



# Organized Crime and Terrorism in the Balkans: Future Risks and Possible Solutions

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## **a. What are the Future risks, if remedial action is not taken?**

- 1) *Organized Crime and Terrorism-anti-thetical to legal reform, human rights and stability in the Balkans*; having festered for a period, these scourges have eroded respect for the rule of law; classically, in developing countries, there is a tremendous amount of distrust of or lack of confidence in government; it is likely that this trend will continue unless the problems are seriously addressed (the public wants to see and perceive that wrongdoers are being caught, held to account, and proportionately punished);
- 2) *Both undermine confidence that investors and the IC have in putting money in the Balkans*; developing countries, such as those in the Balkans, are heavily dependent on foreign investment and the IC for capital, but no one is going to heavily invest or provide assistance where organized crime is running things or where the terrorism is not being seriously addressed; the lack of investment or assistance, in turn, stymies economic growth and potential economic growth, improvement to standards of living, etc.;
- 3) *The public's confidence in the justice system in the Balkans is low because the public does not perceive that justice is being meted out*; in turn, this makes prosecution of current and future cases more difficult (e.g., witnesses do not want to come forward); future implications: courts will be held in disrepute, respect for the rule of law will disappear; though the Court of BiH is relatively new (in operation, effectively for just 2 years now),

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the prosecution of **Organized Crime and Corruption cases** has produced some statistics, which suggest that training is needed in the areas of verdict writing, appellate procedures and reviews, and application of the ECHR; of the 25+ organized crime cases taken to final verdict where a conviction has been obtained, ~90% have been reversed, modified or ordered to be retried, while verdicts resulting in acquittals have been confirmed on appeal 100% of the time; in fairness, there are those who dispute these statistics and the stats should be looked into carefully; however, it seems we can conclude at the very least that some training is in order; such training could be accomplished through members of the IC, ECHR judges, and members of the BiH HJPC; additionally, some training in plea bargains, a new concept for BiH, also needs to be achieved so that there is a proper understanding of the process, and implementation of the same; insofar as **Terrorism cases** are concerned, there is only one case that is being prosecuted at trial at present (Baktesević); the one plea taken in regards to this area (in the Baktesević case) resulted in a 2 year sentence (for possession of ~19 kilos of TNT);

- 4) *Some serious Balkan Legislative loopholes and implementation problems exist*; unless patched, such loopholes and problems will give wrongdoers a continued way out (they will avoid prosecutions, convictions, or serious punishment); such loopholes exist generally in terms of the admission of a suspect's statement, the interpretation given to the "intent" necessary to commit a crime, and "ascertainment of the truth"; the meaning of what constitutes proportionate punishment, and what constitutes a real violation of the ECHR also have to be addressed; additionally, the meaning of "access to documentation" for the defense needs to be clarified so as to reflect the CPC's intent; finally, plea bargains, a new concept for BiH have to be better understood; so far they have resulted in light sentences, and in at least one instance, a changing of the plea bargained for; loopholes and implementation problems also exist in terms of terrorism legislation in terms of preparation or providing material support, the interpretation given to "intent" necessary to commit such crime, financing terrorism, and punishment capacities of the court;
- 5) *Resources will be used to combat these problems, instead of addressing Balkan society's real needs*; police, fire, health, safety, welfare, etc. needs are not being satisfied



**b. Some suggested Action Steps to Reduce the Identified Risks:**

- 1) *judges*-retrain in how to interpret the law, avoid useless reversals, how to mete out punishment; judges need to be trained insofar as application of the ECHR is concerned, so as to comport with international standards; ascertainment of the truth is the ultimate goal and should not be made subordinate to the idea of promoting judicial economy; also, finding one guilty of crimes not charged (permitted by the BiH CPC in certain circumstances) should be reiterated; the concept of "harmless" error needs to be understood; punishment that is meted out must be swift, certain, and proportionate;
- 2) update Balkan legislation—e.g., generally speaking, BiH needs clearer definitions of or commentary to the meaning of “intent” necessary to commit crime; suspect statements taken in compliance with the CPC should be admissible even where the suspect refuses to testify at trial; production of evidence and exhibits pursuant to the CPC needs to be clarified; deadlines for filing of documents has to be more practical/realistic; in terms of terrorism legislation, the following need to be considered: all forms of material support (not just money) should be punishable; additionally, BiH should adopt Anti-Terrorism Financing laws, that are as broadly written as France's Act of November 15, 2001 (that act allows for civil, administrative, and criminal penalties for engaging in such supportive behavior, even if the intended terrorist act never occurs); in November 2006, BiH held a workshop on Legislative Implementation and International Cooperation in the Fight Against Terrorism: BiH agreed to adopt a number of UN Conventions against Terrorism (topics covered physical protection of Nuclear Materials, safety of Maritime Navigation, safety of fixed platforms located on the Continental Shelf), the protocol to the European Convention on Suppression of Terrorism, the 2005 COE Convention on Prevention of Terrorism, and the 2005 COE Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism; future workshops and trainings to be held in 2007; some within the BiH Government believed that a *lex specialis* law on terrorism needed to be created dealing with terrorism exclusively; IC representatives disagreed with this approach, as they believed that amendments to and harmonization with the existing BiH Criminal Code were the proper, sensible route, and least likely to be legitimately challenged in the future; IC representatives noted that preparation, financing, "intent", and penalties provisions needed to be clarified; training of members of the judiciary was also strongly suggested (e.g., having ECHR judges come and instruct on case law as to such issues as "intent" and "proportionate punishment"); amendments to the BiH Criminal Code commentary sections were also suggested, so as to clarify the meaning and coverage of the various criminal law provisions;



- 3) Surveillance resources—obtain equipment and train personnel! Probably the largest complaints law enforcement have had have involved under-resourcing and lack of training: police complain that they have not had enough manpower to do the job, nor the right equipment to surveil wrongdoers (particularly for eavesdropping on mobile phones); they have also complained that even where they do have the equipment or access thereto, they have not had the training to be able to use it;
- 4) *Balkan* financial police units-train how to investigate accounting activities, write criminal reports; forensic accounting specialists have to be trained in how to investigate accounting activities of charitable organizations and corporations, as well as how to write reports delineating suspected criminal activities;
- 5) Cement IC cooperation—by holding more trainings, establishing liaison offices, and developing financial assistance;
- 6) Requests for International Legal Assistance-training how to, plus cooperation has to be more forthcoming; agreements re assistance are mostly in place, but Balkan countries don't necessarily know how to respond to or ask for such requests to be fulfilled; refusals or non-responses are common; furthermore, out of country prosecutions of wrongdoers need to have teeth: assuming no "safe haven" legislation is on the books, in Balkan countries, the participants must prosecute cases against their own citizens with real vigor and be monitored re the same, or extraditions must be allowed.



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