

Solving the counter-terrorist puzzle after the El Masri verdict and Smilkovci terrorist attack: legal and strategic considerations for the South East European intelligence community

Author: PhD Metodi Hadji-Janev, (Associate Professor of Law), LtC

Key words: Terrorist attack, Radical Islam, Legal and strategic considerations, South East Europe, Intelligence cooperation,

Abstract

Both anecdotal and empirical evidences confirm that the complex political, ethnic and religious dynamics in the region of South East Europe (SEE) create the perfect environment for radical groups and individuals affiliated with Al Qaeda and its goals. Supported by their strategic western partners and allies SEE countries have seriously considered threats from modern terrorism. Hence, active involvement in the global counter-terrorist efforts in Afghanistan and Iraq and intelligence cooperation with the coalition partners outside of these theaters clearly speak of the SEE governments' readiness to oppose global terrorists' objectives. However, recent practice shows that different human rights legal tradition and inappropriate political narrative among the coalition partners could pose serious strategic challenges to counter-terrorist intelligence cooperation. Therefore, if not approached appropriately these challenges hold potentials to harm the overall counter-terrorist efforts and turn SEE into a safe-haven for recruitment and radicalization.

In this context the article first provide evidence to prove that the radical Islam is a serious threat to the region of SEE. Then, through analyses of two case-studies related to Macedonia (the European Court for Human Rights' verdict: "El Masri vs. Macedonia" and "Smilkovci Terrorist attack") examines how legal and strategic (political) considerations challenge intelligence cooperation and affect counterterrorist efforts in SEE. Finally, based on the analyses of the first thesis and the above mentioned cases the article provides some recommendation for the intelligence community in the region of SEE.

1. Introduction

Security threats posed by modern terrorism represent a serious challenge to the region of South East Europe (SEE). Complex political, ethnic and religious dynamics in this region create the perfect environment for radical groups and individuals affiliated with Al Qaeda and its goal. Many

anecdotal evidences confirm the threat that radical Islam and terrorism pose to the region of SEE. In addition to the views and analyses by the experts, media and academia, three cases of terrorist attacks (the attack to the US Embassy in Bosnia, Terrorist attack at Smilkovci lake in Macedonia and a suicide terrorist attack on the Israeli tourists in Bulgaria) all related to radical Islam practice, have shocked the SEE and Europe.

SEE governments have seriously considered the threat from global terrorism posed by radical religious groups and individuals. Hence, they have actively participated in the global counter-terrorist efforts with their strategic coalition partners. Nevertheless different legal tradition and arguably inappropriate narrative have posed some strategic challenges that might affect intelligence cooperation and thus affect further counter-terrorist efforts.

As a support to strategic partner's interest (i.e. the U.S.) Macedonian intelligence community has supported special intelligence gathering on suspected terrorist called Khaled El Masri. However, after he was released without charges the victim initiated legal case in front of the European Court of Human Rights. During the process called "El Masri vs. Macedonia", the Court found Macedonia guilty of violating the applicant's human rights in accordance with the European Convention for Human Rights. In order to show how and why the Court have ruled against Macedonia the article will examine the European legal tradition of Human rights in the context of using special techniques for intelligence gathering in the counter-terrorist operations. Based on this analysis the article will provide some explanations relevant not just for Macedonian, but also for the rest of the SEE intelligence community.

The aftermath of the so-called "Smilkovci terrorist attack" is an example of how consequence management of terrorist attacks might influence intelligence cooperation during the global counter-terrorist efforts in the region of SEE. The analysis of this case will test how political correctness, indecisiveness and the media reporting in the context of the complex environment of the SEE affect future intelligence cooperation. To prove this, the article explains the consequences of terrorist attack in Macedonia. It compares it to two other attacks that also happened in SEE and provides some conclusions relevant for the intelligence operatives and leaders.

The argument here is that although unintentionally, these variables if not approached appropriately, could affect policy creation and narrative. Due to the cultural perceptions and complex political environment in the region of SEE later could absorb mutual trust among the coalition partners in intelligence cooperation and even create legal obstacles for further cooperation.

Finally, the article offers some recommendation for SEE intelligence community. These recommendations provide thoughts on how the intelligence community in SEE can improve

cooperation under current considerations and challenges and thus, contribute to the overall counter-terrorist efforts in the SEE.

2. Modern terrorism as a serious threat to the region of SEE and Macedonia

Modern terrorism practiced by Muslim radical religious groups and individuals affiliated with Al Qaeda represents a serious threat to international peace and security. Intentionally or not, regardless of the reason (wrong approach in the so called Global War on terror; support for Israel; cultural or civilization differences) Al Qaeda has created networks of groups and individuals. These groups and individuals have violent, global and abstract agenda that opposes everyone who differs from them. Those who radicalize and spread the agenda are very adaptive to different environments, skillful in abusing modern technology and employ very persuasive methods of spinning the Islam while attacking fragile groups or individuals from the society. So far they have been very successful in radicalization and gaining followers in problematic societies (failed states and rogue state). However, building their argument on the challenges of the very society they live these groups and individuals are also present in the stable and democratic societies.

Some of these groups have real ties to al-Qaeda and share its goals. In politically fragile societies there are those who hide behind the cause to cover their criminal activities. Others, like the ones in Africa, look like local warlords using the label to burnish their brand. (Zakaria, Aug 2013). In all cases, some really understand the goal and the cause they serve, but some are only angry and victims of radicalization. Hence modern terrorism is a hybrid threat composed of terrorists, criminals, insurgents and religious extremists.

The region of SEE is not immune to these dynamics and security trends. In fact the region has a long history of religious and ethnic conflicts. Unlike the rest of the Europe, SEE countries' heritage among other is shaped by the Islam too. Nonetheless the rising influence of radical and violent Islam is a new and dangerous trend in the region that holds potential for destabilization beyond its borders.

So far it seems that the complex SEE environment is a perfect match for radicalization and destabilization. Dynamic history; ethnic tensions; negative image of security services inherited from former Yugoslav conflicts or authoritarian regimes; social instability in the Region (mainly due to economic deprivation) and the Western administration's indecisive policy among others, comprise the complexity in SEE (Hadji-Janev, 2012). At the same time until recent both SEE's governments and the West had hard time to publicly admit that religious extremism is at large in the region and

to undertake appropriate measures (Deliso, 2007, 75–76). Although there are those who deny these views many provide credible anecdotal evidences about the danger that modern terrorism pose to the security of SEE.

According to some Western writers early evidence shows that the region of SEE was just used as a breeding ground with the least interest to hamper local countries or act locally. (Shay, 2007, p. 167). Citing figures like in Abu-Jandal, for example Fawaz (2007, pp100-101), explains how the process of radicalization took part in Bosnia. Explaining clashes inside the Muslim community between moderate and radical groups from abroad, Miranda Vickers (2008, p. 4-5), give similar perspectives for Albania. Maneuver of some of the Arab Wahhabi volunteers from Bosnia to Kosovo is well documented and explained by Stephen Schwartz (February 2014, p. 11). He claims that these volunteers infiltrated the more remote towns and villages of ethnic Albanians in order to preach their jihadist ideology. Other authors explained similar the dynamics in the Republic of Macedonia. (LaVerle Berry, et al. May 2002, 80, 129). Similar claims exist for the rest of the SEE countries. Though some deny these claims as subjective empirical evidence clearly speak about the existing threat.

Jasharevic's attack on US embassy in Sarajevo (Alic, November 01, 2011), the murder of the five civilians at the Smilkovo Lake near Skopje in Macedonia (Dimitrioska, April 13, 2012) and suicide attacks on Israeli tourists in Bulgaria (BBC, July 19, 2012) have seriously challenged SEE security. Events in Kosovo in 2011 after the decision to construct a Catholic Church to honor Mather Teresa and the aftermath of events such as designation of Florim Neziraj and Sadullah Bajrami as a supreme religious officials for the Kacanik region is yet another confirmation of the trends and dynamics in this direction. (Schwartz, January, 2013).

Thus, threats from modern terrorism in SEE and Macedonia are problematic trend that is stimulating tacit conflict inside the SEE's society. This sort of conflict straddles the boundaries between local governments' political micro dynamics, regional social and security stability and moral acceptability. Hence, one might ask what would be the best way to approach this trend in SEE in general and Macedonia in specific?

Many scholars and pundits argue that Intelligence is essential in countering terrorism, in diminishing its tactical effects and strategic importance (Sims, 2007, pp. 417-450). Yet, due to the recent history of international involvement SEE (arguably applicable for the rest of the World) requires a comprehensive, intelligent and firm policy of the SEE' governments. International community through the UN, NATO and EU and USA as a strategic partner have its role too.

It could be argued that SEE governments (including Macedonian Government) along with their strategic partners have seriously considered threats from international terrorism. Almost all SEE governments actively participate in the global counter-terrorist efforts not just in the region of the SEE but in Afghanistan and Iraq too. SEE' intelligence community cooperation has also been enhanced and intensified (Pavlevski, May 27, 2013). However, like the rest of the counter-terrorist coalition, SEE governments face serious legal and strategic challenges that hold potential to undermine the overall counter-terrorist legitimacy and provide an argument for the adversary.

Two recent cases connected with the Republic of Macedonia in this context in best way represent how legal and strategic (political) challenges could become a serious obstacle to SEE counter-terrorist efforts.

3. Legal challenges to SEE countries' cooperation in intelligence gathering after El Masri case in Macedonia

In order to be effective the response to global terrorism requires a global approach, i.e., being able to conduct global intelligence. In reality, synchronization of intelligence efforts of nations that have different national agendas, capabilities, and procedures for intelligence (gathering or sharing) became a concern of operational level officers (Gramer, 1999; Liaropoulos, June 2006). At the same time, in a complex operational environment, tactical success in countering modern terrorism depends on other governments' ability and readiness to adopt similar approaches. Such activities, among others, include: effective diplomacy, overseas military support, intelligence liaison with foreign governments, and offensive intelligence gathering and sharing (Forest, 2007, pp. 56-140).

Macedonian Government like the rest of the SEE governments without hesitation has pledged significant efforts in this cooperation. Nonetheless, contemporary pursuit of intelligence gathering during the global war on terrorism is under serious legal challenge, especially after the European Court for Human Rights decision against Macedonia in the so called "*El Masri vs. Macedonia*" Case".

In the case known as "*El Masri vs. Macedonia*", the applicant (Mr. Khalid El Masri) alleged, in particular, that he had been subjected to a secret rendition operation, namely that agents of the respondent State (Macedonia) had arrested him, held him incommunicado, questioned and ill-treated him, and handed him over at Skopje airport to CIA agents who had transferred him, on a special CIA-operated flight, to a CIA-run secret detention facility in Afghanistan, where he had

been ill-treated for over four months. The alleged ordeal lasted between 31 December 2003 and 29 May 2004, when the applicant returned to Germany (ECtHR, December 13, 2012, p. 1). After reviewing the relevant laws (a Macedonian and International) and presented public materials, the European Court of Human Rights (ECtHR) ruled against Macedonia.

Precisely in this case the ECtHR has unanimously found that Macedonia violated Khaled El Masri's rights under the European Conventions on Human Rights (ECHR). With this the ECtHR has clearly banned SEE countries (also parties to the ECHR) to participate in similar cooperation or practice. Giving that almost all SEE countries have participated in and still actively support the global counter-terrorist efforts one might ask whether or not SEE countries (including Macedonia) could take part (even with just providing support) in intelligence gathering through similar methods.

The broader Courts' practice confirms that like the rest of the European countries party to the ECHR, SEE countries should not cooperate in extraordinary rendition operations outside their territory, when standards and principles of ECHR apply (ECtHR, December 13, 2012, Ch. III). From a closer look into the provisions of the ECHR, it is not clear if the Convention would apply to signatory states in foreign territory. Nevertheless, the European case law tradition seems to confirm that whenever there is "effective control of the territory" where military forces and other operatives of state party to the convention operate, they are obliged to apply convention's provisions. This is specifically interesting for the states' agents operating on third-state territory. Along with *El Masri vs. Macedonia*, the ECtHR cases such as *Loizidou vs. Turkey* (ECtHR, 23 March, 1995), *Cyprus vs. Turkey* (ECtHR, 10 May, 2001), and *Issa vs. Turkey*, (ECtHR, 30 May, 2000), are cases that establish this obligation for the SEE countries (and the rest of the European countries party to ECHR).

The challenge that "El Masri case" has created for intelligence community nevertheless, have illuminated broader issues that could further hurt the overall counter-terrorist efforts. Namely due to the different legal tradition and the overall threat perception (which result in policy creation) the overall counter-terrorist efforts might be under severe challenge. In fact differences in operational and legal approach to counter-terrorist efforts among the coalition partners are present since 9/11.

The immediate response to the 9/11 attacks as an act of war have raised many dilemmas (Goodman and Derek, 2006, p. 2654-2664). Among others was employment of military power under the International Law of Armed Conflict (ILOAC). Regardless of these dilemmas SEE countries, including Macedonia have actively supported all of these operations. From an operational

(doctrinal) and a legal aspect, contemporary counter-terrorist operation could be seen in three separate groups.

First, Major Combat Operations (MCO) conducted in Afghanistan and Iraq (The US Department of Defense, 2006). From an operational point of view, these operations equaled total war. From the legal point of view during these operations the International Law of Armed Conflict (ILOAC) applies (Geneva Conventions I-IV, Fisher, 2004, pp. 511-510).

Second, counter-terrorist operations after the MCO are over, i.e., post-conflict operations, both in Afghanistan and Iraq. From a doctrinal aspect these operations equal peacekeeping, peace enforcement operations, (NATO Peace support operations, Ch-2) stability and support operations (Global Security Org), or under the new U.S. Joint Concept for Irregular Warfare, the so-called “Irregular Warfare operations-IW” (The U.S. Department of Defense, 2007, pp. 5-8). In practice during these operations so far, different laws had applied. So far, guiding legal sources for the post-conflict operations were: principles and standards of ILOAC (precisely, customary rules of the Law of Occupation and principles of the IV Geneva Convention) (Fisher, 2004, pp. 512-514); the UN Mandate (drafted by the UN Security Council and troop-contributing countries) (O’Neill, John Terence and Nicholas Rees, 2005); and International Human Rights Law (IHRL) (Naert, 2011, pp. 16-18).

Third, counterterrorist operations conducted out of Afghanistan or Iraq (O’Rourke, October 18, 2012, pp. 2-5). These operations are usually conducted by the U.S. with or without coalition partners’ support. From an operational point of view, these operations so far were conducted by the U.S. military forces alone, the U.S. intelligence community alone or with or without host government’s consent and support. For U.S. counter-terrorist operations outside of Afghanistan or Iraq, host governments like Macedonia for example, have provided law enforcement, military or intelligence community support. The challenge from the legal point of view has thus come from the fact that rights and freedoms do not receive the same protections when the counter-terrorist operations are conducted under the different standards (i.e., ILOAC vs. IHRL standards) (Bartolini, 2010).

In war, when ILOAC applies tension between the principles of military necessity and humanity, it reflects proportionality and military distinction. For example, proportionality in war does not have the same meaning as in peacetime. In war, due to military necessity, proportionality means that not just the imminent threat should be removed, but also the further potential-perceived threat from the enemy should be removed. The principle of distinction (i.e., the status of the individual “civilian versus combatant” in general) determines whether or not deadly force will be

employed. Detention or capture enemy combatants or civilians should prevent combatants from taking part and protect civilians and legal non-combatants from hostility. This dictates that during these operations, there are no due process guarantees: the individual might not be forewarned about the operation, is not given a chance to defend his innocence, and there is no assessment of his guilt by any impartial body.

Contrary, when IHRL applies (i.e., there is no conflict that amounts to trigger the ILOAC-law enforcement paradigm that legally frames the operational environment), operations consider only individual and actual guilt, not the potential one. The individual must be given the above-mentioned due process guarantees. Therefore, while conducting counter-terrorist operations when ILOAC applies lawfully, there is a great possibility to consider the same operation under the IHRL as unlawful.

Different threat perception also plays its role. The U.S. global political ambitions have created global adversaries. Thus, if one takes US perspectives into account, including the operational arguments, it would be understandable why when there is imminent danger coming from modern terrorism (described above) it is logical to act under ILOAC. The fact the EU threat perceptions have gradually changed since 9/11 also confirms these views (Bossong, 2013). However, there is a significant difference between European (in a broader context, including SEE and Macedonia) and US approach.

General wisdom outside the U.S. is that ILOAC does not apply to the counter-terrorist operations outside the operational theatre of Afghanistan (Iraq is not mentioned, since more or less post-conflict operations have ended with stability and transition to the civil authority phase). Accordingly, since there is no UN mandate, and there is no permanent conflict that amounts to a level where under existing legal norms and standards could trigger the International Law of Armed Conflict, from the legal point of view guiding principles for these operations should come from IHRL standards. In addition European human rights tradition shaped by the ECtHR's practice seriously contradicts the U.S. approach toward extraordinary rendition operations in the global counter-terrorist operations. Thus, unlike the US approach, European human rights practice, shaped by European case law, dictates that once that state agents have effective control of the territory, they need to implement ECHR standards for protection. Any corporation or active intelligence gathering through such extraordinary rendition operations even on a third state territory will violate the ECHR. Even more the ECtHR in *El Masri vs. Macedonia* case, have considered wider IHRL standards beyond European Human rights legal tradition. This, however, indicates that the European legal tradition is not alone in opposing the U.S. approach while applying ILOAC

standards. Therefore the *El Masri case* is a serious concern not just for the SEE countries alone, but also for the US and global counter-terrorist efforts in wider context.

Along with the legal concerns there is another complex issue that gravitates over Macedonian intelligence community. Strategic political concerns nested under SEE political milieu (briefly described above) represent a serious challenge for the overall SEE intelligence community. Although policy matters everywhere in the world, the Smilkovci attack clearly confirmed how complex relations in SEE could be a serious obstacle among others in intelligence community too.

4. The “Smilkovci terrorist attack in Macedonia” and strategic concerns applicable for the SEE Intelligence community

The aftermath of the so-called "Smilkovci terrorist attack" is an example of how consequence management of terrorist attack might influence intelligence cooperation during the global counter-terrorist efforts in the region of SEE. The analysis of this case will test how political correctness, indecisiveness, the media reporting in the context of the complex environment of the SEE affect future intelligence cooperation. The argument here is that although unintentionally, these variables if not approached appropriately could affect policy creation and narrative, which later could absorb mutual trust among the coalition partners in intelligence cooperation and even create legal obstacles for further cooperation.

Four teenagers Filip Slavkovski, Aleksandar Nakevski, Cvetanco Acevski and Kire Trickovski from Smilkovci (village near Skopje) On April 13, 2012 after Good Thursday (“Велики Четврток”-Macedonian) together with Borce Stefkovski a 45-year-old man were found dead. Police reported that all of the identified citizens were shot down by automatic weapons at close range (Marusic, April 14, 2012). The abduction and police investigation showed that the victims were murdered from three different weapons (Brunwasser, April, 16, 2012). While four teenagers were killed and lined up, the 45 years old Borce Stevkovski was found dead near his car which led the police to believe that he was the eyewitness who has not been spotted previously by the shooters.

The furious reactions in the aftermath clearly showed why and how SEE has fragile environment suitable for global terrorists' goals (previously discussed). On April 16 ethnic Macedonians predominantly youth, as a revolt of the murders started demonstrations. Throwing rocks on police several hundred youngsters issued offensive paroles toward ethnic Albanians inferring that they are responsible for the incident, although the investigation was not completed.

However, after more than two weeks new shock came from the investigation (Tumanovska, April 17, 2012). On May 1, 2012 after operation Monster (Монструм) Macedonian Ministry of Interior announced that they have found the murderers. As a response, on May 4 several hundreds of ethnic Albanians in Macedonia have protested against the arrest of the men charged over the killing of five Macedonians. During the demonstration the paroles such as “Alah is Great” and other paroles with violent context were issued to the Prime Minister and more interestingly to Ali Ahmeti leader of the position political parties (ethnic Albanian) (Radio free Europe, September 25, 2012).

The aftermath of the terrorist attack has also shown how the complex environment in the Region of SEE might inhibit counter-terrorist intelligence cooperation by undermining the trust among the coalition partners. Although Macedonian Government successfully maintained stability after the incident and arrest suspected perpetrators (officially charged, convicted with terrorism) there are several elements that have marked this event. These events should be considered in the strategic context of successful counter-terrorist intelligence cooperation in SEE. The local opposition parties’ reaction, the Islamic Religious Community reaction, the media and Western diplomats’ reaction have all played their role and created the consequence management in the Smolkovci aftermath (Hadji-Janev, 2012).

The local opposition parties launched a series of critics about the Ministry of interior’s position that the perpetrators were linked to radical Islam and that the incident was called terrorist act. These critics were welcomed by almost all ethnic Albanian commentators or analysts, negating the fact that the perpetrators were linked with radical Islam. Although Islamic Community in Macedonia (IVZ coming from Macedonian Islamska Verska Zaednica) has previously called for help to prevent radical Islamists’ penetration in Macedonia the institution has too publicly criticized the Ministry of Interior’s statement and negate the connection between radical Islam and suspected executors (Karajkov, June 11, 2012).

Media (printed and electronic) had a significant role that influenced the picture after the Smilkovci terror attack in Macedonia. Although there were positive examples of the professional and ethical reporting, which plays an exceptionally important role in these sensitive situations, most of the domestic and some foreign media reports were quite unprofessional and ethnic oriented. The UNESCO study argues that both ethnic Macedonian and ethnic Albanian media reports could be described as negative stereotyping, ethnocentrism and xenophobia driven (UNESCO, 2012).

Foreign media have tried to factually report the event. Nevertheless, significant reports purposefully or not, had made crucial mistakes. On a day when the Associated Press received the prestigious Pulitzer reward for a higher level of journalism (Associated Press, 2012), the agency has

made the same mistake if not even worse, as the domestic media. The report gave an incorrect picture of what was going on, and misinterpreted the victims (i.e. as ethnic Albanians in the context of describing violent protests from Macedonia without stating why the protests were held) (Fox News, April 17, 2012). In addition western foreign journalist agencies have failed to report that during the protests on May 4, 2012 part of the protestors issued Radical Islam paroles and have signals indicating the Radical Islam connectivity (Radio free Europe, September 25, 2012).

Western Diplomats statements have also instigated negative reactions, have polarized situation and thus have contributed into inhibiting general public support for counter-terrorist cooperation (Some have questioned Macedonian support to counter-terrorist efforts in Afghanistan). Some of the Media have overemphasized parts of the official announcement issued by the US embassy and the US Ambassador in Macedonia, Paul Wolers, and had created the unintentional impression that the US is not supportive of the Government's position. The reality was that the US Embassy in Macedonia called for caution and rules of law to apply. The only problem here is that in another two cases of terrorist acts in Bosnia (Jarsharevic attack on the US Embassy) and in Bulgaria attack on Israeli tourists) no one from the western diplomats asked for such precaution.

This is important to mention since like in Macedonia the rest of the SEE governments and these two countries (Bulgaria and Bosnia) specifically, have history with the application of the rules of law (The Council of Europe (January 21, 2014). Thus, it looked that if the terrorist target(s) or perpetrator(s) differ than the reaction differs too. Even more, the Bulgarian authorities, for example, have presented evidences that linked suspect terrorist (who committed suicide attack) to the Lebanese Shiite Hezbollah organization. They claimed that the suspect terrorist entered Bulgaria from some European State and had traveled to Burgas where than committed suicide terrorist attacks on the Israeli tourists. The point here is that although almost no one of the global counter-terrorist coalition questioned these statements later, these official claims were taken for granted in the paper prepared for the Members and Committees of the Congress (Archik, September 4, 2013, p. 10). This Report presents similar views about the March 2013 conviction in Cyprus of a Hezbollah operative (with dual Lebanese-Swedish citizenship) involved in planning attacks on Israeli tourists there.

The above analyses showed how complicated scenarios can absorb the willingness of the local (SEE) and strategic partners' authorities to openly call "an apple" as "an apple" and "a bomb" as "a bomb". The Smilkovci terrorist attack has clearly shown that specific ethnicity and/or religion of the perpetrators or the victims could restrain the authorities and/or coalition partners to define an attack as a terrorist one. Such events with regard to regional and bilateral agreements could have an

impact on intelligence sharing and cooperation. Ranking terrorism as a specific form of crime under the International law urges government to consider cooperation and intelligence sharing and gathering. Avoiding specific terms of political correctness could cause legal obstacles. These obstacles could later on, creating a practice that could not just “telephone” the perpetrators, but, could damage broader regional efforts for stability by misinterpretation of some acts (For example, if local government refuses to cooperate under terrorist legal framework, but cooperate under the regular criminal framework which might affect the victim state’s efforts to bring justice and provide security).

Political correctness and indecisiveness therefore are viruses that damage intelligence cooperation against the complex threat from modern terrorism that gravitate over SEE. These dynamics have strategic importance for the intelligence community because as we saw from the above, the intelligence community in SEE and its strategic partners face serious strategic challenges posed by modern terrorism. Any vacuum in this direction could be a useful tool that modern terrorists could abuse and use it against us. With this they can easily affect long created trust and cooperation among the SEE countries and between them and strategic partners. Therefore SEE intelligence’s elite must have a proactive approach and carefully advise its political leaders on how to avoid indirect and unintended obstacles that stem from the complex SEE environment and global trends.

5. Some hints to solve the counter-terrorist puzzle in the region of SEE

Legal and strategic challenges to the intelligence cooperation require immediate action among the SEE intelligence services and their strategic partners. Practice in Bosnia has shown that radical religious fanatics that practice modern terrorism eventually turn against the government, the system and the society. Therefore, although the intelligence is about keeping the secrets a secret the SEE governments should not forget who the real enemy is.

If the SEE countries are about to avoid dark scenarios they need actions that will focus on new approaches. These approaches should be based on the indirect and direct measures designed to boost cooperation among the SEE intelligence community and mitigate potential legal and strategic challenges to counter-terrorist intelligence cooperation. Both indirect and direct measures should be carefully designed and in accordance with the Euro-Atlantic counter-terrorist efforts. They must have advisory prefix only and strong coordination among the different actions. Ultimately, this cooperation needs strategic Western support.

5.1. Direct measures that SEE Intelligence community should consider

Complex issues that gravitate in the region's political dynamics require a holistic approach. This approach must be built on the best practices and consider potential threats that should avoid situations in which the intelligence community will have to wait until it is too late. In addition, this approach should focus on all actors that have been crucial in creating tensions in Macedonia. Intelligence community, therefore, should focus on all actors analyzed above (i.e. Opposition political parties, IVZ, Media and western diplomats) including populace and regional partners.

The Governments' center of gravity in the preventive approach, however should be populace. All other actors are enablers in government efforts to build resilient local community. To design such community, government needs mechanisms that will address grievances, whether real or perceived which might be exploited in the radicalization process. Therefore, pursue for social cohesion must be immediately organized if the government is about to prevent the future terrorist attacks. SEE intelligence community should play crucial role in these efforts as a supporter of the government officials.

This however should not be understood in the negative and repressive means. The intelligence community in SEE must cherish its credibility, emphasize civil control and depart from former practices to be seen as apparatuses of the regime. Practice shows that special intelligence gathering techniques have been used as a result to imminent threats. In order to avoid such scenarios SEE governments need preventive actions that will reduce violent actors that practice modern terrorism to secretly operate. In Macedonia, and arguably this is relevant to the rest of the region of SEE, intelligence community must identify factors that stimulate ethnic and religious tensions. Nevertheless, without regional cooperation this is almost impossible.

One possible way to improve existing cooperation is through the establishment of the permanent working bodies that will enhance strategic, operational and tactical levels of cooperation. These bodies should have joint meetings at least two on a strategic level, up to four on operational and up to six on tactical level. Reports of the progress on the tactical and operational level, among others, should design strategic level of cooperation.

At all levels SEE intelligence cooperation should focus on:

- developing a SEE counterterrorist forum of experts and academicians,
- running a joint network assessments,
- developing a SEE strategic cross-border communications.

All of these activities must be designed and supported by the strategic partners (USA, NATO, EU, and last but not the least UN counter-terrorist bodies).

The SEE counterterrorist forum of experts and academicians should be the driving force that will improve future cooperation and enable the intelligence community in SEE to achieve strategic ends. This forum should compose of distinguished experts and academics from the region that will produce credible reports and studies (open and secret) for the SEE officials and the intelligence community. Criteria for choosing the appropriate workforce for the forum should be negotiated at the strategic level among the suggested bodies. Members should come as a suggestion to the respected countries and agreed with their approval. Members and experts from strategic partner countries are more than welcome to participate in this forum's work.

Through the above suggested bodies the joint level of cooperation should focus on *net assessment* that will apply the method of complex system analyses. Using this method through working groups and through developing joint task teams for analyses on operative and tactic level SEE intelligence community should identify the paths and mechanisms that recruiters can employ and radicalize local populace. Moreover, these assessments and analysis will help local governments to understand the terrorists' motives and anticipate their intentions. Using complex system analyses will help SEE intelligence community to identify weaknesses, allocate resources, and create opportunities. Accordingly SEE intelligence community should jointly advice respected government officials on the drivers that inhibit social cohesion. Hence, with such approaches SEE regional cooperation will contribute in preventing future terrorist attacks and advise government officials in building adequate response campaigns. Results from this assessment will also play valuable role in the indirect approach (we will come to this later).

Both mechanisms suggested from the above should culminate in creating regional SEE a strategic cross-border communication at all levels, i.e. strategic, operational and tactic. The regional intelligence community should focus their efforts in establishing this mechanism at the forefront and enable local governments to use it as an instrument against the terrorist rhetoric and recruitment. Straddling among three levels strategic, operational and tactical working bodies, regional cooperation should build the essential element of the SEE antidote to the poisonous recruiting rhetoric. In other words, SEE intelligence community cooperation should develop strategic communications that will have multidimensional directions leading from the populace to the government; among the SEE governments; among the governments, the NGO's, the Media and the populace; and among the strategic partners, local populace and the NGO's and the Media. With such approach SEE intelligence community will increase local population's resilience and inhibit the ability of the recruiters to achieve their strategic ends and win the populace hearts and minds. However, to achieve such success indirect approach and mechanisms should be also considered.

5.2. Indirect measures that SEE intelligence community should consider

To successfully accomplish a desired end-state regional intelligence community needs to consider indirect approaches that will enable direct mechanisms. This approach must have only an advisory role. Only such approach will secure effective actions and avoid well intended efforts to turn into a disaster and mistrust.

One thing that best serves to the radical groups and individuals in the Region of SEE is the reluctance to admit that radical Islam is a serious threat to the region of SEE. Identifying the ways of how best the local authorities can increase awareness should be the focus of the intelligence community. Using the above mentioned direct mechanisms as a platform Intelligence community could initiate an indirect approach and after identifying the drivers could suggest appropriate answers that could support appropriate answers for building awareness. In fact shared awareness is a critical component of any counterterrorism strategy.

Another area where indirect approach is needed is the cooperation with the players that we have identified as a key to destabilization. Employing creative approaches such as joint workshops, trainings and open discussions among the experts and academics (driving force in the regional forum described from the above) intelligence community could support the overall governments' counter-terrorist efforts. This approach in fact will contribute in putting the necessary players such as local political elites and their narrative, the media, the religious community leaders and strategic partners on the right path. It will also create a platform to reconcile different interests and stimulate win-win scenarios. Finally, it will provide for the reverse line in communication i.e. target audience of the government.

Indirectly the intelligence community should encourage regional cooperation in other security and social sectors among the SEE actors. Close cooperation in the sectors that the intelligence community will identify could limit the ability of radical Islamists to manipulate authority and to abuse ethnic issues for its own purposes. Close regional cooperation will also send a strong signal to the potential perpetrators about the region decides to confront radical Islam and terrorism. Finally investment in the regional cooperation is investment in Government's own reputation in the populace and foreign partners' eyes.

From all of the above it will not be hard for one to conclude that modern terrorism requires modern approach of the security sector in general and intelligence community in specific. Successful intelligence cooperation must be designed in a way that links preventive efforts with the

post attack reactions. The quality of this relationship defines the ability of Governments to prevent and mitigate the risks from modern terrorism on a long run.

6. Conclusion

South East Europe is under threat from radical Islamists terrorism affiliated with Al Qaeda. SEE governments have seriously considered global efforts to counter these threats. However, two cases related to Macedonian efforts to counter these threats attest that there are legal and strategic (political) challenges that must be considered if the future counter-terrorist efforts are about to be successful. While cooperating with its strategic partner the U.S. in intelligence gathering on Macedonian soil, Macedonian intelligence operatives (and thus Macedonia) have violated suspected terrorist human rights in accordance with the European Convention on Human Rights. Considering that all of the SEE countries have signed and adopted this Convention this lesson remains valuable for further intelligence gathering and cooperation against modern terrorism. The Smilkovci terrorist attack in Macedonia on the other hand has confirmed that political sensitive situations in the region of SEE and strategic (political) indecisiveness hold potential to hurt the counter-terrorist efforts and open space for radical Islamists to achieve their goals.

Giving that intelligence cooperation is a must for the SEE countries against modern terrorism as one possible way to improve existing cooperation is through the direct and indirect measures. Directly SEE countries could establish permanent working intelligence bodies. This approach will enhance strategic, operational and tactical levels of cooperation. At all levels SEE intelligence cooperation should focus on: developing a SEE counterterrorist forum of experts and academicians; running a joint network assessment and developing a SEE strategic cross-border communications. All of these activities must be designed and supported by the strategic partners (USA, NATO, EU, and last but not the least UN counter-terrorist bodies). Indirectly, SEE intelligence community should provide advice to the political leaders and other relevant actors on how to build a more resilient society in the region of SEE and enhance social cohesion. These mechanisms should be in support to direct mechanisms and designed to inhibit radical religious groups and individual's ability to achieve their goals in SEE and counter their arguments.

REFERENCES

1. Alic, Anes, (November 01, 2011), *III-Planned terror attack on US Embassy in Sarajevo*, ISA Intel, available at: <http://www.isaintel.com/2011/11/01/ill-planned-terror-attack-on-us-embassy-in-sarajevo/>
2. Archik, Christine, (September 4, 2013), “US-EU Cooperation against Terrorism”, The US Congressional Research Service).
3. Associated Press, 2012, *Company awards*, available at: <http://www.ap.org/company/awards>) News, April 17, 2012, *Macedonia: 5 hurts, 14 arrest in Clashes*, Associate Press, available at: <http://www.foxnews.com/world/2012/04/17/macedonia-5-hurt-14-arrested-in-clashes/>)
4. Bartolini, Giulio, (2010), *General principles of international humanitarian law and their application to interpreters serving in conflict situations*, International Institute of Humanitarian law,
5. BBC, (July 19, 2012), *Bulgaria Blast, Suicide bomber kills Israeli*, BBC News, available at: <http://www.bbc.co.uk/news/world-europe-18897772>
6. Bossong, Raphael, (2013), *The Evolution of EU Counter-Terrorism*, Routledge
7. Marusic, Sinisa, (April 14, 2012), *Grieving Macedonia Buries Five Murder Victims*, BalkanInsight, available at: <http://www.balkaninsight.com/en/article/macedonian-municipality-mourns-fivefold-murder>
8. Brunwasser, Matthew, (April, 16, 2012), *Killings Heighten Ethnic Tensions in Macedonia*, The New York Times, available at: http://www.nytimes.com/2012/04/16/world/europe/killings-heighten-ethnic-tensions-in-macedonia.html?_r=3&emc=tnt&tntemail0=y
9. Dimitrioska, Pandorce (April 13, 2012), *Five murdered at Iron Lake, There no Suspects*, (Original: петмина убиени кај Железарското Езеро, Осомничени нема), Alfa TV, available at: <http://www.time.mk/read/85fe05db07/a5bc958d44/index.html>
10. Deliso, Christopher, 2007, *The Coming Balkan Caliphate. The Threat of Radical Islam to Europe and the West* Westport, Connecticut—London: Praeger Security International
11. ECtHR, (23 March 1995), *Loizidou v Turkey* (Preliminary Objections), Series A vol. 310. March 1995, *Loizidou v Turkey (Merits)*, (Application No. 15318/89), (1997) 23 EHRR 513, 28 November 1996, and *Loizidou v Turkey (Merits)*, (Application No. 15318/89), (1997) 23 EHRR 513, 28 November,

12. (ECtHR), (30 May 2000), *Issa & ors v Turkey*, Application no 31821/96, Admissibility decision, *Issa & ors v Turkey*, (Merits stage), (2005) 41 EHRR 27 16 November 2004,
13. (ECtHR), (10 May 2001), *Cyprus v Turkey* (Application no 25781/94), 78.20,
14. (ECtHR), (December 13, 2012), *El Masri vs. Macedonia*, Grand Chamber, Application 39630/09, Procedure
15. (ECtHR), (December 13, 2012), *El Masri vs. Macedonia*, Grand Chamber, Application 39630/09, Ch-III, Applicable Law, Relevant Domestic Law, Relevant International law
16. Forest, James J. (2007), *Countering terrorism and insurgency in the 21st century: international perspectives*, Praeger Security International
17. Fisher, Miles P. *Applicability of the Geneva Conventions to Armed Conflict in the War on Terror*, Fordham International Law Journal, Vol.3, Issue 30, 2004,
18. Fawaz, A. Gerges, (2007), *Journey of the Jihadist: Inside Muslim Militancy*, Harcourt Press, New York,
19. Goodman, Ryan, and Jink, Derek, (2006), *International Law, U.S. War power, and the Global War on Terrorism*, Harvard, Vol. 118 Law Review,
20. Gramer, Jr., George K., *Optimizing Intelligence Sharing in a Coalition Environment*, Naval War College, 1999
21. Hadji-janev, Metodi, (2012) "Managing the consequences of terrorist attacks: The Case of Macedonia", in: Chaleta D. & Shemella P. (Eds.) *Managing the Consequences of Terrorist Acts - Efficiency and Coordination Challenges*, 2012, ISBN: 978-961-92860-5-0, available at: <http://www.ics-institut.com/research/books/4>
22. LaVerle, Berry, et al Glenn E. Curtis, Rex A. Hudson, Nina A. Kollars, "A Global Overview of Narcotics-funded Terrorist and Other Extremist Groups," Federal Research Division Library of Congress, (May 2002)
23. Karajkov, Risto, (June 11, 2012), *Macedonia is it terrorism?*, Osservatorio, Balkani e Caucaso, available at: <http://www.balcanicaucaso.org/eng/Regions-and-countries/Macedonia/Macedonia-Is-It-Terrorism-118381>
24. Liaropoulos, Andrew N., *A (R)evolution in Intelligence Affairs? In Search of a New Paradigm*, Research Institute for European and American Studies Paper No. 100 14 (June 2006), available at <http://www.isn.ethz.ch/isn/Current-Affairs/Security-Watch/Detail/>
25. Naert, Frederick, (2011), *The Application of Human Rights and International Humanitarian Law in Drafting EU Missions' Mandates and Rules of Engagement*, Institute for

- International Law, Working Paper, available at:
<http://www.law.kuleuven.be/iir/nl/onderzoek/wp/wp151e.pdf>,
26. NATO Peace support operations, AJP-3.4.1., 2001,
 27. Nelson, Rick, and Sanderson, M. Thomas, (2011), *A thread Transformed, Al Qaeda and Associate*, Centre for Strategic and International Studies,
 28. O'Neill, John Terence, and Nicholas, Rees, (2005), *United Nations Peacekeeping in the Post-Cold War Era*, New York: Routledge
 29. O'Rourke, Ronald. (October 18, 2012), *Navy Irregular Warfare and Counterterrorist operations*, Background and Issues for the Congress, Congressional Research Service Report for Congress,
 30. Pavlevski, Aleksandar, (May 27, 2013), "Western Balkans intensify military, intelligence co-operation", SETimes.com, retrieved January 28, 2014 from:
http://www.setimes.com/cocoon/setimes/xhtml/en_GB/features/setimes/features/2013/05/27/feature-02
 31. Schultz, H., Richard, (2005), *The Era of Armed Groups*, in: Peter Berkowitz (ed.), *The Future of American Intelligence*, Stanford, CA: Hoover Institution Press,
 32. Schwartz, Stephen, (February,11, 2004) "The Struggle Within Islam: Albanian Muslims Reject Extremism," *Terrorism Monitor*, Vol. 1, I
 33. Schwartz, Stephen (January , 2013), "Kosovo, Still the Balkan front line against radical Islam", retrieved January 26, 2014 from: http://www.weeklystandard.com/blogs/kosovo-still-balkan-front-line-against-radical-islam_693589.html.
 34. Shay, Shaul, (2007), *Islamic Terror and the Balkans*, Transaction Publishers, 2007
 35. Sims, E. Jennifer, (2007), *The Contemporary Challenges Of Counterterrorism Intelligence* in: *Countering terrorism and insurgency in the 21st century: international perspectives*, edited by James J. F. Forest, Praeger Security International)
 36. Radio free Europe, (September 25, 2012), *In Macedonia, Ethnic Albanians Protest Arrests of Murder Suspects*, available at:
http://www.rferl.org/content/macedonia_ethnic_albanians_protest_murder_suspect_arrests/2457816
 37. The Council of Europe (January 21, 2014), "Bulgaria Must Improve Laws to fight money laundering", Human Rights Europe, retrieved January 31, from:
<http://www.humanrightseurope.org/2014/01/report-bulgaria-must-improve-laws-to-fight-money-laundering/>

38. Tumanovska, Marija, (April 17, 2012), Ten have been arrested and five have been wounded, Dnevnik, available at: <http://www.time.mk/read/089992ab9e/b11add6101/index.html>
39. UNESCO, (2012), *Qualitative analyses of the Media report during interethnic and interreligious Relationship in Macedonia, Smilkovci case*, The High School for Journalism
40. US Department of Defense, (2006), *Join Operation Concept*, Version 2.0,
41. Vickers, Miranda, (March 2008), "Islam in Albania," Advanced Research and Assessment Group of Defence Academy of the United Kingdom
42. Zakaria, Fareed, Aug 2013, "Little al-Qaeda's Loom Large", Time Magazine, retrieved January 20, 2014 from: <http://content.time.com/time/magazine/article/0,9171,2149125,00.html>

Metodi Hadji-Janev

Hadji-Janev holds doctorate degree in International Law and International relations since 2009. Since October 2013 he has been assigned as the Vice Dean of the Military academy for education and research. He is Associate Professor of law at the Military Academy and Visiting Professor at the Law faculty in Skopje at the University "St Cyril and Metodij-Skopje".

In 2003 Hadji-Janev was deployed as commander of Macedonian Special task forces in Iraq and has been awarded for distinguish service and has spent almost 16 years in the service. He is the author of the book "Iraqi Freedom: The Road to Babylon" and author of numerous articles published in distinguished journals and books, regarding the legal aspects of organized crime, international terrorism and issues related to cyber-security.