is available at:

<http://www.unhcr.org/refworld/country,,NATLEGBOD,,HRV,,3ae6b4de2c,0.html> [Accessed 9 September 2011].

<sup>73</sup> This is particularly the case in relation to Croatia. Examples of cases or investigations transferred back to domestic prosecutors include the Norac and Ademi case and the Merčep case.

prosecutorial confrontation with the past would facilitate democratic transitions. Yet despite the rapid post-cold war growth of an international tribunal system, and the concomitant assumption that criminal justice initiatives facilitate democratic transitions (Lutz and Reiger 2009: 275), social science investigations into the resonance of international trial processes within post-conflict states raise deeply troubling questions for policymakers and scholars regarding the relationship between transitional justice and post-conflict societies in transition (Grodsky 2009, Peskin and Boduszynski 2003, Peskin 2008, Subotić 2009).

Macedonia's interaction with the ICTY adds a further dimension to these international justice debates, as Skopje initially engaged in a close cooperative relationship with the Tribunal while also later shirking its obligation to prosecute cases referred back to the domestic judiciary.

In 2002 there was a strong push for the prosecution of crimes committed during the 2001 conflict on the part of Macedonia's public prosecutors. Concurrent to the Macedonian parliament's adoption of amnesty legislation, local prosecutors launched investigations into a series of cases of suspected violations of international humanitarian law stemming from the 2001 conflict. These violations of international humanitarian law included alleged incidents of torture, enforced disappearances, murder and sexual abuse (Human Rights Watch 2001).

As early as July 2001 Skopje began to transfer evidence to the ICTY in relation to five distinct cases of suspected serious violations of international humanitarian law (ICTY 2005):

- The first of these cases was known as the NLA Leadership case, which involved ten known individuals who were suspected of participation in crimes under the jurisdiction of the Tribunal. In January and September 2002 Macedonia's public prosecutor submitted a proposal for the prosecution of suspects in the NLA Leadership case to the ICTY (ICTY 2002).
- The second case was known as the Mavrovo Road Workers case and involved twenty three individuals who were suspected in abduction of five road workers.
- The third case was the Lipkovo Water Reserve case. The Lipkovo case involved the alleged denial of access to water for a period of several weeks to a populated area with about 100,000 inhabitants.
- The fourth case would be the only case to result in prosecution before the ICTY, the Ljuboten case, which involved the killing of five individuals by Macedonian security forces.

- The final case, Népošteno, was initiated after the discovery of a mass grave (ICTY 2002).

**Table 2: ICTY Investigations in Macedonia (2001-2008)**

Investigation	Alleged Crime	Prosecuted before the ICTY
<b>NLA Leadership</b>	“serious crimes” committed by 10 known members of the NLA leadership	No
<b>Mavrovo Road Workers</b>	Abduction of five road workers	No
<b>Lipkovo Water Reserve</b>	Denial of access to fresh water to a civilian population	No
<b>Ljuboten</b>	Unlawful killings	Yes
<b>Népošteno</b>	Unlawful killings	No

(Source: *ICTY*)

As **Table 2** illustrates, of the five investigations deferred to the ICTY, it was only the Ljuboten case which would result in the certification of a Tribunal indictment. In December 2004 the ICTY certified its initial indictment against Ljube Boškoski, a former minister of interior and Johan Tarčulovski, a former paramilitary commander. In the indictment Boškoski and Tarčulovski were accused of three counts of violations of the laws and customs of war (ICTY 2004).

The ICTY’s indictments of Ljubo Boškoski and Johan Tarčulovski constituted the Tribunal’s first indictments certified against Macedonian nationals. However, unlike in Croatia, Serbia and Bosnia-Herzegovina, the Macedonia indictments met with comparatively little public opposition (Petruševa 2005). Moreover, Macedonia was not subjected to conditionality demands similar to those which were made in relation to Serbia (Koinova 2011: 820) or Croatia (Lamont 2010: 31-58). In fact, Macedonia’s *voluntary compliance* with ICTY orders resulted in Macedonia becoming the only former Yugoslav territory to have consistently cooperated with the Tribunal (Lamont 2010: 107-108).

At this point it is important to emphasize that the process of international criminal justice is not just restricted to courtroom prosecutions. As part of the ICTY’s *Completion Strategy*, the Tribunal has been involved in growing outreach activities, which resulted in outreach for the first time since its creation in 1999 receiving a regular budget from the United Nations.<sup>74</sup> The United Nations Security Council set out the Tribunal’s *Completion Strategy* in Resolution 1503, which called upon the Tribunal to both transfer cases back to national jurisdictions and to strengthen the

<sup>74</sup> Previously outreach relied on voluntary contributions. Interview, ICTY Field Office, Zagreb, September 2010.

capacity of local courts to carry out prosecutions (UNSC 2003). Therefore, the ICTY engaged in significant efforts to promote capacity building programs across the former Yugoslavia that would facilitate the transfer of a large number of investigations that were initially launched by the Tribunal back to domestic jurisdictions. Thus, Macedonia's four ICTY cases not prosecuted before the ICTY's own trial chambers also brought about Tribunal outreach activities in Macedonia aimed at capacity building. **Table 3** outlines some key capacity building activities carried out by the Tribunal in relation to Macedonia since the 2001 conflict.

**Table 3: The ICTY and Macedonia**

Year	Type of Activity	Short Description
<b>2011</b>	Training Program	20 legal professionals participated in a training program held in Skopje
<b>2008</b>	Tribunal visit	Senior Macedonian prosecutors visited the Tribunal's Office of the Prosecutor. This was aimed at helping the Macedonian judiciary deal with war crimes cases referred back to the Macedonian judiciary.
<b>2007</b>	Training program	Hosted both in Skopje and The Hague. Included workshops and study visits.
<b>2005</b>	Seminar participation	ICTY staff participated in a seminar on IHL in Skopje.
<b>2003</b>	Conference participation	ICTY provided expert speakers for a conference in Skopje on the ICTY's jurisdiction and IHL.
<b>2002</b>	Conference organization	ICTY co-organized a conference on the Tribunal which included Macedonian legal professionals.
<b>2001</b>	Workshop	ICTY hosted a three-day workshop for legal professionals.

(Source: ICTY Outreach 2011)

While it is difficult to measure the impact of ICTY outreach activities in Macedonia, it is evident Macedonia's encounters with international justice never produced the specter of a nationalist backlash similar to those which were observed in Croatia (Peskin and Boduszynski 2003: 1117-1142) or Serbia (Peskin 2008: 61-91). Instead, cooperation between Macedonian prosecutors and Tribunal officials coupled with outreach programs remain the two most visible legacies of international justice in Macedonia. Yet, paradoxically, despite a close cooperative relationship being established early on during Skopje's interaction with the Tribunal, this close relationship began to deteriorate once the ICTY signaled its preference to begin transferring cases back to Macedonia for prosecution in domestic courts. Thus, as will be noted next, the domestic prosecutorial legacy of international justice remains in question.

### *Domestic Justice*

The ICTY's prosecutorial focus on Ljubo Boškoski and Johan Tarčulovski took place in the context of four other judicial investigations into alleged crimes committed by either Macedonian government or ethnic Albanian National Liberation Army forces during the 2001 conflict. On 12 May 2005, the ICTY Office of the Prosecutor filed a *Prosecutor's Notification of Deferral* in which ICTY Chief Prosecutor Carla Del Ponte sought the transfer of the four remaining cases back to the Macedonian judiciary for prosecution. Importantly, the *Notification* did not suggest international crimes under the Tribunal's jurisdiction had not been committed, but rather it simply emphasized that in the context of United Nations Security Council Resolution 1503, which demanded the Tribunal focus its prosecutorial efforts on "the most senior leaders suspected of being most responsible for crimes" that in the view of the Office of the Prosecutor "none of the alleged perpetrators reached the level of responsibility required for an indictment to be issued in the event that there was sufficient evidence to link them to the crimes committed" (ICTY 2005).

After Del Ponte's *Notification*, the Office of the Prosecutor met with Macedonian prosecutor in order to facilitate an "orderly" transfer of files to Skopje. However, on 19 September 2007, Macedonia's Public Prosecutor General advised the Tribunal that Skopje believed that Tribunal files could not be transferred in the absence of a court order (ICTY 2007: 4). Due to Skopje's objections to receiving cases back from the Tribunal, the four remaining cases would not be transferred back until the following year.

On 14 February 2008, the ICTY transferred files relating to the four cases back to Macedonia for further investigation and prosecution. Prior to the referral of these case back to Macedonia in 2008, the ICTY carried out two separate training programs in 2007 and 2008 aimed at ensuring Macedonia was capable of receiving cases from the Tribunal (see **Table 3**).<sup>75</sup> Nevertheless, three

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<sup>75</sup> Most recently this included a training program hosted in Skopje on 20-21 June 2011, which included legal professionals from the Basic Court Skopje 1, the Appellate Court and the Basic Prosecutor's Office for organized crime.

years after the transfer of the four ICTY cases, the Macedonian judiciary had yet to complete a successful prosecution in relation to the ICTY cases. In fact, as of 2010, proceedings had only been opened in the Mavrovo Road Workers case against 11 of 23 accused persons, while in relation to the remaining three cases the Macedonian government stated one was at an investigative stage while the other two remained only at a preliminary investigative stage (Amnesty International 2010). In the Mavrovo Road Workers case the primary difficulty faced by the Macedonian judiciary was securing custody of the 23 accused persons. Indeed, it was only in August 2010, Safet Ogric, one of the accused in this case, was extradited from Serbia to Macedonia (Dimovski 2010).

Despite the Macedonian judiciary having opened proceedings in the Mavrovo Road Workers case, on 19 July 2011 Macedonia's parliament abruptly intervened and applied the 2002 *Amnesty Law* to all four ICTY cases. The application of the *Amnesty Law* to the four ICTY cases raises troubling question as to the legal basis for the Macedonian parliament's intervention and the assumed guiding role of international law during transition. In relation to the former, parliament's intervention is questionable given that blanket amnesties, which would cover international crimes, are generally recognized as not being consistent with international law (Orentlicher 1991: 2537-2615), and in relation to the latter, international law failed to provide a source of guidance as to the limits of amnesties. As Orentlicher argued, it was "by drawing a bright line between crimes that must be punished and those for which amnesties are permissible, international law helps answer an agonizing question confronting many transitional societies" (1991: 2550). Significantly, Orentlicher goes on to point out, "ratification of an amnesty law through some form of democratic procedure would not alter this conclusion; nations cannot extinguish their international obligations by enacting inconsistent domestic law" (1991: 2595-2596).

It should be noted, however, that the *Amnesty Law* itself may not be inconsistent with international law, but rather it is simply its application to the four ICTY cases which is problematic. As pointed out earlier, Macedonia's *Amnesty Law* explicitly exempts crimes under the jurisdiction of the ICTY. Given the ICTY had already requested that these cases be deferred to the Tribunal as they contained elements of crimes under the Tribunal's jurisdiction, and it was the Tribunal which referred the cases back to the Macedonian judiciary, the legal rationale for applying the 2002 *Amnesty Law* to these cases is at best tenuous. Nevertheless, even in the absence of coherent external conditionality on the part of either the EU or the United States to demand a judicial confrontation with international crimes committed during the course of the 2001 conflict, there is domestic mobilization against the *Amnesty Law*'s application to the ICTY cases which is likely to trigger a judicial review of the legality its application by the Macedonian

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This program was aimed at providing a means through which local legal professionals could enhance their "capacity to handle complex war crimes cases" (ICTY 2011). In addition to direct assistance from the ICTY, the OSCE also co-hosted an 18-month training program to assist the Macedonian judiciary receive cases from the ICTY (OSCE 2009: 79).

Constitutional Court,<sup>76</sup> which as will be noted below, has already intervened in relation to Macedonia's lustration legislation.

### **Late Lustration: Dealing with the past and the present**

Parallel to debates over the prosecution of individuals for crimes committed during the 2001 civil conflict, the governing VMRO-DPMNE's ratification and implementation of the *Law on the Establishment of Additional Conditions for the Performance of Public Office* to vet public officials for activities carried out prior to 2008 constituted an application of transitional justice to a period of post-transitional politics. The initial law, adopted unanimously in January 2008 by the Macedonian parliament, applied to activities carried out both under the Socialist Federal Republic of Yugoslavia (1945-1991) and after Macedonia's declaration of independence in 1991. The VMRO-DMNE's application of an extra-ordinary transitional justice mechanism to the post-transition period triggered an intervention on the part of Macedonia's Constitutional Court to limit the scope of the VMRO-DPMNE's lustration law to deal exclusively with abuses carried out prior to 1991 (Constitutional Court 2010).

The Constitutional Court, in its decision reached on 24 March 2010, cautioned that the application of a lustration law to a post-transition polity would create a situation whereby, "...the lustration process would emerge as a modern alternative of the existing legal system and the institutions established pursuant to the current Constitution of the Republic of Macedonia" (Constitutional Court 2010). The Court went on to conclude, "...in its determination the Court took as a starting point the fact that the past should be purified, this is, lustrated, and the [present] should be enabled and realized, not lustrated" (Constitutional Court 2010). In short, the Court was concerned that the application of a transitional justice mechanism, which was intended for the screening and vetting of public officials for human rights violations carried out in the past, or more specifically for acts committed prior to regime transition, to include abuses by public officials in the present risked establishing a parallel quasi-judicial institution, the Lustration Commission, which could impose legal consequences upon individuals outwit the judicial system. In response to the Constitutional Court's March 2010 decision, the VMRO-DPMNE extended the application of the *Lustration Law* beyond the initially envisioned endpoint of 2008 until 2019. Also, shortly after the March 2010 decision, the Lustration Commission declared the president of the Constitutional Court, Trendafil Ivanovski as having been a spy for the former regime, which in effect forced Ivanovski to resign from the Court (Marusic 2011b).

Although Macedonia's lustration law and subsequent implementation of this legislation defies a former Yugoslav regional trend to not lustrate former officials associated with past regimes, Macedonia's lustration law can be viewed in the wider context of a Central and East European

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<sup>76</sup> I would like to thank participants at the conference "20 Years of Macedonian Independence", 15-16 September 2011, Skopje, for this observation.

wave of “late lustration” legislation (Horne 2009: 345). Much like international criminal justice, lustration has been viewed as a transitional justice mechanism that serves to reinforce transitions. Indeed, the Council of Europe, the United Nations High Commissioner for Human Rights, and the European Court of Human Rights have expressed views that emphasize how lustration legislation in Central and Eastern Europe has contributed to democratic consolidation (Horne 2009: 347). However, unlike lustration legislation elsewhere in the region, which focused on human rights abuses committed prior to transition, the Macedonian law sought initially to extend lustration until 2008, the point in time when the lustration law was adopted by parliament.<sup>77</sup> In addition to a broader temporal jurisdiction, the *Lustration Law* also was expansive in terms of personnel who fell under the law’s scope. Often, personnel vetting post-transition targets “...inherited personnel in the state apparatus” (David 2011: 3). Yet, the Macedonian law, rather than exclusively targeting individuals within the state apparatus, could also be applied to political party officials, non-governmental organizations, and representatives of religious groups (Official Gazette 2008).

In addition to an expansive scope, both temporally and in terms of individuals subject to the lustration process, public debates on Macedonia’s lustration program emphasize the politically charged nature of the law’s implementation. Unlike the amnesty debate, which pivots around Macedonia’s internal ethnic cleavage between ethnic Macedonians and ethnic Albanians, the lustration debate highlights the cleavage between two large ethnic Macedonian political parties: the VRMO-DPMNE and the Social Democratic Union of Macedonia (SDSM). The VRMO-DPMNE accuses the SDSM, as the successor party to the Macedonian League of Communists, of obstructing the implementation of lustration (Marusic 2011b).

In the context of the lustration debate largely coalescing around the VRMO-DPMNE and SDSM it is important to recall that in relation to lustration there exist two broad explanations for why states adopt lustration legislation. The first emerges from transitional justice scholarship and posits lustration legislation is adopted to further democratic transitions, while the second argues lustration legislation is adopted by political parties as a tool to maintain their position in government (Horne 2009: 347).<sup>78</sup> In the Macedonian context, the governing VRMO-DPMNE has been subjected to accusations that not only was the lustration legislation itself politically motivated, but its implementation has also been described as selective.<sup>79</sup>

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<sup>77</sup> See Article 2 of the Law on the Establishment of Additional Conditions for the Performance of Public Office (Official Gazette 2008).

<sup>78</sup> Horne also suggests signaling to external actors as a third possible motivation for states to adopt lustration law (2009: 347). However, in the Macedonian context lustration debates have been largely endogenous and therefore this third causal pathway has been excluded from this paper.

<sup>79</sup> Among individuals publicly identified by the Lustration Commission were the President of the Macedonian Constitutional Court, who curtailed the 2008 Lustration Law in a March 2010 judgement (Taleski 2010) and the Macedonia director of the Open Society Institute (Taleski 2011). Both had been involved in conflicts with the governing VRMO-DPMNE.

Indeed, when the Constitutional Court acted to restrict the scope of lustration, Macedonia's VRMO-DPMNE prime minister, Nikola Gruevski, accused the Court of siding with the opposition SDSM (Marusic 2011b).

Furthermore, the exchange between officials of the governing VRMO-DPMNE and the Constitutional Court in 2010 led to the EU's representative in Macedonia to caution the VRMO-DPMNE against questioning the legitimacy of the Court (Marusic 2010a). To be sure, the Macedonian Constitutional Court has proven active in attempting to limit the scope of Macedonia's lustration legislation. The Court acted once to curtail the legislation in 2010 (Marusic 2010b), and may intervene again in 2011. In addition, to this domestic legal contestation of Macedonian lustration laws is likely to bring about cases, and subsequent jurisprudence, before the European Court of Human Rights. Indeed, Ivanovski, the former president of the Constitutional Court suggested he would file suit against the Macedonian state before the European Court of Human Rights (Marusic 2011b). In sum, despite the polarized domestic political and judicial contestations that have been provoked through the adoption of lustration legislation, these contestations may in the near future provide an opportunity for further judicial intervention on the part of domestic courts or the European Court of Human Rights, which will both limit Macedonia's lustration laws while also reinforcing international norms on lustration as previously articulated by the Council of Europe, the United Nations High Commissioner for Human Rights, and the European Court of Human Rights.<sup>80</sup>

## Conclusions

Transitional justice is often imagined as a set of restorative or retributive mechanisms aimed at dealing with the legacy of a violent past (ICTJ 2011). Furthermore, transitional justice, as an academic field of study, emerged from law (Bell 2009: 5-27), and it is therefore not surprising that transitional justice processes and practice are highly legalized. To be sure, there now exists a broad corpus of international rules, norms and guidelines for a wide range of transitional justice mechanisms.<sup>81</sup> In Macedonia the application of both amnesty and lustration diverge significantly from these international legal standards, which according to Bell, Campbell and Ni Aolain should be of heightened relevance during transitional periods (2004: 323).

Macedonia's engagement with transitional justice might lead to a questioning of whether transitional justice mechanisms are effective in promoting institutional transformation post-transition: whether in respect to a transition from conflict to peace or a transition from authoritarianism. However, if transitional justice is instead viewed as a range of dilemmas relating more broadly to the role of law in societies emerging from violent politics (Bell,

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<sup>80</sup> See Horne 2009: 348

<sup>81</sup> The United Nations Office of the High Commissioner for Human Rights maintains a series of briefing papers on relevant international standards in its "Rule-of-Law Tools for Post-Conflict Societies" (OHCHR 2011).

Campbell and Ni Aolain 2004: 305), the accommodation and contestation which has marked the amnesty and lustration debates can be seen as constitutive of a growing legalization of the domestic sphere, which has seen the Constitutional Court make reference to international standards to limit Macedonia's lustration law and generated a growing domestic demand to reconcile the application of amnesty legislation to ICTY cases with international law

Instead of attempting to measure the effectiveness of transitional justice mechanisms in terms of prosecutorial successes, this chapter suggests a more nuanced understanding of the relationship between transitional justice and transition that provides an opportunity to examine the wider resonance of transitional justice processes. Often these processes will diverge from normative understandings of how the law should operate; however, these divergences do not necessarily mean that a transition to a rule of law framework has been undermined. As observed with both Macedonia's amnesty and lustration laws, flawed legislation or flawed implementation will trigger domestic judicial processes that constitute sites of contestation for uncontested constitutional orders.

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