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EDITORIAL

DEMOCRACY AND THE NEED FOR SECURITY HAVE TO CONFRONT VIOLENCE

The academic community has to be the generator for the development of Republika Srpska

Dear readers, it is our pleasure to present you the thirty-third issue of the journal *Defendology*. It is with nostalgia that we reminisce March 27, 1997 when the first meeting of the then Chairmanship of the Association of Defendologists of Republika Srpska was held at which, among other, the Decision about founding and starting publishing the journal was adopted. In the meantime, our organization has changed its name into the European Defendology Center. We did this in the spirit of the time, in accordance with the democratic and European orientation of our Center and, of course, with the adherence to the original idea, tradition and a rich cultural heritage. **We are proud of the fact that the Journal has maintained the continuity and the quality of published papers**, which is not an easy task, especially in politically and economically unstable times in society in which the erosion of social values is a constant and scientific research and **advanced social ideas** often stand on the margins of social reality. In such social circumstance, running a journal is not an easy task. All the more, despite the times and real difficulties, it is thanks to the enthusiasm of the editorial staff, author and our esteemed colleagues and associates from the country and abroad – members of the Journal's Council and the Review Board, Defendology is seen as a serious scientific journal, which is receiving appraisal in both scientific and expertise circles. We have tradition, advanced ideas and the persistence to improve the Journal. **We continue with a bilingual edition, both Serbian and English, anonymous reviews, standard quoting, quote bases and the promotion of the Journal in the domestic and foreign academic circles in order to improve the quality of published papers**. Earlier efforts are recognized by the Ministry of Science and Technology of Republika Srpska, which put our Journal into the first journal category. Such recognition requires the maintenance of quality. Also, it is our intention to publish the papers, aside from domestic authors, of our colleagues from other parts of the world so we can share research experiences and results.

This issue is a combination of heterogeneous topics in accordance with the multidisciplinary orientation of the Journal: the readers will be able to read about the democratization of Bosnia and Herzegovina, i.e. critical presentation of the weaknesses of democracy and society in general. With the development of IT technologies and omnipresence of social networks in cyber space, there comes a need for new research questions. In

that sense, we are publishing the paper on cyber profiling – i.e. the implementation of the concept of criminal profiling in cyber context. Then, there is also the paper on the notion of murder in canons of the Serbian Orthodox Church, which elaborates the Church interpretation of this felony, the responsibility and its consequences. There is also the paper from the Criminal Procedural Law on modern theoretical understanding of basic concepts of a criminal proceeding. Also, we are publishing two papers which deal with the issues of human rights and humanitarian military intervention and the influence of globalization on the diplomacy of these countries.

In the sixteen years of publishing of the journal Defendology, special emphasis is given to, among other, **the development of the academic thought, academic community and the permanent need that the people in the academic community need to strive to the ideal of justice and freedom**. The key question still remains: **Can one society develop as a democratic community, if there is no constant flow of new ideas and political alternatives in it?** This is why we cannot give up on making a new intellectual community, no matter how much anachronous and utopian it may seem. To many, the lack of knowledge and general culture is no obstacle to publically discuss what they do not understand and judge those they cannot live up to and drain their wickedness from themselves by giving it the sublime name of criticism. **Criticism should serve as a permanent intellectual fight against "the anarchy of spirit and the regime of stupidity."** We do not accept personal belief as scientific truth, but we have adopted scientific truth as personal belief. The task of science and the academic community is to gain the knowledge about human behavior in different settings (natural, social, cultural), and not to manipulate people (demagogy in a bottle). **Non-academic association based on scientifically worthless results**, i.e. which are scientifically confirmed on the elementary ignorance of the mentor, is dangerous for the society, state, development, future, etc. **Allotting titles on the principle Cosa Nostra**, which is imposed due to the idea of "peace in the house", is an immoral and a criminal act, it is basically **an academic verification of mediocrity**, which **produces scientific and educated freaks**. Therefore, there must be right to speak, **democratic centralism**, **i.e. mindedness**, which needs to prevent all forms of **critical opinion** which has to be overcome for the greater good. Mindedness leads to the creation of the amorphous mass of mediocrity, which is not entitled to personal opinion. **Defendology nurtures the tradition of the right to speak, freedom of opinion and action, accordingly all universal and advanced human values,** and confronts all **intellectual executions over the autonomy of university knowledge**, we advocate the moral credibility of professors… There are more and more those who are for a moral **step forward and rebirth**. Let us use this natural right and human dignity so the better do not get hurt by the worst…

Editor-in-Chief

Contents

DEMOCRACY – DIVERSITY OF RICHES

PROCRUSTES MODEL OF DEMOCRACY IN BIH

Original scientific article

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Abstract:

The paper analyzes different Procrustes models that affect democracy in BiH and RS. The phrase "Procrustes Model" implies molding into a given pattern, regardless of the fact that it may mean unfreedom and chains for democracy. The hypothesis is that democracy in terms of Aristotle is a negative form of ruling and it is necessary to view its weaknesses and distortions. The paper deals in particular with Procrustes patterns such as the elimination of criticism, i.e. intellectuals from the politics area, partocracy, democracy as an elevated stick, credit balloon, IMF loans and other rigid forms of democracy molding. The arrogance of leaders of the new world order, disrespect for international norms, advocating "knowledgeable society", different ideas of democracy from the three nations in BiH, their different views of Europe and other misconceptions are also a Procrustes's pattern which enchains the people in BiH and RS. All in all, the paper offers a series of insights into the weaknesses of democracy in BiH and illuminates disillusions which we have lived with for years.

Key words: *democracy, Procrustes Model, partocracy, credit balloon, IMF*

INTRODUCTION

We all swear in democracy, but we forget that even Aristotle categorized democracy as a negative form of ruling, out of six "ideal" as he calls them (Aristotle, 1960). We must not forget the root or the original meaning of the word democracy (*demos* = people and *kratos* = power), i.e. δημοκρτία which means wide masses of people rule with the

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imperative of the majority. Today, this is the imperative of the representatives of the majority, i.e. the imperative of the chosen minority. There are two basic weaknesses of democracy today. First, the right of the majority to outvote or impose its will onto the minority. Second, the chosen representatives of the majority need to leave the interests of the majority which has chosen them and rule "on their own", to become the majority minority. Both these deviations are influential in Bosnia and Herzegovina. What is the solution? Opposite democracy, as a negative form of ruling Aristotle puts politeia (πολιτεία), as a positive form of ruling, later known as republic (*res* = thing, *publicus* = public). What is politeia? It means that the people rule with the aim of accomplishing greater legal equality accompanied with transparency and publicity (more in: Suzić 2010). If we are concerned with the question whether the people are capable of ruling, we will point out at the start that there are many issues which need to be dealt with by experts, and not the masses. Today, this issue is resolved with referendums, laws, cyclic repeated elections and in other ways. Still, we are the witnesses of frequent misuse of democracy for the purpose of manipulating the masses, for the purpose of justifying the interests of the chosen minority, we are the witnesses of the fact that democracy in BiH manifests itself in the Procrustes Model.

What does Procrustes Model mean? "Procrustes (Greek: Prokrustes, Latin: Procrustes), his real name was Damastes and he lived in Attica, in the valley of the river Cephisus. He stalked travelers, and when they came along he would meet them and invite them courteously into his house to rest. He would then ask the traveler to lie in his bed. If the travelers longs were too long, Procrustes would cut them off, and if they didn't touch the end of the bed he would stretch them relentlessly (hence the nickname Procrustes, i.e. *Stretcher*). When he lured Theseus into his house he had no idea that he would die in the same way as the people he had killed. Theseus overpowered him, and then forced him to lie in his bed and he cut off his head which fell over the bed." (Zamarovski, 2002: 418). When we apply Procrustes Model to democracy in BiH today we get three meanings: 1) Lure someone into their house means win over the voter to vote for the given party: 2) Stretching and shortening means molding into the form of ruling, into ideology. For example, *The one who does not like Bosnia for what it is can go over the Drina or to Croatia* and 3) Theseus means the way you rule will be the same when you surmount the throne, i.e. *Reign with the sword and you'll will die of it*. Instead of support and cooperation, trust between people, respect for other religions and customs, today we are the witnesses of the intent of realizing outvoting in Bosnia, denying other nations or experts from other nations to declare one whole nation an aggressor and then to attack the aggressor and similar. Former proscribed national key is no more than a fetish today.

Procrustes Model of democracy does not tolerate originality, freedom and unconventional way of thinking. All those who think differently, who do not share the same opinion, who are in the way are only disturbing the molding of the people's attitudes and behaviors. This explains the fact that there are less and less intellectuals in BiH political institutions, that university professors are not wanted there – exempting those who have already adopted the moldings of Procrustes pattern. We are going to use Juvenal's saying here: Quid Romae fáciam? Mentíri nescio, meaning: *What good can politics do for me when I can't lie!* Here we have to say that going to Rome meant doing politics for Juvenal. Indeed, we are accustomed to the fact that politicians lie, that it is an integral part of political career, that is impossible to do politics without lying. Absurd, isn't it!? – more so if

it is true! Poor voters, what can they do with no options at their disposal. The only thing they can do is to put a voting paper into the voting box and spend the next four years wondering. During that period they cannot lie, they cannot revote. They can only guess if the chosen representatives have realized anything of what they had promised when they offer them jobs, prosperity, the moon.

Still, not everything is that black, it can always be worse. The voters have nothing else left but to rely on democracy for the next four years. And, here is the catch! What kind of democracy does BiH have? What form does it appear in? Is this really democracy or is there something else which is worse? The democracy in BiH is threefold: 1) *partocracy* – party voting, where the votes of those who know nothing of the party, its leader or its program are more than welcomed, including those who are mentally retarded, 2) *democracy as an elevated stick* – the basic ruling model is "troubled is reality which does not reflect the democracy advocated by the authority, where free thinkers are often accused of demolishing democracy – the elevated stick can always blow off of someone's head, and the harder the blow the stronger the pain, 3) *representative democracy* – the chosen ones represent the party or themselves, and not demos or the people, there is no feedback on the actions of the elected ones, they are completely empowered. All three forms of this democracy are accompanied by a whole set of methods and means of manipulating the voters. One set of these methods and means is used just before the elections when there is a race on how to win over voters, and the other set is used after the elections when they throw dust into the eyes of the public or silence the masses. In addition, the media are the most influential means of manipulating the masses. This way the "independent" media are controlled and are subjected to political parties and leaders. Hence, it is no surprise that everybody knows who owns a particular broadcasting house, and which party controls which media.

Aristotle's thesis that democracy is a negative form of ruling today is more than evident. For example, what would happen if introduced a full democracy in China. On one occasion, Deng Xiaoping said that the "Cultural Revolution" saved China from famine, and thanks to communism and socialism the Chinese were not starving any more. China allowed privatization in Shanghai, Beijing, Hong Kong and big centers, but not inland. The reason for that, according to Deng, is the need for distribution of national assets and food to all the Chinese, because privatization would lead to starvation and dying of thousands of people. Today, we can see that privatization in Republika Srpska has led to enormous enrichment of 200 people, and almost 200,000 people are on the verge of surviving and famine. When in 1992 I wrote an article about it that 200 Serbs would get enormously rich, sail yachts and own factories and city blocks, and that many other would be foraging in dumpsters, one professor, a friend of mine, said I was overstating. The article was published the next year (Suzić, 1993) and that friend of mine and I witnessed a man wearing a tie foraging in a dumpster. He was wearing a tie just to convince everyone around him that he was looking for food for his dog, and not for himself. That same professor melancholically admitted that I was right. Today, people no longer hide the fact that they forage in dumpsters! Whose national interest is for ones to get enormously rich, while the others are starving? For leaders who portray themselves as exclusive representatives of national interests this fact represents a pebble in their shoes and they do not want to publically acknowledge this fact, rather conceal it. The main task of the leaders

should be to secure money circulation, and not wealth accumulation for those who are already very rich.

The thesis about money circulation is simple. Namely, one convertible mark banknote or euro will be more valuable if they daily circulate from the consumer to the goods manufacturer and from him to the bank. It is easy to realize this circle: the main thing is to provide money to those who need it, such as pensioners, educators, police and other citizens with low incomes. A good example of this is Japan. When yen collapsed after the explosion of the balloon loan in 1995, the Japanese radically increased the salaries and pensions up to 2000%, i.e. up to 20 times (Ote, 2009). "Since 1990 Japan has been in economic depression, in which it inevitably found itself, which arose from the collapse of the balloon loan: (ibidem, 142). The principle is simple, a consumer society cannot function without consumers, and there cannot be consumers if pensioners, educators, doctors and other social classes are reduced to beggary. The absurd is even bigger when the IMF appeals to austerity measures, when it lends money and then bans that that same money should be put out of circulation. "If consumption expenditures are raised then the economy is also generally doing better, if they are lowered then the economy is doing worse" (ibidem, 153). IMF loans are like a chain around one's neck, with the moneylender keeping reigns in his hands and tightening them when he wills.

How does IMF Procrustes Model work? First, the IMF lends money to countries it wishes to keep under control, and then conditions them with austerity measures, i.e. preventing them from putting money into circulation, it urges them to invest into something long-term, something that will pay off in years to come. Then follows another loan under the same conditions. After several years the IMF lends money to that country so it can pay the debt back to the IMF. Therefore, money serves as a means of making particular countries dependent, to mold them into a Procrustes pattern *I owe in order to indebt myself*. It is perfectly normal that students and intellectuals in Greece are against these kinds of debts and austerity measures. They know that they are indebted by the IMF and that it controls them by applying a dosed democracy. On top of that, the leaders from the shadow place and change politicians, and they on the other hand praise themselves in the media for providing the funds from the IMF and they seek the public's appraisal for that.

In the modern world the leaders of the new world order are trying to find various compensating measures in order to cure the diseases of democracy and preserve its function. For example, repeating the elections, the right to referendum, constitutional and parliamentary norms and alike. In Bosnia and Herzegovina the three nations differently interpret democracy. One nation sees it as *demos* plus *kratos*, i.e. based on the model *take it or leave it*. Meaning, *This is BiH, and if you do not like it go over the Drina or Our Beautiful Country*. The others interpret democracy as *Everyone for Themselves*. Meaning, *It is Better To Be Alone, Than In The Wrong Company*. The third nation interprets democracy as a demand for a third entity. More directly, *It is democratic that we have an entity as well*. Procrustes's bed is too small for these three models. At any time, one of the models is not compatible with the other two, and at least one of them shows a pathological dimension. If we take into consideration Aristotle's idea of politeia again we need to leave Procrustes Model of democracy, and seek support components and respect of the citizens and nations in BiH, we need to seek prosperity models for every individual, for all stratums and nations, i.e. national minorities.

Procrustes pattern of democracy in BiH is seen in the action of the High Representative with OHR. The High Representative has all the authorities as an undisputed leader, and no responsibility whatsoever. This is a precedent in the history of human society. Even the greatest leaders were obliged to provide safety for the masses they ruled over, but this does not apply to the High Representative in BiH. The measures undertaken by the High Representatives systematically obstruct the prosperity of BiH more than they stimulate its progress. For example, in 1998 when the entities started to reduce taxes in order to be more competitive among each other and attract capital, the High Representative adopted a regulation which bans tax reduction. It is well known that lower taxes have a positive impact on the budget. It is simple, the retailer who sells ten shirts at the price of 10 convertible marks will pay double the tax into the budget than the retailer who sells one shirt at the price of fifty convertible marks. In other words, low tax makes it possible for a better goods circulation to achieve better budget result. Free market is a progress measure for material prosperity and the well-being of citizens. When the state imposes norms, when the High Representative intervenes by preventing free market, there is no progress. "Wherever the state carefully controls the economic actions of its citizens, wherever, accordingly, there is developed central economic planning that puts common people in chains, they have a low living standard and almost no control over their destiny" (Friedman and Friedman, 1985: 38). If we ask academically what the High Representatives have done to obstruct the prosperity of BiH we can name the following: tax interventions, replacement and then the amnesty of many RS politicians, imposing of some decisions at the BiH level and alike. Therefore, Procrustes democracy in BiH has a High Representative in charge of keeping entities and cantons in the frameworks that fall under his authority. It is completely logical to ask ourselves here if there is some force behind the scene which wants to prevent the prosperity of BiH, some force which prevents the High Representative to introduce progress measures in BiH.

One of the Procrustes effects in BiH is import. We are the witnesses of food being imported into Republika Srpska and other goods abundant in the Republic. A former minister of the RS Government publicly admitted that RS has no healthy food. That is simply not true, quite the opposite – only food produced in RS is healthy. Only, the food with additives and genetically modified food is imported from abroad so it is present on our market. It is interesting that no one reacted to this statement, not even the media. In some "normal" democracies such a minister would be forced to resign from his post. The motive for the minister's statement was to defend the unjustified import of additive wheat, oil, sugar, meat and other goods that come at a low price from the countries eager to get rid of that kind of food. Under the conditions of threatened needs, people use the needs from a higher sphere to satisfy the needs from lower levels. Concretely, the need for safety is regarded, according to Abraham Maslow, as a sphere of lower needs (Maslow, 1943), and a man's need for political accomplishment and leadership falls into the highest sphere of self-actualization. As a result of this, people use obtained needs from a higher sphere in order to accumulate more money and secure physiological and safety needs as the lowest needs in Maslow's hierarchy.

The three nations in BiH see democracy as a road to Europe, except that each of these nations has its own vision of Europe as a non-state community or union. One nation sees it as a long-term road to Islamization of Europe, the other sees it as an open market and a chance for the placement of its goods and the third one sees it as a community where

the Catholics are the majority. These visions are at the same time the biggest Bosnian misconceptions about the road to "democratic" Europe. On the other hand, Europe sees its union in a different light in the future. Unlike America, which sees itself at the forefront of the world national community, Europe sees its union as a community whose aim is not to rule the world but to be an economically and culturally powerful so it can protect the interest of its members. It is not concerned about the Bosnian aspirations of three nations since it has strived so far to satisfy the needs and the national interests of its members. For example, Switzerland has 26 cantons out of which 25 were constituted in blood, but the purpose of cantonization was to satisfy the national interest of people who live there. Cantonal solution was applied to Bosnia and Herzegovina after the war which lasted from 1992 to 1995. BiH represents a disorganized part of Europe, so it is completely normal that Europe has criteria that need to be fulfilled, such as organized roads, utilities and social relations. If you give a sheikh a large piece of desert he will not be less rich. It is the same with Europe, by accepting the Balkan states it cannot lose anything, it can only organized joined territories.

Globalization on the Balkans and BiH brings along Procrustes influences and reflections. Specifically, in the world community of nations the USA wants to be the leader and it often imposes its regulations thus breaking international norms. "When one nation publically carries out its own interests then the legitimacy of international rules is called into question" (Ote, 2009: 52). For example, America does not allow its citizens to be prosecuted in The Hague. The other example is the Satonization of the Serbs in the media controlled by the USA. This is something that a leading world nation or the nation on rise can do, but not when the leading power is on demise. Then we have a rivalry nation. "If the current growth continues, China will probably by 2025 economically surpass the USA if not in 2016 (ibidem, 52). Chinese tradition and recent history show that it does not like to get involved, unlike the USA which wants to control and dominate. Is Americanization going to change into Chinezation or is the new Procrustes model going to disappear or the new Procrustes Model of globalization going to arise is something that will be clear in the next decade.

One of the misconceptions that the Balkans and BiH politicians adhere is that we live in the era of knowledge, including the 21st century. This is another Procrustes platitudes sold to us in order to squeeze us into the framework coined on the back of the new world order slaves. If we check all the definitions of knowledge we can find in different encyclopedias and pedagogical and psychological textbooks we will find that it implies a specific amount of facts residing in the minds of those who learn. Even in the Oxford Dictionary knowledge is defined as everything that one person knows and has accumulated from experience (Advanced Learner's Encyclopedic Dictionary, 1992: 501). If we put emphasis on facts and reproduction of facts and we set that as the future of school and education, then we will continue to develop memory models and reproduction of facts, skills and habits, and by doing this we stimulate the development of slavery of the generations we teach. Instead of producing slaves of the new world order, we need to educate partners in schools. The future of mankind is learning how to learn. In the learning civilization, which has already started, only those who learn easily, those who are not afraid of learning, those who love learning will be free. By advocating the thesis "knowledgeable society" we advocate the thesis on how we should prepare our young for such a society, and that is that we need to educate them to become encyclopedic slaves. Why not prepare

the young for a learning civilization, a civilization of enthusiastic students educated to easily access knowledge, to use it, and then to store it in a computer, put it on the Internet or in book on a shelf where they can easily find it or use it. The thesis "knowledgeable society" is another Procrustes misconception which the educational administration of RS easily and uncritically advocates in the form of democracy of "equal chances".

CONCLUSION

Democracy today in the modern world implies an ideal of just and organized social relations, but we forget that it is, in Aristotle's terms, a negative form of ruling. Aside from Aristotle's interpretation, democracy in BiH and RS is becoming distorted. There are many facts that show that democracy in BiH an RS is based on the Procrustes Model. For example, politicians consider a critic something that they do not approve of, so true intellectuals are not present in politics and the media. Sartre's criticism in RS and BiH does not exist. There are three basic distorted forms of democracy in BiH: partocracy, the politics of elevated stick and representative politics. Aside from these, there are loans from the IMF which enchain the debtors with "loan chain" controlled by the IMF by creating democracy for local leaders and people. Money in this sense is the Procrustes's linen for the debtors.

Democracy in RS has caused social layering, which led to enormous wealth of few and drastic impoverishment of a large number of people. That is one of the outcomes of democracy in BiH and RS. Whose interest is it that in one nation there is a small number of people who do not know what to do with all that money, while at the same time the majority of that nation does not have basic means for life.

The IMF lends money to states and governments, and then it asks them to introduce austerity measures, i.e. to invest into something that will pay off not until many years later. In the meantime, the IMF continues to indebt that country, and by the time it has to pay off the first installment the country is so indebted that it cannot pay it off, i.e. it pays off the debt by getting another loan. Thus, the IMF creates a Procrustes loan noose which it tightens round the neck of local governments and states.

The road to Europe is viewed differently by the three nations in BiH, and this is accompanied by unjustified and non-selective import, also Bosnia is a focal point for arrogant attitudes of the most powerful countries accompanied by breaking and disrespecting of international norms and Satonization of the Serbs, we are the witnesses of the fact that politicians and educational administration of RS advocate the thesis "knowledgeable society" which is nothing more but u huge misconception – these are all Procrustes models which enchain the democracy in RS.

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FACEBOOK – CYBER PROFILING

BEHAVIORAL EVIDENCE ANALYSIS ON FACEBOOK: A TEST OF CYBER-PROFILING

Original scientific article

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Abstract:

This article applies criminal profiling in a cyber-context. More precisely, a deductive profiling method, behavioral evidence analysis, is adopted to develop cyber-profiling that aims to analyze the subject's online behaviors. In the present study, Facebook.com was chosen as the research site and cyber-profiling was applied to analyze Facebook users' online behavioral evidence. The goal was to predict some of their personality traits, namely self-control. The information revealed by the user was regarded as online behavioral evidence. Profiling based on such evidence successfully identify most people with low self-control, as confirmed by the participants themselves. The results show that accurate profiling is achievable, although cyber-profiling on Facebook by no means can represent the full scope of cyber-profiling.

Keywords: *profiling; behavior; evidence; analysis; Facebook*

INTRODUCTION

In an era where social-networking on the Internet has become an important aspect of many people's social life, online activity is more diverse and interactive than ever. Oftentimes, people only interact with us on the Internet and the concept of identity relies only on their behaviors manifested in an online setting. For instance, very few people actually have personally met all of their "friends" listed on their Facebook pages, but the identity of these "friends" is generally recognizable online. This kind of online-only so-

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cial relationships has created more opportunities for both the good and the bad. On the Internet, people can expand their social circle and communicate with a larger audience more easily, but they can also be deceived or even victimized more easily because of the artificial online identity that may or may not be genuine.

In light of such a cyber-centered social context, this study was aimed to develop a technique of cyber-profiling. Assuming no clues are available in the physical world, the subject is profiled based solely on his or her online behaviors insomuch as observable to the profiler. The objective is to assess the feasibility of predicting people's personality traits and characteristics by interpreting their online behaviors as evidence.

The idea of cyber-profiling was derived from criminal profiling. Criminal profiling is an educated attempt to provide investigative agencies with specific information as to the type of offenders in a criminal incident (Geberth, 1981). More specifically, this educated attempt is based on what is known about the subject to infer what is unknown (Yu, 2011). The primary goal of criminal profiling is to provide the criminal investigator with a psychological and social assessment of the subject (Holmes & Holmes, 2009). Although the term 'criminal profiling' is widely used in the media, criminal profiling is not really one method in itself. There are mainly two types of criminal profiling. Inductive profiling intends to generalize patterns observed in known cases, while deductive profiling focuses on the case in question specifically without reliance on generalities found in other cases (Rogers, 2003; Turvey, 2008). It has been argued deductive profiling is better suited for a cyber-context (Rogers, 2003). Behavioral evidence analysis (BEA) is a deductive profiling method that examines and interprets behavioral evidence in individual cases. Behavioral evidence can be any physical, documentary, or testimonial evidence in relation to an action regarding whether, when, and how it has taken place (Turvey, 2008). There have been some discussions in the literature on applying BEA to crime in cyberspace (Jahankhani & Al-Nemrat, 2010; Nykodym et al., 2005; Rogers, 2003). Despite this, very little, if any, effort has been put to empirically test the suitability or feasibility of behavioral evidence analysis in cyberspace.

As an exploratory effort, the present study is intended to develop a deductive profiling method for an online context (i.e., cyber-profiling). In this study the investigator applied behavioral evidence analysis on selected Facebook users and analyzed their online behaviors as evidence to infer their personal information, including demographics and personality. Since the users were not presumed criminals, the online behavioral evidence examined was not meant for determining whether, when or how a criminal event has happened. Rather, the behavioral evidence in this context was interpreted as indicators of the user's personality traits and characteristics.

The personality traits addressed in this study include the characteristics of low self-control as proposed in Gottfredson and Hirschi's general theory of crime (Gottfredson & Hirschi, 1990; Hirschi & Gottfredson, 2000).

PROFILING

Behavioral Evidence Analysis

In the present study, cyber-profiling adhered to the major principles of BEA, although the purpose was not the same. BEA is used to analyze behavioral evidence in a

crime, whereas cyber-profiling is used to analyze people's daily online behaviors. The applicable BEA principles are listed as follows (Turvey, 2008).

1. *The principle of uniqueness.* Every case is unique as no two individuals will develop in exact same fashion and result in the same behaviors.
2. *The principle of separation.* The profiler should avoid projecting personal feelings or perceptions onto the subject.
3. *The principle of behavioral dynamics.* People's behaviors could evolve or devolve so they do not remain unchanged over time, even when the motive is the same.
4. *The principle of behavioral motivation.* All behaviors have underlying causes, although some of the causes could be subconscious.
5. *The principle of multidetermination.* Behaviors can be complex and one behavior can serve more than one purpose.
6. *The principle of motivational dynamics.* The motive could change during the act, which means the original motive that caused the behavior might not be the same as the motive after the act is finished.
7. *The principle of behavioral variance.* One seemingly same behavior could be motivated by different reasons.
8. *The principle of unintended consequences.* Manifest behaviors could be an unintended result.

All these principles basically can be summarized into one word: context.

Behavioral evidence needs to be addressed within the context where the behavior occurs. Misinterpretation is a likely result if the behavior is analyzed as an object isolated from its original context. Hence, qualitative analysis is much better suited for cyber-profiling than the quantitative one.

Participants

Facebook was chosen to be the research site for several reasons. Aside from its ample supply of potential participants, Facebook allows for convenient electronic communications, which facilitates the research process. Participants were recruited unsystematically by searching common English names on Facebook (e.g. John or Emily). Users were chosen if their Facebook pages rendered substantial online behaviors for analysis. The agreement to participation merely granted the investigator the permission to start analyzing their online behaviors that had been observable to everyone. The investigator did not ask for privileged access.

Totally 100 Facebook users were recruited and there was no obvious personal ties among them. Depending on their privacy settings, these users revealed information to a various degree. To serve as a participant, they agreed to be observed by the investigator for a week. They also agreed to be interviewed electronically after the profile was completed.

Online behavioral evidence

Practically everything the investigator was able to observe on Facebook was considered online behavioral evidence. Online behavioral evidence was assessed on a case by case basis, as deductive profiling should be. All participants did not offer the same type of behavioral evidence on Facebook. Some of them only made the profile page public, while others made their "wall" public as well, at least partially. Some of them shared a variety of photos publicly, but some others only shared profile pictures. The information they disclosed on their profile page also varied. Some participant's self-introduction was more elaborate than others, and some users' friend lists were not visible. A few participants had links to other personal websites (e.g. MySpace, blog, Twitter, etc.) and those linked sites were used to look for online behaviors as well. Most evidence was in a textual or graphic form. Some evidence was more personalized as it was created by the user originally, while other evidence was more standardized as it was restricted to the format allowed by Facebook.

In the analytical process, the first component the investigator looked for in the evidence was the content of the online behaviors. For example, if the participant left a message somewhere, the content of the message would be analyzed. By the same token, if the participants shared photos, the content of the photos would be subject to analysis. The second component was the rationale behind their online behaviors. In other words, the analysis was aimed to infer why they were willing to share such information in such a manner. Furthermore, the participant's interaction with others on Facebook was also an analytical focus. The ways, the frequency, or even the lack of interaction all could be indicative of personality traits. Given these components, the behavioral analysis was intended to generate a 2-part profile for each participant.

Profile part 1

The first part of the profile was demographics. The investigator relied on the participant's online behavioral evidence to determine the user's demographic information, including gender, age, race, nationality, education, employment, religious belief, and current location.

Profile part 2

The second part of the profile was self-control. Gottfredson and Hirschi (1990) proposed a general theory of crime asserting that all criminal acts are a manifestation of low self-control. Accordingly, low self-control is the best indicator of criminal propensity. People with low self-control are believed to be impulsive, nonverbal, risk-taking, insensitive, selfish, and ill-tempered. They prefer physical activity over mental activity, and simple tasks rather than complex ones (Gottfredson & Hirschi, 1990; Grasmick, 1993). Low self-control leads to the pursuit of immediate gratification without regard to long-term consequences (Hirschi & Gottfredson, 2000). This theory has been one of the most tested criminological theories and remains the most prominent criminological theory (Piquero & Bouffard, 2007). This theory was chosen because it offers a simple and well-

established theoretical framework suitable for an assessment on personality as intended in the present study. Moreover, compared to other psychological or criminological theories, it is easier to explain the concept of self-control to the participants, who mostly did not have background knowledge on psychology or criminology.

Nevertheless, in this study the purpose was not to establish a correlation between low self-control and criminal behavior, as found abundantly in the literature. Rather, according to the participant's online behaviors, evidence suggesting the characteristics of low self-control was looked for. The aim was to test the ability to identify these characteristics through online behavioral analysis, without using these characteristics to implicate criminality. The complete list of characteristics of low self-control is as follows:

1. Impulsive
2. Nonverbal
3. Risk-taking
4. Insensitive
5. Selfish
6. Ill-tempered
7. Physical (as opposed to mental)
8. Simplicity-oriented
9. Short-sighted

The above characteristics would be qualitatively addressed, which means the cyber-profiling was not to simply draw a yes-or-no conclusion. The overall quality of these characteristics was assessed and the assessment was included in the profile.

Verification

Profiling is a very subjective technique and its reliability has long been questioned (Snook et al., 2007; Bennell et al., 2006). To ensure that cyber-profiling is not just the investigator's whimsical conjecture, the participants served as the source of verification. They were given a chance to review the profile and to refute it. Thus, the accuracy of the online behavioral analysis was subject to the participant's confirmation. Afterwards, an online interview would be conducted electronically via Facebook's messaging system. Thereafter, any inconsistencies between the participant's self-assessment and the profile would be discussed. The interview could continue for days as long as the participant was willing to respond.

If disagreements were reported, the investigator then compared the participant's accounts from the interview with the online behavioral evidence to address the possible cause for any inconsistencies.

ANALYSIS & RESULTS

Demographics

Demographic information predicted in part 1 of the profile includes gender, age, race, nationality, education, employment, religious belief, and current location. Among a

total of 100 profiles, 31 of them contained no errors in this part. Gender was easy to infer even if the participant did not disclose this information explicitly. Inference can be made from their names, photos, their interests, and the pages they like. The prediction of gender was 100% accurate. Age (76% accurate) could be inferred from education, friends, photos, music, and movies, when the participants did not overtly indicate their birth year. Usually the profile could offer an accurate range, such as 20-25. Mistakes were mostly likely to occur when the personal information found on Facebook was inaccurate or outdated. The majority of participants did not specify their race, but photos helped, including the photos of their friends. The profiling was correct 94% of the time as to race, and the absence of photos accounted for all the errors. Religious belief (71% accurate) could be explicitly or implicitly implied. Many people revealed their religious belief directly or through communication with others. For instance, sub011 listed the Bible as an interest, and sub015 once updated his status as going to church. Without such information, however, profiling was nothing more than a guess. Nationality was always implicit, but 98% of the profiles were correct in this aspect. The participant's name and language often provided solid clues. Their preference for music also helped with inference. Moreover, nationality could be reliably inferred when the user's high school and home town were listed on Facebook. Higher education is less reliable for inferring nationality because many people are studying overseas in college or graduate school. Education was roughly predicted in terms of education level rather than the exact institution, although in many cases evidence did, either directly or indirectly, suggest the name of the institution. Only 9 profiles were wrong about the participant's education level, mostly due to outdated information. Current location was predicted in terms of state if the participant was believed to be in the United States. Otherwise, only the nation was predicted. In the absence of direct information on current location, inference could be derived from their education, wall postings, and employment. Only 9 participants reported error in this regard. Employment was predicted in terms of full-time, part-time, or unemployment. In this fashion, 36% of the profiles were incorrect. Most mistakes were with regard to the distinction between full-time and part-time.

In sum, when the participants explicitly disclosed some personal information on Facebook, the self-disclosure served as good behavioral evidence for profiling, although inaccurate and misleading information could lead to wrong prediction. In the present study, most participants directly disclosed some information related to part 1 of the profile, but none of them disclosed all. Hence, inference was needed in all cases.

Inference was easier for gender, race, age, and nationality. Education level, religious belief, and current location relied more on self-disclosure, although inference was not impossible. The prediction of employment status was most unreliable, because even with self-disclosure participants rarely specified if their job was full-time or part-time, and many of them had more than one job.

Self-control

Part 2 of the profile is about self-control. Inference about self-control was based on the characteristics of low self-control, including impulsive, nonverbal, physical, selfish, risk-taking, ill-tempered, simplicity-oriented, insensitive, and short-sighted. Online

behaviors were analyzed for evidence suggesting the existence of these characteristics. Unlike demographic information that many people already revel directly, the assessment on self-control relies solely on inference and reasoning. Depending on availability, in addition to their self-introduction on Facebook, the participant's wall postings, photos, comments, and interests served as the primary sources of behavioral evidence. Some participants had answered a variety of "questions" on Facebook, and the answers to these questions also rendered rich clues. For example, sub066 responded to a question asking about his preference for pastime activities with "definitely outdoor sports". This answer was interpreted as a sign of preference for physical activities as opposed to mental activities, which is one of the characteristics of low self-control. However, it is important to note that one piece of evidence or one characteristic alone was not sufficient to draw a conclusion. The overall evidence was evaluated qualitatively instead of being quantitatively counted.

Only 8 participants' online behaviors showed no characteristics of low self-control at all, while 26 other participants were presumed to be people with low self-control because distinct characteristics were identified in their online behaviors. Most participants showed mixed evidence as expected, but it was determined overall the evidence was not decisively indicative of low self-control.

During the interviews, totally 91 out of 100 participants agreed with the overall assessment on self-control without major disputes, but a few did disagree. Specifically, 5 participants believed they had low self-control even though their online behaviors indicated otherwise, whereas 4 others refuted the predicted low self-control. Among the 9 characteristics, most false negatives were associated with "nonverbal" while "selfish" generated most false positives. More precisely, 12 participants disagreed with the profile that suggested they were not nonverbal, and 9 participants denied they were selfish as suggested in the profile.

Discussion

The purpose of the present study was to explore the feasibility of cyber-profiling, given only limited access to the subject's online behaviors on Facebook. Major findings are as follows.

First, needless to say, the more online behaviors are available the more accurate cyber-profiling would be. Most participants had more or less revealed some demographic information on their Facebook pages. Even if not directly revealed, it could be inferred from circumstantial evidence as discussed in the previous sections. In the present study, cyber-profiling was able to be accurate for the most part in terms of demographics, but with few exceptions (e.g. gender), the profile was not able to be too precise without the user's self-disclosure. It is unlikely for the profiler to predict exactly where the subject does for a living, for instance, unless the subject explicitly discloses it. On Facebook, however, many people actually chose to disclose information of this sort. The question worth pondering is why they allowed such information to be visible to strangers.

According to the interviews, it seems many participants did not mind their personal information being known as long as they can decide how much they want to reveal, and they apparently have different perceptions regarding what is okay to be seen by

strangers and what should remain private. In the present study, no participants claimed the information they revealed voluntarily was fake, albeit possibly outdated. In contrast, some people were unaware of their disclosure of personal information.

Second, unlike demographics, there was no direct evidence showing a participant's self-control. This is to say since no participants openly talked about their personality on Facebook, their personality traits could only be inferred from their online behaviors. Behavioral evidence suggesting low self-control included using profanity frequently, showing photos of deviant behaviors, discussing deviant behaviors, denigrating a particular population (e.g., minorities or homosexuals), liking groups that promote violence or hatred, failing to write a complete sentence most of the time, excessive "likes", complaining about things that they forgot to do, complaining about complexity in tasks, showing little regard for consequences, and being inconsistent in what they say. Moreover, disclosing too much personal information itself can be considered a sigh of low self-control because it is a risk-taking behavior (Ibrahim, 2008; Ellison et al., 2007; Tufekci, 2008; Tyma, 2007; Debatin et al., 2009; boyd & Ellison, 2008; Young & Quan-Hasse, 2009; Gross & Acquisti, 2005; Acquisti & Gross, 2006; Govani & Pashley, 2005; Viseu et al., 2004).

As stressed, such behavioral evidence ought to be analyzed in the context to be accurate. Interpreting the context depends heavily on the profiler's proficiency. In addition to the content of online behaviors, the profiler needs to analyze the rationale behind manifest behaviors. The rationale can be deemed as latent behavior. For instance, one participant was having an argument with another Facebook user who appeared to be her boyfriend. They exchanged words on her wall for two days and resulted in 23 messages related to that altercation. In addition to the content of those messages, the reason why they chose to argue publicly on Facebook instead of using other more private avenues needs to be analyzed as well. Online behaviors, both manifest and latent, were analyzed as indicators of personality.

Research has found self-esteem and other personality traits (e.g. narcissism) could be related to people's behavior on social-networking sites as some people use social-networking sites as a new way of self-presentation or self-promotion reassuring self-worth (Gonzalez & Hancock, 2011; Mehdizadeh, 2010; Stefanone et al., 2011; Wilson et al., 2010). Another theory suggests on account of assumed anonymity people tend to be subjected to deindividuation and lowered inhibition in cyberspace, so they tend to show more deviance in their online behaviors (Joinson, 1999; Kabay, 1998; Suler & Phillips, 1998). With this in mind, cyber-profiling faces a higher chance of false positive or false negative, contingent on the setting.

The present study was conducted on Facebook where anonymity was not assumed and a heightened sense of self-awareness was expected (Gonzalez & Hancock, 2011). According to the aforementioned theories, this implies the participants' online behaviors were prone to present a more positive image of themselves rather than their true ego. Theoretically their online behaviors would present then as having better self-control than in reality. However, in the present study, we had 5 false negatives and 4 false positives so this theory does not seem to be supported.

In sum, following the BEA principles, the present study proves that it is not impossible to predict some aspects of personality by analyzing online behaviors. When predicting personality traits, the inaccuracies in cyber-profiling could be attributable to four

major explanations. First, the profiler might have overlooked or over-interpreted some evidence. Second, the inconsistency between a person's online personality and offline personality could contribute to false positives or false negatives when interpreting online behaviors. Some people may not be aware of such a discrepancy and thus offer a self-assessment based on their offline personality only. Third, the behavioral evidence found online might be outdated. Fourth, the participant may have been untruthful in their self-assessments. As mentioned, in the present study, accuracy was determined by the participant's self-assessment. Hence, if they were not truthful, a correct profile could be reported as inaccurate. Also, the participants also could have disguised or altered their online behaviors after they knew they would be observed.

All in all, cyber-profiling in this study showed decent accuracy in predicting personality traits based on online behavioral evidence. There are limitations worth mentioning, however. The major one is the reliance on self-assessment for verification. Participants may not always be truthful or cognizant of their true personality. Although there was no evidence suggesting the participants had reasons to lie, they might be more prone to report what they want others to see them as rather than what they really are. It is equally possible some participants did not refute the profile simply because they did not care enough to do so.

Further, the sample does not represent any particular populations and the selection of participants was somewhat biased. Admittedly, there are many Facebook users did not reveal much information for analysis and they were not selected. Hence, it is important to note that the purpose of this study was not generalization. In fact, deductive profiling is not aimed for generalization anyway. Rather, the present study merely chose Facebook as a start to test the feasibility of cyber-profiling, and the test was based on a selective sample suitable for this purpose. An appropriate interpretation of the findings should only suggest that given sufficient, not necessarily ample, online behaviors, cyber-profiling is possible to be accurate. In addition, as all types of evidence, quality matters more than quantity. For example, a lengthy self-introduction section may not be as informative as a few photos that clearly reflect personality.

Moreover, due to the settings on Facebook, all participants in this study could be named and most of them had at least one photo of themselves. The name and photos played a predominant role in predicting many participants' age, gender, nationality, and race. However, this information is typically unavailable when the subject's identity remains unknown. Cyber-profiling in the present study had a vantage point that most profilers do not usually have. Thus, the accuracy of cyber-profiling in predicting demographic information might have been inflated in this study. On the other hand, on a site like Facebook cyber-profiling could be restricted because most online behaviors observable on Facebook are static and structured, while on other websites more dynamic (e.g. online video chatting) or personalized (e.g. homepage design) behaviors might be found. With more diverse online behaviors, cyber-profiling should be able to be more precise.

Cyber-profiling has potential applicability in many fields, such as criminal investigation and psychological counseling. In terms of criminal investigation, cyber-profiling is not meant to be a stand-alone technique. Future research should combine cyber-profiling with traditional profiling methods to enhance the utility of criminal profiling. In psychological counseling, a patient's online behaviors may allow for a different insight

into the patient's inner world. Cyber-profiling could even develop into a new treatment modality.

As stressed, behavioral evidence, either online of offline, can only be meaningful when being interpreted within the context. Possible language barriers or cultural differences would further complicate the context. It is recommended that to perform cyber-profiling, a profiler should at least possess the following competencies:

1. Moderate computer literacy
2. Familiarity with various online settings
3. Awareness of the cultural background behind manifest behaviors
4. Language proficiency and linguistic analysis skills
5. Knowledge on cyber-psychology
6. Experience of human sciences

The reliability of cyber-profiling is determined by the profiler's proficiency and the richness plus diversity of the online behaviors. The profiler needs to analyze not only the content of the behaviors but also the rationale of the behaviors. Future research can aim to develop a reliable certification for proficiency in observing and interpreting both manifest and latent behaviors.

Finally, considering the idiosyncrasy in individual behavior, inductive generalization can be very unreliable and misleading for behavioral analysis. Hence, it is advisable cyber-profiling should remain a deductive method. Case studies should be utilized to refine cyber-profiling, and cross-cultural studies are warranted.

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CRIMINAL LAW – RELIGION BETWEEN TRADITION AND MODERNITY

ATTITUDE TO MURDER IN THE CANONS OF THE ORTHODOX CHURCH

Original scientific article

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Abstract:

The canons of the Orthodox Church are rules adopted by the Church and are related to religion, morality, discipline, order and other church matters. Respect of the Old Testament norm "Thou shall not kill" applies to not only the fact of physical murder, deprivation of life, but it also includes a motive or intent. Given the intent of the perpetrator, there is a willful or intentional, almost intentional and unintentional murder. Epitimia implies specific measures taken by the priest against the penitent. Epitimia is not a punishment that should satisfy justice, but a drug that should raise awareness of the one who has committed a specific violation of the canons and provide spiritual healing of sinners through repentance. Epitimia may be a ban of Holy Communion for a while, which is the most common and most severe sanction, removal of sinners from the Christian community and public prayer, additional fasting and domestic prayers, reading religious books, visiting holy places and other soul-beneficial actions. According to the church canons, defrocking is provided for clergy if they kill, regardless of whether the murder was committed in war or in peace, intentionally or unintentionally.

***Key words**: murder, church canons, Orthodox Church, epitimia*

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1. INTRODUCTION

There are many difficult issues and major dilemmas posed in front of every Christian. The issue of murder is probably the most severe question the conscience of Christians is faced with, because, from the spiritual and moral point of view, it is one of the most difficult life and ontological problems. According to the Christian doctrine of genesis, God created man in his own image, which implies that the men cannot claim what is God's, that is, to give themselves the right to take the life of another man, for the giving and taking of life to the man is in the hands of God. Holy Bishop Nikolai said: "We must not, we cannot destroy the loaned life of God in ourselves or others ... Even the father and the mother do not have the right to take the lives of their children, because the parents do not give them their lives, but God through the parents" (Nikolai, 1991, p. 31-32). If parents do not own their children's lives, what about the ownership of the body and the life of others and strangers?

Since Cain killed his brother Abel, the question of murder has been present in the form of current theological, philosophical (ethical and axiological), legal, psychological and sociological issue. Abortion, capital punishment, killing in war and peace, and numerous other issues and ethical dilemmas in connection with the murder remain permanently open as long as the human race exists. This paper is a contribution to the consideration of this issue from an unusual, religious and legal perspective. This paper tackles the issue of how the canons of the Orthodox Church look to the murder. Firstly, it is considered how the canons treat murder (willful, almost willful and unintentional), then what repentance is prescribed for murder and finally, how to treat the murder committed by clerics on one hand and laity on the other. The spirit (deep meaning) and the letter (historical formulation) of the canons related to murder are described and discussed, with no pretense at comprehensive interpretation.

Canonical provisions of murder are given in the canons or rules of the Orthodox Church, which were translated into Serbian from the *Athenian Syntagma*, published in 1852-1859, the best edition and the most complete collections of canons of the first 10 centuries Nomocanon in 14 titles, by Nikodim Milaš, and under the title *Rules of the Orthodox Church with Interpretations* (Milaš, 1895). They will be compared with the latest translation of church canons, which, with the new explanations and interpretations, were published by the retired Herzegovina Bishop Athanasius (Jevtić), under the title *Sacred Canons of the Church* (Sacred Canons of the Church, 2005). A short overview will be given on how one looks at murder in the greatest Serbian manuscript book – *Nomocanon (Krmčija or Zakonopravilo)*[2] *of Saint Sava*, which was compiled by the first Serbian archbishop Sava at the beginning of the thirteenth century based on the Byzantine nomocanons[3] with over a hundred Byzantine canonical and legal writings, translated into Serbian-Slavonic language, done in a way to be an original collection, different from any known. So far, only the first volume of translation of the *Nomocanon (Krmčija) of Saint Sava* into

[2] On the title *Zakonopravilo*, instead of *Krmčija*, see (Petrović, 1990, p. 7-39).

[3] Nomocanons or Zakonopravila are mixed collections that combine collections of ecclesiastical canons and collections of civil laws, but mainly for practical reasons, to put the two separate books into one unified book. Canon is a rule prescribed by Church regarding church issues; law (nomos) is passed by the state, with the consent of the Church, for without the consent of the Church such laws would not be found in Nomocanon.

modern Serbian language has been published, called *St. Sava's Zakonopravilo* (Zakonopravilo, 2004).

What makes the canons (rules) of the Orthodox Church? Canon is a rule whose adoption is under exclusive jurisdiction of the Church and it applies to religion, morality, discipline, order and other church matters. These are written provisions that the Church adopted over several centuries and they consist of the rules of the Apostles (85 canons), rules of seven ecumenical councils (190 canons), rules of ten local councils (321 canons), rules of 13 Holy Fathers[4] (147 canons) and amendments to rules. Understanding of murder in the church canons is not just a theoretical and theological question, but has concrete consequences because of the constant problem of a genuine application of canonical tradition of the Church to the specific requirements of each time and new issues facing the Church.

2. WILLFUL, ALMOST WILLFUL AND UNINTENTIONAL[5] MURDER

Since the *Bible* is the fundamental source of ecclesiastical law, let us first recall the biblical views in relation to the murder. *The Old Testament* says: "Whoever sheds human blood, by a human his own blood is to be shed; because God made human beings in his own image" (1 Moses 9, 6), followed by "Thou shalt not kill" (2 Moses 20, 13). *The New Testament* includes Christ's reference to the Old Testament commandment "Thou shalt not kill" expressed in the words: "You have heard that what was told by those who lived long time ago: You are not to commit murder, for whoever murders will be subject to punishment" (Mt 5, 21). In addition, the Lord Jesus Christ is far more acute and exceeds the specified order prohibiting even the insults and anger at his neighbor: "But I say to you that everyone who is angry with his brother shall be guilty before the court; and whoever says to his brother, 'You good-for-nothing,' shall be guilty before the supreme court; and whoever says, 'You fool,' shall be guilty enough to go into the fiery hell" (Mt 5, 22). Revelation says: "He that kills with the sword must be killed with the sword" (Rev. 13, 10).

The validity of this commandment is universal and absolute, although it relates to single murder. Respecting the norm "Thou shalt not kill" does not apply only to the fact of physical murder, deprivation of life, but it also includes a motive or intent. Therefore, in terms of the Church, the norm is so layered, mysterious, ethically fruitful and ontologically enigmatic. Considering the kind of murder, different sanctions are provided, and there is different approach if murder is committed by a cleric or a laity.

According to the Eighth Rule of St. Basil the Great, willful or intentional murder (in modern legal language – premeditated murder) means: if someone throws an ax on someone and kills them; one who, pulling out a sword or knife, hits someone; and a robber, and the enemy and the one who for some other reason gives the poison – kills, and the women who give somebody child destroying weed, and those who use it.[6] The inter-

[4] Some of the Fathers whose rules are part of the Rules of the Orthodox Church are: St. Athanasius the Great, Saint Basil the Great, St. Gregory the Theologian, St. Gregory of Nyssa, and others.

[5] The quotations from the St. Sava's Zakonopravilo kept the form of "unintentionally".

[6] The quoted Eighth Rule of St. Basil the Great says: "He who pulls the ax at a woman – is a deliberate killer. Whoever throws a stone at a dog, hits a man, and the one who, to punish strikes with a whip or a rod – is the

pretation of the eight rule, among other things, says: "Some murders are therefore willful, others unintentional and there are some almost willful. If anyone, therefore, throws an ax at someone and kills him, and whoever takes a sword or a knife and kills someone, and bandits and enemies – the ones who kill for wealth, and the others want to kill those who oppose them in public – these are called willful murderers, for they kill willfully. This applies to the ones that give child destroying weed to try to kill a child in the womb – and those providing the weed – they also kill deliberately. And those women that would like to be loved by a man, making such weed and giving it to him to drink causing an eclipse of his mind – so, if he dies from the weed, it is considered willful murder" (Zakonopravilo, 2004, p. 505-506).

It is interesting that killing in war is also understood as willful, deliberate and premeditated murder. The attitude of Basil the Great, who believed that it is willful murder, was included in *Saint Sava's Nomocanon*. In N. Milaš, in the mentioned *Rules of the Orthodox Church with Interpretations*, this position is formulated as following: "It is however deliberate and is not subject to any doubt what is done by bandits or in time of enemy wars, because they kill for money, hiding from the court, and in wars murders are performed with resolute intention not to frighten or show someone the right path, but to kill opponents" (Milaš, 1895, p. 360).[7] This last paragraph shows how the issue of killing in war is complex, contradictory and ethically highly sensitive. War and killing in war are eternal themes and dilemmas of man from time immemorial to the present day.

Unintentional (accidental) murder and almost willful killing in interpreting the Eighth Rule of St. Basil the Great in *St. Sava's Nomocanon* is determined in the following manner: "And if anyone throwing a stone or wood at the dog in an attempt to defend oneself from him, and strikes the man missing the dog and the man dies from it, the murder is unintentional; or wants to knock some fruit from the tree, such as a pear or an apple or something like that, and missing the wood, hits a man, and the man dies of it, it is also unintentional killing; or if a man, wanting to punish the guilty, beats him with a belt or a stick, and the man dies from it – he is also considered an unintentional killer. If a man becomes angry with someone, and in his anger unsparingly inflict a wound with a piece of wood or hand on the mortal place and kills, it is almost willful murder. For, if a man although not wanting to kill the one who quarrels with him, does that, just wanting to inflict insult and not to kill him, but turns out to be overwhelmed with passion and grim, and therefore unsparingly inflicts a wound with a piece of heavy wood and kills – it is not entirely unintentional killing, but almost willful" (Zakonopravilo, 2004, p. 505–506). From these positions of the Fathers, it can be seen that they always put the emphasis on the intention of the man, not so much on the effects of human activities or nefarious activity, although of course they do not omit or deny them.

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unintentional killer. A person who, getting angry, strikes someone with a piece of wood or a hand in the mortal place and kills, is almost a willful murderer. The one, who, pulling a sword or knife, hits someone, is a real deliberate killer. The thief, the enemy and the one who for other reasons gives poison – if he kills, is a deliberate killer. The women who give somebody child destroying weed, and those who provides them with these, are willful murderers." (Zakonopravilo, 2004, p. 505)

7 The translation of Bishop Athanasius (Jevtić), this paragraph reads as follows: "And again, it is absolutely intentional (offense), undoubtedly, the (attack) from bandits in time of war and invasion. For they kill for money, avoiding (each) control, and they come to war to murder, not to intimidate or bring to reason, but with a public purpose to kill opponents" (Sacred Canons of the Church, 2005, p. 464).

Saint Sava's Nomocanon contains the 43rd Rule of Basil the Great: "He who strikes someone to death, whether he started it or in defense, is the killer" (Zakonopravilo, 2004, p. 525). The interpretation of this rule states that the killer is considered a person who, getting angry, in rage, inflicts someone a wound and kills him, whether he started it or was hit, and in the desire for revenge murders another one. Whether a deliberate or accidental murder, it will be decided according to the object he struck with, a sword, a piece of wood or something else. Here the above Eighth Rule of Basil the Great is pointed out again, which can help discern what kind of murder it is.

Indication of difference between intentional and unintentional murder is found in the canonical letter of St. Gregory, Bishop of Nyssa, addressed to Litou, Bishop of Meletina.[8] At *Concilium Quinisextum* (Fifth-Sixth Ecumenical Council), the 91st Rule also qualifies as murderers "women who take poisons to kill children in their womb, and the ones who give them those poisons".[9]

3. EPITIMIA (SANCTION) FOR MURDER

In the Gospel, Jesus Christ had already identified a punishment for murder – "… will perish from the knife". "Earthly death thus remains maximum evangelical 'penalty' intended for the holder of the sword", Ilyin noticed (Ilyin, 2001, p. 165). One who has taken up the sword to kill the other has to be ready to be killed. Hence, the taking up of the sword – is accepting death, but the fear of God reduces the fear of death. Christ's words that the one who takes up the knife will die of it does not mean an absolute prohibition of "taking up the knife", but a warning what to expect for those who take it up.

Given the intent with which the murder was committed, the canons provided various sanctions or epitimias (threatening). According to the orthodox view, epitimia implies certain measures taken by the priest against the repentant (whether the one receives or not forgiveness of sins), mainly in order to achieve spiritual healing as well as to protect the repentant from spiritual evil and every possible repetition of sin. Therefore, epitimia is not penalty which should satisfy someone's insult or appease the offended justice of God, but a remedy that should awake consciousness of the one who has committed a specific violation of the canons and provide emotional healing of the sinner through spiritual struggle of repentance.

Confessors – bishops and priests (presbyters) are entitled, which by the apostolic succession comes from the Lord Jesus Christ, to forgive or retain sins of those who

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[8] Considering various characteristics (properties, force, power) of the soul, St. Gregory of Nyssa, on the trail of the other Holy Fathers, as far as the ancient philosopher Plato, differs three basic properties of the soul: minded, horny and fierce (reasonable, eager and dynamic part). It is the man's free will whether these mental skills are to be used, or abused, or whether they will be used in the service of God and salvation, or in the service of passion and sin. Thus, writing about the depravity of the heart, the affective part of the soul, in the 4th rule, St. Gregory repeats the stance on intentional and unintentional murder: "there are a lot of depravity, fury and rage. The worst of all is the murder, which is divided into willful and unintentional" (Zakonopravilo, 2004, p. 583).

[9] 91st Rule of *Concilium Quinisextum* (Fifth-Sixth Ecumenical Council) states: "The ones giving and the ones receiving child destroying weed – are killers" and the interpretations write: "The women who use poisons to kill the children in their womb, and the ones that provide them with these, are also subject to threatening the robbers" (Zakonopravilo, 2004, p. 467).

repent: "If you forgive somebody's sins, they are forgiven, if you retain them, they are retained" (John 20, 23). Since some confessed sins cannot be forgiven, confessors, by the grace of the Holy Spirit, judge and evaluate the weight of each confessed sin, and the degree of repentance manifested. Based on that, some detestable sins can be "retained" for some time, determining required spiritual medicine for worthy repentance. The "retention" of a sin and prescribing spiritual medicine are the very essence of the term "epitimia".

When, whom, how much and what type of epitimia is determined is especially important. Both failure to cure by giving any spiritual medicine (which usually happens) and giving excessive doses can be devastating for the penitent's soul, because the goal of epitimia is to help and heal, not to worsen the situation and kill the soul. If the spiritual and emotional healing is compared to the physical one, then, a doctor would be guilty and responsible for the death of his patient for, either not curing him or giving him a drug that does not match his illness (too weak or too strong), which, instead of healing, will cause death, the priest is also responsible before God and the believer in using epitimia. With the exception, that the responsibility of the priest is even greater and more severe if the soul dominates the body.

What can be considered epitimia? For example, it may be moving away the sinner from the church community and public prayer, Holy Communion ban for some time, which is the most common and most serious epitimia, additional fasting and domestic prayer, prostrations (small and large gifts), reading religious books, almsgiving, visiting sacred sites and other soul-beneficial actions. For more serious sins, such as murder, adultery and witchcraft, it may be decided on the prohibition of Holy Communion for the period of several years. Even in apostolic times, heavy sinners were opted out of the church community, and they came back into it after a while, as they showed true repentance for the sins committed. Later on, at ecumenical and local councils, the Church systematized the issue of epitimia, especially by adopting specific rules.

Even in the third century, the 11th Rule of the Epistles of St. Gregory the Great, discusses penitent discipline and four levels "of those who repent", and these are: 1) weeping penitents, 2) listeners (to pious content that is read), 3) those who kneel and prostrate and 4) those who attend religious services together with other faithful (Orthodox Encyclopedia, 2002, p. 36). As far as the year of 391, the Church practiced "public confession" (in public, in front of everyone in the church, the sins were confessed), and the "repentance" was public, as well as the epitimias themselves. Nectarios, Patriarch of Constantinople, abolished public confession, and since then there has been only a single, secret confession.

The oldest canons of epitimia are attributed to the *John* Nesteutes or *John* the Faster (582-595). His regulations require fasting, prayer, dry food and specify for a long time, depending on the offense, prayer, almsgiving, etc. – for offenses, such as apostasy, witchcraft, adultery, not keeping the oath, obscenity, digging and desecration of graves (Milaš, 1895, p. 499–519). From the sixth century, when (for legitimate reasons) public confessions were abolished, various degrees of public repentance (epitimia) were also abolished. Fruits of centuries of church work in the field of systematization of epitimia were briefly summarized and expressed in his holy canon of epitimia by St. Nicephorus the Confessor, Patriarch of Constantinople (+818).

The 66th Rule in the Rules of the Apostles, or the collection of canons, which were called *Apostolic Canons* and created during the first centuries of the history of the Church, writes: "If the killer is the priest – to be exposed, if an ordinary person – to be opted out", followed by: "If the priest fighting hits someone to death – to be exposed for his cruelty and if the laity does this – to be opted out" (Milaš, 1895, p. 148).[10] Thus, if the cleric (priest) commits murder, whether willful or unintentional, the canons provide him to be defrocked.

The strictest penalties for willful killing are provided in the rules of the First Council of Ankyra.[11] The 22nd Rule stipulates: "Anyone who deliberately committed the murder at the end of life that is worthy of the Holy Communion" (Zakonopravilo, 2004, p. 204; Milaš, 1895, p. 22). Certainly, the idea was that, although a murderer, a man should receive the Holy Communion, thus coming before the face of the Lord, who alone has the power to forgive the man everything, or to punish him for the past life and the offenses done. This means that the penalty for this sin is epitimia for life. The interpretation of this rule says: "He, who deliberately killed a man, repents all his life, and at the end of life, or at the exit of the soul, is to be worthy of life ending and given the Holy Communion" (Zakonopravilo, 2004, p. 204). The 23rd Rule of the Council of Ankyra specifies that for the one who inadvertently commits murder, the punishment is 5 years of epitimia: "Whoever commits murder unintentionally is to repent for 5 years".[12]

The threats provided by the rules of Basil the Great and included in *Nomocanon* are listed below. The 11th Rule provides that: "Whoever commits murder unintentionally is to repent for 10 years. This is clear" (*Zakonopravilo*, 2004: 509). In the 54th Rule, St. Basil opens up the possibility to extend or reduce the threats for murder depending on the circumstances (Zakonopravilo, 2004, p. 530). The interpretation of this rule explains: "Therefore, threats prescribed for intentional and unintentional murders are set by this great teacher of the church; and these are to be extended or reduced as needed, delegated

[10] Unlike *St. Sava's Zakonopravilo*, in other collections this rule is stated under item no. 65. See: (Sacred Canons of the Church, 2005, p. 53). In interpretation of this rule by N. Milaš, we find that this rule deals with "almost willful murder", or a murder that was committed in an irritated state or quarrel. If the laity commits such a murder, according to the 11th Rule of Basil the Great, he is opted out of Holy Communion for 11 years, and according to 55th Rule by the same saint, deposition is ordered for the clergy, as well as for any other murder. In the interpretation of this rule, Valsamon refers to the words "one hit" and says, "that the words were put there specifically, lest anyone think that cleric may not be deposed if he kills a man with a single blow, since such a murders could have been accidental, but a cleric is subject to deposition no matter the way he killed the man. Here, the decisive moment for the clergy is shedding the blood of man, regardless of the circumstances and motives that caused the shedding, and this is because the shedding of the blood of man is decisively contrary to the service, generally done by a priest, the main point of service being bloodless victim in Eucharist sacrament" (Milaš, 1895, p. 135–136).

[11] The Council of Ankyra is the first local council, which means the council at which all the Bishops of the concerned Metropolitan were required to participate and it was held in Ancyra in Galatia in 314. The Council was attended by 18 bishops of Asia Minor and Syria, chaired by the Bishop of Antioch, Vitaly. 25 canons were enacted at the Council, of which half is attributable to the conditions under which the Church may receive the clergy and laity who have renounced their faith during the persecution of the Church in 305, and Canons 11, 16, 17, 20, 21, 22, 23, 24 and 25 apply to certain moral transgressions of the faithful, including the murder.

[12] The interpretation of this rule is: "If anyone commits murder accidentally, this rule, therefore, provides for such a murderer 5 years of being threatened", while "57th Rule of St. Basil provides for such a murderer: 2 years of crying, 3 years to spend with those listening, 4 years with those belonging, and one year to stand with the faithful, so that after ten years he receives final and is worthy of the Holy Communion" (Zakonopravilo, 2004).

to the will of the one who had received the power to *bind* and *discharge*" (Zakonopravilo, 2004, p. 530). This refers to the clergy. The 56th Rule reads: "Whoever willfully kills is to receive 20 years of threat, and who kills unintentionally – 10 years; adulterer – 15 years; fornicator – 7 years, and virgins, who having taken the oath do the sin – are to receive 15 years of threat" (Zakonopravilo, 2004, p. 531). In interpreting the above, it is stated: "Whoever willfully kills, and then repents, is to be barred from the sacraments for 20 years. These twenty years will be arranged for him in the following way: he shall cry for four years, standing outside the church doors and asking the faithful who enter to make up a prayer for him, confessing his lawlessness. After those four years, he is to be admitted among those who listen to *Divine Scriptures* and spend five years with them; and seven years to spend with *the belonging*, praying; four years just to stand with the faithful, and not to receive the Holy Communion. When these years pass, he will receive the sacraments of the Holy Communion" (Zakonopravilo, 2004, p. 531-532). 57th Rule reads: "The one who kills unintentionally is to be ostracized for ten years, namely: two years to cry and two years to listen to, four to *belong* to, one to stand with the faithful, and then to receive the sacraments of the Holy Communion" (Zakonopravilo, 2004, p. 532). 26th Rule briefs on the time (of threat) for sinners, and in 15th Rule, St. Basil states: "Whoever kills willfully – is to repent for 20 years"; 17th Rule: "Whoever kills unintentionally – is to repent for 12 years and not to be a cleric" (Zakonopravilo, 2004, p. 548).

The aforementioned 4th Rule of St. Gregory of Nyssa states: "He who wishes to repent willful killing, is to deprive of the Church for ten years; to listen to *Divine Scripture* for the period of nine years, standing with the people; to *belong* for nine years, thus receiving the Holy Communion. However, there is a mitigating factor if warm repentance and tears are expressed, so that in each instance of repentance, there are either eight, or seven, or six, or only five years. A person who has committed unintentional killing – if the cleric, is to be rejected by the grace, that is to be deprived of the sacred service, and if the laity, the threat for him is to be the same as for the fornicator who has committed plain fornication, meaning with women and not with the animal or with the male adulterer. The time is also reduced if he expresses warmth and makes effort to repent" (Zakonopravilo, 2004, p. 583). The same father, St. Gregory of Nyssa states in the 5th rule: "If the opted out gets sick before the end of his punishment, he is to receive the Holy Communion if on the point of death. However, if he gets better, he is to wait for the ordered time, dwelling on the degree of threat before the Holy Communion" (Zakonopravilo, 2004, p. 584). Here, one can see the norm that epitimia is interrupted before physical death to enable the sinner to come more prepared before the face of God.

Murder in war is a specific issue (Grozdić, 2010). In connection to killing in armed conflicts, the most important is the 13th Rule of St. Basil the Great. The *Rules of the Orthodox Church* by N. Milaš read: "Our fathers did not consider killing in wars to be murder, condescending, as I see it, the defenders of modesty and devotion. It would be very good to advise that those, as their hands are unclean, abstain from the Holy Communion for three years" (Milaš, 1895, p. 367). Athanasius (Jevtić) translates 13th canon of St. Basil the Great as follows: "Our fathers did not consider killings in wars to be murder, giving forgiveness (=*condescending*), as it appears to me, the defenders of chastity (=*modesty*) and devotion (=*True Christian Faith*). After all, it would be good to advise that they, as their hands are not clean, abstain only from the Holy Communion for three years" (Sacred Canons of the Church, 2005, p. 467).

In the interpretation of this rule by N. Milaš, Basil advises that a soldier should not be given three years of the Holy Communion, as he soaked his hands with human blood. This Basil's advice was justified by the example of the Old testament Church (4 Moses 31, 17–34)[13], trying to ease the burden on the soul of the soldiers themselves for shedding of human blood (Milaš, 1895, p. 368). In addition, the above interpretation cites the observations of Zonaras [14] and Valsamon[15] that the advice of Basil the Great was not used anywhere, but the attitude of Athanasius served as a benchmark: "Killing is not permitted, but killing enemies in war is both lawful and worthy of praise". Valsamon mentions examples of some clergy "who have participated in wars and killed enemies, however, they were not deprived of the right to the priesthood, but were also awarded" (Milaš, 1895, p. 368).

Having dealt with the issue, the 55th Rule of Basil the Great is also interesting: "Those who attack the bandits, if they are not clergy, are deprived of mild communion, and the clergy – are to be exempted" (Zakonopravilo, 2004, p. 530–531). Ariston's interpretations of church canons read: "Since, in the words of the Lord, anyone who takes up a knife will die of it, and those who attack the bandits and confront them and kill them – are under threat; so if the laity they will not receive the Holy Communion gifts, and if the clergy – they are to be exempted" (Zakonopravilo, 2004, p. 531).[16] The question is whether this rule prohibits opposition to "bandits", fighting against them and killing them. The above rule only expresses the way the Church sanctions the sin of Christians who were killed in this situation. For, what about those who for a noble cause "take up knife", ready for the greatest sacrifice, die from the knife, sacrifice their life for the protection of their loved ones, homeland, religion and so forth? What if a man accepts to get killed for love? Despite the fact that we live in another time where much has changed in relation to the basic canons, we see that their messages are permanent, universal and valuable to our lives and our interpretation of the value and meaning of life. What is particularly impor-

[13] The Old Testament recommendation on what should be done by those who killed says: "And you stay outside the camp for seven days; whosoever killed and who touched the killed one should clean on the third day and the seventh day, yourself and your laundry. (Whoever touches the dead body of man, to be unclean for seven days. 4 Moses 19, 11). Further, all dresses, all leather things, all that is of sackcloth and all wooden vessels are to be cleaned. Eleazar, the priest, said to the soldiers who were going to war: this is the order and the law as the Lord commanded Moses: Gold, silver, brass, iron, tin, and lead. Whatever stands the fire, let through the fire and it will be cleaned, but after having been cleaned with the water of purification, and whatever cannot stand the fire, rinse through the water. And wash your clothes on the seventh day, and you will be clean, and then you will get into the eye" (4 Moses 31, 19–24).

[14] John Zonaras (1081–1118) one of the three most important interpreters of church canons (Ariston, Zonaras, Valsamon); however, he is not limited only to the interpretation of their meaning, but looks for motives for the adoption of a certain canon, reconciles them, and in the event of a conflict among canons on the same issue, gives preference to one over the others, etc.

[15] Theodore Valsamon (1143–1180), the third interpreter of church canons.

[16] In N.Milaš 55th Rule of Basil the Great states: "Whoever enters into battle with the bandits, unless they are serving the church, let them be opted out of the holy communion; if they are clergy, let them be overthrown of their degree, because everyone, it is said, who takes on the knife, will die from the knife (Mt 26, 52)", and the interpretation states: " and in his 13th rule on killing enemies in war, Basil, although not condemning such murders, recommends that the concerned soldier should be deprived of the Holy Communion for three years, because he soaked his hands in human blood. In this rule, he speaks of bandits and commands that every laic who comes into the fight with bandits and kills them is to be deprived of the Holy Communion, and if a cleric does this, he is to be overthrown; and this command is based on the words of the Holy Scripture, that everyone who takes on the knife, will die from the knife (Mt 26, 52), because it is really hard to man not to kill the bandit who wants to kill him and inflict harm to many others" (Milaš, 1895, p. 406–407).

tant is that in the contemporary world, very important issues are still considered, such as killing in war, as well as valuable answers to new challenges, dilemmas and ethical antinomies are provided. Ancestors rightfully left us laws, wisdom and messages to operate according to them, to interpret them carefully and wisely and develop them creatively.

4. CONCLUSION

According to the Church, a man does not govern the mystery of life and death, and thus cannot take what he has not given, to destroy what he has not built and cannot build. Only the one who can give or not give life, who rules the secret of life and death, can take it. Therefore, he who kills essentially seeks to have the feeling of power to put himself in the place of someone who has the latest and greatest power, therefore, reaching out divine power. According to Christian understanding, life is great, but only one of the noblest values, and not absolute sanctity. There are values in the name of which life can be sacrificed. After all, the Holy Scripture says: "He, who loses his life, will save it". In addition, there are views according to which life ceases to be sacred when it endangers the life of another, and then a life can be taken in order to save and protect another life.

According to the canons, the clergy, if kills, is defrocked, regardless of whether the murder was committed in war or in peace, intentionally or unintentionally. Which would justify taking of one's life? It is essential to understand the life of the killed person, his fate in the world and, finally, the fate and the way of the world in general. Since only God has this power, killing a man cannot be justified by any reason. The big limitation of man as a creature is that he is not able to fully and essentially consider all dimensions, depths and secrets of the murdered man, to conceive and understand his fate, motives and intentions. If a man had divine powers, only then he could essentially understand whether or not he was supposed to kill another man; thus, as an imperfect creature, the man will always make mistakes when he wants and takes life of another being, as he does not see the world as a whole, destiny, the secrets of life and the meaning and intention of the Creator. Since love is completely absent from the act of murder, the man's murder is not only the denial of love between a man and a man, but absolute denial of the possibility of establishing such relationships and its duration in the future. It is difficult to prove that there was no other way out other than murder, to provide serenity to troubled soul and silence the conscience caused. One feels that there was no other way out except killing another one, because of succumbing to one's weaknesses, the inability to have the power to make proper measurements as Plato would put it, and not investing enough Christ-like love in the relationship with another man.

There will always remain the following question: Has everything been done not to render murder a unique and inevitable means? Murder as such establishes between the murderer and the murdered special, painful and mortifying spiritual and moral ties. This obviously expresses the inability of the man to break down spiritual thread of humankind unity.

The act of murder is a complete and unconditional incorrigibility of what will happen and will continue to happen. If we consider only in terms of time, irreparably is all that passed in time, that is the past, every insult, every injustice, every sin. However, viewed from the aspect of love – all this can be fixed, smoothed, healed and comforted.

Murder, on the other hand, carries the character of irreversibility (Илъин, 1997). Murder is a shorter, simpler and torturous relationship of a man to a man. The other one is reaching for the attributes of the Lord, but the path of love, seeing one's own and others' sinfulness is longer, more complex and bumpier, although illuminated by the divine goodness, beauty, love and compassion; for that, a man often does not have strength, will, patience or kindness. Death is forever a broken bridge between people in both this and the other world, and to avoid killing is a new horizon of hope and the victory of a God-like creature and a new bridge of love and forgiveness, because the Lord rejoices when, with the power of his love, evil is avoided and won.

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CRIMINAL PROCEDURE AND MODERNITY

OVERVIEW OF CONTEMPORARY THEORETICAL CONCEPTS ON THE BASIC NOTIONS OF CRIMINAL PROCEDURE

Reviews

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Abstract:

In their paper the authors first show that the criminal procedure law is a branch of criminal law doctrine related to criminal procedure, i.e. it represents a set of legal regulations governing criminal procedure. Therefore, criminal procedure is the subject of the criminal procedure law. Then they define the notion of criminal procedure introducing two concepts that are relevant to the essence of this notion: the realistic and the legal concept of criminal procedure. In addition, this is followed by the types or forms of criminal procedure, and finally, by the subject of criminal procedure. Namely, the aim of this paper is to point out or to provide an overview of contemporary theoretical views of our authors on the basic notions related to criminal procedure.

Keywords: *criminal procedure law, notion, types and subjects of criminal procedure.*

INTRODUCTORY REMARKS

The history of the criminal procedure law indicates that the criminal procedure law has been at each step of its development a part of the organizational structure of a particular state[3], and as such, has been a result of economic, political and other social causes (Sijerčić-Čolić, 2005, p.181). The notion of the criminal procedural law can be

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[3] See more on medieval criminal procedure in: Vidović, V. (1984). Srednjovjekovni krivicni postupak s narocitim osvrtom na dokazni postupak. Banja Luka, Faculty of Law Yearbook, Vol. VIII, Banja Luka, pp. 125-138.

discussed in many ways, but nevertheless one must always bear in mind that it is a branch of criminal law which deals with criminal procedure which again offers a clarification and resolution of a criminal matter. (Bejatović, 2010, p. 27).

Thus, theory offers different concepts of the criminal procedure law, where these concepts occur because of different ideas of what the essence and content of this law are. Depending on the previous, greater importance is being given to one or another basic characteristic of criminal procedure. That is why we have theorists who give primacy to criminal procedure actions, and those that prefer relations in criminal procedure, or there are those that these features observe from different points of views (Stevanović and Đurđić, 2006, p. 3). Tihomir Vasiljević offered one complete definition noting that the criminal procedure law is a set of legal rules governing criminal procedure, i.e. it represents a set of legal rules governing the rights and duties of criminal-procedural subjects, as well as the form and content of criminal procedural actions taken by these entities for the purpose of determining the criminal claims of the state towards the perpetrator (Vasiljević, 1981, p. 23). A similar definition was given by Dragoljub Dimitrijević, noting that the criminal procedure law represents a system of legal rules defining the criminal-procedural entities and their relations for the purpose of clarification and resolution of a criminal matter and for accomplishing criminal-law protection of a society-state (Dimitrijević, 1988, p. 3). However, Momčilo Grubač (Grubač, 2009, p. 45) and Miodrag Simović (Simović, 2005, p. 30) state that this concept would remain incomplete if it did not cover the matters that may arise out of criminal claims, but are the subject of the criminal procedural law (property claims, prejudicial issues, and legal costs), as well as regulations on matters whose resolution represents a prerequisite for criminal procedure or have incurred as a result of completion of a criminal procedure (extradition, indemnity to unjustly convicted persons, issuance of a warrant and announcement, deletion of the conviction and others).[4]

As for the subject of the criminal procedural law, Momčilo Grubač stresses that the basic and the main subject is found in legal settlement of the procedure in which it is determined and decided whether there is a criminal-procedural claim of the state to punish the person who is associated with committed criminal offense (Grubač, 2009, p. 45). On the other hand, according to Čedomir Stevanović and Vojislav Đurđić, the main subject of the criminal procedure law is a criminal matter (*criminalis causa*), and apart from the main subject, there is a secondary subject of the criminal procedure law, which includes: preliminary or prejudicial issues, property law claim and costs of criminal procedure (Stevanović and Đurđić, 2006, p. 9). Miodrag Simović, on the other hand, points out that the subject of criminal procedure is to establish the existence of criminal-procedural claim of the state in each criminal matter initiated due to perpetrated criminal offense, and that it ends by making a final decision on the matter. Furthermore, he emphasizes that criminal procedure differs from criminal enforcement, because the process focuses on decision making and the enforcement on the execution of decisions so that the enforcement has no procedural relations (Simović, 2009, p. 32). The right of criminal enforcement is a special one, separate from the criminal procedure law, regardless of the fact that

[4] The criminal procedure law is also called the formal criminal law, unlike the so-called. substantive criminal law. These names should demonstrate that the substantive criminal law prescribes the terms and content of one state's right to impose criminal sanctions on offenders, and the criminal procedure law prescribes the right to have a procedure where such procedure is determined (Grubač, 2009, p. 45).

some criminal enforcement provisions are also found in the criminal law and the criminal procedure law, and regardless of whether criminal enforcement is imposed as an act of the court or an act of the administrative authority (Vasiljević, 1981, p. 24). Thus, the enforcement of court decisions is not a subject of the criminal procedural law, the criminal enforcement law. Also, the organization of judicial authorities (courts and prosecutor's offices), although it has great significance for criminal procedure, is not the subject of the criminal procedure law. Parts of the criminal procedure law are only those standards from the law on courts and the law on prosecution that deal with the specific performance of judicial duty, but not the other provisions (Simović, 2007, p. 30).

When we talk about the task of the criminal procedure law, we can conclude that it is related to the clarification and resolution of criminal matters, as well as to resolution of the issues that fall under the secondary subject (Bejatović, 2005, p. 27). Therefore, the main subject of the criminal procedure law is the one that is implemented first, and along with it the secondary subject of the criminal procedure law is realized (Stevanović and Đurđić, 2006, p. 9). So, in addition to the general task of criminal procedure (clarification and resolution of a criminal matter, and the application of substantive criminal law in a resolved criminal matter), there are specific tasks and phases of each and every individual stage of criminal procedure, with the notion that they all fit into the overall task of the criminal procedure law (Bejatović, 2010, p. 34).

THE NOTION OF CRIMINAL PROCEDURE

We have previously noted that the criminal procedure law is a branch of criminal law doctrine related to criminal procedure. Momčilo Grubač states that the word "procedure" comes from the Latin word "*procedere*" which means to prosper, grow, and develop. In this respect we can talk about criminal procedure or criminal process noting that the words process and procedure have exactly the same meaning.[5] Therefore, criminal procedure (*lat. - processus criminalis, fr. - procédure pénale, germ.- Strafprozess, ital. - procedure penalties*) is the subject of the criminal procedure law (Grubač, 2009, p. 27). In criminal procedure, the state, throughout state bodies and other entities, undertakes a range of appropriate actions in order to apply, in a specific case, if there is a suspicion that a criminal offense has been committed, the substantive criminal law (Simović, 2005, p. 21). Momčilo Grubač and Miodrag Simović agree that the theory of the criminal procedure law offers more than one concept on the notion of criminal procedure, and that if one wants to explain the essence of criminal procedure, special significance is given to two notions: legal and realistic one.

The realistic notion of criminal procedure

Criminal procedure, observed throughout its manner of manifestation, as a physical phenomenon, is a set of criminal-procedural actions of criminal-procedural subjects

[5] On the other hand we have a stand of Djurdjic and Stevanovic who note down that the term "criminal process" is less acceptable because the term "process" is more natural and appropriate in technical, then in social ones. Quoted from: (Djurdjic and Stevanovic, 2006, p. 10).

– the court and the parties (the prosecutor and the suspect or the accused). These actions are defined by procedural regulations and are aimed at reaching a court decision or a decision on other procedural relations connected with a criminal offence and requiring court's participation and decision (Simović and Simović, 2011, p. 25)[6]. Criminal procedure is, therefore, a set of legislated procedural actions which are undertaken by procedural subjects with the aim of reaching certain procedural aim. This notion, although it precisely defines criminal procedure as a real-life phenomenon, is not adequate to define its internal legal nature and essence. Therefore, criminal procedure must also be defined from the juristic point of view (Grubač, 2009, p. 27-28).

The legal notion of criminal procedure

As it is noted by Miodrag Simović, complete comprehension of criminal procedure notion can be achieved only when one, in addition to its actions and subjects, also studies the relations among the procedure subjects, and determines what procedure represents not as a physical phenomenon but as a legal notion. Namely, when a criminal offense is perpetrated, a substantive law relationship between the state and the perpetrator is created.[7] For the state this imposes the right and the duty to apply criminal law against the perpetrator, if he is found liable. For the suspect, or the accused at the same time, it imposes a certain right that criminal liability is established, and the sanction is determined and executed under the assumption and within law-prescribed framework. A relation thus created between the state and the suspect or the accused, is a legal one, as it is regulated by law, and establishes the rights and obligations for both parties (Simović, 2009, p. 24-25). Substantive law relation is essential and concrete, but also hypothetical, because its presence and scope are yet to be determined, and that is what happens in a criminal procedure (Grubač, 2009, p. 27-28).

Criminal procedure, observed in terms of its internal side (in terms of its legal/juristic nature) is also a legal relation, independent of the substantive law relation. Criminal procedure is a legal relation since it is governed by the law, and procedural actions are set in a manner that they appear as execution of law, from the legal point of view, or fulfillment of procedural subject duties (Vasiljević, 1981, p. 5-6).

Criminal procedure relation takes place between the court, the suspect or the accused, and the prosecutor (procedural subjects): the court has certain rights and obligations towards parties (to the accused and the prosecutor), and the parties have certain rights and duties towards the court and among themselves, i.e. legal relationship is trilateral. The obligations of one entity are, as a rule, the rights of the other, though there are also independent rights and obligations of each entity (Simović, 2007, p. 24).

When talking about the relationship between the parties and the court, the court has a general duty to provide them with legal protection: it is obliged to accept the law-

[6] A prominent theorist of criminal procedural law, Karl Birkmeyer defined criminal procedure in similar manner as "... the public, continuous legal relation between the court and the parties for the purpose of determining state's criminal claim" (Birkmeyer, 1898, p. 5 - see the Dimitrijevic, 1988, p. 5).

[7] See more on the criminal procedure as a legal relation: Dimitrijević, D. (1988). Osnovi ucenja o krivicnom postupku kao pravnom odnosu. Yugoslav Journal of Criminology and Criminal Justice, Vol. 26, No. 3, Belgrade.

suit, to make a decision on the filed claim in accordance with the law, and to perform all actions that may be needed. The suspect or the accused has a general duty to get into an initiated procedure, and to endure and bear the process, without obligation to any action, except the obligation of responding to court summons, and, on the other hand, it has a number of rights that enable the defense and protection of his entity. The prosecutor's general duty is to establish procedural relations, wherein prosecutor makes a decision whether procedure initiation is based on the principle of legality and the principle of opportunism. The specific thing about the relation between the parties is that the prosecutor is obliged to prosecute fairly, which corresponds to the right of the accused to, otherwise, seek his exemption (Simović, 2007, p. 24).

When studying procedure as a legal relation, it is necessary to have an assumption of the existence of procedural subjects. Procedural law relations cannot exist if there are no subjects which the procedural relation is based on. Definition of procedure as a legal relation is valid only for those types of procedures in which primary procedural functions (prosecution, defense and adjudication) are split among three main procedural subjects (the prosecutor, the suspect or the accused and the court) who carry certain rights and duties (accusation and mixed type of process), but is not valid for the investigative (inquisitorial) type of procedure, as well as for modern criminal procedures where the accused, due to non-recognition of procedural rights, has no status of a procedural subject (Simović, 2009, pp. 25-26).

Criminal procedure theory also offers some other perceptions of the criminal procedure law. There is even a perception of the criminal procedure law as a legal position (situation) and a concept of threefold perspective of criminal procedure (Grubač, 2009, p. 28). The idea that stands out is the one that defines criminal procedure law with the subject of criminal procedure, action and decision (tripartite realistic definition of the criminal procedure law) (Simović, 2005, p. 23).

TYPES OR FORMS OF CRIMINAL PROCEDURE

In order to deal with criminal matters, the law prescribes one general form of a procedure, but, depending on the gravity of the offense, characteristics of offenders and other circumstances, there is a need to anticipate certain variations from this form (Stevanović and Đurđić, 2006, p. 11). Thus, we have forms of criminal procedure that can be general and specific, with the proviso that the general form of procedure is the one that is defined by the law as a typical (normal). In our law[8], the general criminal procedure is prescribed in Part Two (the course of procedure), wherein the general criminal procedure is not related to a specific court, or certain category of suspects or accused. There are specific criminal procedures for certain categories of courts that prescribe different procedure from the typical (normal) one. The Law on Criminal Procedure does not anticipate any complete special form of procedure, but in terms of procedure for issuing a warrant, procedure against juveniles, procedures against legal persons, and procedure for the imposition of judicial admonition, it sets some modifications compared to the typical procedure (Simović, 2009, p. 29).

[8] Code of Criminal Procedure - Revised text ("Official Gazette of the Republic of Srpska", No. 100/09).

Specific types of criminal procedure should not be confused with specific non-criminal procedures. Specific procedures are not criminal procedures, because they are applied to the latter (before, during or after a criminal procedure). Those are procedures for: application of security measures; property confiscation; revocation of suspended sentence; making a decision to delete a conviction or to terminate imposed security measures or legal consequences of a conviction; providing international legal assistance; compensation, rehabilitation and exercising other rights of persons unjustly convicted and imprisoned; and procedure for issuance of a warrant and announcement (Simović, 2009, p. 29).

From the historical point of view, procedure has been: indict (accusatorial), investigative (inquisitorial) and contemporary (mixed, i.e. accusatorial – inquisitorial). The criminal procedure of any historical period and any country can be categorized as one of these three types of criminal procedures. The position of procedural subjects in the mentioned procedures is very different. The historical evolution of criminal procedure, observed through these three basic forms, shows that the development proceeded from the understanding of the offense and the procedure as a private matter of parties, to the understanding of the offense and the procedure as a matter of public interest, which resulted in a different organization of criminal procedure (Sijerčić-Čolić, 2005, p. 181).

SUBJECTS OF THE CRIMINAL PROCEDURE

Depending on the notion who falls under the category of the subject of criminal procedure, the theory of the criminal procedural law offers three different views. According to the first, quite narrow conception, the subjects are only those entities that are necessary for criminal procedure to be initiated, carried out and ended, and they are the prosecutor, the defendant and the court[9] (Bejatović, 2010, p. 125-126). In another concept, the criminal procedure subjects are the holders of primary and secondary functions of criminal procedure (Bellavista, 1956, p. 94 – see Bejatović, 2010, p. 126). Finally, a third view is the broadest; according to it, the procedural subjects are all those who in any way participate in a criminal procedure (Ferrucio Falchi, 1949, p. 129 – see Bejatović, 2010, p 126).

Criminal procedural subjects are natural or legal entities holding procedural ability and having law-prescribed rights and duties, which, by undertaking certain actions, engage in criminal procedure relations and contribute to the exercise of criminal procedural task (Radulović, 2002, p. 95). Nevertheless, all entities participating in a criminal procedure are not the subjects[10]. The status of the criminal procedure subjects hold only those participants which establish criminal procedural relationship, which perform a procedural function – the trial, prosecution and defense (procedural subjects in a narrow sense), or have certain other rights and obligations (procedural subjects in a wider sense, such as the damaged). The concept of procedural subjects is sometimes extended so that it includes participants of a criminal procedure which are not the subjects of criminal procedure, but perform certain tasks in another's legal relations, and these are witnesses, expert witnesses, experts, interpreters and the defender of the suspect or the accused.

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[9] On the older meanings of these terms see more: Vasiljević, T. (1957). Komentar Zakonika o krivičnom postupku. Belgrade: Modern administration, p. 149

[10] On the subjects of criminal procedure sees more: Simović, M. (2003). Krivični postupci u Bosni I Hercegovini. Banja Luka: Internal Affairs College, p. 90 and on.

These persons have certain rights and duties in criminal procedure and are the subjects of the general legal framework, but not of criminal procedural relations which they enter (Grubač, 2009, p. 67).

Criminal procedure subjects are only those entities that are necessary for the criminal procedure to be initiated, carried out and ended (Vasiljević, 1981, p. 59). If we start from the functions performed by criminal procedural subjects, we can differentiate primary and secondary subjects of criminal procedure (Stevanović and Đurđić, 2006, p. 93). The main or primary procedural subjects are the court (as an independent state agency), the prosecutor (who performs the function of prosecution) and the suspect, i.e. the accused as the defendant. The prosecutor and the suspect or the accused are procedural parties, so the main procedural subjects are the court and the parties (Simović, 2005, p. 58).

In addition to the main subjects of criminal procedure relation (court, prosecutor and the suspect or the accused), there are also secondary procedural subjects that have specific and limited powers in a criminal procedure. These include: the damage party (on the prosecutor's side) regardless of whether it is entitled to the property claims; legal or physical entity that is imposed the security measure of property confiscation (on the side of the accused or defendant); and the guardianship body in the juvenile procedure (on the side of the court) (Simović, 2005, p. 58-59).

In a criminal procedure there may also appear entities that are not criminal procedure subjects, but the subjects of secondary (adhesion) property-law procedure relation which discusses the property-law-related, i.e. civil claims arisen from a criminal offence which is the main subject of criminal procedure (Grubač, 2009, p. 68). The subjects of the secondary (accessory or adhesion) procedural relation need not to be identical with the subjects of criminal procedure relations. Property-law-related claim is represented by a person entitled to the claim in a lawsuit, and that, as a rule, is not the prosecutor. Also there are some cases wherein the person whom a property claim is filed against is not the suspect or the accused. The subjects of this procedure are not entitled to any form of criminal procedure relation, while, on the other hand, they are entitled not only to formal but also to substantive aspect of the secondary property relation (confession, renunciation, alignment, etc.) (Simović, 2009, p. 53-59).

The position of procedural subjects (the court and parties) depends on the type of criminal procedure and legal rules that regulate that position. However, procedural subjects are not equal, because the prosecutor, and in particular, the suspect or the accused, are, to some extent, subordinated to the court. In addition, the court is the one that governs the procedure and may oblige the parties to do or not to do something, and has disciplinary powers over them. The position of the suspect, or the accused is different from the position of the prosecutor – in addition to being a subject to the procedural relation, it is also subjected to the investigation in he procedure, but is not an object of criminal procedure (Grubač, 2009, p. 68-69).

CONCLUSION

The criminal procedure law is a branch of criminal law doctrine related to criminal procedure, or criminal procedure is the subject of the criminal procedure law. Theory

of the criminal procedure law offers more than one concept on the notion of criminal procedure, and two are the most common, realistic and legal.

The forms of criminal procedure can be general and specific. The general form of procedure is the one that is defined by the law as a typical, and there are specific criminal procedures that prescribe different procedure from that one. Historically viewed, procedure has been indict (accusatorial), investigative (inquisitorial) and contemporary (mixed, i.e. accusatorial – inquisitorial). In this regard, the criminal procedure of any historical period and any country can be categorized as one of these three types of criminal procedures, while the position of procedural subjects in the mentioned procedures is very different.

As for the procedural subjects, it can be concluded that the criminal procedure subjects are only those entities that are necessary for the criminal procedure to be initiated, carried out and ended. If we start from the functions performed by criminal procedural subjects, we can differentiate primary and secondary subjects of criminal procedure.

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INTERNATIONAL RELATIONS

HUMAN RIGHTS AND HUMANITARIAN MILITARY INTERVENTION

Reviews

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Abstract:

The paper analyzes a cause-effect relationship between human rights and humanitarian military intervention by analyzing cases in a global world practice. One of the most effective ways to protect human rights is a direct intervention, ranging from sanctions to the use of military force, at a time when the whole system in the country is disintegrated and its people are drawn into a war against all, or when the state exercises a permanent and systematic violence over its citizens.

The research attempts to answer the question whether direct military intervention is "humanitarian" or "legalized violence" against people and whether national security and international law guaranteed sovereignty of a country are undermined under the banner of preserving human rights and security.

The main aim is to point out the motives and consequences of taking military humanitarian intervention to protect human rights as well as their long-term viability.

Key words: *protection of human rights, the Charter of the United Nations, humanitarian military intervention, "moral justification", state sovereignty*

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1. INTRODUCTION

Human rights are commonly viewed as a set of rights and freedoms that belong to all human beings and are inseparable from their inalienability and their natural origin. The idea of human rights is linked to the very nature of human beings. Every individual is born as a free being with their rights and freedoms. All people have equal rights and freedoms and all are obliged to respect the human rights of every individual. The starting points for protection of human rights are at an international level and they are the Universal Declaration of Human Rights adopted by the United Nations on December 10, 1948, the United Nations International Covenant on Civil and Political Rights from 1966 and the United Nations International Covenant on Economic, Social and Cultural Rights from 1966. By definition, humanitarian intervention is the threat or use of force outside the boundaries of a state (or group of states) without the consent of the state on whose territory force is applied in order to prevent or put an end to massive and seriouss violations of human rights of persons who are not citizens of the intervening country (Dimitrijević, Račić, Đerić, Papić, Petrović, & Obradović, 2007). The Charter of the United Nations does not allow the use of armed force in order to maintain international peace and security, only for general interest.

In world practice there are instances of violation of human rights and resolving the issue through military intervention from other countries, with and without the consent of the Security Council. However, there are examples of its abuse, and non-intervention when, indeed, human rights were seriously compromised. The paper is based on the hypothesis that military intervention is a viable model for protection of human rights, but only under the assumption of respect for international law, not political motives.

2. INTERNATIONAL LEGAL ASPECTS OF MILITARY INTERVENTION

Human rights in the legal literature are usually defined as a set of rights and freedoms that belong to all people and this definition is often supplemented by words that refer to inalienability of human rights and their natural origin (Gajin, 2012).

The idea of human rights is old, but its formulation is the result of great revolutions from the late 18th and early 19th century. The most important documents in this regard are the Declaration of Independence of the States of America from 1786, the Declaration of the Human Rights and the Citizen of the National Assembly of France from 1789 and first ten amendments to the Constitution of the United States from 1791 (Dimitrijević et al., 2007).

The starting point for international human rights in the Universal Declaration of Human Rights by the United Nations adopted on December 10, 1948. The historical background for United Nations' decision to adopt this declaration was prompted by reports of violence against the Jews and other groups whom the Nazis considered second-

rate, hence less worthy people, before and during the Second World War, after which the international community agreed to adopt the rights that will apply to "all members of human race," and that will be the basis for "freedom, justice and peace in the world" (Đuliman & Karlsen, 2003).

According to the Universal Declaration of Human Rights by the United Nations, human rights are built on the principle of equal rights and non-discrimination, and are presented in the following way:

- Civil rights protect life, integrity, liberty, legal security, private and family life, freedom of expression, assembly and movement.
- Political rights protects the right to participate in management of one's own country (the right to vote and participate in elections).
- Economic rights protect the right to work, to form and participate in professional unions, the right to strike and to a satisfactory standard of living.
- Social rights protect the right of individuals in regard to unemployment, sickness, disability or other circumstances beyond our powers.
- Cultural rights protect the right for education and to participate in cultural life, as well as the use of scientific achievements and copyright.

Protection of human rights is not just the state's problem. There are international mechanisms for the implementation of international contracts which are designated as a set of measures to ensure the realization and monitoring of the contract. With the ratification of international contracts on human rights states voluntarily agree to limit their power.

The United Nations through its agencies, programs, departments and funds help improve the conditions for realization of human rights in member countries. The Charter of the United Nations has entrusted the field of human rights to the Economic and Social Council and prescribed that it can create subsidiary bodies (Commission on Human Rights was replaced by a new body in 2006, the Council of Human Rights) (United Nations, 1945).

International law is often faced with the dilemma of how to relate to situations where it is likely that there will be a humanitarian disaster in a state "when the present government massively threatens the lives and health of the entire population or part of it, or when a weak government fails to control the use of violence in internal conflicts on its territory so population is exposed to persecutions and even genocide." (Dimitrijević et al., 2007). Often in these situations, under the influence of the public, foreign interventions are required in order to stop and disable a humanitarian disaster and to protect human rights. The use of such force has received the name of "humanitarian intervention".

The possibility of peace intervention in other countries was mentioned for the first time in one declaration by the participants of Vienna Congress in 1815 in order to justify the protection of people who are not the citizens of countries that intervene. The decision was to prevent slave trade and protect basic human rights by all means necessary. On that occasion this intervention was named "humane intervention" from which arose the expression – humanitarian intervention (Dimitrijević et al., 2007).

In the preamble to Charter of the United Nations form 1948, which to this day has not been changed, it is clearly stated that the peoples of the United Nations are committed to the following goals (United Nations, 1945):

- "To be tolerant and live together in peace with one another as good neighbors,
- to unite our strength to maintain peace and security in the world,
- to secure the acceptance of principles and establishment of methods that armed force shall not be used except in the public interest, and
- to use international mechanisms to promote the economic and social advancement of all peoples."

Next, in Section 1 Paragraph 1 of Charter of the United Nations, in regard to the goals and principles the United Nations, it is stated that the goal is to "maintain international peace and security and to that cause take effective collective measures for prevention and removal of peace threats, suppression of acts of aggression or other breaches of peace and to bring about to peaceful, in accordance with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to peace breaches."

From the moment when the use of force in international relations is reduced to the action of self-defense and collective measures of the United Nations, there should seize to exist the right to humanitarian military intervention because the UN Security Council can conclude that a humanitarian crisis in a country poses a threat to peace and peace endangerment and order appropriate sanctions such as the ones done in South Africa when the policy of Apartheid was applied (Dimitrijević et al., 2007).

In world practice we have a case where the NATO in March 1999, without the consent of the Security Council for undertaking military actions, carried out air strikes on the FR Yugoslavia in order to force its government to make concessions, arguing that the Albanian population in Kosovo and Metohia was faced with a humanitarian intervention. Should some conturies retain the right to on their own or with their allies assess whether there is a humanitarian disaster or peace threat in one country or not, there is a danger for misuse of humanitarian intervention.

3. HUMANITARIAN MILITARY INTERVENTION AND ITS JUSTIFICATION

Humanitarian intervention is reflected in "the threat or use of force outside state borders carried out by one or more countries in order to prevent or terminate widespread and grave violations of fundamental human rights of individuals who are not the citizens of that or those states, and without the permission of the state within whose territory force is implemented" (Glušac, 2010).

The concept of humanitarian military intervention under the name "humanitarian war" was first used by the Clinton administration during the NATO attacks on the FRY in 1999 (Savić, 2009).

During the nineties of the last century the right for humanitarian intervention was represented by governments that wanted to justify interventions in Haiti, Somalia, Iraq, Bosnia and Herzegovina and Kosovo. The spokesman of the French Ministry of Foreign Affairs Philip Lali said that France has asked the United Nations Security Council to make a decision no later than 20 December 2012 on military intervention in north-

ern Mali, where armed conflicts of armed groups are in progress (Nova srpska politička misao, 2012).

The Charter of the United Nations calls on states to declare respect for human rights and prohibits the use of force against other states, as well as interference in internal affairs of other countries. The Charter from 1945 starts from the assumption that intervention is justified in the case of flagrant violation of human rights, which poses a threat to international peace, when the Security Council has the right and obligation to intervene and react (United Nations, 1945). Therefore, any intervention that is detrimental to the sovereignty of a country can be considered illegal.

States approach intervention with caution and use it as a temporary measure when a state fails to meet its basic obligations (maintenance of physical security and adequate food supplies for its population or when its army and police continue to exercise violence against minorities and dissident political groups). In this case, a state may temporarily lose its right to sovereignty within the international system. An example of this is Northern Iraq, which is under formal authority of the Iraqi government, while in the Kurdish enclave allied planes patrol the land preventing any effective exercise of Iraqi sovereignty. We have a similar case in Kosovo, which is under the protectorate of the United Nations, but also with certain powers contained in the Security Council Resolution 1244 of the United Nations.

The UN Charter does not permit unlawful use of military force for expansion or occupation of territory, so the interventions are intended as self-limiting within an appropriate mandate, with the aim of bringing peace and stability. However, the examples of long-term protectorate in Bosnia and Herzegovina, Kosovo and East Timor interventions are taking the shape of, according to the opinion of certain scientific circles, imperialist police with the imperialist duties which seem to be endless (Ignjatijef, 2006). In Bosnia and Herzegovina, for example, an intervention did not create a stable self-governing society, but it only stopped an ethnic civil war.

We also have an example where the Security Council in 1994 stood by side and did nothing while hundreds of thousands of Tutsis in Rwanda were massacred according to genocide plan by the Hutus central government.

There is a formal evaluation of humanitarian military interventions justification in regard to this question by the International Commission on Intervention and State Sovereignty in the sense that a "humanitarian military intervention is controversial, both in cases when it takes place (Somalia, Bosnia and Herzegovina and Kosovo and Metohia), and when it does not take place (as in Rwanda)" (International Commission on Intervention and State Sovereignty [ICISS], 2001). One should bear in mind the fact that the intervention on the FR Yugoslavia did not have the approval of the UN Security Council, and from the standpoint of international law it is not based or justified.

It follows from this that interventions of any kind can be justified, for if human rights are universal the violation of the same is of our concern regardless of where it occurs.

In the late nineties of the 20th century, there were three criteria for rationalization of interventions (Ignjatijef, 2006):

- Abuses of human rights have to be of large volume, systematic and pervasive,
- They must pose a threat to international peace and security in the region, and

– There must be a real chance that the military intervention will stop the abuse of human rights.

In practice, there are is a fourth criterion, when the give region has to be, for cultural, strategic and geopolitical reasons, of vital interest for one of the powerful countries in the world, and no other powerful state does not oppose to its use of force. Such one intervention is the one in Kosovo which justifies the violation of human rights and national interests that threaten the destabilization of Albania, Macedonia and Montenegro and poses a threat to peace and security in the region.

However, the values and interests do not always indicate the policy of intervention in the same direction. Let us take the example of Burma where repression against citizens who disagree with the government perhaps is a clearly an indication of human rights violation, but as long as its military ruling is not a threat to its neighbors, it does not face the risk of military interventions. One such recent example is the conflict in Syria.

The example of Rwanda shows that the interests prevailed over the values which cost the lives of 800.000 innocent people. The committed atrocities called for an intervention regardless of national interests (Ignjatijef, 2006).

In the past there were examples where internal activities of the state did not represent a clear threat to the international system, but in the future was a reliable sign that it would. Hitler's and Stalin's regime during 1933-1938 is one such example. Benignant attitude to such occurrences had a very high price, which was not mirrored only in internal violations and abuses of human rights, but later on it led to a great tragedy of worldwide proportions that happened in the future.

However, there is a rule against intervention in other nation state which protects the state from more powerful and guarantees a minimum level of equality between countries on the world stage. The rule prohibiting intervention gives space to sanctions, diplomacy and negotiations in order to prevent the possibility of excessive, premature and poorly estimated intervention.

These rules essentially give a war "moral justification" and the so called "humanitarian intervention" condition with the following (Primorac, 2006):

– the reason for intervention must be just,
– intention for intervention must be morally right,
– the decision to intervene must be declared by a legitimate authority,
– resorting to war is the last solution,
– there should exist a convincing hope for success, and
– that the accomplished well-being should exceed the harm caused by the war.

Small states believe that any formalization of intervention would be an encouragement to intervention that would equally undermine the sovereignty of the state in that respect, and those who violate human rights.

Such changes within the international system may or may not be desirable, just as in practice there is a slight chance to change the Charter of the United Nations when it comes to intervention. Therefore, in the 21st century the application of human rights in the international system is based on the same principles that were defined in 1945.

When we talk about the means and goals for protection of human rights in practice there are cases when due to inadequate action in certain cases promise given population is circumvented (United Nations military missions in Rwanda, UN peacekeeping force in Srebrenica), which undermines the credibility of human rights values in danger zones around the world.

Intervention does not always save the innocent ones because it is often necessary to side with one of the conflict parties, but that choice often requires to support the party which itself is responsible for human rights violations.

The international community, despite the emphasis on the importance of early intervention and prevention, rarely makes efforts to resolve problems before violence erupts. This compromises the legitimacy of intervention on behalf of human rights. An example of this is Kosovo Liberation Army which violated the human rights of Serbian civilians and officials in order to trigger a retaliation that would in turn force the international community to intervene on its behalf.

Memorandum of Human Rights Watch identifies seven most pressing human rights issues in Kosovo today:

- Inadequacy of the criminal justice system,
- Domestic violence against women and other abuses against women,
- Violence against ethnic minorities,
- Inability of refugees and displaced persons to return to their homes safely,
- Position of Gypsy, Ashkali and Egyptian Communities,
- Inadequate supervision of international institutions, and
- Lack of inter-ethnic reconciliation.

Interventions to protect human rights are more common today than ever before, and sometimes worsen things rather than to promote the implementation of human rights using their legitimacy as a universal basis for foreign policy.

Human rights crisis is reflected in the inconsistency to apply the criteria of human rights to both the strong and the weak, to harmonize human rights with adherence to self-determination and national sovereignty, as well as the inability to intervene on behalf of human rights in order to effectively build legitimate institutions that will be the best guarantee for the protection of these rights (Ignjatijef, 2006).

Non-Western culture adhere a biased way of protection and enforcement of human rights principles, seeing human rights only as a justification for imperialism of the West.

"Intervention will take place where it can be performed relatively cheaply against a weak nation, in an area that is both approachable and strategic, where public sentiment is aroused, and where it will not get in the way of other political, economic or military needs." (Grey, 1999).

4. CONCLUSIONS

According to the United Nations Charter and norms of human rights an illegal use of military force for the expansion or occupation of a territory is not allowed. Military humanitarian interventions are limited under the relevant mandate, in order to prevent or

end widespread and seriouss violations of fundamental human rights of individuals without the permission of the state on whose territory it is conducted, with the aim of bringing peace and stability.

States use the right to intervene with caution and use it as a temporary measure when a state fails to meet its basic obligations (maintenance of physical security and adequate food supplies for its population or when its army and police continue to exercise violence against minorities and dissident political groups). In this case, the state may temporarily lose its rights to sovereignty in the international system.

In world practice, we have an example where the Security Council in 1994 stood by side and did nothing while hundreds of thousands of Tutsis in Rwanda were massacred according to genocide plan by the Hutus central government.

At the international there is a rule against intervention in other nation states which protects the states from more powerful and guarantees a minimum level of equality between countries on the world stage by prohibiting intervention and providing a space for sanctions, diplomacy and negotiations. This allows for the prevention of the possibility for excessive, premature and poorly estimated intervention.

Interventions for protection of human rights are now very common. World practice shows that intervention does not always save the innocent ones because it is often necessary to side with one of the conflict parties, but that choice often requires to support the party which itself is responsible for human rights violations. This raises the question of the criteria and justification of the so called humanitarian military intervention.

Humanitarian military intervention is a viable model for the protection of human rights, but only under the assumption of respect for international law, and not politically motivated and in the service of endangering state sovereignty of individual countries for achieving higher economic and political interests.

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IMPACT OF GLOBALIZATION ON DIPLOMACY OF SMALL COUNTRIES ACCORDING TO THE MINISTRY OF FOREIGN AFFAIRS

Pre-announcement

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Abstract:

Diplomacy as the most common and widely accepted form of international relations is not immune to global changes that are taking place in all areas of social life. The development of communication technology, in many ways, has significantly contributed to more intensive and effective diplomatic action, as has the division of the world into Eastern and Western Bloc at the end of the era. Small countries with poor international influence mostly have diplomatic network, which is based on the principles thirty years old or more, unable to respond to the demands of the modern era. It is for this reason that it is necessary that small countries change their approach to diplomatic action, seize to be based only on political diplomacy, and in particular to reorganize and modernize the network of diplomatic and consular missions. The activities of the ministries in the government are also very important, and not just specifically the Ministry of Foreign Affairs, but also other ministries within their jurisdiction. It is believed that only through international relations, small countries can achieve a better position and prosperity of not only the state but also its people.

Key words: *diplomacy, small countries, governments, embassies and the Ministry of Foreign Affairs.*

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INTRODUCTION

Although frequently used, the term globalization does not have a clear and precise definition. True, there are definitions which are more or less general, abstract or concrete, influential or less influential, but there is no single acknowledged definition of the issue.

According to the definition of International Forum on Globalization, globalization is a process of denationalization of markets, politics and legal system at the highest political and economic level.

It is interesting to point out some of the opinions of world-renowned theorists of globalization. Thus, according to Martin Albrow, globalization means all the processes by which people all over the world are incorporated into a single world society or global society. Thomas Friedman sees globalization as an unstoppable integration of markets, nation states, and technologies to an unprecedented degree, thus enabling individuals, corporations and nation-states to expand their activities through the world, faster, deeper and cheaper than ever before. According to Stephen Bell, globalization is associated with the crisis of the territorial nation state, because the nation state is too small to solve the big problems of life and too big to solve small problems of life. Finally, we should mention the inevitable economic component of globalization as Rosebeth Moss Kanter points out, the globalization of the world has become a global supermarket in which ideas and products have become available everywhere and at the same time.

Globalization is generally understood as a ‘’consequence of modernity’’ ‘’a western modernization project’’, ‘’a global human condition’’ (Robertson, 1992, p. 26). The effects of governing and spreading of globalization processes in everyday life are strong, especially in developed countries; globalization is also creating new transnational system of power and reshaping the institutions of our society (Giddens, 1998, p. 33). Those nations which believe that they achieved their national dream in the past decade (with their own country), are now operating in modern globalized space and time according to how much they accept the values of a globalized society and its measures of success of the transition movement (Ibraković, 2003, p. 5).

Diplomacy is a term with many meanings. The origin of the term comes from the Greek word “diploma” which means a formal letter, memorandum, or document folded in two as a sovereign act, which one party (the state) would hand over to the second and then the second to the first one after the completion of job negotiations, i.e. agreement. It is believed that the concept of diplomacy was first used by the French Cardinal Richelieu who was from 1624 to 1642 the Prime Minister and the real ruler of France. In the most general sense, in national speech, diplomacy is an ability, a skill and a craftsmanship in running a business. No other possible meaning can be determined without linking it to the concept of “foreign policy” undertaken by the state as a subject of international relations and international law. Therefore, it was often said that diplomacy is a foreign policy tool of the state (Mitić, 2003, p. 3).

Foreign policy is of great importance for the state and therefore foreign policy of the state is always under the jurisdiction of its supreme authority. In the area of foreign policy, core competencies in most cases belong to the executive and legislative branches, and only in contentious situations to the court. According to foreign policy, the function of representation of the state both at home and abroad belongs to the Head of State wheth-

er he is the president of the republic, the collective presidency or the monarch (Kuzmanović, 2006, p. 449). Operational management of foreign affairs is entrusted to the executive authorities (governments), acting through special bodies whose task is to maintain diplomatic relations with other countries and the implementation of international political action.

Foreign affairs are the determinants of sovereign states. In our area, in addition to the term of foreign affairs, there is also the term of external affairs. External affairs refer to state authoritative appearance, based on international law and within its limits, regulated by national law by the authorities designated by national law towards other countries, international organizations and, in some cases, foreign citizens in order to protect the rights and constitutionally defined state interests and the rights and interests of nationals and legal persons (Đurić, 2007, p. 19).

Diversity between countries in today's world map is great, starting from size, economic development and the state system, the rule of law and respect for fundamental human rights, up to military power and the influence on the countries in the region. The position of the state in international relations is determined precisely by this difference in strength, power and influence.

Rivalry between large and influential states in international relations, and not just states, but rivalry between interest blocs of some countries as well is the only possible choice, but also a chance for the functioning of foreign policy and diplomacy of small states. In this way, these small states are able to achieve some of the goals that they are unable to reach because of their international powerlessness. At the same time, great powers use the situation in small states and their dependent position on the global stage of international relations with the purpose of an easier and more efficient manipulation of these same countries and all that, of course, for their own sake and goals. This is the trump card with which small states are trying or managing to recoup its foreign policy powerlessness. This is something that great powers count on which enables them to manipulate smaller states.

Based on the aforementioned, it can be concluded that small and medium-sized states can only unquestioningly obey orders of great powers and centers of international relations. It is understandable that, given its political, military and economic power, they cannot resist to the processes of globalization, which affect the whole world and create relationships of complex interaction between countries. Based on past experiences, it can be concluded that small and medium-sized countries need to deploy a very pragmatic policy, based on a well-thought-out national interests (Berridge, 2007).

So, instead of standing in the foreground as fighters against globalization, and by that on the margins of processes which determine the economic development of these countries, improvement of living conditions and living standards of its citizens, as opposed to the risk of being sanctioned, it is suggested that small and medium-sized countries should have a good, thoughtful policy based on national, economic, political and military interests and find their proper place in globalization processes. Small countries, with their comparative advantages and opportunities, should benefit from the positive aspects of globalization as much as they can, take advantage of globalization opportunities for a rapid, economic and other form of development.

GLOBAL DIPLOMACY

It can be said that modern diplomacy has gone through many stages of reconstruction, which were caused by developments at the global level. Contemporary diplomacy is characterized by a tremendous increase in international entities involved in international relations, which indicates that there is an increase in international contacts, and thus there is also a need to increase the capacity of the diplomatic services of modern states, especially those states that have very little or no influence in international relations. Increasing the capacity of diplomatic services around the world is related to increasing diplomats and diplomatic missions that are responsible for the conduct of diplomacy at the multilateral level. Capacity increase is related to changes in the organizational structure within the ministries of foreign affairs which has led to an increase in the total number of employees in the area of foreign affairs.

However, the concept of global diplomacy does not mean just political relations and contacts between countries or international organizations. Modern, global diplomacy involves a number of other relationships such as economic, cultural, educational, military, scientific and other. Also, it can be said that the current situation on the global plan leads to an increasing need for diplomatic negotiations in new areas of social life, which have become the center of global interest such as human rights, migration, environment, international terrorism, and the like (Simonović, 2005) .

Due to this trend, diplomacy is becoming a profession which requires more and more specialized knowledge. Evident technological advances in the field of communication have to some extent affected diplomatic communication, leading to growing influence of the media and the public on the processes in international relations. The latest in a series of examples of this phenomenon is the so-called "WikiLeaks scandal".

ECONOMIC DIPLOMACY

The modern world is characterized by constant changes in which the key for economic success lies in the ability to understand them and to optimally adapt to the new business environment. The emerging environment is nothing more than globalization. If we bear in mind the fact that global economy is characterized by a high level of competitiveness, the question of how economic subjects of small countries can achieve satisfactory market share and how they can achieve competitive advantages that allow proper positioning in the market arises? Finding the "market place", according to Peter Dracker, is nothing more than a way to ensure survival and subsequent growth and development. In this sense, researches show that efficient and effective diplomacy can have an important positive role, or more precisely, its economic components more known as – economic diplomacy.

Diplomacy in the contemporary world is faced with very complex challenges and constant transformations, trying to maintain a privileged status and a high historical reputation of the key factor in international relations. Things have become greatly complicated with the end of the "Cold War ," because from that time to the present the barriers between the states gradually disappeared, which resulted in a spontaneously need for the extent and form of diplomacy implemented in the last century. Meetings at the top, "di-

plomacy shuttle", the existence of a single "super power" – the United States, a rapid development of technology and information explosion rendered the diplomacy of the twentieth century not as useful and functional as it was before (Miletić, 2004).

Besides the fact that the world is no longer a safe place as it was during the last century, however, it should be noted that there is a significant shift on the emphasis in the work of diplomacy from security-military and political issues onto the field of economics. This tendency is not only logical reaction to changes in the environment, but is also a necessary response to the needs of economic subjects of global markets.

Economic diplomacy is not a new term for a new feature in the development of diplomacy. From the Renaissance to the present economic problems were one of the most urgent tasks of diplomacy, along with political and security aspects, providing through them a certain balance of power. Economic and security-political diplomacy alternately receive priority depending on historical circumstances and the environment which the states are in.

In international system, economic diplomacy gains further importance due to the acceleration of globalization (referring primarily to further strengthening of the degree of interdependence between states, as well as integration processes at regional and global levels), in terms of lack of adequate policies and institutions that set the framework for the performance of economic subjects of global markets. In these circumstances, firms are invited by the institutions of their countries to strengthen the performance on the world market, leading to the conclusion, the more powerful country is, the easier is for companies from these countries to find a place on the global market, and again, on the other hand, companies from small countries have significantly less chance to do so. Governments have little choice but to support the activities of the companies from their country, otherwise, companies from other countries will benefit from their passivity. All this is nothing, but an open struggle for the growth and development of the economic strength of individual companies, whose success is ultimately, the success of the economic policies of democratically elected governments.

Trade diplomacy, according to the official interpretation of the U.S. State Department, includes state activities for promotion and protection of interests of companies at the international level, negotiations with governments and companies in countries in which parent companies operate, preclusion measures for possible economic conflicts at the domestic and international level, gathering of information, and global promotion of export interests through the diplomatic apparatus, all in direct cooperation with local companies.

In regard to economic diplomacy, it can be observed from two levels. One is economic diplomacy in a broader sense, which is more comprehensive and it concerns all the subjects of a society involved in strengthening of the economic competitiveness of a country through diplomatic methods, and the other is the definition of economic diplomacy in a narrower sense, which is concerned with exclusive activities of the Ministry of Foreign Affairs in the defense of economic interests of its country.

REGIONAL DIPLOMACY

Today there are different types of cooperation between sovereign states. The cause for all types of cooperation is globalization, which encourages international relations and contributes to their diversity. In order to discuss cooperation between the countries at the global level, we must first start with a country and its regions. Its performance on the global stage depends on what kind of relations it establishes with the countries in the region. In addition to bilateral and multilateral cooperation, we see that there are stronger and more institutionalized forms of economic, financial, technological, security and other cooperation between individual countries in the region (province, republic), countries within the established regional economic integration (group), and regional integrations themselves. Most prominent among all forms of regional relations and cooperation are certainly economic relations. The formation of numerous regional integrations has become a global mega trend.

Regional diplomacy is a relatively new form of multilateral diplomacy, created as a result of regional economic integrations, and it has developed and is developing parallel to the development of regional integration processes and initiatives in the contemporary world. Its role and influence in the modern diplomatic world is growing, both political and economic, but also in every other field, and thus it represents a chance for small countries to achieve, through regional diplomacy, a better position in the field of foreign policy.

Economic globalization is favoring of new entities, regional unions, which are better adapted to developments. Trade flows are organized around more attractive poles that are assembled around the integration of trade and economic agreements. In North America it is NAFTA; in Latin or South America that is MERCOSUL; ASEAN in Asia, and the EU in Europe, which is the leader among existing agreements.

Regional integrations have become an unavoidable subject of international relations and international law, foreign policy, diplomacy and diplomatic relations in the modern world. Without their political and diplomatic engagement not even one open world political, security, economic, environmental or other kind of issue cannot be considered or resolved.

Regional diplomacy encompasses a very broad spectrum of international relations that are established through the activity of regional integration, especially between (1) member states of regional integration, (2) regional integration and other countries outside the integration, (3) the very regional integrations, (4) regional and global integrations, and (5) regional integrations and international, intergovernmental and non-governmental organizations and others.

Regional integrations are also concerned with matters of foreign policy to the extent that member states have transferred their powers to them, in relation to this type of activity. The best example of the success of a small country through regional integration is Ireland, which has after joining the EU, made progress in all fields, including international relations.

Regional integration centers such as Brussels (European Union), Montevideo (MERCOSOUL), Jakarta (ASEAN), Ethiopia (African Union) and others, have become prominent global multilateral diplomacy centers for diplomatic missions and representatives of member states of such regional economic integrations, as well as the countries

that have an interest in establishing cooperation on the diplomatic level with such integrations (Dašić, 2008) .

Depending on the economic, trade and financial content among them, one is confronted with various forms of regional integration of states: (1) a preferential trade agreement, (2) free trade market (3) the customs union and (4) common market, (5) a single market and (6) a mega market.

Precisely these forms of regional integration of countries represent a chance for small countries to allow their companies to appear on the global market, or at least regional market.

The most influential regional integrations in the world are:

- European Union,
- European Free Trade Association (EFTA),
- Central European Free Trade Agreement (CEFTA),
- the Commonwealth of Independent States (CIS),
- the Organization of the Black Sea Economic Cooperation (BSEC),
- North American integration (NAFTA),
- he Andean integration (CAN),
- South American integration (MERCOSUL)
- U.S.: Free Trade (FTAA);
- South Asian Association for Regional Cooperation (SAARC);
- Association of Southeast Asian Nations (ASEAN),
- the Asia-Pacific Economic Cooperation (APEC),
- the Common Market of Eastern and Southern Africa (COMESA),
- African economic community at large (AEC),
- the African Union (AU).

CURRENT ROLE OF EMBASSIES

Embassies are the most common form of diplomatic representation in bilateral diplomacy. Typically, they are located in the capitals of the host state. Ambassador, the highest diplomatic authority, manages the work of the Embassy. Ambassador is the chief of the diplomatic mission of the highest rank under the Vienna Convention on Diplomatic Relations. Ambassador is the highest representative of his state in the country in which he is (host country), and in that sense he is superior to all official representatives in that country (consular, cultural, and other). Ambassador is the head of his country and he represents his country before the authorities of the state in which he is accredited. He speaks on behalf of his government. Since he receives and transmits communications of his government and since he is the official source of information, he is also a regular and reliable intermediary in the relations between the two countries.

High trustees (formerly the commissioners) have the rank of ambassador which is exchanged between the countries of the Commonwealth and the highest representatives of the Vatican, nuncios and pro-nuncios. It should be noted that embassies have their own sectors, according to circuit operation, run by the diplomatic representatives who are lower in rank than the ambassador.

The role of embassies today is largely reduced, thus their influence in international relations is diminished. The biggest impact of the embassies was during the division into blocs, where their work was confined largely to political action. The end of the Cold War reduced the need for such political activity and most embassies are turning to resolving of economic, cultural and other issues, and as well as to constant performing of regular activities and consular affairs.

During recent years, a trend in the reduction of diplomatic missions in the world is noticeable, especially by large countries. The reason for this is largely recession and justice in order to reduce costs, so there is an effort to maintain embassies that could, in some way, conduct regional diplomatic missions. An example of this is the Canadian embassy in Vienna, which is also responsible for the countries of the former Yugoslavia.

Though big countries are reducing their number of diplomatic missions in the world, small countries should do just the opposite, but with prior modernization of their diplomatic network and reorganization of the entire diplomatic system. Systematization should be done based on the interests of the state, to strengthen the embassies and other diplomatic missions in the countries where there is some interest, while in other countries diplomatic activity should be reduced to regular consular activities, and the Ministry of Foreign Affairs should take over the rest of the embassy's affairs.

REDEFINING THE ROLE OF MINISTRY OF FOREIGN AFFAIRS IN INTERNATIONAL RELATIONS

In the recent past, especially during the bloc division of the world, all activities in the field of international relations weree mainly conducted through diplomatic offices around the world, while the Ministry of Foreign Affairs had a more organizational and logistical role. Upon the completion of the division into blocks, diplomatic missions slowly are decreased in engaging in political activities in the host country and are turning more to economic, cultural and consular issues, while political issues are dealt with more by the state government, especially the Ministry of Foreign Affairs.

This role of the Ministry of Foreign Affairs rapidly increases with the expansion and development of information technology, especially if one takes into account that communication between representatives of states is facilitated in many ways. Small countries should develop the activities of the Ministry of Foreign Affairs, or at least to streamline and organize their work so that they can meet the requirements of the modern time.

In modern diplomacy trends, with the European Union as an example, other ministries are increasingly involved in international relations, and in the area under their jurisdiction.

Some of the jobs of modern organized foreign ministries are:

- to represent, along with the President, the state in its relations with other countries, international organizations, international courts and other international institutions, as well as their representative offices in the country;
- to protect the interests of the state, its citizens and legal persons abroad;
- to propose the Government a foreign policy which the Government determines;

- to propose the Government the establishment and termination of diplomatic relations with other countries;
- to propose the Government the membership or participation of the state in international organizations and integrations, as well as other forms of international cooperation;
- to propose the Government the ambassadors, general and honorary consuls of the state abroad;
- to participate in activities related to the accreditation of official representatives of the state and international organizations in the country;
- to organize official visits at the state and diplomatic level;
- to take part in preparations for the participation of state representatives in international negotiations and conferences;
- to analyze the international situation of the state and bilateral relations with other countries;
- to analyze the foreign policy aspects of defense and national security;
- to analyze and predict the development of regional and global relations and phenomena, particularly in the area of foreign policy, security, international public and private law, economics, environment, education and culture and human rights, which are important for the realization of international relations of the state;
- to collect and analyze foreign media information concerning the state;
- to prepare draft laws, other regulations and general acts in the field of foreign affairs, give an opinion on draft laws and regulations relating to foreign affairs, for which other government bodies are responsible, which are of interest to the international position of the state;
- to prepare legal opinions on questions of international law for the state president, the government and other state bodies;
- to propose the Government the development strategy of foreign affairs and other measures to shape the foreign policy of the Government and the preparation of documents, information and analysis in the field of foreign policy;
- in cooperation with state authorities, they initiate proceedings and coordinate the negotiation and conclusion of international agreements, participate in the process of their ratification and monitoring of their application and keep the originals of all international agreements, joint statements and state declarations and its international government predecessors;
- inform the governments of other states and international publicity, as well as immigrants, their citizens abroad on the politics and government of the state and in cooperation with other relevant government agencies promote political views of the Government in order to strengthen the reputation of the state in international relations;
- in cooperation with other relevant government agencies, carry out the elections for their citizens who have a permanent residence or temporary residence abroad during the elections and referendum on the state level;
- in cooperation with other government agencies, perform division affairs with neighboring countries, draft and maintain documentation of the state border;

- collect and maintain documentation on foreign policy of the state, encourage scientific research in the field of foreign policy and international relations;
- implement the process of acquiring, holding and disposing of real estate abroad, which is necessary for diplomatic-consular offices;
- organize, maintain and protect information systems, telecommunications, courier and other ties with the diplomatic and consular missions and other information systems;
- perform jobs of security of the Ministry, diplomatic missions and staff;
- in cooperation with other relevant bodies ensure participation in international operations;
- perform other duties specified by the law.

The ministries perform activities directly and through diplomatic and consular missions.

Ministry of Foreign Affairs is an executive authority which has the closest link to other separate executive body – the head of the state since in most modern states the head of state participates in the creation and shaping of foreign policy. Also, the activities of the Ministry of Foreign Affairs mainly involve the creation of security and defense policy of a particular state, which is particularly evident in NATO countries. And vice versa, the Ministry of Defense, is actually the Ministry of Foreign Affairs "in the small" since the Department of Defense implements a strong diplomatic activity of the state through international military cooperation. An example of this is the United States and some European countries such as Germany, France and the United Kingdom.

CONCLUSION

In recent years, diplomacy as a whole has experienced some changes, and it can be said that is slowly emerging from its traditional limits. These changes should be used by small countries to modernize their diplomatic network and reconstruct it so that they can respond to ever-rising demands that are put in front of them.

In addition, there are also new actors in diplomatic relations, primarily specialized foreign ministry officials. The process of "diplomacy" of departmental ministries is already under way in the European Union. For example, international financial issues are negotiated by finance ministers, not diplomats.

Many countries have a large number of small diplomatic departmental ministries such as agriculture, finance, trade, transport, and so on. This trend is obvious and it is imperative that ministries are trained to participate in diplomatic processes, especially in small countries, because in this way diplomatic action increases and helps diplomatic representatives of other countries to perform their jobs better and more efficiently.

Despite the growing multi departmental approach, the backbone of the implementation of foreign policy of small countries remains on the Ministry of Foreign Affairs, which is the traditional approach to diplomacy, since modern diplomacy is increasingly based on economic and military component.

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