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Administrative Development in ‘Low-Intensity’ Democracies: Governance, Rule-of-Law and Corruption in the Western Balkans

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Abstract:

Although the Western Balkan states achieved considerable progress in pluralist development during the post-2000 period, all the states in the region continue to manifest considerable weakness in both state-building and democracy-building. This article explores the dimensions of the “weak state syndrome” that continues to trouble the region, and particularly the interaction between deficiencies in administrative capacity (including limited professionalization and the politicization of the public service, patterns of corruption, and problems of judicial development and decentralization), and the process of democratic consolidation. As the impact of the global economic crisis that began in 2008 continues to afflict the region, most of the Western Balkan states remain trapped in a still uneasy intermediate zone; clearly no longer repressive authoritarian political systems, but not yet substantially consolidated or strong democracies. This situation will delay the timetable of EU entry for most states in the region, and also influence their post-accession pattern of development.

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Administrative Development in ‘Low-Intensity’ Democracies: Governance, Rule-of-Law and Corruption in the Western Balkans¹

Democratic state-building depends on the establishment of administrative institutions that have the capacity to efficiently and legally implement government policy, and are also accountable to elected officials and the public. More broadly, the ability of civil servants to carry out their duties, both effectively and honestly has an important influence on the overall performance and legitimation of the state. And together with other factors, such as the manner in which administrative officials relate to other state institutions, and how such officials respond to the demands of individuals and groups within society, administrative change has a critical impact on the process of democratic consolidation. In view of the significance that administrative capacity has on democratic state-building, the EU has accorded public administration reform a high priority, both in the pre-accession process, and also in the period after states are allowed to enter the EU.² Indeed, the experience of former EU candidate members who have gone on to become successful applicants suggests that the quality of public administration in a country is critical to the ease with which it navigates the accession process.³ How to reform public administration has acquired even more urgency as a result of the economic crisis which began in 2008. Thus, political elites in the region, along with leaders in other post-communist regimes, found themselves shifting their focus from the previous imperative of reducing the role of the state, to redefining the quality of state institutions and making them more supportive of the market economy.⁴ Indeed, it has become even clearer that public administration as the “state in action,” is critically important in terms of the ability of governments to deal with the socio-economic impact of the crisis.

¹ This paper draws upon research for the project *Embracing Democracy in the Western Balkans: From Post-Conflict Struggles Toward European Integration*, by Lenard J. Cohen and John R. Lampe.

² On the general problems of administrative development in the area see Svein Eriksen, “Institution Building in Central and Eastern Europe: Foreign Influences and Domestic Regimes,” *Review of Central and East European Law* (2007), Vol. 32, 333-369; “Sustainability of Civil Service Reforms in Central and East Europe Five Years After EU Accession,” (OECD, Sigma, 2009); and Tony Verheijen, *Administrative Capacity in the New EU Member States: The Limits of Innovation* (Herndon, VA: World Bank, 2007).

³ *Convergence to the European Union: Challenges and Opportunities* (Skopje: Ministry of Finance, 2009), 26.

⁴ *Transition Report 2009: Transition in Crisis* (London: EBRD, 2009).

The first section of the paper briefly explores the historical background of Western Balkan administrative development, and also compares the general features of government spending and the size of public bureaucracies in the region. The discussion then moves on to explore several inter-related facets of governance in the Western Balkans including the professionalization of the civil service sector, the de-politicization of bureaucratic agencies, ethnic representation and power-sharing in the public sector, efforts to contain corruption, the course of judicial development and decentralization. The final section of the paper explores the interaction between persistent facets of weakness in administrative development on the one side, and the prospects of democratic consolidation and EU entry on the other. The analysis suggests that deficiencies in governance are likely to reinforce the region's overall democratic consolidation and complicate the prospects for each state to quickly and successfully navigate the process of EU accession.

Evolution of Public Administration: Towards De-Politicization, Professionalization and Accountability

Historical continuities and discontinuities in administrative development, particularly in transitional and post-conflict settings such as the Western Balkans, have an important impact on the capacity of a particular bureaucratic apparatus. And although the impact of historical legacies and traditions on bureaucracy-building can often be exaggerated, it is a formidable task to transform “administrative cultures,” even after revolutionary episodes and the purge of old regime personnel. Thus, as one seminal study aptly reminds us, “the historical character of a bureaucratic apparatus must be taken into account in any attempt to explain its capacity, or lack of capacity to intervene.”⁵

Despite disparate 19th century origins in an autonomous Serbia and two imperial bureaucracies, followed by the discontinuities of the two world wars and communist re-staffing after 1945, public administration in the Western Balkan regimes entered the post-communist period with one historical legacy in common. They all lacked the experience of sustained

⁵ Dietrich Rueshemeyer and Peter B. Evans, “The State and Economic Transformation: Towards an Analysis of the Conditions Underlying Effective Intervention,” in Peter B. Evans, Dietrich Rueshemeyer and Theda Skocpol (eds.), *Bringing the State Back In* (Cambridge: Cambridge University Press, 1985), 59.

democratic consolidation, i.e., a transparency and separation of powers sufficient to make their bureaucracies responsible to legal norms and standards of efficiency, as well as external oversight. They were burdened instead with a heritage of clientelism and corruption not open to public view. By the 1930s, the democratic promise of full independence, new constitutions and parliamentary government following the First World War had clearly failed across all of Southeastern Europe. Authoritarian regimes, facing the Great Depression, now struggled in vain to reduce the bloated bureaucracies that had already grown up in the 1920s. They also gave their Interior Ministries new extra-legal powers that would set precedents for the communist regimes after 1945.⁶

In both Yugoslavia and Albania, the occupations and divisions of the Second World War substantially destroyed the existing institutions of administration. The communist personnel purges that followed World War II reconstituted administrative institutions now staffed with new and much less experienced cadre. Neither of the new one-party regimes – which would quite quickly diverge in their structures and character – opened its respective public administrations to the representative or judicial oversight demanded by democratic norms. Yugoslavia's growing devolution of party and executive authority to its republics never provided this oversight. What continued instead, based on a pattern already established by the 1930s, was a state (or republic) apparatus whose reach was extensive, but whose basis for public support and legitimation was weak. The growing tension of the 1980s between the federal and republic administrations contributed to the failure of Yugoslavia to survive the general crisis of communist regimes in 1989. But unlike the post-1945 period, neither Yugoslavia's successor states nor Albania entered the new post-1989 period with significant turnover in public administration below the highest level. Thus, what continued in place were inefficient, non-transparent, and essentially non-accountable "administrative cultures" throughout the region, from which the ethnic and political homogenization linked to the conflicts of the 1990s hardly freed it.

⁶ See John R. Lampe, *Balkans into Southeastern Europe, A Century of War and Transition* (London: Palgrave, 2006), 63-140.

TABLE 1
GOVERNMENT EXPENDITURES AS A PERCENT OF GDP IN THE WESTERN BALKANS,
SELECTED YEARS

	1997	2001	2003	2005	2008
Albania	29.2	31.6	29.0	28.3	32.7
Bosnia & Herzegovina	55.4	46.9	52.4	50.2	49.7
Croatia	50.7	52.0	51.3	49.0	46.3
Kosovo	-	-	33.1 (2004)	31.3	27.3 (2006)
Macedonia	35.1	34.3	38.5	35.3	36.4
Montenegro	-	42.8	39.9	40.4	42.9
Serbia	-	36.2	46.7	44.4	45.2
EU	-	-	47.4	46.9	46.6

Sources: IMF Country Reports, World Bank, European Commission Spring 2009 Forecast (May, 2009).

Proceeding against the background of regional disruption and violence, the initial period of post-Yugoslavia and post-communist institution-building during the 1990s only reinforced the historical pattern of state weakness and fragility in the Western Balkans.⁷ Thus, the turbulence and uncertainty that accompanied the initial stage of regime transition in each new polity often demoralized and traumatized personnel in the long-established state apparatuses of the former Yugoslav republics and provinces, and also Albania, reinforcing earlier communist and pre-communist problems in the administrative sectors. In many cases, administrative coherence, rule-of-law and efficiency were also undermined when segments of the former communist elite took advantage of the transitional situation to stay in power and corrupt the new institutional structures and its officials through various modes of “state capture.”⁸

⁷ For the character of state weakness in the Balkans see Albert Rakipi, “Weak States – a View from Within” (April 2002), and Ivan Kratsev, “Bringing the State Up,” Paper presented at the Conference, *Inter-ethnic Relations in the Western Balkans: Problem, Instruments and Prospects for the Future*, Berlin, September 12-13, 2003.

⁸ See Venelin I. Ganey, *Dysfunctional Sinews of Power: Problems of Democracy Building in the Post-Communist Balkans* (2001).

At the same time the new states of the Western Balkans were faced with an enormous burden: reorganizing their administrative structures as post-communist states (and in most cases of Yugoslavia's successor states), removing officials associated closely with the former single-party regimes, recruiting new personnel, creating a new administrative culture with respect to norms and behaviour, and endeavouring to legitimate the new "democratic" system through effective governance. The heavy load on these states is reflected in comparative trend data with respect to the level of government spending as a percentage of GDP (see Table 1). Indeed, regional difficulties with regard to the scope and size of the state have continued throughout the post-conflict period since 1999. The costs of having to establish new institutions for an independent state, and to perform new functions previously carried out by the pre-1991 Yugoslav Communist federation, were largely responsible for the high public spending levels apparent in Bosnia-Herzegovina, Croatia and in Serbia and Montenegro, although in the first two cases the trend has gradually improved. Serbia's budget for administration costs increased sharply following the break-up of the state union of Serbia and Montenegro in 2006 (the number employed in various state services actually quadrupled between 2000 and 2008). In Bosnia, the complex institutional environment, with multiple units and levels of government, accounts for the large share of government spending – at almost 50 percent of GDP in 2008 – and a high public sector wage bill. High wage bills are particularly striking in the two entities. In the Federation, there has been excessive salary outlays on war veterans, invalids, and the families of those killed during the war (40 percent of the Federation budget in 2008 was spent on social welfare). Meanwhile, salaries in the Republika Srpska are ten times higher than the country average. Requests by the IMF in 2009 for Bosnia's governments to cut administration expenses met with resistance from both politicians and organized groups.⁹

Government spending in Albania and Kosovo has been lower (in the latter case, without UNMIK spending, about 33 percent in 2003 and 27.3 percent in 2006, but good trend data regarding this new state is not available). The implosion of the Albanian state in 1997 accounts in part for its lower level of public expenditure, but that level is also subsequently explained by the country's avoidance of inefficient resource allocation, and limitations on social transfers and

⁹ Anes Alić, *Bosnia: The IMF Money Crunch*, May 25, 2009.

corporate subsidies. In most of the Western Balkan states, post-conflict reconstruction imperatives, ambitious new show projects, high welfare, health, and defence expenditures, and delayed reforms of the old socialist system, have all played a role in high government spending levels, to one extent or another. The economic impact of such high levels of governmental spending is to crowd private sector activity, increase spending on consumption, and slow economic investment and growth.

Montenegro stands out in terms of the relative size of its state administration as a percentage of the employed population, i.e., civil servants and employees working in government agencies (see Table 2, appended). Croatia has also been slow to reduce the size of its very complex state apparatus that resulted from the government's intrusive regulatory role in the economy, and the large number of administrative units on the central, county and local levels. In 2009, it was estimated that Croatia's public sector wages were about 11.1 percent of GDP (down from 12.4 in 2005) compared to 10 percent in Serbia.¹⁰ But it is Montenegro along with Macedonia and Kosovo that have the largest overall proportion of those employed in the state and public sectors combined, or approximately one-fifth of those employed in the labour force. Most other Western Balkan states have from roughly 9-13 percent of their employed population in the public sector. And although most EU countries on average have relatively higher public sector wage bills than the Western Balkan states, they also have far more prosperous economies.¹¹ The costs of large administrative sectors in the Western Balkans place a heavy burden on their budgets and are a drag on economic development.

The high costs and low effectiveness of Montenegro's administration – linked to overlapping functions, weak coordination, blurred accountability among administrative units and the inability of a small country to exploit economies of scale – have hampered decision-making and reduced the quality of service delivery.¹² Indeed, Montenegro's relative wage bill for "general government" in 2006 was higher than Croatia and Slovenia. Moreover, by 2008/2009, Montenegro, as other countries in the region, faced pressure for public sector reduction at a time

¹⁰ Simon Gray, World Bank Manager in Serbia.

¹¹ *Republic of Montenegro: 2008 Article IV Consultation* (Washington, DC: IMF, March 2009), Country Report 09/88.

¹² *Montenegro Beyond the Peak: Growth Policies and Fiscal Constraints, Public Expenditures and Institutional Review* (Washington, DC: World Bank, November 24, 2008), Report #46660-ME, 82.

when there is a need for the recruitment of new personnel to meet the requirements of EU integration and decentralization. Thus, unless such recruitment is compensated for by a corresponding decrease in staff, such pressures are likely to perpetuate large public sector wage bills, and limit overall efforts to improve efficiency. Macedonia's inflated bureaucracy has also been resistant to efforts at right-sizing. Several reasons, not unlike those in neighbouring countries, account for the problem: the use of highly politicized administrative posts as a mechanism for political party patronage, government perceptions that administrative jobs provide a way to reduce unemployment, and public perceptions that bureaucratic work is a "highly desirable opportunity" in difficult economic times.¹³ The requirements of equitable ethnic representation and decentralization in the administrative sector mandated by the Ohrid Accord (see below) are also a factor in Macedonia. By 2009, some reports claimed that Macedonia's total public administrative sector had grown to some 125,000-130,000 employees, although the country might not need not more than 70,000 personnel.¹⁴

Of course, the weaknesses of the Western Balkan states in terms of administrative effectiveness and accountability do not derive solely from the fact that state structures are large in terms of their spending levels and size (e.g., public employment levels). For example, the region's average size of government spending as a portion of GDP for most states in recent years was close to the average or lower than for the EU 27 as a whole, roughly 47 percent, although in most cases, higher than in fast-growing economies such as Romania or Bulgaria (in 2008, 38.5 percent and 37.4 percent respectively). General government expenditures across the Western Balkans in 2008 ranged from approximately 50 percent in Bosnia and Herzegovina to 33 percent in Albania (see Table 2, appended). Moreover, as already alluded to above, the fact that most of the Western Balkan states were in the very early stages of state formation considerably slowed and complicated their administrative development, as did setbacks caused by the direct and indirect consequences of recent regional conflict. Indeed, it is partly because of these aspects of path dependence, and also the political circumstances and sometimes political instability in individual states, that the considerable resources expended by the EU and international financial

¹³ *Right-Sizing of the Public Administration in Macedonia* (Skopje: Analytica, April 2009).

¹⁴ *First Quarterly Accession Watch Report* (Skopje: FOSIM, 2009), 54.

institutions to ameliorate problems in the region had only limited impact during the post-2000 period.

But it was unrealistic for observers to assume that imported administrative models could quickly displace domestic habits of bureaucratic operation, or to entirely blame domestic elites for a failure of will. Thus, more often than not, the institution-building saga in the Balkans, as in most regions of the world, has resulted in an amalgam of old and new patterns of behaviour in the administrative sphere. And although the formal legal restructuring of state administrations is not particularly difficult under EU conditionality pressures, the actual replacement of old administrative habits by new “European behaviour” has proven very difficult.¹⁵ In the case of the Western Balkans, four particular and inter-related problems of administrative development have proven very intractable to EU conditioned Europeanization: 1) weak professionalization, 2) persistent politicization, 3) inequitable ethnic representation and, 4) extensive corruption. These problems have historically plagued Southeastern Europe, and are also not unfamiliar to bureaucracies elsewhere. But as part of a broader context of difficulties they have proven particularly detrimental to the effectiveness and democratic accountability of the public administrative sectors in the Western Balkans.¹⁶ As a consequence, the notion of a merit-based public administration, which serves citizens and transcends the alternation of different governments and governing parties in a pluralistic system, has had considerable difficulty taking hold.

Professionalization

For example, studies of Western Balkan bureaucratic structures frequently point to the shortages of skilled personnel in otherwise overly large public sectors, and also to the poor motivation of administrative employees compared to the private sector across the region.¹⁷ Levels of administrative professionalization and politicization naturally vary from one country to

¹⁵ Arolda Elbasani, “EU Administrative Conditionality and Domestic Downloading: The Limits of Europeanization in Challenging Contexts” (Berlin: Free University, July 2009), Working Paper #2.

¹⁶ Dimce Nikolov, “Innovations in the Public Administration in the Balkan Regions,” *Southeastern Europe*, (2005), Vol. 31-32, 103-128.

¹⁷ Assessment Report, *Public Administration in the Balkans: Overview* (Sigma, May 11, 2004).

another and from one ministry to another within countries. But the general reasons for problems in the region can usually be traced to low salaries, bad working conditions, poor qualifications and training, as well as the typically low prestige of civil servants in society. Thus, the qualifications of administrative employees, although improving slowly in the Western Balkans, still remain unsatisfactory. A substantial number of civil servants have lacked any tertiary education, as for example, roughly half of them in Serbia and Croatia during 2002-2004.¹⁸ Moreover, in the case of new states such as Montenegro and Kosovo, even many young highly educated individuals recruited to the public service in the post-2000 period have lacked experience or managerial and leadership skills.

Meanwhile, the older generation of officials, as in most other regimes in the Western Balkans, were often “equipped with outdated notions of management.”¹⁹ Throughout the region, it is also very difficult for the civil service to compete for highly qualified talent. For example, an October 2008 survey of nearly 200 senior officials, managers and other civil servants across the Western Balkans, found that an overwhelming majority (91 percent) viewed international organizations as more attractive employers, and 60 percent considered private firms to be more attractive.²⁰ Moreover, although new educational institutions specializing in public administration studies are a positive development, those institutions still do not have a strong reputation, and their limited number of graduates who enter public bureaucracies still constitute a minority struggling against well-entrenched negative practices. Indeed, 40 percent of respondents across the region believed that traditional personnel practices in the civil service have not changed much by 2008, and 51 percent believed that another model is necessary for a “modern public service.” Perhaps a hopeful finding of the survey was that 80.3 percent of the respondents claimed that the interests of citizens and business should be paramount in their work.

¹⁸ Marijana Badun, “Governance and Public Administration in the Context of Croatian Accession to the European Union,” in Katarina Ott (ed.), *Croatian Accession to the European Union: Institutional Challenges*, Vol. 2 (2004), 152, and *Serbia and Montenegro, Public Administration Development: Creating the Conditions for Effective Economic and Social Reform Policy Note* (Washington: World Bank, May 15, 2004), 13.

¹⁹ Kosovo UNDP Capacity-Building Seminar, 21-23 November 2005. Vanja Čalović, the Executive Director of a Montenegro NGO lobbying for government and administrative overhaul observed that his was a “really small country, so we have few government employees, and on the other side, our system of education does not prepare our people to do their job sufficiently well.” *International Herald Tribune*, September 8, 2006.

²⁰ Damir Ahmetović, “Attracting and Retaining Civil Servants in the Western Balkans,” *Development and Transition*, (April 2009), No. 12, 11-13.

Unfortunately, too often, the officials in the over-staffed and inefficient Balkan states compensate for their organizational weaknesses by a style of personal presentation – when doing business with foreigners, at domestic tax collection, border checking and traffic control, etc. – that projects strength, or an image of an ostensibly “strong state.”²¹ Below that veneer are found sizeable or “big” states that are, however, “weak” or inadequate at delivering state-related services and are usually very unaccountable to their citizens. Indeed, less than 3 percent of those interviewed said that their own pursuit of a civil service career was motivated by a desire to perform public service. Job security and a regular salary were the main factors attracting people.

However, deficient educational and professional qualifications are only partially responsible for the poor performance and image of administrative sectors in the region, and their often undemocratic mode of operation. An equally important issue is the overall political mentality and motivational climate within the region’s administrative structures. As a 2001 Croatian study put it: “citizens consider the administration distant, formal and corrupted...it is not perceived as professional and unbiased, but riddled with connections and the exchange of friendly services....The people in the administration do not get there because of professional criteria and they are not promoted according to expertise and performance.”²² A 2004 study by another Croatian analyst observed that “it is very difficult to break up the inheritance of clientelism and paternalism in which the administration has been focused too much only on itself. A culture of secrecy has been cultivated, favouring nepotism and arbitrariness, and citizens have always been made to feel subordinate in their encounters with the administration.”²³ Even after considerable EU assistance and pressure as part of Croatia’s engagement in the pre-accession process, a 2006 study concluded that “the capabilities of institutions to adopt to the requirements of modern and open societies” is still Croatia’s “weakest spot...changes in the public administration in the last couple of years show limited progress in the application of

²¹ Andras Inotai, *The European Union and Southeast Europe. Troubled Waters Ahead* (Brussels, Peter Lang, 2006), 249.

²² Ured za strategiju razvitka RH 2001, 7, cited in Marijana Badun, “Government and Public Administration in the Context of Croatian Accession to the European Union” in Katerina Ott (ed.), *Croatian Accession to the European Union: Institutional Challenges* (2004), Vol. 2, 150.

²³ Marijana Badun, “Government and Public Administration in the Context of Croatian Accession to the European Union” in Katerina Ott (ed.), *Croatian Accession to the European Union: Institutional Challenges* (2004), Vol. 2, 152.

reforms that continue to be made partially...the goals necessary for public administration reform and various new incentives are proposed, but it is difficult to expect the necessary political will for their implementation.”²⁴

Similar problems are apparent in the other Western Balkan polities and have been seriously exacerbated by the frequent change of ruling parties and party coalitions, and the climate of inter-party polarization within government cabinets. Below the top tier of political ministers, among non-elected officials in the public administration, such changes, divisions and uncertainty tend to feed bureaucratic inertia and non-accountability. At the lower levels of public administration, such division and uncertainty has only solidified bureaucratic inertia. For example, as one Serbian minister told visiting foreign experts in 2002: “You can still find the old customs everywhere. The biggest problem is people’s mental attitude. Our civil servants are used to seeing politicians [under the Milošević regime] come and go. All initiatives are considered as transitory. Civil servants see no point in exerting themselves in support of the politicians. They will be gone tomorrow, and new people arrive with new ideas.”²⁵ And a Serbian deputy minister remarked “that some ministries do not even function at all. The employees are neither interested nor involved in their work. They were employed because they once had the right connection, not because they might have been professionally qualified.”²⁶ Yet another deputy minister observed that: “90 percent of the employees in his ministry are ‘totally passive.’ They don’t actually do anything at all – not even damage. I don’t even consider them part of the ministry.”²⁷

Laying the groundwork for an improvement in the professionalization of Serbia’s administrative structure proved difficult in the politically turbulent first six years that followed the downfall of the Milošević regime. Despite studies of the public administration and a host of recommendations for reform, recruitment to the ministries continued to be based more on party loyalty than merit.²⁸ When more reform-oriented political forces finally assumed power in 2008,

²⁴ *Croatian Accession to the European Union: The Challenge of Participation* (Zagreb: Institute of Public Finance, 2006), 4, 8-9

²⁵ *The Serbian Central Government Administration: Organizational Challenges* (Belgrade: Government of the Republic of Serbia, Agency for Public Administration Development, February 2002), 83.

²⁶ *Ibid*, 83.

²⁷ *Ibid*, 85.

²⁸ Jadranka Jelinčić, *Europeanization of Serbia: Capacities of Public Authorities and Local Self-Government Authorities* (Belgrade: Fund for an Open Society, November 2006).

momentum for reform picked up. As one former Serbian official put it rather hopefully in 2009: “The people working within public administration fully understand their capacity, but they also perceive their shortcomings, and more importantly how to address them.”²⁹ Unfortunately, the economic recession of 2008/2009 did not prove auspicious for administrative reform in Serbia or elsewhere.

Politicization

The difficulties of improving civil service professionalization in the region have been closely linked to the politicized character of public administration. Indeed, throughout the Western Balkans, efforts to depoliticize the civil service sector have gone very slowly. And despite a flurry of reform initiatives in the period 2002-2005, politicization in most states actually increased.³⁰ The most important reasons for this problem are the region’s deeply embedded tradition of political interference in administrative decisions, and the lack of a clear division between the public and private spheres. This legacy led to a situation where progress in reforming the state apparatus, both the public administration and the justice sector, lagged behind developments in other areas such as trade, energy and infrastructure. Members of the political elite often under-estimated the importance of public administrative reform for economic development and, in most cases, incumbent decision-makers simply wanted to maintain control of the bureaucracy in order to distribute positions and perks to their supporters. At the same time, the existing civil servants were often hostile to changes which disturbed their traditional modes of operation and personal networks (inertia, which often frustrated younger professionals).³¹

²⁹ Tanja Mišćević, “Serbia’s Administrative Capacity: Driving European Integration,” in Wolfgang Petritsch, Goran Svilanović, and Christophe Solioz (eds.), *Serbia Matters: Domestic Reform and European Integration* (Baden-Baden: NOMOS, 2009), 93-98. See also, *Public Administration Reform Strategy in the Republic of Serbia. Action Plan for Serbian Public Administration Reform Implementation 2009-2012* (Belgrade: Ministry of Public Administration and Local Self-Government, 2009).

³⁰ Aleksandra Rabrenović and Tony Verheijen, “Politicians and Top Civil Servants in Former Yugoslav States: Back to Discarded Traditions?” (September 28, 2005). The authors accurately point to the pattern of politicization that occurred in the successor states following the disintegration of socialist Yugoslavia. But they underestimate the degree of one party political control from 1946 to the late 1980s, and exaggerate the “traditions of a professional strong and impartial civil service system” that the Western Balkan polities have been able to draw upon as a basis for recent administrative development.

³¹ Anke Freibert, “Problems and Challenges on the Path of Making the Civil Service in the Western Balkans Professional and Non-Political,” *Hrvatska Javna Uprava* (2008), 8, No. 1, 31-45.

Indeed, administrative structures in the Western Balkans did not prove very willing or successful at allocating external assistance, or benefiting from such support for “good governance.” Thus it is estimated that in Serbia and Croatia only half of the EU assistance earmarked in 2001 for projects in public administration was actually dispersed by 2004.³²

Studies of Serbia’s administrative staffing in senior positions indicate that although Milošević was responsible for exacerbating the politicization of the Serbian civil service, the post-October 2000 experience under a multi-party system has been “even more politically colored.”³³ As a high-ranking government official told one researcher in 2001: “We get a number of young people sent by political parties and with an order from the minister to employ them. They’re usually arrogant, lack knowledge as to what a Civil Service career entails, and cannot fit in at all. You do not conflict with them if you want to survive...new ‘political commissars’ that is what they are; and call themselves ‘democrats’ with a capital ‘D’....”³⁴ Part of the problem in post-Milošević Serbia was that the new reform-oriented prime minister in 2001, Zoran Djindjić, had little experience in governing and little idea of how to go about restructuring public services, other than to place them under his political control. As Djindjić told one interviewer just after assuming authority, he and his colleagues “were trained in opposing, not in exercising political power.”³⁵ A study by Croatian specialists in 2003, also revealed the political context of the problem after Tudjman: “The relations between the government and administration are still treated as those of a *master vis-à-vis an apparatus* where the spoils system dominates in the political arena. This lessens or completely removed the need for the educated, professional and ethical civil servants.”³⁶ “Today,” as one of the analysts put it in 2003, “the administrative profession is thought to be a mere servant of politics.”³⁷

³² Svein Eriksen, “Promoting Good Governance in Eastern Europe – Domestic Responses to External Influences,” (May 2006), 6-8.

³³ Zeljko Sevic, “Measuring Performance on a Local Government Level in a Transitional Country: The Case of Serbia,” *International Journal of Public Service Management* (2005), Vol. 18, No.7, 597.

³⁴ *Ibid.*

³⁵ Svein Eriksen, “Unfinished Transition – Public Administration Reform in Serbia 2001-2004” (Unpublished Paper, May 2005).

³⁶ Ivan Koprić, “Education of Administrative Personnel: Experiences and Challenges,” in Ivan Koprić (ed.), *Modernization of the Croatian Public Administration* (Zagreb: Faculty of Law, University of Zagreb, 2003), 210.

³⁷ Ivan Koprić, “Modernization of the Croatian Public Administration: Issues, Proposals and Prospects,” in Ivan Koprić (ed.), *Modernization of the Croatian Public Administration* (Zagreb: Faculty of Law, University of Zagreb, 2003), 484.

The “spoils system” mentality generally has meant that each victorious incoming political party, or more typically a coalition of parties, not only changes the head of each ministry, but treats its entire administrative staff as its patrimony, and as an opportunity for rewarding its supporters with patronage appointments. When the political process is driven by a new governing coalition, and ministries are allocated along party lines, it raises the problem of policy coherence among ministries, and sometimes even coherence within ministries. Thus, after a coalition of parties won the Serbian legislative elections at the end of 2003, each ministry was managed by a miniature multi-party coalition of officials, with the result that individual ministries could hardly function at all.³⁸ After changes were made, and ministries were allocated among winning parties on a party-by-party basis, the related problem of inter-ministerial tensions and fragmentation arose, further undermining policy coordination. Indeed, cabinets in Serbian coalition governments often appear as a “confederation of fiefdoms” that have little capacity or will to function as a unified government. At worst, the government almost ceases to function, as in Serbia during early 2007, when the formation of a new coalition was greatly delayed over the question of awarding ministerial posts. The core of the problem resided within the polarized “democratic bloc,” particularly between the Democratic Party headed by President Tadić on the one side, and the Democratic Party of Serbia headed by caretaker Prime Minister Koštunica. For example, two different Democratic Party (DS) offers made to the rival Democratic Party of Serbia (DSS) to constitute a new government proved unworkable: “Koštunica as Prime Minister, but without the award of strong ministerial positions to his parties, or DSS control of several ministerial positions, but without [Koštunica as] Prime Minister.”³⁹ While deadlock continued through the spring of 2007, government and legislative policy-making was suspended and administrative effectiveness was impaired. The “feudalization” of the state administration by party machines continued after a democratic coalition (without Koštunica) government was

³⁸ *Danas*, December 30, 2004.

³⁹ One close observer of the Serbian bureaucracy notes that the politicization of ministries “has an impact on the quality and knowledge of office holders; on the one hand it prevents effective inter-ministerial and intra-ministerial cooperation. Not to mention the potential for violating the principle of equality before the law. It can even provoke competition among ministries, as well as different interpretations of the same law – regulation leading to uneven practices and application.” Branislav Malegurski, “How can Administrative Procedures Either Foster or Hamper Economic Development? Experiences of an Outsider Dealing with Public Bureaucracies,” (Sigma Regional Workshop on Public Administrative Reform and EU Integration, December 2005). See also Slaviša Orlović, *Politički život Srbije: Između partokratije i demokratije* (Belgrade: Službeni glasnik, 2008).

elected in 2008. And because each political party organization can decide on the placement of their loyalists in different ministries, it has almost been impossible for ministers to remove incompetent or redundant personnel. As one minister put it in 2009: “If you want to recall somebody you have to ask approval from a coalition partner. If that partner has a strong position within the ruling coalition it is not very likely that the recall shall occur.”⁴⁰

In some cases where two strong parties have alternated in government, politicization has weakened the capacity for reform efforts in the Western Balkans by undermining, rather than entrenching, the continuity of the administrative sector. For example, one study of the Albanian civil service found that 30-35 percent of civil servants were changed for political reasons during the period from July 2005 to May 2006.⁴¹ The Albanian political elite has, however, proven politically adept at paying lip service to EU demands for de-politicization and administrative reform. For example, on the eve of the 2009 election, the government hired 1,700 temporary staff, “mainly political militants,” who could guarantee control over state agencies. As one analyst put it, EU mechanisms were unable to “break ‘the informal rule’ of reshuffling the state and starting anew after each political turnover....The governing actors have not posed resistance to adoption of new rules, but showed great resistance to implement the laws.”⁴² Similarly, in October 2006, Macedonia’s government sacked over 500 public sector managerial personnel in a three day period after elections, despite EU criticism that civil servants must be shielded from political interference. As an EU official remarked in Skopje: “we have reacted to change of those people in whose training we invested.”⁴³ Prime Minister Nikola Gruevski responded to such criticism by pointing out that “it is normal that a political team coming to power and with its own program wants to work with people it trusts.” And a government spokesman observed that all the newly appointed officials were “professionals.”⁴⁴ Such responses, not inaccurately, underline the

⁴⁰ *BLIC*, May 25, 2009. See also, Boško Mijatović, *Reforms in Serbia. Achievements and Challenges* (Belgrade: Center for Liberal Democratic Studies, June 2008), 95-97.

⁴¹ Sigma Balkan Report, *Albania Public Service*, June 2006.

⁴² Arolda Elbasani, “EU Administrative Conditionality and Domestic Downloading: The Limits of Europeanization in Challenging Contexts” (Berlin: Free University, July 2009), Working Paper #2, 17-18. See also John O’Brennan and Esmeralda Gassie, “From Stabilization to Consolidation: Albanian State Capacity and Adaptation to European Union Rules,” *Journal of Balkan and Near Eastern Studies*, (2009), Vol. 11, No. 1, 61-82.

⁴³ Sabina Fakic, *Macedonia Axes Public Servants on ‘Political Grounds,’* Institute for War and Peace Reporting (October 12, 2006).

⁴⁴ *Ibid.*

fact that all alternating governments in democratic systems have some level of politicization. However, the problem in Macedonia, and elsewhere in the region, is less the existence of political interference in routine administrative affairs, and more the extent of politicization in appointments, both at the top of ministries and often more broadly. As one 2004 study in Croatia noted: “Croatia in an institutional-managerial sense...really doesn’t have (a politically independent) administrative elite. The fundamental reason (seen in practice) is the perception of the political elite that the management of ‘public affairs’ isn’t really a matter of well-educated professionals, but primarily a question ‘of the general affairs of politicians and employees.’ Functionally, administrative individuals are considered part of a ‘subordinate structure,’ and not an important developmental resource in the country.”⁴⁵ The practice of considering assistant ministers as political appointees, which continued up to mid-2008, was a particular problem impeding administrative continuity and professionalization in Croatia.⁴⁶

In Bosnia, the establishment of a new civil service agency established professional criteria for public administration, and eliminated the formal basis for overt political interference found in other states in the region. For example, a civil servant in Bosnia cannot be a member of a governing board of political party, and cannot follow the instructions of political parties. But research indicates that, in practice, below the level of the minister, politicization is still quite extensive with respect to personnel appointments. Although those who aspire to become civil servants are obliged to declare that they are politically independent, the Civil Service Agency of Bosnia does not monitor such declarations. Both the agency officials and the public generally believe that most civil servants belong to political parties, or are closely connected to politics through family and personal ties.⁴⁷ And ministers began using the legal possibility of appointing “advisors” in their ministries in order to recruit loyal political personnel. This *de facto* practice soon acquired “epidemic proportions,” and has reportedly created a kind of “parallel administrative service.”⁴⁸ Moreover Bosnia’s legislative structure has not proven very effective

⁴⁵ Drago Čengić, Sanjin Dragojević and Igor Vidačak, “Hrvatska administrativna elita i problemi upravljanja u procesu evropskih integracija,” in *Društvena istraživanja* (2004), Vol. 13, No. 1-2, 20.

⁴⁶ Antonija Petričušić, “Reforming the Public Service as the Precondition for Public Administration Reform in Croatia,” *Review of Central and East European Law* (2007), 32, 303-331.

⁴⁷ Reconstruction National Integrity Survey, Bosnia and Herzegovina (RNISS 2007).

⁴⁸ Esref Kenan Rasidagić, “Government Effectiveness and Accountability,” in *Democratic Assessment in Bosnia and Herzegovina* (Sarajevo: Open Society Fund Bosnia and Herzegovina, 2006), 204.

at monitoring its civil servants.⁴⁹ In the past, the small size and lack of expertise in Bosnia's central legislature has contributed to weak legislative oversight over the administration. Indeed, except for Croatia (see Table 2, appended), Western Balkan legislatures have quite small administrative staffs to assist them in the monitoring of laws by very large public administrative sectors. Insufficient staff and resources have combined with the low levels of professionalization among legislators to weaken governmental accountability throughout the region.⁵⁰

Meanwhile, in Kosovo, as governmental powers began to be transferred from UN interim administration to local authorities from 2005-2008, the major political parties engaged in a struggle to insert their loyalists into ministries; a pattern which appeared to intensify as the international community reduced its footprint. Kosovo's Minister of Public Services in 2007 observed that following a "formal recognition of the independence of Kosovo" he expected a dismissal of civil service employees because the existing administration was already built on "political bias and has a difficult socio-economic and political heritage and weak capacity."⁵¹ Politically motivated personnel turnover became quickly apparent after independence was declared and Kosovo's new ruling party, the PDP, began axing civil servants and policing their supporters into public administration posts, whether or not the new appointees were qualified. "We can't afford to have people from other political parties operating key sectors of the economy and government," one PDP official observed.⁵²

Ethnic Representation and Power-Sharing

In some Western Balkan states the development of a public administration that is supportive of an inclusive and democratic society is linked to issues of ethnic representation. This ethnic dimension of administrative development in Bosnia and Kosovo, for example, is reinforced by internationally designed regime norms that institutionalize ethnic power-sharing practices, and various policies for personnel selection on the basis of equitable representation. As

⁴⁹ Nikhil Dutta, Christina Hajdu, *et. al.*, *Strengthening Legislatures for Conflict Management* (Princeton: Woodrow Wilson School, 2006), 48-60.

⁵⁰ See, for example, *Transparency and Accountability in the Montenegrin Governance System* (Podgorica: National Democratic Institute, 2009).

⁵¹ Artan Mustafa, "Kosovars Concerned New Ministries May be Politicized," *Institute for War and Peace Reporting* (July 2005), No. 5, 6, 7, and *Kosovo Live News Agency*, February 27, 2007.

⁵² *Prishtina Insight*, June 14, 2008, 5.

elsewhere, views differ regarding the value of ethnic quotas. Do such methods and practices enhance overall stability by accommodating different groups? Or does ethnically-based recruitment to state institutions compromise considerations of merit and professionalism in the public service? Answers to those questions require careful empirical research in multi-ethnic settings. In any event, accommodating the desire of ethnic constituencies and minorities to get their perceived fair-share of administrative posts and resources is a major component in the political life and democratic consolidation of the Western Balkan states.

In Bosnia, Kosovo and Macedonia, for example, where ethnic divisions have been particularly deep, domestic political authorities and international actors have paid considerable attention to the issue of balanced representation in the public sector. For example, in Macedonia, a good deal of progress has been made in achieving more equitable ethnic representation in the state administration as stipulated by the Ohrid Accord of 2001. The 2009 EU Commission Progress Report for Macedonia observed that civil servants from non-majority ethnic communities (who comprised 35.8 percent of the population in 2001), increased to 26 percent at the central level by September 2009.⁵³ The EU data suggests that ethnic Macedonians, who comprise 64.2 percent of the country, make up 74 percent of the central level employees. Although an improvement on the situation eight years earlier, recruitment targets under the accords are being made very slowly. Albanians, as the principal minority ethnic community, have made the most progress, but the ethnic Turkish and Roma communities remain considerably unrepresented.

Indeed, fuller and more detailed information provided by Macedonian agencies provides a more complete picture of the representation problem than the EU report. Thus Albanians, who comprised approximately 25 percent of the population in 2001, have increased their position in the state administration from roughly 12 percent in 2002 to 15 percent in 2005/2006. And in some ministries, such as for the economy (19.8 percent), health (19.9 percent), and foreign affairs, the proportion of Albanians is even higher. However, in other sectors, such as the Ministry of Culture, there were only 90 Albanians out of 2,313 employees in August 2006, or 3.9

⁵³ Commission Staff Working Document: The Former Yugoslav Republic of Macedonia, 2009 Progress Report (Brussels: EU Commission, October 14, 2009).

percent of those employed. In the judiciary, Albanians constituted only 8 percent of those employed, only 3 percent of the public defence office, and there were no Albanians at all in the Republic Judiciary Council.⁵⁴ Moreover, 2008 data for designated civil servants in Macedonia's overall public sector indicates that although more Albanians have been appointed recently to a number of top jobs, ethnic Macedonians are still over-represented in the core positions within the civil bureaucracy (see Table 3, appended). Meanwhile, members of non-Albanian ethnic communities are strikingly under-represented below the very top positions.

In fact, Albanians are mostly represented at the top and bottom levels of administration. Still, total Albanian representation among civil servants has grown impressively from 5.6 percent in 2004 to 12.2 percent in 2006, and 15.5 percent in 2008. This has been achieved, however, in large part by increasing the overall size of the civil service: from 10,352 individuals in 2004 to 13,203 in 2008. Indeed, 37 percent of the new employees hired from 2004 to 2007 were Albanians.⁵⁵ Efforts at more equitable representation have clearly begun to reverse an earlier pattern of near minority exclusion, but only by expansion of the bureaucracy, and with considerable resistance from the majority. But low intensity inter-ethnic resentments and a constant focus on the question over who is "winning" and "losing," is at least a partial improvement over the inter-group violence that occurred in 2001.⁵⁶

The imperative of ethnic balance in administrative appointments and ethnic bargaining in decision-making has also been a major political issue in Bosnia that has sometimes subverted the promotion of professional standards and placed additional "stress" on governance-building.⁵⁷ In Bosnia, for example, the Dayton Peace Accord and post-Dayton constitutional amendments, have called for ethnic proportionality in the public services in line with the pre-war 1991

⁵⁴ Data from Secretariat for Implementation of Ohrid Framework Agreement (August 31, 2006), in *Analysis of the Inter-ethnic Relations in Republic of Macedonia* (Skopje: Zaednichki vrednosti, 2009), 153.

⁵⁵ *Analiza i politikata i budzetskite implikacii za Soodvetna i previchna zastapenost na zaednicite* (Skopje: Secretariat for Implementation of the Ohrid Framework Agreement, 2008).

⁵⁶ See Florian Bieber (ed.), *Power-sharing and the Implementation of the Ohrid Framework Agreement* (Skopje: Friedrich Ebert Stiftung, 2008), 7.

⁵⁷ *Balkans Public Administration Reform Assessment, Bosnia Herzegovina* (Sigma, June 16, 2004), 1. See also *Balkans Public Administration Reform Assessment, Former Yugoslav Republic of Macedonia* (Sigma, January 30, 2004), and *Macedonia, Blue Ribbon Report* (UNDP, October 2006), 64-66.

census.⁵⁸ But in practice, ethnic proportionality has meant little more than a general consensus among the major ruling mono-ethnic parties to divide up central administrative posts in a more or less proportional manner, leaving minority groups under-represented, particularly in the entity public services (provisions of the Bosnian constitution, which provide that only members of constituent peoples are eligible for top political positions has had the same effect). Moreover, because no census has been held in Bosnia since 1991, it is almost impossible to accurately determine the current ethnic representativeness of Bosnia's public administration. This has recently resulted in increased inter-ethnic squabbling regarding the issue of group representation. For example, in August 2009, Nikola Špirić, the incumbent chair of the Council of Ministers, claimed that a "certain imbalance" existed in the ethnic representation of top civil servants based on a report that the Council had requested. According to Špirić, out of 383 top officials and government institutions, there were 163 Bosniaks (42.6 percent), 113 Serbs (29.5 percent), 93 Croats (24.8 percent), and 12 "others" from minority communities (3.1 percent).⁵⁹ As some calculations of Bosnia's 2009 population estimate Serbs as constituting approximately 34-37 percent of the population, Špirić's claim would have some, albeit very little, validity (although hardly any when compared to the 1991 census when Serbs were some 31 percent of Bosnia's population).

Meanwhile, Bosniak leaders have also complained of under-representation based on other evidence. Thus, Sulejman Tihić, the president of the Party of Democratic Action, claimed that during the period Špirić presided over the Council, 13 Serbs, 7 Croats, and 4 Bosniaks were appointed to leading administrative positions. This allegedly altered the balance in 60 state institutions to 25 Serbs, 19 Bosniaks, 15 Croats and 1 majority person.⁶⁰ Tihić claimed that "there is an agreement between the Serbs and Croats at the expense of Bosniaks."⁶¹

Somewhat clearer evidence on ethnic representation in the two entities indicates the results of the ethnic reconfiguration ("ethnic cleansing") of the country that occurred during the 1992-1995 conflict. Thus, in the Republika Srpska, over 90 percent of civil servants are Serbs,

⁵⁸ Dragan Ivanović, "An Ethnic Veto and Protection of Minorities on Sub-national Level in BiH," Policy Brief, Open Society Fund, Bosnia and Herzegovina (2007-2008).

⁵⁹ Bosnian Serb Public Television, August 24, 2009 in BBC Monitoring, August 27, 2009.

⁶⁰ *Europa Magazine*, September 2009, 17. Croats have had the same complaints. See *Dnevni list*, August 10, 2008.

⁶¹ *Dnevni avaz*, August 25, 2009.

while in the Federation, the same proportion of posts are held by Bosniaks (66.5 percent) and Croats (26.19 percent) together.⁶² The skewed ethnic composition of political and administrative posts in each of Bosnia's entities has reinforced an entity-centric outlook and entity versus center jurisdictional tensions, particularly between the Republika Srpska and the weak central state institutions. RS Prime Minister Dodik went so far in December 2008, as to question whether "Muslim judges" in the central level Court of Bosnia Herzegovina could be depended upon to fairly adjudicate an issue regarding the RS.⁶³ It is the predominantly Serb RS that has been most culpable in blocking the initiatives of the central authorities and institutions. In fact, administrative segmentation into two entities, a weak central government, the Brčko District and ten cantons in the Federation have made it impossible to readily identify a unified administrative structure in the country.

Overall in Bosnia, disproportions in ethnic representativeness have been less responsible for political tension and lack of reform than have elite driven jurisdictional rivalries particularly between the entities on the one side (especially the Republika Srpska), and the central state institutions on the other. Decision-making paralysis increased in Bosnia during 2008 and 2009, as ethnic polarization in the political class intensified over the persistent issue of entity rights versus central government prerogatives. The new round of constitutional discussions that began in October 2009 was intended to strengthen the central institutions and the cohesion of the country. But, as mentioned earlier, at the outset of 2010 achieving that goal remained elusive. The major stumbling block was how to diminish the role of ethnic politics as channelled through the entities, and the use of the entity veto in the central legislature.

In Kosovo, prior to 2008, affirmative action policies for the employment of minorities had been a centerpiece of UNMIK policy, as well as the Provisional Institutions of Self-Governance. By mid-2005, about 10.2 percent of the staff in Kosovo's central institutions were minorities, and around 7 percent were Serbs. But even such proportions of minority representation came under considerable criticism from members of Kosovo's Albanian majority, who argued that minorities were being "pampered," and that they do not perform their jobs

⁶² *Blic*, July 27, 2009 and Erduan Katana, [Report from Banja Luka,] June 24, 2009.

⁶³ ONASA, December 10, 2008.

adequately.⁶⁴ Following Kosovo's declaration of independence in 2008, the public administration not only became increasingly politicized, but many Kosovo Serbs withdrew from the administration.⁶⁵ Between 2008 and 2010, no significant progress was made in improving minority representation in political life.

Corruption

Deeply entrenched practices of corruption have been especially corrosive to administrative development, and indeed to general economic growth and democratic consolidation in the Western Balkans throughout the post-2000 period. For example, comparative studies of the problem in 2001-2002, indicated that citizen attitudes regarding the degree and tolerance of corruption differed little among the Western Balkan countries. Respondents in Macedonia, Bosnia, and Kosovo perceived corruption as particularly extensive.⁶⁶ Unfortunately, internationally assisted efforts by the regimes in the region to reverse the spread of corruption – an endemic problem in Southeastern Europe that was exacerbated by the pattern of conflict and state debilitation in the 1990s – have had only limited success. The comprehensive 2008 United Nations report on patterns of crime in the Balkans found that conventional criminality had decreased in the region, but a serious problem still existed as a result of the widespread collusion between politicians and criminals.⁶⁷

Beyond the temptation of those active in the established party organizations, and particularly those holding elected and appointed posts, to enrich themselves illegally, a number of additional factors have been responsible for the spread of corruption in the region. They range from the low salaries of officials to imperfect legislation and internal administrative controls, the legacy of problems from the pre-communist and communist period (e.g., the blurred lines between the public and private sectors), the decline in public morality during the late communist

⁶⁴ "Serbs, Scroungers of Government," *Kosova Sot* (Prishtina, May 17, 2005), 3.

⁶⁵ *Human Rights, Ethnic Relations and Democracy in Kosovo* (Summer 2007-Summer 2008), (Prishtina: OSCE, 2008), 22. In Kosovo's central civil service, the representation of non-majority communities decreased from 12 percent in 2006 to 9 percent in 2009, although such representation is higher in the judiciary. Communities Rights Assessment Report (Prishtina: OSCE, December 2009).

⁶⁶ *Corruption Indexes: Regional Corruption Monitoring in Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Macedonia, Romania and Yugoslavia* (Sofia: Vitosha Research, April 2002).

⁶⁷ *Crime and its Impact on the Balkans* (New York: United Nations Office on Drugs and Crime, 2008).

period, and the continued weakness of judicial and legal systems within individual polities. Recent research indicates (see below) that most of the same problems apparent at the onset and end of the 1990s continued to manifest themselves throughout the next decade despite the considerable regional efforts to control corruption. Generally in post-communist states, a surfeit of anti-corruption institutional innovation has not been able to improve integrity in public life absent political forces that are committed to the task.⁶⁸

During the post-2000 period, the emphasis of anti-corruption efforts shifted from strategies of “awareness raising” to those of “capacity building,” but numerous obstacles would impede the newer initiatives.⁶⁹ Each country had its own special difficulties. But a number of general problems afflicted the region: 1) mobilizing and sustaining sufficient civil society support for a long-term anti-corruption agenda, 2) weak government commitment to such projects, which prevented follow-through on announced goals, and 3) the misuse or abuse of anti-corruption mechanisms (specialized agencies, prosecutorial powers) as tools to attack political opponents. The result was typically to perpetuate low levels of trust in state institutions.

Anti-corruption efforts throughout the Western Balkans have suffered from the polarized pattern of political party competition and elite dynamics, as well as the still embryonic stage of civil society. A mismatch between the desire of foreign donors for in-depth institutional reforms to eliminate corruption on the one side, and the general public’s desire for quick results on the other side, also undermined support for anti-corruption policies. Moreover, external donors frequently neglected the fact that policies stand little chance of success without the sincere and sustained commitment of authorities at all levels within the region. As a study of corruption in Bosnia in 2005 remarked: “The mere existence of anti-corruption efforts is not an indicator of how seriously the government is committed...[and] the fact that a number of objectives set out in a strategy have been achieved already is not a real indicator of commitment either since ongoing

⁶⁸ Daniel Smilov, “Designing Anticorruption Institutions in Central and Eastern Europe,” *Development and Transitions* (2009), No. 12.

⁶⁹ Martin Tisne and Daniel Smilov, “From the Ground Up: Assessing the Record of Anti-Corruption Assistance in South Eastern Europe,” (2004), Bryane Michael, “The Rise and Fall of the Anti-Corruption Industry: Towards Second Generation Anti-Corruption Reform in Central and Eastern Europe?” and Alina Munghiu-Pippidi, “Corruption: Diagnoses and Treatment,” *Journal of Democracy* (July 2006), Vol. 17, No. 3, 86-99.

reform efforts are largely driven by the international community.”⁷⁰ And in the case of Kosovo, long-time uncertainty about the status of the polity itself, plus confusing lines of responsibility and enforcement within the government structure, fed corruption.⁷¹ The persistence of corruption and organized crime networks in Kosovo was a key factor behind the European Union decision to place the “Rule-of-Law Mission” (EULEX) at the forefront of plans to assist international supervision of the area once it achieved “conditional” independence in 2008. EULEX’s efforts took time to get underway, but by the summer of 2010, the mission’s anti-corruption efforts had become a subject of major political controversy in Kosovo. The difficulty of eliminating corrupt practices in Kosovo was particularly complicated by the role of traditional kinship connections and their role in clientelism and nepotism. For example, a 2005 article in a Priština paper, claimed that Albanian employees working in the public service sector at the airport “did not call each other colleague or ‘chief,’ but rather ‘uncle,’ ‘nephew,’ and ‘cousin’.” According to the article, the head of airport security employed about 17 cousins in the public company.⁷² Anti-corruption efforts by international officials to alter such patterns have had limited success. Indeed, a 2008 survey in Kosovo indicated that 91 percent of respondents believe that in order to get a job it is better to have political connections than to be qualified.⁷³ A recent Gallup poll indicates that familial connections may actually be even more extensive in Montenegro – where clan-based connections remain very important – and in Bosnia.⁷⁴

World Bank opinion surveys in the Western Balkans conducted during 2006 revealed quite “mixed” findings on the consequences of anti-corruption efforts. For example, Croatia appeared to have made progress in reducing facets of “state capture,” i.e., corruption in the law-making process (particularly bribes to parliamentarians and government officials). But high levels of state capture were still perceived as a problem by respondents surveyed in Albania, Bosnia, Macedonia, Serbia, and Montenegro during the post-2000 period. Indeed, the problem of

⁷⁰ Vera Devine and Harald Mathisen, *Corruption in Bosnia and Herzegovina* (Bergen: Chr. Michelsen Institute, 2005), 56.

⁷¹ Fron Nazhi, “Combating Corruption in Kosovo” *The Anti-Corruption Action Plan: Social and Economic Necessity for Kosovo* (October 2006).

⁷² *Express*, June 17, 2005, cited in *Reconstruction National Integrity Survey, Kosova 2007*, 46.

⁷³ Leonard Ibrahim and Faton Pocolli, *The Principle of Equal Opportunity in Kosovo’s Employment System: A Survey of Citizen Perceptions* (Priština: KIMP, November 2008).

⁷⁴ Gallup Balkan Monitor, *2008 Analytical Report* (2008), 31-33.

state capture seemed to be worsening in both Serbia and Montenegro along with petty or administrative corruption.⁷⁵ A study of citizens' attitudes on corruption in Serbia carried out in 2006 was very similar to earlier World Bank surveys, as well as evidence from Transparency International Studies.⁷⁶ A 2009 study of Kosovo, funded by the European Commission, found that a "culture of corruption" was "heavily embedded in institutions and as a result citizens are encountering difficulties with the functions of the state and other institutions."⁷⁷ And in Montenegro, the political elite's reputed involvement in organized smuggling of cigarettes and also reported corruption in the public service gave the small state one of the worst reputations in the Western Balkans.⁷⁸

And although Croatia was generally touted as a leader among the Western Balkan polities with respect to its efforts and successes at combating corruption, survey research continued to reveal corruption as a widespread problem in public institutions, particularly the judiciary, the health sector and local government. For example, in February 2006, Croatian Prime Minister Sanader sent a negative signal to the international community by sacking Justice Minister Vesna Škare-Ožbolt, who had been an advocate of a bold anti-corruption strategy and an independent judiciary. While the move was connected to inter-party politics – the former minister belonged to a small party in Sanader's ruling coalition – the government subsequently watered-down its anti-corruption policy, and continued problems in the court system (millions of backlogged cases, a weak state prosecutor's office, and officials facing corruption allegations), represented serious deficiencies in the rule-of-law. Meanwhile, Škare-Ožbolt suggested that the condition of the Croatian court system was "weak," and that "the Croatian path to Europe will have further difficulties."⁷⁹

⁷⁵ James H. Anderson and Cheryl W. Gray, *Anti-Corruption Transition 3: Who is Succeeding and Why?* (Washington: The World Bank, 2006).

⁷⁶ Vesna Pešić, *State Capture and Widespread Corruption in Serbia* (Center for European and Policy Studies, March 2007), CEPS Working Document No. 262, and *Serbia Global Corruption Report 2006 Part 2*, 235-236. In 2006, Serbia ranked 90th out of 146 countries in the Transparency International Corruption Index, 2006.

⁷⁷ *Study of Corruption in Kosovo* (Priština: EU-AC, 2009).

⁷⁸ Marijana Trivunović, Vera Devine, and Harald Mathisen, *Corruption in Montenegro 2007* (CMI 2007), and *Korupcija iz perspektive poslodavaca* (Podgorica: UPCG, 2008).

⁷⁹ Bojan Klima, "'Croatian Justice' – Članak Vesne Škaric Ožbolt u Wall Street Journalu," VOA News.com, February 2, 2006.

During 2008-2009, after a spate of further corruption scandals, the issues of honesty and integrity in the governmental system became a controversial domestic issue complicating Croatia's entry into the European Union. When Sanader resigned suddenly in July 2009, there were widespread allegations that he had allowed corruption to go unchecked throughout the ruling HDZ elite. Indeed, corruption became a major issue in the presidential election of 2009/10. One of Croatia's top journalists, Davor Genero, put his finger on the issue that had come to plague the political class in Croatia and also the entire region. He pleaded with his readers to concentrate their attention on the matter of corruption when casting their votes: "Every relevant presidential candidate could be expected to have a clear anti-corruption strategy. But a strategy is not enough. What is needed most of all is a personal background that is free of even a whiff of corruption, which also means a clearly defined origin of personal and family assets, as well as a career devoid of suspicion of corrupt activities, especially suspicions of having created a network of associates and supporters by way of illicit activities and the spending of public money."⁸⁰ Following the election of Ivo Josipović as Croatia's president in 2010 – who had an unblemished record and was strongly committed to ethical governance – it appeared that the Croatian elite would accelerate its anti-corruption efforts.

The Challenge of Judicial Reform

Problems associated with the establishment of an uncorrupted and independent judicial sector have also been a persistent obstacle to Western Balkan administrative and rule-of-law development. A comprehensive 2004 comparative study of judicial institutions in the region revealed that a "lack of the political preconditions for [judicial] independence is visible in many countries... an insufficient culture of independence and separation of powers and functions still emerges in the whole region due to the presence of legacies of the political culture." The same study found that corruption was still a serious problem in the region, and this was in part due to the fact that the salaries of judges were "below the level of decency."⁸¹ And although the system

⁸⁰ *Vjesnik*, October 13, 2009.

⁸¹ *Reinforcement to the Rule of Law, Division of Competencies and Inter-Relations Between Courts, Prosecutors, the Police, the Executive and Legislative Powers in the Western Balkan Countries Final Report*. Brussels, European Commission, Europe AID Cooperation Office, July 2004, 25-26, 30-31. See also *Judicial Reform in Countries of*

of financing courts had improved in Albania and Macedonia, the judiciary remained dependent on the executive and legislative branches of government in Croatia, and in Serbia and Montenegro. Mechanisms to ensure the accountability of judicial officials in the region were also seen to be “underdeveloped.”

EU standards for combating judicial corruption have nonetheless made gradual progress in the post-2000 period. Structural changes and innovations have been slowly improving the administration of justice in some countries. Advances in the professionalization of the judiciary encouraged by professional associations, have also improved the autonomy and role of the judicial sector.⁸² For example, in Serbia, assertive members of the judiciary, particularly in the Serbian Society of Judges, sound deeply committed and outspoken about developing their profession as a sector that is an independent “branch of power.” As Vida Petrović-Škero, the president of the Supreme Court of Serbia, put it in 2007:

EU standards for combating judicial corruption have nonetheless made gradual progress in the post-2000 period. Structural changes and innovations have been slowly improving the administration of justice in some countries. Advances in the professionalization of the judiciary encouraged by professional associations, have also improved the autonomy and role of the judicial sector.⁸³ For example, in Serbia, assertive members of the judiciary, particularly in the Serbian Society of Judges, sound deeply committed and outspoken about developing their profession as a sector that is an independent “branch of power.” As Vida Petrović-Škero, the president of the Supreme Court of Serbia, put it in 2007:

We do not agree to the dependence of a judiciary which involves itself with the dirty laundry of routine politics, instead of being a symbol of a law-governed state. We don't agree to conform to routine politics and judicial interpretations which are constructed by the political will of one or another [political] party, or the election of judges who are

South East Europe (Brussels: Directorate-General for External Policies of the Union Directorate B, Policy Department, September 13, 2006).

⁸² See Milica Golubović, “Judicial Professional Associations: Fostering Judicial Reform Through Civil Society Development,” *Southeastern Europe* (2009), 33, 48-62.

⁸³ See Milica Golubović, “Judicial Professional Associations: Fostering Judicial Reform Through Civil Society Development,” *Southeastern Europe* (2009), 33, 48-62.

loyal, but are not competent. We don't agree to defend society from democracy, because democracy needs to be defended from the state.... We don't agree to silence about the embarrassments of the judiciary, if I'm already turning red from shame because of less than honorable decisions of the judiciary.⁸⁴

Despite such a commitment, problems of judicial development in Serbia and throughout the region have been slow to change, especially where confronting a deeply embedded extra-legal culture. As one of Serbia's leading human rights activists observed:

Experience shows that people don't believe they can achieve much in the courts, that it is better to have good 'connections.' At least that's what our research shows. In Tito's time there was an office of the President of the Republic, and because Tito was a Marshall, it was called the Marshalat. Many people ignored the deadlines for appealing to courts because they directly appealed to the Marshal. That kind of desire by a subject to achieve rights, but not from the courts is a bad tradition in this country. Submissiveness to executive authority, to the top leader has lasted a long time and deformed the basic instinct [in Serbian society] regarding the equality of people.⁸⁵

After a considerable period of political division and drift in Serbia from 2006-2008, the election of a more vigorous democratic coalition set the stage for judicial reform legislation in December 2008, and the establishment of a de-politicized High Judicial Council and State Prosecutorial Council in April 2009. There was optimism that "for the first time," according to the Justice Minister, "judicial selections between July 30 and December 2009 will be transparent and devoid of political influence."⁸⁶ However, in early 2010, the first indicators from the appointment of new judges and prosecutors suggested that the process remained non-transparent and had done little to remove doubts regarding nepotism and political influence in the judicial sector.⁸⁷ Several leading Serbian judges called the process "a slap in the face of the judiciary and democracy."⁸⁸ The problem of judicial independence was also problematic in neighbouring

⁸⁴ *Danas*, June 25, 2007.

⁸⁵ Vojin Dimitrijević in *Danas*, June 16-17, 2007.

⁸⁶ *Tanjug*, July 30, 2009.

⁸⁷ Vesna Pešić, "On the Appointment of Justices and Prosecutors," *Peščanik*, December 30, 2009.

⁸⁸ Radio Serbia, December 23, 2009 in *BBC Monitoring Europe*, December 24, 2009. The High Judicial Council appointed 1,531 judges to permanent judicial positions and 876 candidates for first appointment to judicial posts. But 837 judges were not reappointed, without detailed explanation or legal recourse. In 2010, the European Commission asked Serbia to repeat the entire process for judicial appointments.

Montenegro, where by 2009, management rules for the judiciary have been put in place but the judicial and prosecutorial services were still “visibly vulnerable to politicisation.”⁸⁹

Even in front-runner candidate states such as Croatia and Macedonia, persistent problems with corruption and judicial development have continued to slow momentum through the EU accession process. Visiting Croatia in April 2007, EU Justice Minister Franco Frattina asked that the fight against corruption be made a top priority and emphasized that politicians and judges are not above the law: “legislative reforms are not enough. They need to be fully implemented,” he said.⁹⁰ Recognizing such deficiencies and EU frustration on such matters, Croatia launched a major project in June 2007 to improve judicial efficiency, increase transparency, and reduce corruption.⁹¹ At the same time Croatia was hit by a national scandal regarding corruption by high officials of the country’s troubled Privatization Fund, leading to some calls for the resignation of the prime minister. Croatia’s Justice Minister commented in 2009 that “the European Commission’s grade to Croatia’s progress in the judiciary could be described as C-. However, Croatia is preparing a package of laws on the independence of the judiciary, so one can expect the grade to improve to B- by the end of the year.”⁹² Alan Uzelac, a Croatian legal development specialist, has usefully pointed out that members of the current judicial elite in Croatia – many of whom had been educated in or had adopted the “socialist legal tradition” which views law as instrumental to the ruling political order – have embraced the notion of “judicial independence,” but only as a means of preserving and perpetuating the exclusive role of judges and magistrates in the judicial sector. This is not necessarily a desirable matter in terms of developing judicial impartiality and democratic change. Indeed, the conservative values of Croatia’s judiciary have been an obstacle to judicial reform in the country. Thus, by controlling all spheres of the judiciary (e.g., the High Judicial Council, Professional Associations, drafting of new legislation, the socialization of new judges, etc.), many unreformed members of the “judicial oligarchies” exercise considerable political leverage and “play a part in the political games.” Professional legal elites can thus use the notion of “judicial independence” to entrench traditional values and

⁸⁹ Sigma Assessment, Montenegro, Public Integrity System, May 2009.

⁹⁰ *South East European Times*, April 18, 2007.

⁹¹ Eastbusiness.org, June 4, 2007.

⁹² *Hina*, October 15, 2009.

ways of conducting the judicial process.⁹³ A 2009 OSCE study in Macedonia found that almost half (43 percent) of 421 surveyed judges felt that they regularly were subject to external pressure by executive, administrative, judicial and political officers (37 percent said they were not and 20 percent did not answer the question). Seventy percent of those surveyed believed that the members of the country's Judicial Council (composed of members of the legislature, the executive and the judiciary), had been selected on the basis of "biased criteria"). A retired Supreme Court judge who took part in the analysis inquired "how citizens trust such a judicial system, when significant numbers of judges do not believe in the system."⁹⁴

In Albania, which trails among Western Balkan EU aspirants, corruption runs throughout the public administration, including the judicial sector, at a very high level despite years of discussion and numerous policy statements regarding the issue: "Albania is in urgent need of reform of the judicial sector," remarked the country's Justice Minister in early 2007, as he announced a new 5-million Euro EU project to improve the quality of trials and increase the number of judges.⁹⁵ The urgency of judicial reform in Albania was underlined by 2008 Gallup poll results, which found that only 22 percent of Albanian respondents had confidence in their judicial sector and courts. This was the lowest level in the region, and close to the same low level was found in Macedonia. The regional median of 30 percent expressing confidence in the judiciary was approximated by the findings for Croatia and Serbia, and was considerably below the EU median of 47 percent.⁹⁶ Meanwhile, in Kosovo, judicial institutions reflected the situation of a very "unfinished state," with overlapping and conflicting lines of authority. In 2009, the EULEX mission had not been able to eliminate a highly politicized judicial system, nor to establish a merit-based appointment process for judges.⁹⁷ The challenge for EULEX was complicated by the existence of a Belgrade-funded "parallel" justice system in Serb-controlled

⁹³ Unpublished paper, "Survival of the Third Legal Tradition?" Paper delivered at the International Association of Procedural Law (Toronto, 2009).

⁹⁴ Saše Dimovski, "Survey Shows Macedonian Judges Still Fear 'Pressures'," BalkanInsight.com, January 6, 2010.

⁹⁵ *Rilindja Demokratija*, World News Connection, April 24, 2007, 54; Citizen Trust in the Albanian Judicial System is Low and Showed No Change from 2005-2006. *Corruption in Albania: Perception and Experience Survey, 2006* (Tirana: Institute for Development Research and Alternatives, March 2007). See also *Analyses of the Criminal Justice System of Albania* (OSCE, 2006), 167-178.

⁹⁶ Cynthia English, "Many in the Balkans Lack Confidence in Judicial Systems," March 10, 2008.

⁹⁷ Vedran Džihic and Helmut Kramer, "Kosovo After Independence: Is the EU's EULEX Mission Delivering on its Promises?" (Friedrich Ebert Stiftung: July 2009).

north Mitrovica. At the end of 2009, Serbia's appointment of judges for the parallel system provoked a protest from EULEX and international actors.

The deep distrust and low evaluation of Western Balkan judicial systems not only reflected the malfunctioning of existing institutions and of judicial and administrative actors, but clearly had a trans-generational impact that impeded the development of a legal culture supportive of democracies. For example, a 2009 study of students and teachers in Bosnia found the “worrying fact” that they usually do not have a “trust in justice.... Three-fifths of students believe that the society in which they live is unjust, while even a third do not believe that justice wins over injustice.”⁹⁸ A December 2009 OSCE study found that in the preceding twelve months, instances of undue political pressure on the Court of Bosnia and Herzegovina and the central prosecutor's office had reached an “unprecedented level.”⁹⁹

From 2007-2010, the Western Balkan countries all accelerated their efforts to fight corruption and deficiencies in the rule-of-law, but they were making up for the earlier loss of valuable time, and in many respects were still in the take-off stage of meaningful state-building, that is, implementation of legislation on these matters. For example, the 2009 Progress Reports on the individual Balkan countries – an important guidepost for the region's political elites – suggested that corruption was still “widespread” (in Macedonia), “still prevalent in many areas” (Croatia, Serbia, Kosovo, Montenegro and Albania), or that “little progress had been made in fighting corruption” (Bosnia). The judicial systems of the region were also identified as an area where reforms were taking place (with notable momentum in Macedonia) but still “remained to be tested in practice” (Croatia), were only “moderately advanced” (Serbia) or remained at “an early stage” (Kosovo, Bosnia, Albania). Both EU and domestic officials have increasingly acknowledged that over the last two decades in post-communist countries “the importance of the rule-of-law was sometimes under-estimated.” As the EU Commissioner for Enlargement put it in October 2009: “while in the early 90s [the] first, and often the only commandment was: ‘Privatize,’ they now underline that the most important thing was actually to put in place a

⁹⁸ Discrimination of Children in Schools in Bosnia and Herzegovina (Oslo: Save the Children, Regional Office for Southeast Europe, 2009), 8.

⁹⁹ *Independence of the Judiciary: Undue Pressure on BiH Judicial Institutions* (Sarajevo: OSCE Mission to Bosnia and Herzegovina, December 2009).

modern constitution, to reform the judicial system, including the courts, and to build credible law enforcement authorities.”¹⁰⁰ Indeed, a report of the European Court of Auditors towards the end of 2009 questioned the sustainability of European Commission institution-building projects that had been conducted in the area of justice: “The reason for this was continued political weakness and lack of commitment (ownership) by the beneficiaries, as most projects did not come from within the region but from the Commission and other external stake-holders.”¹⁰¹

Decentralized Governance and Democratization

Western Balkan elites have often resorted to various forms of decentralization as a way to combat corruption and address widespread citizen distrust toward public administration and judicial institutions. Each state in the region has pursued its own varied strategy of decentralization. But in all cases, they are aimed at promoting improved public administration by enhancing the effective delivery of services and improving the accountability of government to citizens (through local oversight of officials). Decentralization strategies are also sometimes touted as a way to nurture a new and more democratically oriented type of politician. And, in multiethnic settings, various modes of devolved authority are viewed as a way to satisfy demands for ethno-cultural autonomy and/or the representativeness of local government to minority groups.

Because various schemes of decentralization and regionalization are so varied and complex – involving fiscal, administrative and political decentralization – it is difficult to make sweeping generalizations about their success in the region. In some countries with deep ethnic divisions such as Macedonia, Bosnia and Kosovo, as discussed above, the centralization versus decentralization debate has often been extremely contentious and sometimes destabilizing. Other countries, such as Serbia, Croatia, Albania and Montenegro have experimented with modes of regionalization and the devolution of authority to municipalities not primarily in order to

¹⁰⁰ Olli Rehn, “Lessons from EU Enlargement for its Future Foreign Policy” (Brussels, October 22, 2009), Speech 09/492.

¹⁰¹ Press Conference with Maaten B. Engwirida, *Special Report 12/2009 on the Effectiveness of the Commission projects in the Area Justice and Home Affairs in the Western Balkans* (Brussels: European Court of Auditors, October 13, 2009), ECA/09/57.

accommodate ethno-regional or sub-cultural demands, but to implement measures called for by both domestic and international actors for more effective democratic and accountable governance. Such initiatives have, in most cases, contributed to the formal de-concentration of governmental responsibilities and also stimulated considerable discussion of non-centralized models of organizing regimes. In comparative terms, considered in 2008 together with the experience of European and CIS countries, most Western Balkan states could be ranked as “advanced intermediate decentralizers” (Macedonia, Albania, Croatia, Montenegro, Serbia and Kosovo) because they have established “full systems of local government,” and have made progress in “building the policy and legislative setting for decentralization.” But legislative reform is only a first step. In Albania, for example, the establishment of a Regional Council is regarded as an “empty box,” because regional and local officials often lack the capacity to deliver public services and promote economic development. The systematic turnover of local staff after each municipal election has also weakened capacity in Albania.¹⁰²

Overall, efforts in the Western Balkans to combat local corruption, satisfy the demands of ethnic cultural groups, and foster political participation or to create democratic linkages between citizens and the state through schemes of decentralization and regionalization have met with only limited success. Indeed, when the overall public administration sector is already riven by systematic problems such as organizational fragmentation, politicization, lack of professionalism, and corruption, models of decentralization and regionalization can actually compound problems, at least temporarily. In Bosnia, for example, with three ethno-political elites and a host of ethnically-oriented political parties dominating the scene, a weak central government and a multiplicity of regional and sub-regional administrative-political units has only accentuated fragmentation and a dysfunctional governmental system in which decision-making is impaired and corruption is rife. Strategies and “Action Plans” for fighting corruption have not seriously been implemented by entity and local authorities who are sometimes closely associated with criminal elements. Corruption is also most widespread and apparent to observers at the local government level – especially in the legal, health, and education sectors – because of the direct personal contact between officials and citizens.¹⁰³ Of course, it is difficult to classify

¹⁰² Decentralization in the European and CIS Region, Discussion Paper (Bratislava: UNDP, April 2008), 16.

¹⁰³ Srdjan Blagovčanin, *Korupcija u Bosni i Hercegovini* (Sarajevo: Friedrich Ebert Stiftung, 2009), 9.

Bosnia as either decentralized or centralized because the entities and cantons, i.e., the mid-level of governance, have considerable powers and resources vis-à-vis local governments. Thus, viewed from the local level, Bosnia is a case of extreme centralization, but not because of central institutions.¹⁰⁴ The renewed constitutional reform discussion, which began in Bosnia in 2009, is not likely to address decentralization on the local level, at least in the short-run.

When inter-group tensions are at a fever pitch in a country, over-concentration on power distribution through decentralization can also deepen ethno-cultural divisions. For example, in Kosovo, beginning in 2008, the radical Kosovo Self-Determination Movement had some success in convincing Kosovo Albanian citizens that internationally-inspired decentralization plans to assist minority rights placed them at a disadvantage compared to minority Serbs. And some Kosovo Albanians also perceive disadvantages from the transfer of power from the central government to local governments because the latter jurisdictions are financially weaker. Many Kosovo Albanians were already predisposed against decentralization because Serb communities in northern Kosovo and elsewhere had established what some in the country's ethnic majority considered a "state within a state." By and large, however, most Kosovo Albanians regard decentralization of powers to the Serbian community as a foregone conclusion since it is a core feature of Ahtisaari Proposal, that is, the plan that paved the way to independence in 2008, and would theoretically accommodate 80 percent of Serbs in self-government local units. Most Serbs, meanwhile, have remained suspicious that any decentralization plan that is organized by Kosovo state authorities and international actors will erode existing Serb structures of parallel authority (including control of schools and hospitals).¹⁰⁵ The participation of a small number of Serbs in the Kosovo 2009 local election encouraged Kosovo officials to believe that their decentralization could move forward. But EULEX officials created a storm in early 2010 when they suggested that Belgrade's agreement to determination of Serb control structures in north Mitrovica might be linked to Serbia's chances to enter the European Union.

¹⁰⁴ Zdravko Miović, "Bosnia and Hercegovina Between Centralisation and Decentralisation," Paper for the Conference, *Decentralisation Between Regionalism and Federalism in the Stability Pact Countries of the Western Balkans* (Tirana, June 9-10, 2006).

¹⁰⁵ *Implementing Decentralization in Kosovo: One Year On* (Pristina: Kosovo Local Government Initiative, June 2009).

Macedonia has also been trying to implement a decentralization strategy since the Ohrid Agreement of 2001 provided for devolution of greater power to municipal units. From its onset, the Ohrid decentralization strategy has been regarded by most ethnic Macedonians as a way that the predominantly ethnic Albanian municipalities would link up in some way to form a kind of “enclavization’ of municipalities” that would eventually combine and lead to the federalization or collapse of the state.¹⁰⁶ Most citizens of Macedonia, however, grudgingly accepted that the decentralization mandated by the Ohrid Accord was necessary to prevent violence in the country. More enthusiasm for decentralized governance was shown on the Albanian side. In view of the strong political divide, the implementation of decentralization progressed slowly and non-transparently with a kind of “centralized approach to decentralization.”¹⁰⁷ For example, a 2004 referendum to overturn an early decentralization plan was defeated because turnout fell well below 50 percent. But because the referendum did not lead to further violence or instability, the vote was generally seen as a state-building success.

A new phase of decentralization began in July 2005. In 2006, out of 84 municipalities in the country, 32 had a highly mixed ethnic composition and comprised 41 percent of the state’s total population. Another 19 municipalities are predominantly minority dominated in terms of the relative ethnic composition of the population, 16 of which have Albanians as the largest group. Those municipalities made up about 28.6 percent of the population.¹⁰⁸ The ethnically mixed communities have provided at least an element of demographic political integration in the country. But because of Macedonia’s political and party polarization on an ethnic basis, such mixed population does not provide for an improvement in inter-ethnic relations. Thus, up until 2010, the decentralization model in Macedonia did little to de-ethnicize political loyalties or transcend intergroup conflicts, not to mention improve political participation, administrative accountability or efforts to combat corruption on the local level. In fact, in 2009 four-fifths of surveyed respondents in Macedonia claimed that they have no influence over decisions made by local municipal governments, although a slightly greater number of Albanians felt they now have

¹⁰⁶ *The Process of Decentralization in Macedonia* (Skopje: Institute for Regional and International Studies, 2008).

¹⁰⁷ Joseph Marko, “The Referendum on Decentralization in Macedonia in 2004: A Litmus Test for Macedonia’s Interethnic Relations,” *European Yearbook for Minority Issues* (2004/05), Vol. 4, 24.

¹⁰⁸ Rizvan Sulejmani, Decentralisation or Centralisation, Paper for the Conference, *Decentralisation Between Regionalism and Federalism in the Stability Pact Countries of the Western Balkans* (Tirana, June 9-10, 2006).

some influence.¹⁰⁹ Albanian local politicians did have more influence in minority and mixed municipalities after 2005, and the danger of violence and territorial secessionism also diminished (due in part to greater minority rights with respect to education and language). And most citizens (78 percent) surveyed reported that inter-ethnic relations in their municipality was “positive.”¹¹⁰ But decentralization in Macedonia has mostly benefitted ethnic Macedonian and Albanian local party elites, who have been more concerned with their “petty interests” and “ethnic power-sharing” as a means to control local institutions rather than in responding to the needs and views of citizens.¹¹¹ Significant progress has been made, however, in the area of strengthening the financial independence of municipalities, and by mid-2009, 68 out of 85 municipalities had entered the second stage of fiscal decentralization.

Meanwhile, Serbia and Croatia have moved very slowly forward with initiatives to decentralize governance in the post-Milošević and post-Tudjman period. In part, both countries have faced difficulties in steering a course between pressure from the EU requiring more decentralization, and the political realities of trying to avoid minority nationalism and state disintegration. This concern has been less serious in Croatia, where regional demands for autonomy in Istria have been moderate and well-incorporated into the party system. However, Croatia lacks the dynamics of a generally decentralized system. Thus, there have been persistent delays in implementing decentralization plans in Croatia, and a Decentralization Commission has not proved able to act as a driving force in the process.¹¹² Moreover, enthusiasm for rapid decentralization to local government in Croatia has diminished somewhat in recent years owing to revelations of flagrant corruption by some municipal authorities.¹¹³ Imbalance in the staff size of Croatia’s local government units – the country has one of the largest numbers of territorial and local units in the Balkans, with 20 counties, 430 municipalities and 126 cities – was also an obstacle to administrative capacity and efficiency.¹¹⁴

¹⁰⁹ *People-Centered Analysis Report* (Skopje: UNDP, March 2009), 82.

¹¹⁰ OSCE Decentralization Survey 2009 (Skopje: OSCE, 2009).

¹¹¹ *A Guide to Minorities and Political Participation in South-East Europe* (King Bandouin Foundation, 2009), 70.

¹¹² *Capacity Development for Quality Public Service Delivery at the Local Level in the Western Balkans* (UNDP, May 2009), 33.

¹¹³ Marijana Badun, “Decentralisation, Corruption and Supervision of Local Budgets in Croatia,” *Newsletter*, Institute of Public Finance (January 2009), No. 38.

¹¹⁴ Ante Bajo, “The Structure of Employment in Local Government Units,” *Newsletter* (July 2009), No. 43, 1-9.

In Serbia, there have been even greater difficulties with decentralization. The 2006 constitution actually increased the formal powers of the central government. However, there has been strong pressure for regionalization, especially on the part of minority communities, such as the Bosniaks in Sandžak, Albanians in South Serbia's Preševo Valley, and Hungarians in Vojvodina.¹¹⁵ Indeed, demands in Vojvodina for more decision-making power go simply beyond minorities and include a portion of the majority (65 percent) Serbian community. In late 2009, the ruling coalition in Belgrade was poised to enact a "Vojvodina statute" that granted some additional powers to the province. But nine years after the fall of the Milošević regime, Serbia was only beginning to initiate a broader country-wide process of decentralization, and this was largely conceived as a way to advance the country's case for candidate status in the EU pre-accession process. A recent survey indicated that the majority of citizens (54 percent) in Serbia expressed general support for the ideas of both regionalization and decentralization. But there existed considerable confusion about what such notions meant. Moreover, when asked whether they enjoyed any influence in local government, 57 percent of respondents said that they had none, 19 percent very little, 13 percent only a little, and 9 percent only moderate or considerable influence.¹¹⁶

Weak States in "Low-Capacity" Democracies

Despite the continued difficulties with fighting corruption, as well as in the areas of both judicial reform and decentralization, the Western Balkans did reveal improved governance capacity and democratic state-building during its first post-conflict decade. Thus, the useful data provided by the World Bank Governance Project offers cross-national evidence of a common pattern of both success and continued weakness in the region; some notable differences among states notwithstanding. Three aggregate indicators focusing on the quality of governance are most illustrative with respect to the institutional focus of this paper: (1) *government effectiveness* (the quality of public services and the civil service, its degree of independence from political pressure, the quality of policy formulation and implementation, and the credibility of the

¹¹⁵ Beata Huszka, "Decentralization of Serbia - The Minority Dimension," Center for Policy Studies, July 2007.

¹¹⁶ Srećko Mihajlović, "Mnenje građana central Srbije o decentralizacija i regionalizaciji" (Belgrade: Center for Civil Society Development, 2008).

government's commitment to such policies), (2) *rule-of-law* (compliance with societal rules, particularly the quality of contract enforcement, the police, and the courts, and also the likelihood of violence), (3) *control of corruption* (the extent to which public power is prevented from being exercised for private gain, including both petty corruption such as "state capture" by the elite and private interests). These governance indicators used by the World Bank draw on an aggregation of responses to a large number of surveys carried out by institutes, think-tanks, non-governmental organizations, and international organizations.

As Table 4 indicates, most of the Western Balkan polities have made progress with respect to their governmental effectiveness over the period from 1990-2008, with Croatia in the

TABLE 4
SELECTED GOVERNANCE INDICATORS FOR THE WESTERN BALKAN REGION
(IN PERCENTILE RANK 0 -100%, WORST TO BEST)

	Government Effectiveness			Control of Corruption			Rule-of-Law		
	1996	2002	2008	1996	2002	2008	1996	2002	2008
Albania	55.0	32.2	44.5	59.2	23.3	39.1	53.3	19.5	32.5
Croatia	55.9	66.8	69.7	31.1	62.6	61.8	33.3	54.8	55.0
Bosnia and Herzegovina	5.2	12.8	35.1	46.1	42.2	45.9	54.3	29.0	43.5
Macedonia	47.4	37.0	50.7	11.7	30.1	54.6	52.4	33.3	43.5
Kosovo	N/A	N/A	18.5	N/A	19.9*	30.0	N/A	13.3	30.1
Serbia	36.5	31.3	47.9	18.0	29.1	53.1	16.7	20.5	41.1
Montenegro	N/A	N/A	56.9	N/A	N/A	47.8	N/A	N/A	53.1

Source: *Worldwide Governance Indicators, 1996-2008* (World Bank Group: 2009).

*Kosovo, 2003.

lead and Kosovo trailing behind. Control of corruption is a more problematic area of governance, even for Croatia. Kosovo and Albania are at the back of the regional pack, with the former

suffering from an earlier pattern of deficient international management and new challenges of fledgling statehood, and the latter making slow recovery in the decade that followed its 1997 state meltdown. Albania's scores in 2008 on all three areas selected were actually lower than in 1996. But even Albania, as shown from other evidence, made limited progress with administrative reform, and research indicated that support for a well-paid merit-based civil service has been slowly developing within the ranks of senior administrative officials.¹¹⁷ In view of the political difficulties faced by Serbia after Milošević, and the close links between criminal elements and politicians in Montenegro, corruption control in both countries has been slow. Rule-of-law as a general governance category shows steady forward momentum, but at levels which vary from country to country. International assistance has helped to advance Bosnia-Herzegovina in all areas, albeit not up to Croatia's level, and not yet exhibiting levels that will ensure sustainable progress once the present framework of foreign involvement and assistance is terminated.

Meanwhile, Kosovo, Albania, and Serbia also have deeply rooted rule-of-law problems. In the case of Serbia, this particular difficulty is closely linked to the issue of coming to terms with the recent past, not to mention the problem of dealing with entrenched criminal networks, and two remaining high profile war crime cases. Macedonia's progress in the rule-of-law area dropped precipitously after the 2001 conflict, but later showed improvement. Overall, a comparison between Western Balkan trends in rule-of-law, corruption and government effectiveness with similar average aggregate data for the Eastern Balkans and Central Eastern Europe reveals the relatively more favourable position of the latter two regions that were fortunate in having faced the difficulties of post-communist transition and democratic consolidation without post-conflict burdens.

Although these selected World Bank indicators are subject to considerable margins of error, and cannot express the complex diversity of transformation within individual regimes and societies, the data usefully suggest relative standings and rates of progress. Most significantly, the aggregate measures indicate that from the vantage point of institutional strengthening or capacity-building, the Western Balkan states still have a considerable way to go before they

¹¹⁷ *Global Monitoring Report 2006* (Washington: World Bank, 2006), 152.

reach “European standards,” although making important progress since 1996. Aspects of the *intrusive state/weak state* syndrome nonetheless remain an outstanding issue for governance in region. The problem of state weakness has been a feature throughout the post-2000 period. A 2004 review of the region emphasized that the warfare in the 1990s had “fostered a culture of opacity, politicization, and corruption” leaving the countries and entities “generally weak in their capacities – the rule-of-law is respected neither by the executives nor the population and judicial systems are incapable of enforcing it systematically.”¹¹⁸

Referring to the performance of public administrations in the Western Balkan states as weak, is simply a way of comparing their administrative structures to the longer established and more professionalized administrative sectors in other European democracies. Typically, the so-called weak state lacks the “infrastructural strength” or the capacity to coordinate and carry out certain critical tasks such as delivering selected services, protecting the rule-of-law and human rights, and also avoiding corruption and the capture of governing institutions by various extra-state predatory forces and “opaque groups” in society. Indeed, even with the assistance of foreign state builders, the weak state usually lacks the capacity to obtain broad societal compliance for its policies.

Characterizing the Western Balkan states as weak does not suggest that they all suffer from the full range of problems generally associated with weak states in other regions, or that the same facets of weakness affect each country in the region. One feature, however, of the “weak society, weak state syndrome” that is perhaps most common to all the Western Balkan states – and one that they share with many other states after the recession of 2008-2010 – is the chronic lack of routine communication and trust between citizens and states.¹¹⁹ The “implementation deficit” in terms of getting laws translated into practice is another persistent regional problem. Indeed, the weakness of state institutions in the Western Balkans has been persistently affected by what has recently been referred to as a “culture of disrespect for state-sponsored rules,” which is reflected in a “distrust of the state and its alienation from society.” In most post-communist

¹¹⁸ *Public Administration in the Balkans: Overview* (Sigma, 2004), 7. See also on Balkan state weakness, Ivan Kratsev, “The Balkans: Democracy without Choices,” *Journal of Democracy*, Vol. 13, No. 3 (July 2002), 39-53.

¹¹⁹ See Marko Grdešić, “Problem slabih država i slabih društva u istočnoj Europi,” *Anali Hrvatskog Politološkog društva* 2008, 241-262.

states and throughout most of the Western Balkans during the past decade, such chronic disrespect of rules and their implementation has undermined the overall legitimacy and performance of the state, which is a prerequisite for progress in democratic consolidation.¹²⁰

The selected features of state weakness displayed in the Western Balkans have also influenced the region's pattern of democratic consolidation. Thus, although the countries of the region have made considerable progress at state-building and democracy-building in the post-2000 period, most regimes have continued to manifest features that Charles Tilly has referred to as "low-capacity democratic," that is, regimes that have become more pluralistic and have expanded available civil liberties, but are weak in the area of implementation of policies and the enforcement of laws. "Capacity and democracy interact," as Tilly correctly points out, and while "governmental capacity does not define democracy, it looks like a really necessary condition for democracy on a large scale."¹²¹ The interaction between capacity and democracy is a vicious cycle. Thus, in the early stages of post-communist transition, the non-consolidated character of new democracies in the Western Balkans, and elsewhere in Eastern Europe, impeded capacity-building in such regimes, and to some extent that problem continues. But more recently, the deficits in institutional capacity of post-communist regimes have become serious impediments to further democratic consolidation in the Western Balkans. Such capacity deficiencies (especially in eradicating organized criminality, widespread corruption, and de-politicizing their judiciaries), and their linkage to the non-consolidated features of democracy, have generated anxieties among elites and analysts, both within and outside the region about future development. They wonder whether the Western Balkans have or can successfully develop the panoply of requisite institutional and political characteristics that will qualify them for fuller entry into the "European family," or whether the region will retain its familiar status as an area located "in between" on the East-West fault-line. The fact that the most recent EU entrants from Southeastern Europe, Romania and Bulgaria, have remained severely challenged by the problems of fighting

¹²⁰ Denisa Kostovicova and Vesna Bojičić-Dželilović, "State Weakening and Globalization," in Denisa Kostovicova and Vesna Bojičić-Dželilović (eds.), *Persistent State Weakness in a Global Age* (Farnham: Ashgate, 2009), 2-6. Susan Woodward, pointing to the progress the Western Balkan states have made in reducing "conventional" crime levels, and downplaying the problem of corruption and organized crime, has questioned the utility of describing the region's governance achievements as weak in terms of capacity. "Measuring State Failure/Weakness: Do the Balkan Cases Fit?" in Denisa Kostovicova and Vesna Bojičić-Dželilović (eds.), *ibid*, 151-164.

¹²¹ *Regimes and Repertoires* (Chicago: University of Chicago Press, 2006), 21-29.

corruption and judicial development has been an added source of concern to EU elites as they ponder future enlargements in the region. Thus, as the first decade of the 21st century ended, most regimes in the Western Balkans were still trapped in an indeterminate and unstable intermediate zone; clearly no longer repressive authoritarian political systems, but not yet fully consolidated or strong democracies that demonstrate the capacity to effectively constrain egregious forms of corruption and the routine abuse of governmental power.

And yet, many of the obstacles to democratization that arose in the Western Balkans as part of the complex and prolonged consolidation phase following the transition out of communist rule, have been significantly reduced or, with the assistance of the EU, have begun to receive close attention (\$3.5 billion Euro in pre-accession financial aid for the Western Balkans and Turkey covering the period 2007-2011 was approved by the EU in mid-2007). State structures in the region have not entirely recovered from the sharp downward slide they experienced during the late communist period, and in the 1990s, with respect to their institutional capacity to carry out public functions. And many long-standing problems of state development, such as corruption and weaknesses with respect to rule-of-law, and politicized administration and adjudication, remain troubling and difficult to dislodge. The relatively low or moderate levels of post-2000 institutional capacity in the Western Balkans have admittedly held back progress in state-building and democratic consolidation, if less in economic development up to 2008. Such progress is, however, anxiously sought by the region's elites as a means to qualify for integration into the European Union. Still, their constitutional frameworks and the institutions of state authority and governance have shown signs of genuine progress. But along with such gradual institutional advances, other dimensions of political life – especially civil society and political party development – should be considered in making an overall assessment of progress toward democratic consolidation.

TABLE 2
STATE ADMINISTRATION AND PUBLIC SERVICE, 2008 AND 2009

Country	Governmental 2008/9			Legislative 2008/9			
	State Civil Servants/ Employees ¹	State Civil Servants/ Employees as % of Population	Total Public Service Employment ²	Public Sector as % of Population	Administrative Employees in Legislature	Number of Legislators	Number of Staff per Legislator
Bosnia & Herzegovina	11,774	1.38 ⁴	105,298	12.4	79	57	1.38
Macedonia	13,203	2.24	110,000	18.6	196	120	1.63
Croatia	37,400	2.31	207,400 ⁵	12.8	283	152	1.86
Serbia	34,024 ³	1.28	357,318 ⁶	13.4	342	250	1.36
Montenegro	12,121	5.52	50,000	23.0 ⁷	96	81	1.18
Kosovo	8,206	2.20	73,221	13.3	157	120	1.30
Albania	13,790	1.15	105,134	11.4	145	140	1.03

Sources: National Analytical Reports, EUROSTAT, and media reports.

Notes:

¹ Without military and police.

² Includes those employed in education, health, culture, sport, judicial administration, and municipal/regional agencies (but excluding employees in public enterprises).

³ In administrative bodies in the Republic of Serbia, including 3,400 part-time employees. A law at the end of 2009 limited the number employed at this level to 28,400.

⁴ Another 9,534 state employees work in the entity administrations (5,722 in the Federation and 3,812 in Republika Srpska) or together with the 11,774 working in central “common” institutions a total of 21,308, or 2.5 percent of the employed population.

⁵ Without Ministry of Interior or Ministry of Defense.

⁶ 2009 Serbian Ministry of Finance Data without approximately 83,000 employees from the Ministry of Internal Affairs, Security-Information Agency and Ministry of Defense.

⁷ Estimated in reports near the end of 2009. In 2007, the equivalent figure was 44,015.

TABLE 3

**CIVIL SERVANTS IN THE STATE ADMINISTRATION OF
THE REPUBLIC OF MACEDONIA, BY ETHNICITY, 2008 (IN PERCENT)**

Ethnic Affiliation	Total Population 2001	General & State Secretaries	State Secretaries/ Municipal	State Advisors	Directors & Asst. Directors/ Depts.	Directors of Divisions	Counsellors	Higher Associates	Associates	Higher & Other Officers	Total
Macedonian	64.2	66.6	61.9	85.0	82.0	85.5	83.8	79.7	57.3	81.0	79.0
Albanian	25.2	19.0	28.5	10.4	13.3	10.2	11.1	14.2	37.8	12.9	15.5
Others	10.6	14.4	9.5	4.6	4.7	4.3	5.1	6.1	4.9	6.1	5.5
Total	100.0	100.00	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
(n)		21	21	173	592	1,190	2,749	553	1,677	6,227	13,203

Source: *Godišen izveštaj za podatocite od rigistarot na državnite službenici za 2008 godina* (Skopje: Agencija za državni službenici, March 2009).