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Fragility in Central Asia: the politics of Kyrgyzstan's and Tajikistan's securitarian instability

Guilherme Moreira Leite de Mello

University of Coimbra, Portugal

guilhermelorenzetti@live.com

Abstract: *The nature of social mobilization, civil wars and terrorism dissemination in Central Asia bring a volatile characteristic to national security to the states of this region. The main scope of this article will involve the explanation of divergent types of order maintenance, relative or not, in Kyrgyzstan and Tajikistan. In Kyrgyzstan, mobilizations are complex, secessionist, borderlike and marked with ethnic ordains, although sporadic. The securitarian process in Tajikistan is derived in precarious economic development factors, political fragility, excessive corruption, cooptation of the Islamic extremism, hence of the terrorism often linked to it. Based on the precepts of neoliberal institutionalism, this article will argument that to build democratic values and promote the strengthening of national security, it is necessary to reestablish a discourse of governance towards international cooperation and institutionalization of transparency and defragmentation of the securitarian policies in these states as a tool to reduce the insecurity and vulnerability margins.*

Keywords: Central Asia; political fragmentation; neoliberal institutionalism; national security.

Introduction

In the last decade many subjects were discussed on the international agenda and a highlight was the maintenance of security in Central Asia facing new challenges and the participation of new actors like the dissemination of Islam, international terrorism, competition for energy resources and peripheral social mobilizations. To analyze the relevance of new forms of cooperation between the effects of internal and external participation of new regional and international actors and the dynamics of security agents in Central Asia, it is necessary to conceptualize the spectrum of a security complex. Buzan *apud* Allison (2001) states that a security complex is:

[...] a group of states which securitization concerns of first order interconnect so close to each other that national security can't be dissociated from regional reality.

The understanding that this security process in Central Asia supports the principle of non-dissociation between national and international complex for purposes where the fragility of its structure does not allow it, it is also understood that the principles of 'friendship' and 'enmity' stipulated by Buzan, can be applied with more accuracy in this context, translated as 'partner' and 'suspect' (Allison et al, 2002). Therefore, it is possible to stipulate an area where the distinction between cooperation and securitization can be made and apply them in a volatile environment? There is room for a liberal discussion in Central Asia?

Once considering that there are Central Asian countries where the distribution of power and the population favors a more competitive force in the proportionality of security, such as Kazakhstan and Turkmenistan respectively, there is a gap in the analysis of other countries that still suffer from unevenness in containment of internal tensions, the difficulty of co-optation of foreign investment and the institutionalization of organizations and regimes that may facilitate development.

Through inferring contemporary perceptions about this theme, this essay will discuss the institutionalization of regimes, international actors and neoliberalism as being the main ingredients for dissociation of fragmentation and political stagnation in the securitarian policies of the countries in analysis: Kyrgyzstan and Tajikistan.

At first, it will be identified how the securitarian policies of Kyrgyzstan and Tajikistan transformed due to recent events such as September 11 and the introduction of Islam, thus showing how external agents were participants of this process. Secondly, it will be shown as a neoliberal strategy may be a viable and feasible alternative to the containment of the insurgency and the spread of a more uniform development. The conclusion highlights the current fragility of Kyrgyzstan and Tajikistan and lists, through recommendations, points that suggest a greater involvement of the international community and the institutionalization of regimes and how organizations contribute significantly to the further development of these countries and consequently the total situation of the *supercomplex* that is Central Asia.

Politics after the Soviet Union break-up and 9/11

By analyzing the security process in Central Asia, it is necessary to bring out two historical moments that reshaped their development. Those are the breakdown of the Soviet Union (USSR) in 1991ⁱ and the terrorist initiative against the United States of America in September 11, 2001ⁱⁱ. The dissolution of the USSR created five independent countries, completely reconfiguring the geostrategic complex that is Central Asia today. Consequently, after two decades these countries have managed to become, in a special way, countries with unevenly divided and unprotected borders, identities to validate and economic development in constant struggle to rise. In counterpoint, they became members of the international community through the United Nations (UN), the Organization for Security and Cooperation in Europe (OSCE), the Organization for Shanghai Cooperation (SCO), the Commonwealth of Independent States (CIS), Organization of the Collective Security Treaty (CSTO)ⁱⁱⁱ. Concerning the following 09/11 securitarian policy, Afghanistan, which is the main target for Al Qaeda and contribute to the Taliban extremism, transformed Central Asia in a military route that triggered and potentiated insurgencies that could lead to conflict, and even war, since its boundaries and securitarian systems faced many challenges that turned the countries within its borders, extremely vulnerable.

Insecurity and inequality are the main categories that shape and guide bilateral and multilateral relations within the conflicts in Central Asia. Proximal causes such as ethnic discrimination, political manipulation, corruption, mismanagement of energy resources, violations of basic human rights are also

characterized as factors that fragment and destabilize the region (Nielsen, 2004: 2-3). The consequences of international interference varied from country to country, being in Kyrgyzstan and Tajikistan, both states being socially and economically fragile and susceptible to securitarian insurgencies, the most affected by the transformations of international actions against the Central Asian complex, and also being equally and directly influenced by Russia and the USA. The hegemonic powers played a specific role in the securitization process not only in their own state essence but also participating through major economic and security organizations such as the North Atlantic Treaty Organization (NATO) and SCO.

Kyrgyzstan in particular is a country that meets the military interests of the United States, Russia and China because of its geographical position. The three countries maintain military bases and invest in strengthening its security, despite its constant attempt to keep Russian non-governmental organizations and the American military presence less prominent in his most influential and regional portion that is Bishkek, its capital^{iv}. After the war in Afghanistan, the vulnerability and insecurity in Kyrgyzstan increased considerably, despite the efforts of the international community, through the growth of regional conflicts, ethnic disruptions and social mobilization. In Osh, a southern city in the border with Uzbekistan, the conflict of ethnic bias and lower secessionist Marxist adhesions against local residents of Uzbekistani origin, marked a period that almost resulted in a civil war between the two countries. This sense of vulnerability is considered by Allison (2002: 8-12) as one of the most dangerous for Central Asia, and this can only be controlled with the spread of

democratic ideals in favor of a perspective of trade openness and community efforts from the international cooperation in profiling schemes since realizing that Kyrgyzstan alone, is not yet able to balance a regional or international security-policy.

In the mid-1990s, Tajikistan sheltered a large Russian military base that led directly to the Afghan border. After the relentless presence of the U.S. and NATO in Afghanistan and the transformation of the security priorities of Central Asia that alternated border conflicts for insurgencies and regional mobilizations. This epicenter involved domestic rebellions that embodied matters of national security. Tajikistan is now part of the international route of drug trafficking and terrorism, a problem originated in Afghanistan, its main neighbor and despite the intense and varied attempts at containment of this practice, the insecurity generated by it has become one of the major concerns and challenges for the country. The post 11/09 transformed the politics of Tajikistan regarding its increased cooperation with NATO for Afghanistan and increased cooperation with its neighbors, especially China, Pakistan and Uzbekistan.

Thus, it is understood that the securitization process for Kyrgyzstan and Tajikistan is a socioeconomic dichotomy, a paradox in construction and a challenge that tries to be institutionalized by states seeking to interfere directly or indirectly in the region. Aware that the instability is growing in these states and that despite efforts by the international community to curb the increasing securitarian vulnerability, could it be argued that there might be a space where a neoliberal ideology can be build in the region? Could inserting

democratic values and ideals of peace by democracy and institutional promotion of cooperation be possible even for such fragile states, and if so, this construction is really necessary?

Security in Central Asia: is there a window for the neoliberal discourse?

The creation of legitimacy in a neoliberal view, the creation of legitimacy and the evaluation of state inconsistency in Central Asia can be understood in terms of Oskanian (2013: 37-46), as 'a phenomenon of inherent weakness'. The materialization of the deterioration of a democratic ideal^v in Kyrgyzstan and Tajikistan can be explained by the following hypotheses:

- 1) Presence of repression and legitimacy of authoritarian regimes, which represents a non-spontaneous *qualis*. A democratic state should not show signs of censorship, physical repression and political and economic corruption to retain control over their society.
- 2) Corruption is a sign of rejecting the very legitimacy of the state and welfare. It is an obvious characteristic that if the state is legitimate, society will willingly obey norms and institutionalized rules as a symptomatic act of the need for democratic values, aiming for high standards. So if there is retrogression in compliance with international standards, the institutionalization of a neoliberal ideal becomes compromised, since this regulatory compliance is corrupted.
- 3) Stability in these countries will become truly compromised if its maintenance of elites in closed circles of power remain impenetrable.

The restructuring of economic integration, deterrence of protectionist measures and a smoother control of internal policies to accommodate social diseases in natural behavior, are also factors to be considered. This is because until now, no development model chosen by the countries of Central Asia has been, in its entirety, successful. Approximately 1-2% of Kyrgyzstan's population are refugees and about 80% of Tajikistan's population lives below the poverty line, an increasing number that has affected the country especially after the Civil War 1994-1997 and the Color Revolutions of 2004 (Malashenko, 2012). The deteriorating social conditions in the most marginalized countries in Central Asia creates an atmosphere of insecurity that enhance the deterioration of the state-building process, currently in-progress, fighting against the conceptualization of fragile states.

Consequently, this opens up the opportunity and especially the need for a neoliberal discourse of integration and cooperation through open markets and more commercial trade and energy resource expansion in Central Asia. With Kyrgyzstan's social fragility and the political and economic instability in Tajikistan, the need for institutionalization of systems has never been greater. Institutions would be able to coordinate the insurgency in a way that the countries themselves currently show themselves incapable, and to defray the procedures of cooperation, would also turn viable the promotion of stronger securitarian barriers.

The securitarian instability in Kyrgyzstan and Tajikistan

In Kyrgyzstan, the domestic policy faces a dubious paradox between a promising state development and external threats to national stability, since the country is geographically, ethnically and politically divided between the north-south regions. In 2010, violence linked to ethno-nationalism (or ethnic nationalism) among the peoples of Kyrgyzstan and Uzbekistan, in the city of Osh in southern Kyrgyzstan, victimized more than 500 people; 1,900 wounded and between 50000-70000, were displaced to other peripheral regions.

These facts represent a major turnaround in foreign policy and one of the most violent conflict ever seen in the 20 year history of independent Kyrgyzstan. This model of protest and unexpected revolution can be interpreted as a product replicated in a modern context of the revolutions of 1990, also occurred in Osh, and a clear example of the null attempt by the government of Kyrgyzstan to keep its security system under control in order to avoid such tensions. Due to its internal political weakness, securitarian volatility and ethnic handcuffs, Kyrgyzstan is represented as a threat, in social and political nature to the development of Central Asia.

According to Matveeva (2011: 45-56), the reasons that accentuate the conflict and evidentiate the threats to regional and international security are:

- a. Weakening of political authority and the division of power between social and economic fragmentation - the Tulip Revolution of 2005^{vi} (this revolution impeached former President Askar Akaev) explains about the siege of its extension as the political and business elites

- maintained relationships with certain localities that weakened the government's authority over regimes and institutions;
- b. Disrespect for human rights and weak reinforcement of regional laws. Some of those laws can also be insufficient to attend to all the necessary demands of the population, due to the authoritarian regimes and lack of representativity of its congresses.
 - c. Ethno-nationalism, under the aegis of predatory political and social elites. These elites see the state only as a tool for private enrichment (Juraev, 2010: 3-4);
 - d. An atmosphere of permissiveness or neglect, which allowed the protests to and its evolution to armed conflict to happen;
 - e. Sense of historic opportunity through accumulation of income and external investment, which seemed impossible in other contexts of political development in Kyrgyzstan and Tajikistan;
 - f. Fear against the current governmental system.

Instability and fragmentation in Tajikistan is a constant concern, alongside with the border conflicts, the presence of Islam and the trade routes of drugs emanating from Afghanistan^{vii}. Formerly, it was hoped, that the fragility of these countries would put internal and external crises into account and that the international community would intervene in favor of the dissolution of these conflicts and mediate a democratic solution, through the CIS, Russia or even the EU and US. These interventions never reached cooperation heights, nor established a true, necessary bond between organizations, hegemonies and Central Asia.

As a counterpart, when dealing through international cooperation, Tajikistan is one of the countries most open and prone to firm reconciliation treaties and co-optate investments (Matveeva, 2011). International actors such as NATO and the EU invested substantially in the securitarian industry of the country, however, few results could be presented towards conflict prevention, since despite the political openness of the country, it has serious shortcomings in the distribution of international aid to fight corruption and low capacity for direct application of these investments.

The difficulties faced by Kyrgyzstan and Tajikistan are ablaze and it is safe to say that this should compel international actors to be more cautious and more eager to cooperate with their domestic policies. Events of mass violence are not foreseen in the near future, but these countries are still likely to transboundary conflicts and tensions between the South-North relations and regional disputes.

Due to social fragmentation, lack of democracy and inter-ethnic mobilizations, these represent, alongside a decline in economic and political development, a process to a great challenge towards a possible ideal of integration for the countries of Central Asia. Depending on this thought, it appears that the insecurity in these countries are mixed thoroughly with feelings of discontent and national stagnation, on all sides of its domains - political, economic, ethnic, religious and cultural.

In order to provide the progress and post-conflict recognition, international actors^{viii} need to propose a stronger and more strategical

cooperation. This cooperation should target vital sectors such as energy, and stimulate a sense of perspective of economic growth, despite facing social difficulties (Matveeva, 2011). In order to reestablish a thought directed to a democratic order, trust is a necessary tool to react to political-economic-social insurgencies, whether borderly, regional or external.

The precepts of Keohane (1984) on the neoliberal institutionalism applied in the practical case of insurgencies in Kyrgyzstan and Tajikistan, creates a divergent tone. Cooperation would also be seen as a challenge for Central Asia, such as corruption, the questioning in the induction of investments and the economic-security-insurgency are. As a branched region between sensitive borders, Central Asia positions itself strategically in a volatile battlefield. There is a clear lack of transparency in the policies of security institutionalization, such as there is a need for dialogue and establishment of basic principles of democracy. Nevertheless, in Kyrgyzstan and Tajikistan, it becomes impossible to dissociation of Asian intercultural factors, ideals and political legacies of the former Soviet Union. It is noted that the discussion on the process of security-building in Central Asia is still newborn, just as is its construction as a geographic region.

Conclusion

Stability and transformation in Central Asia are the central points of its securitarian needs. In the examples followed by Kyrgyzstan and Tajikistan, the mobilization was used as a tool for social and structural change as a way to express their political, economic and ethnic dissuations. In the case of

Tajikistan, where the process of recovering from civil war and the establishment of terrorism and trafficking routes as new agents challenge the development of a stable and transparent security process and make the establishment of a democratic system even more complex.

In a contrast to the conflicts in the Middle East and South Asia, these processes of securitarian deconstruction and political fragmentation became convergent points that threaten not only national development but the security of Central Asia as a whole, because despite the region not being politically unified, geographically it becomes inescapable the dissemination of joint threats that interfere geopolitically in the context as a whole (Freire, 2010).

This paper is concluded, in allusion to a neoliberal perspective on the topic, by presenting the following recommendations:

- a. The poor performance of the government of Kyrgyzstan exacerbates proportionally the existing conflicts and undermines socioeconomic development. The remodeling of a state regime to a regime of greater interaction with international organizations would be an acceptable alternative to the international community in order to strengthen political governance gradually, without empowering elites and generating more imbalance between North and South. Ethnic interruptions in Kyrgyzstan are products of political mismanagement, a factor that can be reversed through increased cooperation with international actors. The World Bank, WTO and International

Monetary Fund (IMF) may play an important role to stabilize the country's finances and guide economic fronts policies against corruption, one commonly shared disease in Central Asia. There is the possibility to Kyrgyzstan to pluralize and mix its protectionism, making itself realize that institutionalizing an atmosphere of security, trust consequently generates stata confidence and stabilizes its international relationship with neuralgic zones of conflict.

- b. Tajikistan will continue to progress in terms of their cooperation with Afghanistan, China and Russia. This cooperation is positive, economic and politically. The growing interest of Tajikistan in joining other international organizations signals the need to establish a serious fight against political corruption, drug trafficking, terrorism and the accommodation of Islam. The maintenance of order in Tajikistan is more organized than in Kyrgyzstan and provides its people a sense of hope within the uncertainty, coming this to be a possibility in the long term to reduce its political and economic malfeasances.

These countries need to be encouraged by the international community, not as an act of international interference or intervention. The incentive has to be done through a coordinated cooperation with the institutionalization of principles and rules that organize and dissociate unharmonized policies and broader investment in security in order to protect the human, civil rights, and resolve disputes nonviolently, which proves that not only is there room for a neoliberal thought in Central Asia, but there is evidence of its inevitability.

Regional security is guaranteed with sensible preventive policies, incentives to encourage political stability, justifiable economic progress, social development and political growth dodging corruption. For a solid revenue based on social justice in Central Asia, transparency and openness to external policies sound like the ideal ingredient.

ⁱ When it comes to the decoupling of the Soviet Union, it should be considered that two decades have passed and they faced diverse processes of development and despite many similarities, Kyrgyzstan and Tajikistan absorbed divergent alternatives of state reintegration and restructuring of its economic and securitarian policies. Ethnic conflicts in Kyrgyzstan and the civil war in Tajikistan are examples of insurgencies that have emerged from the center to the periphery.

ⁱⁱ In citing the terrorist bombing of 11/09, we also consider the war in Iraq and Afghanistan, that in geo-strategic terms influenced the U.S foreign policy toward Central Asia and from Central Asia towards the West and that consequently resulted in positive and negative points to the development of both regions.

ⁱⁱⁱ Also known as the Treaty of Tashkent.

^{iv} In northeastern Kyrgyzstan where are the borders with Uzbekistan and Kazakhstan. On the border with Kazakhstan, there is a large presence of Russians, stemmed from migration processes post-USSR. There is also a Russian concern about the Ferghana Valley, in the southeast of the country, bordering Uzbekistan and Tajikistan and consequently with Afghanistan, and is

now considered a route of radical Islamists and terrorists as well as drug trafficking, affecting directly the development of the country and contributing to the vulnerability and international insecurity.

^v As for impairment of a democratic ideal, we understand the way in how these states have developed their state policy and consequently, how it affected the insurance policy, the concept that both countries are unaware of democratic values in fact.

^{vi} See more in: America University of Central Asia (Social Research Center): https://src.auca.kg/images/stories/files/A%20Tale%20of%20Two%20Revolutions%20DM%20FINAL%20old%20word%20version_3.pdf

^{vii} As can be seen in conflicts between Kyrgyzstan and Uzbekistan-Kyrgyzstan-Tajikistan border, where conflicts have worsened up conflicts of lower order for nationals, especially in 2011, after the electoral climate change and, overwhelmingly partisan politics in the states in question. Insecurity on the borders of Tajikistan, the only country that still uses the Persian language in Central Asia has grown considerably, due to its strong ties with Afghanistan and China, regarding the lack of cooperation and border monitoring.

^{viii} Particularly Europe, since programs like BOMCA and CADAP, established since 2004, are focused on strengthening the borders and expand securitarian structures in Central Asia. The BOMCA invested over € 4,346,584 in Kyrgyzstan between 2004 and 2010. See more at: <http://bomca.eu/en/kyrgyzstan.html>

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From national to universal justice and back again: Costs and challenges of political and judicial transformations of developed states

Maja Davidovic

American College of Thessaloniki

maja.a.davidovic@gmail.com

Abstract: *The era of globalization shifted the focus of the international community towards more pooled sovereignty and supranationalism in many areas, including justice. Emphasizing human rights and the rule of law, states have created international criminal justice mechanisms such as universal jurisdiction and the International Criminal Court. These changes, however, require political and judicial transformations, as well as shifts in both domestic and foreign policy even among those developed states which have had a good record with regards to the respect of human rights. The aim of this paper, therefore, is to explore changes and costs principles of universal justice have brought to Western states such as the United States and Spain, to analyze possible challenges international criminal justice is facing due to lack of transformation, integration and support of developed states and to draw conclusions about the future of a sovereign state on the road to universal justice.*

Keywords: universal jurisdiction, sovereignty, USA, Spain, ICC, judicial transformation, crimes against humanity

Introduction

In the era of globalization, Western democracies are known for having the highest records of human rights respect for their citizens. Nonetheless, even the most powerful countries of the West assert classical notions of sovereignty and often reject political principles of the universal human rights-oriented regime, facing international criticism and drastic legitimacy deficit (Levy and Sznajder 2006). Namely, human rights norms form a new universal legalism that challenges orthodox assumptions of national sovereignty and shapes international and domestic politics. Upon these transformations, human rights violations ceased to be solely a moral matter, but they now trigger a legal breach and involve legal responsibility of state officials. Through newly-created mechanisms such as the International Criminal Court (ICC) and the principle of universal jurisdiction, international legislative branch is testing the rule of a nation-centric *raison d'état*. Optimistically, rather than making states the dominant subjects of international law, these new mechanisms bring 'persons' to that position (Levy and Sznajder 2006). These emerging legal regimes are also significant for modifying current political policymaking in the international arena, restructuring the discourse of the overall international affairs in a legalist direction filled with responsible actions.

These novel 20th century mechanisms of international criminal justice are meant to put an end to the practice of impunity and exercise the promise 'Never Again' that was given at the Nuremberg trials. Yet, some like the ICC are disadvantaged due to lack of universal membership and often accused of being

neocolonial¹ (Kaleck 2009), whereas others as, for instance, the International Criminal Tribunal for Former Yugoslavia have been accused for offering high-quality treatment to top-level perpetrators and, in few instances, acquitting them². Consequently, seventy years after the end of the World War II, the world has not kept the promise given in Nuremberg. Perhaps we have not experienced such a long and devastating world war ever since, but crimes that ‘hurt our conscience’³, resembling to Holocaust have certainly been repeated.

During the Cold War, many atrocities were committed by the Western allies, the creators of the Nuremberg trials. The victims of the Vietnam, Algerian and numerous proxy wars in Latin America might never receive their true justice, as the perpetrators have been prosecuted selectively⁴. Soon after the Cold War was over, the world was struck by terrible crimes that had not been seen since the 1940s – mass slaughters in Rwanda and the former Yugoslavia. Both resulted in creation of ad-hoc tribunals – the International

¹ All the on-going and completed cases at the ICC include African nationals.

² Recent examples include acquittals of Gotovina, Markac and Haradinaj.

³ Mendez, 2001

⁴ For instance, certain Guatemalan state officials such as Efraim Rios Montt responsible for the horrible crimes committed against the Mayan population in the 1970s and 1980s, faced prosecutions in the past years; yet, none of the US officials – most notably the Reagan administration – who were helping the Guatemalan government’s crimes by providing weapons, finances, training and staff - have been held responsible for the tremendous losses of human lives.

Criminal Tribunal for Rwanda (ICTR) based in Arusha and the International Criminal Tribunal for the former Yugoslavia (ICTY) in The Hague. While the ICTR and ICTY have often been exposed to severe criticism, they are also praised for abolishing the victor's justice in the international criminal justice system, as well as for prosecuting heads of states, such as the former Yugoslav President Slobodan Milošević. The idea of holding individuals, military and political leaders, criminally accountable dates far earlier than the international criminal tribunals for former Yugoslavia and Rwanda, but it is certain that their creations have added to the legacy of global-level jurisdiction which started with the arrest of the Chilean General Pinochet who was the first former head of state to be prosecuted on the basis of the principle of universal jurisdiction. Ever since the Pinochet case, dozens of similar cases have been initiated *ex proprio motu* by prosecutors and judges, while a substantial amount of cases has been started by human rights organizations and lawyers (Kaleck 2009).

The aim of this paper is to, by comparing and contrasting universal jurisdiction practices and political and judicial changes and costs of two key players in the international judicial arena – Spain and the United States of America, evaluate the short history of universal jurisdiction and draw conclusions on its admirable successes, but also its necessary amendments. The paper begins with a brief overview of universal jurisdiction, and it then attempts to examine Spanish actions, transformations and costs related to universal jurisdiction practices, only to reach the point of contrast, by offering an analysis of most relevant US practices and transformations, followed by a couple case studies. The paper then slowly reaches concluding remarks, by

asking questions and drawing conclusions about universal jurisdiction's impact on transformations of national sovereignty, and the eternal debate about national versus global.

On Universal Jurisdiction

Those who commit offenses categorized under 'universal jurisdiction' are *hostes humani generis* – enemies of all mankind, and every state in the world can have the authority to bring them to justice (Bradley 2001). Even after the 'Never Again' promise was given, the world was exposed to many *hostes humani generis*, as an estimated 170 million civilians have been victims of gross violations of human rights such as genocide and war crimes to date (Jouet 2007). Atrocities committed by heads of states and other state officials have largely been tolerated by national and international communities; for example, the Argentinian military junta pursued a 'Dirty War Against Subversion' between 1975 and 1981, during which tens of thousands were tortured in secret prisons and killed in the most brutal ways. One of the survivors of the regime, Luiz Urquiza, fled to Europe only to discover upon returning to Argentina in 1994 that his repressors had become senior officials in the Argentine police (Jouet 2007). However, he did manage to testify about the torture he had been through and contribute to bringing justice to Argentina far away from where the crimes took place – in a Spanish High Court, addressing Judge Baltasar Garzon. Complaints filed by the Judge Garzon are usually marked as a beginning of the expansion of universal justice practices; however, as several examples show, the idea preexisted. Although

the Nuremberg tribunal was built on a doctrine somewhat different than universal jurisdiction, different military and civilian courts certainly claimed universal jurisdiction to prosecute the atrocities committed by the Nazis. One of the most famous examples was the Israeli Supreme Court which demanded it had the right to prosecute Adolf Eichmann under the principle of universal jurisdiction for committing crimes against humanity in countries other than Israel, without him being physically present in Israel or possessing an Israeli citizenship (Bradley 2001).

Defining the scope of universal jurisdiction is quite a challenging task, considering that there has not been a consensus on what universal jurisdiction should be. In pragmatic terms, countries engaging in universal jurisdiction differ on whether custody of the alleged perpetrator is needed prior to initiating proceedings or not. *Conditional universal jurisdiction* means that a state may prosecute a defendant only if he is in custody of that state; states who follow this principle include Austria, France and Switzerland (Jouet 2007). Throughout history, customary law has demanded states to exercise universal jurisdiction on pirates who happened to be in their custody. Furthermore, in international law, different treaties suggest states are either required to prosecute the defendant who is in their custody through universal jurisdiction or extradite them to the state where they allegedly committed grave breaches of 1949 Geneva Conventions, torture under the 1984 Torture Convention or other gross violations of human rights.

On the other hand side, *absolute universal jurisdiction* supposes that states may prosecute a defendant regardless of whether he is in custody of the prosecuting state; along with different Western European countries, Spain practices this kind of universal jurisdiction (Jouet 2007). In the past few decades, Judge Garzon and other notable Spaniards shaped the way the world views universal crimes, and largely contributed to the progress of universal jurisdiction practices.

The Accommodation of Universal Jurisdiction in the Spanish Judicial System

Spain has a democratic political system in which the Constitutional Court is the highest court that must uphold and interpret the Constitution and, similarly to the US Supreme Court, has the power of judicial review over other state organs' actions (Jouet 2007). Spain adheres to many international treaties and conventions, most notably the Convention on the Prevention and Punishment of the Crime of Genocide and the Torture Convention. Universal jurisdiction practices in Spain come from a combination of international treaty obligations and national procedural rules (Kaleck 2009). To be more precise, application of the principle of universal jurisdiction for grave crimes against humanity such as genocide and torture is authorized under Article 23.4 of the Organic Law for the Judiciary 6/1985⁵. Until it was amended, this law did not require cases to have any connection to the Spanish state in order to be filed.

⁵ See Ley Orgánica Nº 6/1985 de 1 de Julio de 1985 del Poder Judicial. (1985).

Retrieved 26 August 2014 http://www.wipo.int/wipolex/en/text.jsp?file_id=181467

Consequently, over the years, Spanish judiciary branch has developed substantial infrastructure to accommodate universal jurisdiction practices, which has certainly made it one of the most welcoming arenas for prosecuting international crimes.

According to the Organic Law, trials *in absentia* are generally prohibited (Kaleck 2009). Although in absentia trials are prohibited, absolute universal jurisdiction enables Spain to initiate proceedings even in cases where the defendant has never crossed Spanish borders (Jouet 2007). Allowing countries to demand extradition of perpetrators from other states, absolute universal jurisdiction gives a much broader application power to Spain and puts it on the very top of the judicial fight against crimes against humanity. On the other hand side, the role of judicial police in Spain has been limited and no significant investigations have been undertaken abroad, although the police are authorized to execute them under the direction of an investigative judge (Kaleck 2009). For this reason, in most cases, the non-governmental sector is the one pushing for locating more evidence and witnesses. Nonetheless, proceedings may also be initiated by an investigating judge *ex officio* in the aftermath of preliminary analysis of reported facts, regardless of whether criminal notice was primarily obtained by the police, prosecutor or an individual. In fact, individuals can submit private complaints if they are victims or Spanish citizens acting by the way of popular accusation, which has been a major driving force in bringing human right cases to courts.

Over the years, the Constitutional and the Supreme Court of Spain have had discrepancies on the scope of the kind of universal jurisdiction Spain should pursue under treaty law and Article 23.4. According to the Supreme Court's rationale, as shown in the case of Adolfo Scilingo in 2004, an Argentine navy officer involved in the Dirty War, jurisdiction is a representation of state's national sovereignty, and it should reach only as far as in national interests do; aiming further would mean intervening in other states' national sovereignty (Jouet 2007). Thereupon, the Supreme court is of an opinion that universal jurisdiction should only be justified when there is a union of 'the common interest in avoiding impunity for atrocity crimes with the concrete interest of a state in protecting its national interests' (Jouet 2007 p. 506). Citing Article 2.7. of the UN Charter as a bar to broad universal jurisdiction, the Spanish Supreme Court concluded that any broader universal jurisdiction application would violate the principle of non-intervention in another state's affairs, and that any exception to this principle on the basis of human rights violations should be decided between nation-states and international community.

The Constitutional Tribunal, on the other hand, argued that there is no need for a link to national interest, since universal jurisdiction is solely based on the substantive nature of serious violations of human rights having consequences on the entire international community (Jouet 2007). Thus, demanding victims of universal crimes such as genocide need to be Spanish citizens contradicts the nature of genocide as a crime and the idea of it being prosecuted universally. If such rationale was followed, Spanish courts would only be able to prosecute whoever was aiming to exterminate Spaniards,

whereas Article 23.4. of the Law on Judicial Power clearly intended to punish perpetrators aiming to exterminate anyone anywhere in the world.

Small Victories

Based on this ruling by the Constitutional Tribunal, Spanish magistrates were able to issue several international arrest warrants, most notably against former Guatemalan military ruler Efraim Rios Montt, who was later on tried in Guatemala and is currently awaiting retrial (Amnesty International 2013). In addition, some of the most prominent examples are represented in the activities of the notable Spanish judge Baltasar Garzon, who in 1996 started demanding extraditions and arrests of Argentina's erstwhile military leadership for their role in hundreds of unsolved murders and forced disappearances of Spanish citizens during the 'Dirty War' (Levy and Sznajder 2006). The event culminated in Garzon's ordering detention against General Augusto Pinochet, a Chilean dictator, at the time he was in London. Garzon's arguments consisted of allegations of Pinochet and other army personnel committing crimes against humanity similar to those committed in World War II by the Nazi officials. Consequently, Garzon's argued Spain had a full right to prosecute these perpetrators under the principle of universal jurisdiction. These bold attempts to try criminals who committed horrible atrocities across national borders resulted in the first prosecution of a former head of state for crimes like torture and genocide, and set a precedent for all other heads of state or high-tier officials to be prosecuted in a similar fashion anywhere in the world. Most importantly, this practice showed that state officials can be disabled from

benefitting from their sovereign immunity and demonstrated some important steps forward in the global battle for more pooled sovereignty and supranationalism in all spheres, including justice.

Along with Pinochet, another notable trial that was opened was against a former Argentine marine officer Adolfo Scilingo, detained while traveling in Madrid (Kaleck 2009). The case ended in his conviction for crimes against humanity and torture by the National Court. In addition, another former Argentine marine officer, Ricardo Cavallo was put on trial after being successfully extradited from Mexico in 2003; yet, five years later, he was eventually extradited from Spain to Argentina to be prosecuted by his home country. There are numerous on-going investigations; however, many cases have been dismissed and a lack of consistency in Spanish courts has been noticed.

Costs and Changes

Spanish high courts have often been of conflicting opinions about whether international law allows states to unilaterally prosecute crimes committed by foreign perpetrators against foreign victims in a foreign country, without any link to the prosecuting state. First attempts to amend the Spanish law started in November 2004 when the Supreme Court aimed to narrow Spanish application of universal jurisdiction by requiring an evident link to national interests in order to proceed with a prosecution, feeling that some

prosecutions had gone too far (Jouet 2007). A year later, the Constitutional Tribunal of Spain overruled this decision, authorizing Spanish courts to exercise broad universal jurisdiction. As a result of this authorization, alleged victims were able to file criminal complaints against the former Chinese president Jiang Zemin and other state officials of China for engaging in the Tibetan genocide, which endangered Sino-Spanish relations (Jouet 2007).

Besides causing anger among Chinese state officials, Spain's broad application of universal jurisdiction led senior Spanish executive officials to protest against prosecuting crimes in Argentina and Chile, including those crimes committed directly against Spanish victims (Jouet 2007). Most importantly, however, these practices caused political tensions with the United States of America, Spain's strong strategic ally. Under the rationale that the action violated civilian rights protected by the Fourth Geneva Convention and was a general 'crime against the international community' (Jouet p. 526), Spain opened an investigation against three American soldiers for the death of a Spanish journalist who was killed in Iraq in 2003, when an American tank fired at Hotel Palestine. The Spanish magistrate who opened the case, Santiago Pedraz, argued that the US army was aware it was shooting at a civilian object and that it did so with an aim to endanger or end lives of the journalists who were critical of the war. These allegations were rejected by the US government, which claimed the soldiers were abiding by the rules of combat, targeting a sniper located on the hotel's roof, and did not commit a crime. Despite US threats and reluctance to cooperate, Spanish authorities still continued with an investigation and issued an international arrest warrant

against the three soldiers. As the US State Department spokesman at the time stated that it will be a 'very cold day in hell' before American soldiers are forced to answer to Spanish courts, it becomes very unlikely that the soldiers will ever be in Spain's custody (Jouet 2007).

While there are evident ambitions by notable Spanish judges and activists, judicial and prosecutorial authorities in this country hamper progress of certain cases due to vast political and economic costs and diplomatic pressures from abroad. Thus, amidst its exceptional record in fighting against universal crimes, in March 2014, Spain amended its universal jurisdiction law. Changes brought by the amendment include 'extensive and complex set of requirements' on perpetrators and victims' nationality and status in Spain that have to be met prior to applying the principle of universal jurisdiction (Human Rights Watch 2014). Namely, section 2, 4 and 5 concerning the Article 23 of the Organic Law on Judicial Power have been amended so as to limit the application of law to cases where: the perpetrators are physically present in Spain; the victims are of Spanish nationality, or the case has significant links to Spanish national interest⁶. The possible loophole in the amendment could be the interpretation of the third criterium which has a potential to be flexible and could help the law function largely unchanged (The Center for Justice and

⁶ See Ley Orgánica 1/2014, de 13 de marzo, de modificación de la Ley Orgánica 6/1985, de 1 de julio, del Poder Judicial, relativa a la justicia universal. (2014). Boletín Oficial del Estado, Núm. 63, Sec. I. Pág. 23026. Retrieved from <http://www.boe.es/boe/dias/2014/03/14/pdfs/BOE-A-2014-2709.pdf>

Accountability 2014). Nonetheless, under the new law, Spain placed itself in breach of certain international legal obligations it adheres to, such as the UN Convention against Torture. According to the Human Rights Watch (2014), Spain has already dismissed charges of crimes against humanity in at least one case involving El Salvador, leaving the case pending regarding other charges that do not require universal jurisdiction. If the Spanish judiciary will seek loopholes in the amendments in order to continue their remarkable practices is yet to be seen; however, it is evident that controversial actions have taken their toll and that the Spanish are, like many others, also weak under persistent political pressures from important allies.

US Law and Universal Jurisdiction

Ever since the early 1800s, it has been established in the US that there is no federal common law of crimes, but that federal criminal liability can be created only by a domestic enactment. Hence, neither customary international law of universal jurisdiction nor customary international law forbidding a particular conduct can by itself create criminal liability under US law (Bradley 2001). Moreover, treaties do not create domestic criminal liability although they might call for the criminalization of conduct or the exercise of jurisdiction. In other words, treaty provisions take effect on federal level only when Congress implements them. Evidently, it is Congress that has more control over the exercise of universal jurisdiction than federal courts or international law, although international law can surely have some importance in the interpretation of congressional enactments. For instance, most of the universal

jurisdiction statutes are implementations of treaties, demanding from states to prosecute or extradite perpetrators found in their territory. Under the Necessary and Proper Clause, US Congress has flexibility as to how different treaty commitments should be interpreted and applied (Bradley 2001). Yet, limitations of the Congress provided by the Constitution and the Bill of Rights should not be overlooked.

A relevant act is the Alien Tort Statute, first enacted in 1789 as a part of the First Judiciary Act. It creates a federal cause of action for torts that violate international law regardless of where they are committed (Bradley 2001). The statute states that 'the district courts shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States', in a form of universal jurisdiction⁷. This means that parties lacking access to criminal justice can alternatively attempt to bring civil suits using the Alien Torts Claims Act to obtain justice, which is not as controversial as universal jurisdiction (Kaleck 2009). In fact, under this Statute, courts have adjudicated claims regarding human rights abuses in countries such as Guatemala, Ethiopia and the former Yugoslavia (Bradley 2001).

Apart from the general unwillingness to fully participate in international criminal justice practices, the US suffers from a few technical

⁷ See Cornell University Law. (2014). *28 U.S. Code § 1350 - Alien's action for tort*. Retrieved 28 August, 2014 <http://www.law.cornell.edu/uscode/text/28/1350>

obstacles in its dealings with universal jurisdiction. For instance, the federal genocide statute of the US does not assert universal jurisdiction but it states that the offense must take place in the US or the offender must be a US national⁸. This not only limits US practices, but it also serves as a way of avoiding responsibility to act according to its powers as the most influential actor in the contemporary international arena. Another issue is the existence of a possibility that the US could impose a death penalty as punishment upon prosecuting perpetrators under the principle of universal jurisdiction (Bradley 2001). Criminal tribunals for former Yugoslavia and Rwanda, as well as most democratic countries have abolished death penalty, thus many are or might be unwilling to extradite the suspects to the US without an assurance that death penalty would not be an option.

The Donald Rumsfeld Case

One might expect the US to be highly engaged in prosecuting international war criminals, being a symbol of democracy in the world. However, rather than investigating and trying foreign perpetrators, the US is a very important case to analyze because it is so often being the one against whose nationals other states press charges. In 2006, several human rights organizations represented by the Berlin Attorney Wolfgang Kaleck filed a criminal complaint with the German Federal Prosecutor for purposes of

⁸ See Cornell University Law School. (2014). *18 U.S. § 1091 – Genocide*. Retrieved 26 August 2014 <http://www.law.cornell.edu/uscode/text/18/1091>

opening an investigation of high-ranking US officials', most notably the Secretary of Defense, Donald Rumsfeld, responsible for authorization of war crimes during the so-called 'war on terror' in Iraq (German War Crimes Complaint against Donald Rumsfeld et al. 2014). A similar complaint was filed in 2004, but it was dismissed. The new complaint involved new evidence, defendants and plaintiffs, and followed after Donald Rumsfeld's resignation as the Secretary of Defense, and the adoption of the Military Commissions Act of 2006 in the US, when it was attempted to offer retroactive immunity from prosecution for war crimes to military officials. After the German Federal Prosecutor decided not to open an investigation, the human rights organizations in question appealed to the decision, but the Stuttgart Regional Appeals Court dismissed the appeal in 2009. A motion for reconsideration was filed in May 2009.

According to the prosecuting party, the US administration led by Secretary Rumsfeld treated at least hundreds, if not thousands of detainees in Abu Ghraib in Iraq and in Guantanamo in a coercive manner, using harsh interrogation techniques (German War Crimes Complaint against Donald Rumsfeld et al. 2014). Consequently, committing crimes of torture and/or cruel, inhumane and degrading treatment violated the 1949 Geneva Conventions, the 1984 Convention against Torture and the 1977 International Covenant on Civil and Political Rights – all of whose principles are signed and adhered to by the United States. For instance, the 1984 UN Convention against Torture, signed and ratified by the US, requires states to investigate allegations of torture committed on their territory or by their nationals, or extradite them

to stand trial elsewhere.⁹ In addition, the Convention suggests that 'no exceptional circumstances what so ever, whether a state of war or a threat of war, internal political in stability or any other public emergency, may be invoked as a justification of torture', meaning that the US involvement in torture practices during the war in Iraq are not justified at any cost.

This particular complaint was filed under the Code of Crimes against International Law (CCIL), carried out by Germany in compliance with the Rome Statute which this country ratified. The CCIL enables Germany to act and prosecute according to the principle of 'universal jurisdiction' for the crimes that violate the CCIL, regardless of the nationality of the victims or suspects, or the place where the crimes took place (German War Crimes Complaint against Donald Rumsfeld et al. 2014). No other international or national courts were mandated to investigate and prosecute this case. Having refused to become a party to the Rome Statute, the US escaped the option of having its citizens facing a prosecution before it; in addition, it gave immunity from Iraqi prosecution to its entire military personnel in Iraq, so the Iraqi national courts were not authorized to go on with an investigation either.

Nevertheless, the complaints were not as meaningless. As soon as the first complaint was filed, the Pentagon made clear threats, stating US-German

⁹ See Articles 2 and 5 of United Nations General Assembly Resolution 39/46. (1984). 1984 Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment.

relations could be largely endangered if the complaint over Abu Ghraib proceeded (Deutsche Welle 2004). In addition, the Pentagon's spokesperson said that every government in the world, NATO allies in particular, should be aware of the grave effects on relations with the US whenever similar 'frivolous lawsuits' appear. Subsequently, no significant progress in the case has been made since 2009. Up to the present date, Germany remains home to thousands of US troops, many of which commute into and out of Iraq from German bases.

Other Troublesome Cases

Open political struggles in universal jurisdiction cases are not rare. In particular, political barriers become troublesome when criminal proceedings are brought against perpetrators from the states with whom the hosting state has politically, economic, military, and overall, friendly relations. Apart from the Donald Rumsfeld case, there have been several important attempts to prosecute US officials responsible for recently committed atrocities, both in and out warzones.

The CIA Extraordinary Rendition Flights Case

A good example of a controversial case that implies political barriers is the CIA extraordinary rendition flights case. The CIA rendition flights enable the outsourcing of torture and creation of a 'global spider's web' of detention

facilities and torture chambers in which, allegedly, fifteen European countries have been involved (Kaleck 2009). Much criticism about these centers is directed towards the US government, but also to European governments for being co-responsible for international crimes. In 2005, El Pais reported the landings of CIA planes in few Spanish islands including Palma de Mallorca (Democracy Now 2010); as a result, the notable judge Garzon pursued an investigation regarding the landings. Allegedly, the landings were exercised without any official knowledge of the Spanish authorities, thereupon breaching its national sovereignty. Nevertheless, in 2010, WikiLeaks reported that the US government, led by the American ambassador to Spain, worked with members of the Spanish government to thwart the investigation and the judicial process (Democracy Now 2010).

Violations and breaches committed through these CIA actions are plenty. The Inter-American Convention on Forced Disappearance of Persons states that 'the forced disappearance of persons violates numerous non-derogable and essential human rights enshrined in the American Convention on Human Rights, in the American Declaration of Rights and Duties of Man, and in the Universal Declaration of Human Rights' (Paust 2004 p. 1354). Furthermore, the Convention on Forced Disappearance sees forced disappearance as a grave crime and a serious offence 'against the inherent dignity of the human beings, and one that contradicts the principles and purposes enshrined in the Charter of the Organization of American States' (Paust 2004 p. 1355). In a similar manner, the Convention recognized forced disappearance of persons as a crime against humanity. Although belonging to

the Organization of American states (OAS), the US has not ratified any of the OAS human rights treaties, including the Convention on Forced Disappearance (Rivera Juaristi 2014). It, thus, becomes clear that the United States of America is an exception when it comes to taking responsibility under international law for transferring persons to other states for purposes of torture and inhumane interrogation. As a result, the attempts to prosecute those responsible for the CIA extraordinary rendition flights did not go far.

The Bush Six Case

Several international organizations including the Center for Constitutional Rights (CCR) have filed cases against former US officials for committing the universal crime of torture. Nonetheless, as the US is one a few non-members of the International Criminal Court, the perpetrators would have to be brought to justice using the principle of universal jurisdiction in one of the nation-states who feel strongly about prosecuting crimes like torture regardless of whether they involve their own citizens. One of the on-going investigations includes the French investigation into the torture and serious mistreatment of three French citizens in Guantanamo, confirmed by the Appeals court in Paris in June, 2005. The US administration has been alleged of lack of cooperation in the pending case up to date (Universal Jurisdiction: Accountability for U.S. Torture 2014).

In a similar fashion, Judge Velasco of Spain took responsibility to decide whether there should be any proceedings in a case filed against the so-called 'Bush Six' for torture and war crimes in Guantanamo and other overseas facilities (The Spanish Investigation into U.S. Torture 2014). Spain had a direct incentive to file the case, as six of its citizens were held in Guantanamo and had reportedly been suffered directly from the Bush administration shifts from the international law (Borger and Fuchs 2009). His decision to proceed with prosecutions was appealed in 2011, but the appeal was dismissed in March 2012 just so that the victims could appeal to the Supreme Court of Spain in June 2012, which dismissed their appeal in 2013. Later in 2013, a petition for review was sent to the Spanish Constitutional Court (The Spanish Investigation into U.S. Torture 2014). This particular case was deemed very likely to endanger Spain's relations with the Obama administration, but there was a general feeling among the lawyers who filled in the lawsuit that, under the Spanish law, prosecutors had no other option but to go ahead with the case. The reason for denying the prosecution, used previously in a case against Donald Rumsfeld by the German court, was that such prosecutions should be held in and by the US. In early 2009, Obama stated his administration will look into past practices; nonetheless, none of the second-tier officials in question have been prosecuted so far (Borger and Fuchs 2009).

Although this argument has been used frequently by state officials, many scholars argue states do not have exclusive jurisdiction over citizens. According to Scharf (2001), 'when another state seeks to prosecute a state's national, the latter may seek to intercede diplomatically on behalf of its citizen

on the basis of comity, but it has no legal right under international law to insist it be the exclusive forum for such prosecution'. This is another parameter of national sovereignty's decrease in the post-World War II era, in which the international community has largely recognized that one government's powers end where human rights of persons are being violated (Jouet 2007).

Like many other universal jurisdiction cases, the Bush Six case remains pending. Often the judiciary lacks sufficient data to draw concrete conclusions, or in other cases, like the Bush Six and the CIA extraordinary rendition flights cases, progress of a prosecution is being hampered by political and diplomatic pressures. As a matter of fact, WikiLeaks reported in 2009 that certain Spanish officials were warned by the Obama administration's diplomats about severity of the Bush Six case and the 'enormous impact' that the prosecution might have on the bilateral relations between the two countries (Egelko 2011).

In 2003, Belgium brought charges against the retired General Tommy Franks, who led the US invasion in Iraq, following the 1993 law that empowered its courts to practice universal jurisdiction (Deutsche Welle 2004). Donald Rumsfeld, the Defense Secretary at the time, threatened to stop funding inflows for NATO headquarters in Belgium, as well as to seriously consider whether the US would send any more officials to meetings in Brussels. The lawsuits against Franks, former president George H.W. Bush, Secretary of State Colin Powell and Israeli Prime Minister Ariel Sharon were all eventually aborted by the Belgian High court, as the Belgian law on universal jurisdiction had been drastically amended. Being aware of its power and

influence, the US managed to defeat the international criminal justice system again.

Fighting the ICC

The lack of effective and fair national justice in many countries that led to severe atrocities resulted in the need of the international community to establish an international court, which birth is a considered to be a significant victory as well as a historical advance for international justice (Begbeder 1999). The creation of the International Criminal Court (ICC) was preceded by multilateral intergovernmental negotiations, resulting in a formal international treaty to be approved and ratified by all the countries. The US was one of only seven states that voted against the Rome Statute in 1998, along with Israel, China, Iraq, Libya, Yemen and Qatar, and has not become a member to the present date (Human Rights Watch 2013). Choosing not to ratify the ICC statute puts the US in position where they are neither subject to the Court's jurisdiction nor obliged to provide cooperation. Unlike its precedents, the ICTY and the ICTR, which being part of the UN system impose a strict legal obligation on all UN member states to cooperate, the ICC leaves this obligation to operate on voluntary basis for the states that have not ratified the Rome Statute (Peskin 2002).

What was listed as the greatest concern of the Bush administration back in 2002 when the Rome Statute entered into force was the prospect that

the ICC might exercise its jurisdiction to conduct politically motivated investigations and prosecution of the US military and political officials (Human Rights Watch 2003). This reluctance to cooperate with the ICC soon culminated in the American Service Members' Protection Act of 2002 banning the US government from lending support to the ICC. The so-called '*Hague invasion clause*' was included in the Act, authorizing the President to "*use all means necessary and appropriate*" to free American personnel held in custody by the ICC (Peskin 2002 p. 252). In addition, it provides for the withholding of US military aid for governments ratifying the Rome Statute and a prohibition to the peacekeeping activities unless immunity from the ICC is guaranteed for the personnel (Human Rights Watch 2003). This renunciation of the Statute marked the beginning of a comprehensive US campaign to undermine the ICC and a much more hostile foreign policy.

Furthermore, the Bush administration requested states worldwide to approve bilateral, so-called "impunity" agreements that would require them not surrender any American nationals to the ICC. By the end of Bush's term in 2008, over 100 bilateral impunity agreements (BIAs) were signed (A Campaign for US Immunity from the ICC, 2013). Even though the US claimed that it did not pressure any of the states to sign BIAs, some US government officials said that a state's unwillingness to sign had affected US support for its membership in NATO. Different reports in the media and by foreign officials claim that threats of cutting both military and non-military aid were made towards smaller countries (A Campaign for US Immunity from the ICC, 2013). This so-called '*bullying*' was proven when the US ambassador to Zagreb published an

open letter warning that Croatia would lose \$19 million in military assistance if it failed to sign the BIA. Another example would be Caribbean countries which have been threatened to lose hurricane assistance if they don't give the Americans what they want (Crawshaw, 2003).

In 2004, then-Senator Barack Obama said that the US should *“cooperate with ICC investigations in a way that reflects American sovereignty and promotes our national security interests”* (Statements of Barack Obama on the International Criminal Court, 2011). This was considered to be a big step, and indeed, myriad of changes in foreign policy of the US have been made since Obama became the President in 2008 with regards to the ICC. The US under the Obama administration has been providing support to prosecutions by providing assistance to certain requests made by the ICC prosecutor. Since November 2009, the US has participated as an observer in the ICC Assembly of States Parties (ASP) meetings (US Department of State, 2013). A clear example of better cooperation was the UN resolution that imposed tough sanctions against Libya in 2011, which was the first time that the US supported the ICC. However, this still means that if in 2011 the US dropped a bomb in the no-fly zone in Libya accidentally killing civilians, those responsible for the attack would be subject to jurisdiction of a US court only, not the ICC (Lederer, 2011).

The real question that needs to be raised is why the state that established the principles of war crimes trials in Nuremberg and Tokyo and advocated for the creation of the ICTY and the ICTR is now so eager to sabotage a court that promotes criminal justice worldwide. Perhaps the real

difference is the lack of American vulnerability in any of those ad-hoc tribunals as opposed to a complete and constant disposal the US would have to face at the ICC. Like with many human-rights Conventions, the US remains to be an exception to the Rome Statute up to the present day.

What Awaits

What will come next on the universal jurisdiction road remains uncertain, but there is much room for advancement. Human Rights Watch and other non-governmental organizations advocate for the creation of specialized units in police and prosecutorial authorities that will be adequately resourced and staffed, especially working towards investigating and prosecuting universal jurisdiction cases (Kaleck 2009). Evidently, the universal jurisdiction principle has limited application and much is left to be developed and advanced. According to Wolfgang Kaleck (2009), a German lawyer who filed a complaint against Donald Rumsfeld et al., there is a lack of appropriate implementing legislation in outlining when universal jurisdiction principle can be exercised and determining which crimes should be prosecuted under it. Furthermore, prosecutorial discretion and a very broad interpretation of political immunity in Europe and beyond prevent some prosecutions from making any progress.

Nevertheless, universal jurisdiction surely carries great political, legal and symbolic consequences on state actors as it reaffirms the new understanding of transforming national to supranational, while creating

individual responsibility in the arena of deterritorialized sovereignty (Levy and Sznajder 2006). The trials started by the judge Garzon and many others create legal precedents that can evolve into customs and, later on, harden into law. In fact, any ideas that were born along the lines of creating the universal jurisdiction mechanisms are now incorporated into practices of the recently installed International Criminal Court. The ICC is a recognition of the weakening of sovereign national states in many forms. While national self-determination and statehood remain the central political units in international law and driving forces behind many of the current affairs, the hierarchy of values in the international arena has been transformed. Human rights seriously challenge the leadership, and arguably supersede the previously untouchable status of national sovereignty. In legal terms, the idea of prosecuting crimes against humanity at any cost constructs a major shift away from national jurisdiction to international and rather universal one, while completely blurring differentiations between international and internal conflicts (Levy and Sznajder 2006). In theory, states are no longer able to exercise power over their citizens in any possible way, for an internal conflict might be just enough for any sort of humanitarian or military intervention that would undermine the importance of states' national sovereignty.

Judicial transformations are often intertwined with political changes, since international judicial bodies such as the ICC shift the focus away from protecting state borders and territoriality, which, while still important, weakens under the strains of the idea of more juridical dimensions of a state, such as the stability of peoples. The nation-centric notions are diminished and

the world is shifting towards increased global interdependencies in all spheres, some, like economic, being developed more than the others, but surely all speeding up their paces. Overall, all these new legal developments listed bring us to the emergence of a rather humanitarian-law oriented international regime, which is closely related with the modern phenomena of political transitions and highly developed interdependence in the era of globalization.

As it can be easily detected in the examples of Spain and the USA, universal jurisdiction remains quite limited. The National Audience of Spain has held that incumbent heads of state are immune from prosecutions, disabling Spanish courts to prosecute certain individuals such as Silvio Berlusconi or Fidel Castro at the time (Jouet 2007). This reaffirmed the ICJ's Arrest Warrant of 11 April 2000¹⁰ decision, in which it was clearly stated that incumbent heads of state, ministers, and other senior officials are immune from jurisdiction while in office. In addition, the Rome Treaty required all parties to the treaty, including Spain to give preference to the ICC when it comes to prosecutions (Jouet 2007). Nevertheless, the ICC has very limited jurisdiction, partly because it is not universally recognized and that it suffers from complete absence of support of one of the most important players in the international arena – the US. The US, along with not supporting the work and progress of the ICC, keeps avoiding taking responsibility for actions of its well-developed, omnipresent

¹⁰ See p. 22 of International Court of Justice. (2002). *Case Concerning the Arrest Warrant of 11 April 2000*. [Democratic Republic of the Congo v. Belgium]. Retrieved from <http://www.icj-cij.org/docket/files/121/8126.pdf>

military. The negative examples that come from the US, as well as a decrease in positive changes coming from Spain and other Western democracies such as Belgium, sadly show that, while undoubtedly being an incredible success, universal jurisdiction still has a long way to go before it earns a status of a mechanism strong enough to be beyond any state, their officials and their political and diplomatic pressures. Stronger implementing, monitoring and sanctioning bodies will surely take it there, but the real question is, can thousands of civilians dying in conflicts around the world diurnally wait any longer?

The Point of It All

Shifting from national to global rights is a topic of interest for many notable scholars. Soysal (1994), for instance, describes post-national trends that dissociate national identity of a person from their rights, or the so-called universal status of personhood. These supranational notions tackle upon premises of national citizenship, but they also disturb the coordinates of national sovereignty. Evidently, national and ethnic identities and memories are not being completely erased, but rather transformed and brought to a novel form of existence. There is still a good balance of the universal and the individual; nation-centric memories still exist and, as such, continue to inform the parameters of national sovereignty (Levy and Sznajder 2006). Nevertheless, current mechanisms of supranational institutionalization and jurisdiction of human rights not only threaten the existence of nation-states, but also make the application of their principles a mandatory prerequisite for

state legitimacy. The era of globalization is human rights-oriented, and much more emphasis is put on humanitarian-driven actions, both military and economic.

The Nuremberg trials were, undisputedly, legal and moral precedent of the recently established international criminal tribunals for the crimes committed in former Yugoslavia and Rwanda. What both the Nuremberg and the international criminal tribunals that followed did was challenge national sovereignty of states who committed grave violations of human rights. The ICTR and the ICTY differ from the Nuremberg in the sense that they were both placed outside the countries who went through an internal strife, rather than an international armed conflict, like Germany did during the WWII. Thereupon, domestic integrity was questioned by international law even more, and the internal and external boundaries were blurred (Levy and Sznajder 2006). Internal conflicts around South America became a part of the international legal system with Judge Garzon. Before Judge Garzon demanded Pinochet's extradition to Spain, the notorious dictator had been quite untouchable, despite the dreadful crimes he had committed. The Chilean government objected Garzon's demand, arguing Pinochet was immune from prosecution and that extraditing him would violate Chilean national sovereignty (Jouet 2007). It was only the British judicial panel that argued that, under the British adherence to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, extraterritorial torture was enough for demanding an extraditable offense in which Pinochet could not enjoy immunity from prosecution.

Yet, not everybody agreed with British reasoning. Along with the first major universal jurisdiction case for the Spanish courts, came much criticism. Many argued that Spain's actions could have seriously violated international customary law and endangered its diplomatic relations with other states; in addition, states whose citizens were being prosecuted complained about ignoring the importance of national criminal justice and violating national sovereignty (Jouet 2007). These anti-universal jurisdiction efforts were not in vain. Having faced similar allegations, Belgium eventually amended its universal jurisdiction law in 2003, significantly narrowing its scope, under much political pressure received from the United States, against whose state officials Belgium had started a few prosecutions. Once Belgium drastically changed its law and practices, Spain became the most desired destination for the victims of different atrocities, and human rights activists to file their criminal complaints. Under the pressure, eventually Spanish practices changed, too.

Although Spain and Belgium were the rare ones engaging in absolute universal jurisdiction, willing to prosecute former heads of states and state officials wherever they are, time has shown that both have amended their laws and practices and might not be able to endure under the strains of diplomatic pressure coming from the US and others. Precisely because of these political disputes and recriminations, many heads of states who established dreadful regimes have been enjoying impunity and luxurious lives ever since they stepped down from the leadership (e.g. Haiti's Baby Doc Duvalier). Consequently, human rights and justice are still left behind military and economic dominance in the hierarchy of the world's priorities. Yet, we live in a

world where political, judicial, economic and social transformations occur at a very fast pace, and where many are critical of the current regimes of power. Through a series of small victories, perhaps soon enough it will not be so unperceivable to see the Bush Six sitting in a courtroom, just like Generals Rios Montt and Pinochet had sat before them.

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No place for Yugoslavia: memory politics in Macedonian museums

Alina Zubkovich

School of Advanced Social Studies

alina.zubkovich@fuds.si

Abstract: *Macedonia is experiencing an active phase of construction and fixation of its image through the cultural institutions and monuments. Skopje is leaving through the memory boom. The monuments surround pedestrian during all his way through the city center. Twenty two meters high Alexander Macedonian sculpture become the keeper of contested equilibrium and there appears the feelings, that in case of his displacement from the post the whole construct of the monument codes will collapse. Public space of Skopje became a field of symbolic struggle.*

In the following article, we analyze how the socialist Yugoslavian period is represented in such new constructed image of the national history in museums. For this purpose, we use visual analysis and apply it to the Skopje history museum's observation. We show how the "antiquisation" policy of the state re-defines the past within the historical revisionism approach and dismiss the particular period to the marginalized level.

Keywords: Macedonia, museums, Yugoslavia, representation, Skopje, history

'Skopje 2014' project

In combination with the absence of historical chronology in representation, the urban landscape of the city center is missing the orientation of the consonant architectural style. The inner problem is the dissonant architectural styles, materials and narratives leads to the "transformed into Las Vegas and Disneyland" the city center (Graan (2013): 171). The construction of the international image and attraction of the tourists, which was the main goal of the project, is heavily criticized by the opposition due to the problem of national authenticity and damage of the national image (Graan (2013): 171).

The present image of the city was laid in 2010 year with the beginning of the realization of the state project called 'Skopje 2014'. The organizer of the project –the Government of the Republic of Macedonia has spent the sum of 200-500 million Euros during the period of four years. The government made their first-ever report in April 2012, after the local elections and stated that the sum of 208 million Euros has been spent for the reconstructions of the buildings and erections of monuments so far¹. However, some of the experts think that the sum was much higher and varied around 500 million Euros or even more.²

¹ <http://www.balkaninsight.com/en/gallery/skopje-2014>

² <http://www.balkaninsight.com/en/gallery/skopje-2014>

The tension between the state and the critical public brought to the number of protests. Thus, in 2009, the group of students of the faculty of architecture, who have called themselves as “First Arhi (Architect) Brigade” organized the protest via the Facebook group against the construction of the Orthodox church based on the public financing on the main square of Skopje (Ignatova (2009)). However, when the students arrived to the square at the appointed time, “crowd of church supporters carrying flags and crosses”, were already there.³ Church supporters came with the organized for these purposes buses, police were present, but did not intervene in the conflict when the ‘supporters’ came into the clash with the students (Ignatova (2013)). Later, in a local TV show, protesters were called “gays and atheists”.⁴ The given conflict was reflected by the opposition media as a clear intervention of the state to the freedom of opinion and as usage of the state recourse to mobilize the pro-governmental position. The mainstream media presented the protest as having the political background, while the student protest was led by the “daughter of the chief of the campaign headquarters of SDSM presidential candidate”, the main opposition party to the VMRO-DPMNE (Ignatova (2009)).

It was not the single protest activity, just to mention the group of “Razpeani Skopjani” (Singing Skopjeans), who repeatedly gathered in central spaces in the city in order to sing children’s songs with new lyrics that,

³ Violence Disrupts Student Protests in Skopje: <http://history-of-macedonia.com/2009/03/30/violence-disrupts-student-protests-in-skopje/>

⁴ *ibid*

parodied 'Skopje 2014' (Janev (2011)). Another symbolic protest was organized by scholars (Mijalkovic and Urbanek) who have published a volume in English with provocative title "Skopje: The World's Bastard", which critically referred to the Skopje 2014 project "spatial and representational politics" (Graan (2013): 174).

The center is not designed in the single style and has brought a lot of critics from the side of different expert groups. Some call it historicist kitsch,⁵ some a theme park⁶ or megalomaniacal project⁷ and criticize the whole project as misplaced during the economical crisis and high unemployment rate in the country.

The sculptural line includes the "antiquisation" policy as a major direction, continues with the commemoration of the leaders of anti-Islamic rebellions of the Ottoman period, goes further to displaying the National awakening period (middle of 19- beg. of 20th century) and diminish the socialist heritage (Graan (2013): 161). Monuments are either the personalized form of commemoration of some period or event or a sign which refer to the abstract concept of the long struggle for Macedonian independence. All of the heroes are meant to reflect their Macedonian ethnical origins which excludes

⁵ <http://edition.cnn.com/2011/10/04/world/europe/macedonia-skopje-2014/index.html>

⁶ *ibid*

⁷ <http://www.balkaninsight.com/en/article/macedonian-culture-strategy-milestone-or-wish-list>

the ethnicity and multiple identities of other ethnic groups together with the Ottoman-era architecture.

The project is materializing the “nostalgia for the presocialist period” (Graan (2013): 169), both in the aspect of choosing the heroes and the style of reconstruction (Lafazanovski 2006: 67). The active or even the dominant role of the government in this trajectory is rarely discussed. “The government tries to erase the communist past from the visual appearance and replace it with the pre-socialist facade that would be reminiscent of a full European integration” (Mattioli (2014): 83).

Being part of broader entities, Macedonia did not have its independence until recently and as nearly- established country, it faces the problem of arising right to include the famous persons of world history or history, which is already formed in neighbor countries in the national history. In other words, there is debate on the nationalization of the hero and making it ‘Macedonian’. Such example consists of the monument to Justinian I, Tsar Samuil (Samuel of Bulgaria), Philip II of Macedon Alexan and others (Photo 1). The controversiality of the situation may be represented through the ‘main’ statue in the central square. Officially it is called “Warrior on a Horse” which was opened on September 2011 and had to symbolize twenty years of countries’ independence. It is rarely mentioned with such title, but is commonly known and called as the statue of the Alexander the Great.⁸ During

⁸ <http://www.theguardian.com/world/2011/aug/14/alexander-great-macedonia-warrior-horse>

the visit at the London School of Economics, Macedonian Foreign minister Nikola Poposki told that Macedonia wants “to be real, economic partners” with their neighbors.⁹ However, as critically remarks author of the interview (Prelec (2014)): “the towering 33-m high statue depicting Alexander the Great – which the government claims to be ‘just any’ warrior on a horse – seems to contradict this statement”.

Other example that come into the similar line is the statues of Saints Cyril and Methodius, who were born in 9th-century Thessalonica, Byzantine Empire and Mother Teresa, born in Skopje, Ottoman Empire and being of Albanian origin.

In the example of the spatial image of Skopje Janev (2011) shows how “ethnocratic regime” which is understood as “rupture the concept of the demos in favor of a single ethno-national group”(Janev (2011): 3) has emerged in Macedonia recently. The loss of democratization of the first decade of the 90th replaces with the “ethnic bargaining between ethnic elites. De facto, Macedonia is bi-national country, where the rule of law and “separation of power” is not working (Vankovska (2013): 99).

As shown by Trpevska and Micevski (2014: 308) there is visible intervention of the state to the media sphere and economics. The deterioration of the democratic initiatives, intervention of the state on

⁹ <http://blogs.lse.ac.uk/lsee/2014/06/13/poposki-we-dont-want-to-win-against-greece-we-want-to-be-real-partners/>

different levels and politicizing of the past lead to the “continuous movement towards authoritarianism” (Trpevska, Micevski (2014): 308; Prelec (2014)).

“Macedonian political life has been reduced to the activities of ethnopolitical parties... the Albanians who form the second largest ethnic group in the country are not inactive, passive onlookers in this spatial reordering” (Janev (2011): 8). They also follow this trend. Thus, in January 2012, the leader of the most influential Albanian party - Democratic Union for Integration (the second largest party after VMRO-DPMNE) inaugurated the construction of Skanderbeg Square and the monument of Skanderbeg, the greatest Albanian national hero (Janev (2011): 9). The given party has emerged as a transformation of the National Liberation Army that ignited the military confrontation in 2001.

“The total dominance of ethnopolitical parties and their respective policies and public discourse lead to the conclusion that Macedonia has stepped out of democracy into ethnocracy” (Janev (2011): 9) and Skopje 2014 is the representation of this politics through the social urban landscape.

Paradoxically, Macedonian nationalism was constructed, encouraged and implemented with the dominant help of the Yugoslavian governance. “The Socialist Republic of Macedonia, as part of the Yugoslav Federation, was formally encouraged to develop a national identity that would distinguish it from the neighboring republics”(Dimova (2012): 238). In 1945 official Macedonian orthography was implemented, the language was distinguished from Bulgarian by the efforts of the Yugoslavian linguists who selected the central Vardar dialect as a central point.

Together with the construction of language the unique national identity was implemented by the constructionist power of scientists. Consequently, the Yugoslavian project encouraged the emergence of a Macedonian national identity; however, it was oppressing “the nationalist claims to the larger region of Macedonia Antiquizacija and the Greek – Macedonian Conflict” (Dimova (2012): 238) as not relevant for the geopolitical needs.

After the disintegration of Yugoslavia FYROM continued the rhetoric of Macedonian uniqueness and non similarity to neighboring countries, but at the same time, the socialist period which constructed the discursive preconditions for such statements was disappearing. At the same time, previously forbidden statements of Macedonian antiquisation were expanded through the political narratives and became actual in 1999 when VMRO-DPMNE came into power. When in 2007, the same party received its victory once again, it became visible their “clear agenda to enforce and purify the national identity of the country (zajaknuvanje na makedonstinata), by undertaking a number of activities in the domain of culture” (Dimova (2012): 238).

We mentioned the contemporary Macedonian ‘monument boom’ phenomena which requires broad separate study in order to show that the exclusion of Yugoslavia from the ‘heritage map’ of the ‘worth mentioning’ periods of the past is clearly confirmed by the overall state politics involved in the discourse of antiquization of the country and tied to the discourse of nationalization of the transnational memory. In the following section we shall

demonstrate how such politics intervenes into the museum space and how does it deal with the socialist past.

For the purposes of our research, we have made our analysis in two main history institutions: the recently established Museum of the Macedonian Struggle and the oldest institution in the country- History Museum. We will show how differently the Yugoslavian period can be represented in the same city, and how clearly it is interdependent with the political sphere.

Museum as a space of analysis

The museum as an object of social analysis is grounded in the idea of the functioning of the given institutions in a political field. Such institution function not only for displaying the material and preservation objects chosen as the heritage objects, but also as the space, which helps different groups of interest to use it for ideological purposes and to compete with each other (Crane, 2000). We define museum as a place of the concurrences of the power and meanings (Williams, 2007)

History museums work as the public institutions which transmit the constructed history and are involved in representation and maintaining the national identities (Ostow, 2008, Anderson (2006), Bennet (2008)). Visitors are being educated in the objectified narratives of nationality and ethnicity. And consequently, the history museum is an important actor in the construction of national identity. In such role it would be analyzed in the article.

Another important aspect needed to be mentioned is the fact that the individual memories are usually substituted by the official interpretation or the “official history” in the museums (Kavanagh (1996): 2). In contemporary museum practice such exhibitions when the individual memory are encouraged to be represented are rising, however, the successful cases of transmitting the material through the personal hi (stories) are still rare phenomenon and our research will show how the history is displayed in two main history museums located in Skopje.

We are applying method of visual analysis by which it is relevant to see the ways by which the material is sorted and visualized. The titles of the plaques and any other auxiliary material are also taken into account. The overall view, image framing and actualization of the nodal points through the events or main heroes is taken into account when doing such visual observation.

The field trip was conducted in December 2013 and the visual material supporting the given article consists of the personal “photo notes”.

The Museum of the Macedonian Struggle

The capital city has six main museums. The core one is the Museum of the Macedonian Struggle, located at the center of the city. It has a perfect location: the heart of the city, near the main bridge. From one side there starts

tourist attraction- the Old Town, from the other- the main Square, on the left is the National Theater and the Holocaust Memorial Center for the Jews of Macedonia. At thirty meters is the Archaeological Museum, which was under the reconstruction and has opened its doors in October 2014 (Photo 2).

The Holocaust Museum is also newly established institution and is in a good condition both outside and inside. It is important to describe the location of the institution which we observe because in the following text, we will find out that the conditions of other historical museums in the same city dramatically differ: they are subjected to oblivion whether they are still open or already closed for the indefinite period.

The whole title of the museum is rather long, but very symptomatic: “Museum of the Macedonian Struggle for Sovereignty and Independence – Museum of VMRO – Museum of the Victims of the Communist Regime’(Photo 3). It has opened its doors in September 2011 as part of the ‘Skopje 2014’ project.

The staff of the Museum of Macedonian Struggle has a clear division of responsibilities where everybody has its allocated tasks: security, ticket office, guide-tours. It may look like an obvious fact, but it is not, if compared to the situation in some other museums in Skopje. Thus, in Macedonian History Museum one will find the security guard who at the same time serves as a ticket seller and an information cell.

The museum’s subject is the representation of the battles and uprisings organized by Macedonian people, which are interpreted as the long-

term process of Macedonian fight for the independence. The victimization of the history and glorification of the imagined national community is the main tool provided by the museum. It is not surprising that the Yugoslavian period is reduced to the single issue of Naked Island prisons, sadly known for being used as a place of political imprisonment (Photo 4,5). The exhibition specified the period of 1945-1956 as the time framing of the display and is the only mention of Yugoslavia at the given museum.

The reduction of the broad layer of the recent history into the single issue works as the best explicit illustration of the non-neutrality of the museum, and on the contrary of its ideological constructionist power.

Main visual instruments to be used for demonstrations are the panoramic pictures and the wax statues. Both of them are newly made. Panoramic pictures concentrate on the displaying the battles; statues make accents on the individuals taking part in the battle. All of the panoramic pictures were made by the Ukrainian and Russian painters. Afterwards, during my talk with a guide, I've asked why there were no Macedonian painters and received an answer that in contradiction to Russian and Ukrainian long-term panoramic tradition, Macedonian one is not developed.

All materials are fixing up believe in the existence of the national community with its organic aspiration to be independent. It's important to mention, that the only way to visit the museum is to have a guided tour. Tours can be provided in both Macedonian and English languages. Perhaps, at the beginning the idea was meaningful, but was spoiled when implemented because the visitors are not able to walk along, spend even a minute after the

guided tour has finished walking through the exhibition on their own: to read the plaques, to see considered artifacts and stands. When the tour is over all are obliged to get out of the exposition hall together with the guide. Additional inconvenience which haunts the visitor is the ongoing flows of people following their guide. If two groups appeared in one room, one of guides tries to tell the material more quickly in order to go to the next hall. Such situation not only leads to the reduction of the material, but creates the impression both of the conveyor and Disneyland attraction.

In the described situation the visitor becomes the object of ideological manipulations because he is limited in his rights and time-spending. The visitor does not have time to read the plaques, to observe carefully the material, to have as much time as he personally wants to spend at the museum. This produces the feeling of conveyor; the diversity of images and fullness of pseudo-artifacts which surrounds the visitor, who has however limited time to see it and has to move further make the exhibition look like a Disneyland attraction. In Disneyland the visual imagery that surrounds the visitor is made for helping him to feel himself in some imagined time and place. The objects and the whole picture do not intend to represent the real world, the items do not need to be original. The whole entourage is done as an extra bonus for the main goal- delivering adrenaline and feeling certain emotions. Museum initially had another main goal: to display the unique, bizarre, important artifacts. At the Macedonian museum, the originality and authenticity are replaced with the creation of the atmosphere with the model “pretend to believe it was so”. Due to this aspect museum has similarities to the Disneyland.

As the logical completion of the conveyor type of the exhibition is the reduced role of the guide, who as being the insider, though does not know or does not see as possible to share information on the plans of the museum. I did not succeed to know the guide's personal opinion on the presented topic, on the politics of museum and even on the plans for the upcoming exhibitions. I received answers that showed the limited responsibilities that the guides had. They were not aware of any information regarding the new exhibition which at the moment of my observation was literary under the noisy reconstruction of the last floor where none of the visitors was allowed to go. All answered were reduced to the formula: "I have no idea what it will be there, I'm the guide and can answer on the questions about the history".

In this way, the limitation of functions, vertical model of decision making without taking into consideration the guide's opinions on of the displayed period (who then work as social agents of spreading the verified and standardized information), conveyer type of presentation makes the museum seem to be the visible instrument of the state ideology. In this regards, the reduction of the Yugoslavian period (the recent past of the country) into the narrative of repressions works as the instrument for creating the image of independence as a teleological development. Such approach of displaying the history has dangerous signals because the orientation of the museum includes into its main function not the function of showing the history, but showing the history in an ideologically correct manner. Being the national museum subsidized from the national budget, we may conclude that the museum does not have its independent policy in producing the knowledge and is closely tight with the request from the ruling VMRO-DPMNE political party in "leveraging

nationalistic sentiments and partially recreating the history of their own party, while reaffirming themselves as the true bearers of the Macedonian spirit” (Prelec (2014). The vanish of the socialist past which is visible in the architectural scope of the city (Graan (2013), Mattioli (2014)) is replaced in museum with the reduced model of referring to the Yugoslavia as a ‘prison of the nations’ and Tito Broz as a tyrant.

Museum of Macedonia

It was rather difficult to find this museum. It is located at the periphery of the Old center in the area where elderly men drink Turkish tea in the street cafes. Even when I found the street where the museum had to be located, it was still problematic to recognize the building as the cultural institution dealing with the heritage because of somewhat neglected appearance and the unusual social practice notices in front of it. Children were playing football on the spontaneously organized just in front of the museum football field (Photo 6).

The museum is the oldest in the country. It was opened in 1924, consisted and remains to consist of three parts: archaeological, historical and ethnological museums.

The practice to smoke inside the buildings, even at the museum buildings where special temperature conditions have to provide is widespread by the security guards at several museums we have visited. I would interpret it as an additional sign of the institution which ceases to work according to its

functions, loses its social significance and consequently requires reorganization.

The historical part is located at the two-storey building, quite huge, but urgently in need of renovations. It has a lack of light and order. The only prominent exposition was dedicated to the Orthodox icons (Photo 7); it was organized with the financial support of the European Union. This information was specified on the huge plaques near the entrance and constantly repeated on the plaques accompanying the exposition. The area had a special temperature regime and inscriptions in Macedonian and English. The icons might be auspicious material to represent because it is easy to change the perception of the religious objects into the other non-religious connotation by putting them into the discourse of cultural or world heritage. Such tendency also allows avoiding reinterpretations of the history. However, the non-visibility of the similar heritage of the Islamic culture, might be a clear element of the politics of exclusion and cultural dominance of a single national narrative. Especially, it might be questioned at the museum, which is physically located in the area of the Ottoman architectural visual regime, whose silence is rapidly intervened time to time by the invitations for namaz from the mosque adjacent to the building.

Contemporary science is usually discussing the idea of the museum as a space of inclusion of the broader audience. The museum works in the opposite way: the exclusion of the minority interests, the absence of the history which might be interesting for them, the concentration on the singularity.

The next room demonstrates the liberation movement of 1878 and the Ottoman Empire period. Some plaques are made only in Macedonian, some are duplicated in English. As becomes clear from the plaques, the Ottoman period has a negative connotation while the central focus of the exposition is the liberation from it.

Finally, we are moving into the rooms of the greatest interest for us: the representation of the socialist period. The idea of the exhibition can be described in several words: 'socialistically positive'. The Yugoslavia is shown as the peaceful time, a time full of optimism for the future. The exposition starts with the stands showing the period of the fight against the Nazism during the WW2 with the glorification of the Macedonian partisan movement together with mentioning partisans of the whole Yugoslavia. After several stands presenting the WW2 period, the public space continues to narrate in a rather chaotic way about the chronologically unbounded topics. There emerge stands about the 19th century Macedonian national movement, then arise the artifacts from the year 1925 year: first officially published book in Greece on the Macedonian language. After come again stands telling about the WW2, Holocaust and it is followed by illustrations of 'the spirit of progress' during the first socialist after-war period. Parts of the physical space are lacking any expositions at all: they were taken away once and now have been left with the empty walls. The WW2 period and Yugoslav stands are clearly glorifying the given period. It is happening because the exposition has not been subjected to any changes since the socialist period: old plaques, old-style ("socialist type") of narrative (glorification and special use of words: "comrades" e.t.c), old (a bit faded) pictures make us think

that the place went out from the actuality. It lacks the very basic financial support and is experiencing the times of uncertain transition. As a coincidence which cannot be understood as a representative knowledge, but however, confirms our statement, I would like to mention an artifact which has appeared in my hands the same day. I bought a plate with the title 'Macedonia' on it. The seller has wrapped it into the piece of newspaper. On a closer inspection, the article in a newspaper was informing the reader about the disappearance of forty seven golden artifacts from the museum I have recently visited. The article described the lamaneble state of the museum, which lacks financial support and renovation (Утрински весник, 8 November 2013: 3).

All given observations help to understand that the museum is stuck in the unclear division. From one side it needs reorganization of the expositions, refreshment of the stands, the addition of the factual material, systematizing of the space (Photo 8, 9). The building and the exposition inside seems to be currently frozen, and that's the reason why the Yugoslavian version of the historical representation without the switch to the revisionist national narrative of the independent Macedonia is still alive.

At the moment of observation author was the only visitor of the museum. According to the guide whom I have found in another section of the museum, there could be approximately 80-100 visitors per day. To my question, or rather sad sympathy regarding the feeling of oblivion and visibility of no financial support, my interlocutor answered: "I don't know what to answer... They are there and we are here". The feeling that the museum went

into oblivion remained with me during the whole visit. The guide said that at the current moment another institution- the Archaeological Museum, which is now under reconstruction, takes all funding.

Conclusions

Analyzing these two museums what kind of conclusions shall we draw out? The complex presentation of the Yugoslav period is not favorable for the recent construction of the contemporary history project. By itself, by the matter of historical fact of Macedonian history, Yugoslavia is not an actual period to concentrate on it. Yugoslavia is needed as an auxiliary material for establishing some broad picture or concept of history being largely ordered by the state. The Museum of the Macedonian Struggle selects the piece from very broad and complex period and reduces it to the single issue: the political imprisonment. Hence, the Yugoslavia is represented with the minus sign, as a kind of horrible short sleep, which the individual wants to escape from recollecting it. Another museum- the Museum of Macedonia, which demonstrates the researched period in a glorious way, goes into oblivion with the lack of funding and, consequently, its interpretation of Yugoslavia follows it. Yugoslavia's removal of favor fits into the broader issue of cityscape image and related to the national identity construction through the visual texture of the city.

Both museums avoid inclusions of national minorities. From one side it fits the politics of homogenizing the Macedonian identity; from another it does

not stress any actual history for Albanian minority which constitutes more than 30 percent of the whole population.

The imagination of the Yugoslavia as a country with a stable economy and as the relatively secure period was the matter of the pre-independence politics of representation, but is not topical anymore. The period after the Second World War is inscribed into the canvas of the narration, but the circumstances of such presentation are simply the lacking of finance to re-organize the exposition. The History Museum that ties with such vision is experiencing the lack of financial support and hence cannot be analyzed as an important player that indicates the state policy.

Pictures



Photo 1: Main Square, Skopje, December 2013

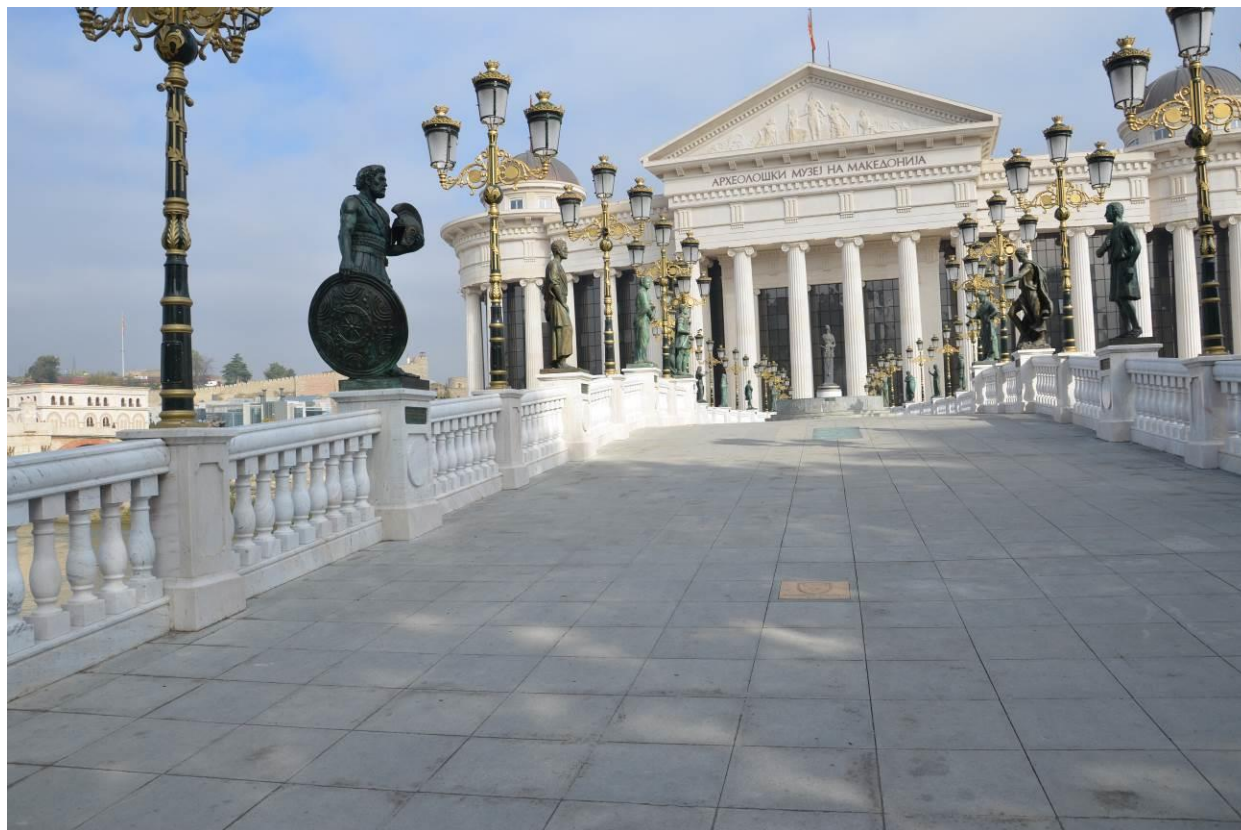


Photo 2: Archeological Museum, Skopje, December 2013



Photo 3: Museum of Macedonian Struggle, Skoje, December 2013

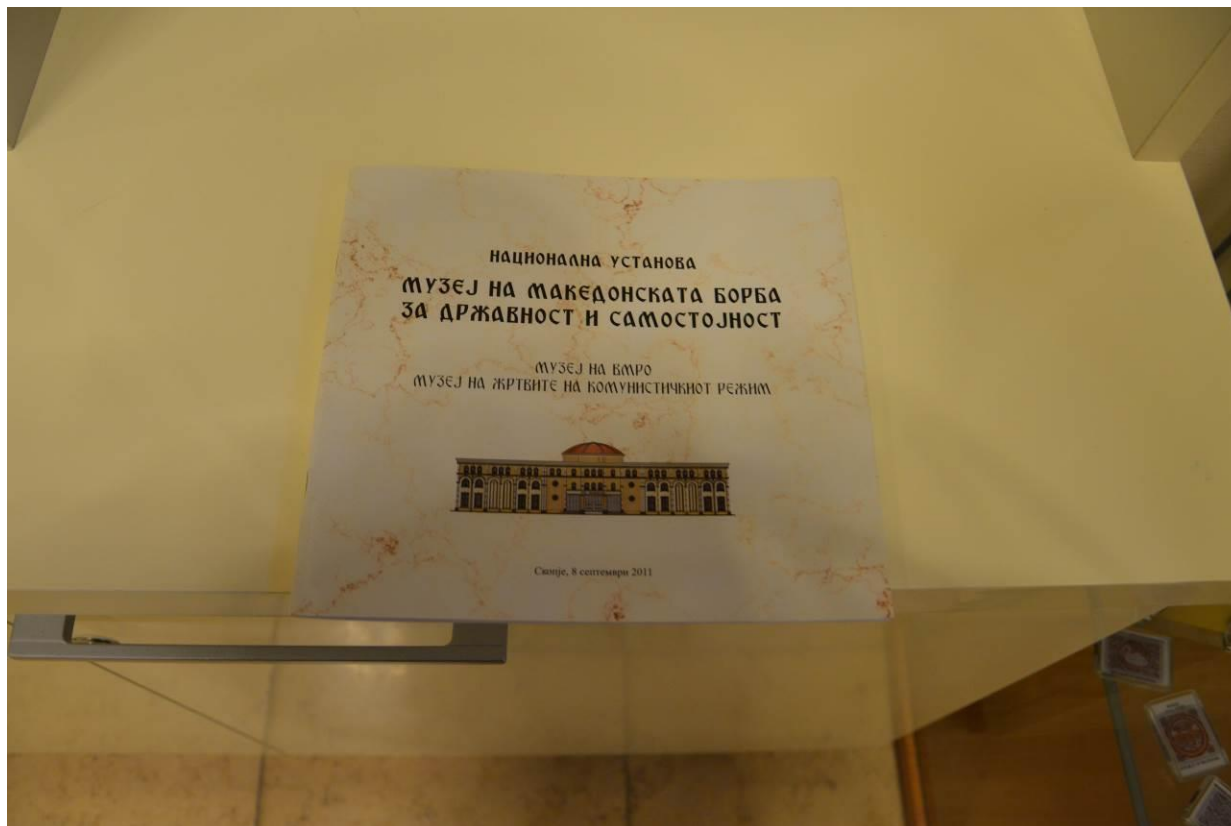


Photo 4: Brochure sold at the shop of the Museum of Macedonian Struggle, Skopje, December 2013



Photo 5: Section from the brochure titled: “Victims of the Communist regime”, Skopje, December 2013



Photo 6: Entrance to the Museum of Macedonia, Skopje, December 2013



Photo 7: Collection of Orthodox Icons, Museum of Macedonia, Skopje, December 2013



Photo 8: Inside view, Museum of Macedonia, Skopje, December 2013



Photo 9: Inside view, Museum of Macedonia, Skopje, December 2013

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