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Analytical Summary of the Conference

***Decentralisation between Regionalism
and Federalism in the Stability Pact
Countries of the Western Balkans***

(June 9th and 10th 2006, Tirana, Albania)

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I. Background

On June 9th and 10th 2006, a conference on the theme of *Decentralisation between Regionalism and Federalism in the Stability Pact Countries of the Western Balkans* was held in Tirana, Albania. The Conference, co-organised by the Institute of Federalism at the University of Fribourg (Switzerland) and the Institute for Contemporary Studies, Tirana, was attended by over thirty policy makers, academics and other representatives of civil society organisations from Albania, Bosnia and Herzegovina, Croatia, Kosovo, Macedonia and Serbia.¹ The Conference was designed to provide an opportunity for a critical re-visiting of decentralisation strategies and practices in the Western Balkans, particularly with regard to their impact on democratisation, stabilisation and regional security. Thus, among its main objectives, the Conference aimed principally at identifying best practices and structural problems in the decentralisation processes of states in the region, thereby contributing to a viable policy harmonisation and policy transfer in the field of decentralisation.

The Conference structure was balanced between plenary sessions and working groups on one of three thematic focuses: *Constitutional Frameworks and Intergovernmental Relations; Decentralisation & the Local/National or Local/Regional/National Level* and *Process Management & Finances*. The first session opened with framework mapping addresses on the Conference themes by the three keynote speakers, Prof. Dr. Lidija R. Basta Fleiner, Dr. Ivan Krastev and Prof. Dr. Bernard Dafflon. Subsequent sessions were devoted to presentations of the papers prepared by Conference participants and to discussions in working groups on the three Conference themes, followed by a closing plenary session in which the keynote speakers reported back on the discussions that had taken place in their group and made concluding remarks.² This paper attempts to provide a summary and analysis of the most salient issues raised and discussed during the Conference plenary sessions and working groups, as well as in the papers prepared in advance by Conference participants.³

¹ For a full list of participants, please see the Annex

² See all the Conference themes in the Annex

³ All Conference papers mentioned in this Analytical Summary are available for download at <http://www.federalism.ch/index.php?page=707&lang=0>.

II. Introduction

Before proceeding to the specific elements discussed during the Conference, it is perhaps helpful to begin by providing a short introduction to the context of constitutional frameworks and state organisation in the Western Balkans, as this is the context in which decentralisation is advanced as a key component of primarily political, but also economic and social, transformation. In other words, as we wrote in the Conference Concept Paper⁴, there is a strong commitment to institutional practices that on one side should reflect respective complexities of democratisation processes in the countries of the region; as well as power relations embedded in particular institutional forms and the influence of history in shaping institutional structures. On the other side, the viability and effectiveness of the institutions to sustain local and regional democracy in the Western Balkans rely strongly on the viability and functioning capacities of the existing constitutional frameworks.

Despite obvious diversities, there are a number of common features of the countries in the region that are relevant for an analysis of their respective decentralisation processes. While acknowledging the risk of over-generalising, these can be identified as follows:

1) *Weak states and weak civil societies*

The countries in the region can be characterised as being both weak states and weak civil societies. This has been a common point shared by almost all analysts who see the Balkans “like an explosive mixture of weak states, non-states and present and future protectorates.”⁵ The constitutional agreements mediated by the international community – the Dayton Agreement, the Ohrid Framework Agreement, the now disbanded Serbia and Montenegro State Union Agreement and the awaited agreement on the status of Kosovo - resulted in indeed contested states. It is a structural paradox that these constitutional frameworks are both *the outcome and a persisting cause* of weak states and weak civil societies. There are, however, other significant causes – such as corruption, and slowed down processes of democratization and of strengthening the rule of law – due to which even the states with uncontested constitutional frameworks, Albania and Croatia, can not be said to be strong states with strong civil societies. This is of major importance for the whole region. Weak states are unreliable and unpredictable partners, and regional cooperation cannot substitute for building functional states. Furthermore, economic development, social inclusion and regional stability in South Eastern Europe (SEE) build on, in fact *require*, the strengthening of state institutions. This is also highly relevant for decentralisation, since the benefits supposed

⁴ See Basta Fleiner, Lidija R. (2006) “Concept and Design for the Conference”, at http://www.federalism.ch/files/categories/IRCC/concept_06_06.pdf. This Introduction summarises parts of the analysis elaborated in the Concept Paper.

⁵ Krastev, Ivan (2002) “The Inflexibility Trap: Frustrated Societies, Weak States and Democracy”, UNDP Issues Paper, p. 6 (available for download at http://www.cls-sofia.org/uploaded/1144748608_inflexibility_trap.pdf).

to come from the decentralisation of state powers (such as improvements in efficiency, etc.) imply that there are actually functioning state institutions in place. Otherwise, what is there to decentralise?

2) *The role of power-sharing constitutions*

The principles and instruments of democratic governance either failed or did not perform effectively in most of the internationally mediated constitutional negotiations for the Western Balkans, notably Bosnia and Herzegovina, Serbia and Montenegro, and Macedonia. These international agreements on new constitutions were negotiated with the very elites that were leading the conflicts. Thus the constitutional design that regulated the power balance among ethnic communities engaged in war was a matter of political bargaining and not of state vision. Power-sharing and not rights enforcement was the main principle in pacifying inter-ethnic tension. In other words, vertical legitimacy was to a certain extent, or even to a very large extent, sacrificed in the interests of horizontal legitimacy.⁶ The constitutional frameworks have set up states in the process of permanent negotiation and reconstitution. An inevitable side effect of such a strategy is that ethnic issues in general and those of minorities in particular, are first and foremost related to territorial issues. This is relevant for decentralisation for at least two reasons:

- a) The territorial aspect of decentralisation becomes linked to ethnic/minority issues; and
- b) Decentralisation is posited as a way to build up the lacking vertical legitimacy, but it is far from clear if this is an effective way to do this.

3) *The absence of trust and tolerance*

The absence of trust and tolerance as necessary conditions for a peaceful and democratic society is more than evident in most countries of the Western Balkans, especially those coming out of the dissolution process of ex-Yugoslavia. The categorical nature of ethnic conflicts leads to different readings even of the causes of the conflict. In such a situation it becomes a major challenge to reach an agreement on the constitutive nature of a common state that would lead to an inclusive and participatory constitution-making process as part of conflict transformation. At the same time such an agreement is also a pre-condition for effective and democratic local and regional governance. From the international community, which encouraged, facilitated and sometimes “boxed through” as part and parcel of

⁶ By vertical legitimacy we understand the relationship between the state and society or citizens, understood in the sense of the classic “good governance” agenda. By horizontal legitimacy we understand the relationship between social/political groups, in this case “ethnic” groups, in other words, power-sharing. For more on this topic see Günther Baechler, “Conflict Transformation through State Reform” (Paper published by the Berghof Research Center for Constructive Conflict Management, available at http://www.berghof-handbook.net/articles/baechler_handbook.pdf).

democratization strategy, these constitutional acts failed to perform simultaneously two critical tasks:

- a) to establish or reinforce a political community, which is a pre-condition for democracy;
- b) to establish or reform the rules for the allocation and exercise of state power, since it is the contestation over these rules which has often been the cause of conflict and instability.⁷

Furthermore, the question of trust is of relevance not only for intercommunity relations, but also, and perhaps more importantly, for the relationship between individuals and the state. A lack of trust in state institutions is widespread, as has been documented in many opinion polls, leading to generalised and alarmingly high rates of perceptions of insecurity.⁸ Of this insecurity, Krastev writes that it is the weakness of one's own state and not the aggressive behaviour of neighbours that is at the centre of citizen's concerns.⁹ Again, this is relevant for decentralisation, since it is supposed to bring state institutions closer to the people, thus enhancing transparency and accountability, and eventually, ideally, trust in these very institutions. However, evidence from decentralisation processes to date has been less than affirmative on this point and it is important to ask why this has not taken place, and what can be done about it. Many Conference participants confirmed that the elite capture at the local level was taking place and remained a significant challenge. In circumstances of weak political culture and low public participation, decentralisation in the Western Balkans often contributed to the further concentration of power to smaller circles of unaccountable leaders.

Though the discussions in the plenary sessions and working groups were centred around the three Conference themes, a number of topics came up in all three working groups, notably the autonomy of local government units. The structure of the analytical summary is organised along major factors sustaining or impeding the autonomy of local government.

⁷ Cf. Ghai, Yash, and Galli, Guido (2006) "Constitution Building Processes and Democratization", International IDEA, Stockholm, p. 7 (available for download at www.idea.int/publications/cbp_democratization/upload/cbp_democratization_eng.pdf).

⁸ See, for example, IDEA's "South Eastern Europe Public Agenda Survey" (2002) at http://www.idea.int/europe_cis/balkans/; UNDP's "Governance Perceptions Survey in Bosnia and Herzegovina" (2003) at <http://unpan1.un.org/intradoc/groups/public/documents/UNTC/UNPAN018625.pdf>; or UNDP's "Early Warning Report" for Macedonia (2006) at http://www.ewr.org.mk/reports/06%20EWR_ANGL2.pdf.

⁹ Krastev (2002), op. cit. p. 15.

III. Summary of Conference Papers and Proceedings

1) Territorial organisation

- **Resources vs. responsiveness**

The territorial organisation of the local government units and whether and how this organisation would need to be reformed are relevant questions in almost all countries in the region. The challenge is to have local government units that are large enough to possess sufficient human and financial resources to adequately provide services to citizens, and at the same time small enough to be responsive to the needs of the local population. In other words, the local government units must be at once viable and identifiable with citizens. The boundaries of many local units do not meet these criteria, either due to the circumstances of their founding (post-conflict division along ethnic lines, or rather hurried implementation of decentralisation/local governance) or to changes that have taken place since (particularly, rural-urban migration). As Vehid Sehic writes about Bosnia and Herzegovina, "in relation to the units of local self-government, [territorial reorganisation] would mean the abolishment of many current municipalities, since they do not fulfil fundamental conditions for existence."¹⁰ In Bosnia and Herzegovina, the division of territorial units on the basis of ethnic lines has created functionally illogical boundaries.

Boundaries are also in question in other countries in the region as well, where the question of the organisation of local government units is high on the agenda, both to take into account new economic, social and demographic realities, and also, to a certain extent "lessons learned" in the past years on the functioning of local government. Two conference participants from Albania, Taulant Dedja and Fran Brahimi, conducted a thorough study on the question of the revision of the administrative and territorial division, and found that there exists a general consensus for the reform of territorial reorganization: "The consensus is related to a number of general principles such as: 1) reorganization should favour and deepen the decentralization process; 2) the consideration on historical tradition, links and economic interests; 3) public services should be offered as closely to the citizens as possible; 4) the distance of the periphery with the centre of the unit should be in coherence with the geographic particularities; 5) the criteria over which the amalgamation (mandatory or voluntary) will take place should be as objective as possible; 6) the respective units and communities must be part of the process by expressing their attitude, what eases the process itself."¹¹

¹⁰ Sehic, Vehid (2006) "Analysis of the Bosnia and Herzegovina Constitution", Conference Paper, Tirana, p. 7.

¹¹ Dedja, Taulant and Brahimi, Fran (2006) "The Dilemma of the Revision of the Administrative and Territorial Division in Albania: Obligatory, Voluntary Amalgamation, or Inter-Communal Collaboration as a Transitory Solution?" Conference Paper, Tirana, p. 26.

Territorial reorganisation is not the magic cure to all problems being faced by local governments, or by citizens in relation to their local governments. Moving around boundaries might in some cases create more functionally effective units, but it is important that local government units have a certain size in order to do this. As conference participant Bratislav Djokic from Serbia wrote: "Since citizens quite often believe that it will be easier for them to satisfy their own needs if the place that they are living in is an independent municipality and make pressure upon the central authority in the direction of further fragmentation of municipalities, it is necessary to organise a strong public campaign with the aim to explain and clarify that, contrary to the general belief, small territory which objectively and economically is not capable to secure provision of services as an independent municipality will not be capable of carrying out the competences that belong to the local self-government and this will not be able to satisfy the needs of its citizens."¹²

- ***Migration***

The huge social and economic changes undergone by countries in the Western Balkans over the past years have driven a significant amount of migration, from rural to urban areas within the country, as well as emigration. This is relevant for the question of the territorial organisation of local governance because the significant demographic changes make it necessary to review the number and size of municipalities in rural areas, left with fewer inhabitants, as well as those of urban areas, which have grown greatly and rapidly. Rural municipalities struggle to provide services to few and dispersed people, as well as to find and engage sufficient human and financial resources to do so.

This is particularly challenging in the case of human resources as often those migrating are the very people with the very skills that would be necessary for the local administration, health and education services, etc.¹³ On the other hand, urban municipalities face the challenge of providing services to a constantly growing population that is not necessarily very well documented, making planning difficult. For example, conference participants Taulant Dedja and Fran Brahimi write that an argument in favour of territorial reorganisation in Albania "is related to the much differentiated economic developments (in certain areas the potentials changed significantly), the large demographic movements and the internal migration of the population towards the urban areas. In fact, the control over the territory in these areas represents difficulties of different character and development urban tendencies that are changing every day. These changes have been reflected in the administration of a

¹² Djokic, Bratislav (2006) "The Decentralisation Process in the Republic of Serbia in View of Optimal Territorial Organization", Conference Paper, Tirana, p. 2.

¹³ Cf. Prelic, Vesna Ilic (2006) "Constitutional and Legal Framework for Territorial Organization and Power Distribution in the Republic of Serbia", Conference Paper, Tirana.

part of local government and in their fiscal and human resource capacities. Somewhere the capacities have diminished significantly and somewhere they have increased significantly.”¹⁴

To sum up: urban and rural municipalities face differing challenges in terms of providing services to their citizens and thus the decentralisation framework needs to be flexible enough to take this into account. In Albania, for example, a distinction is made between municipalities and communes (urban vs. rural areas), whereas in Bosnia and Herzegovina there is no difference in the legal status of municipalities, although there are huge differences in the level of urbanisation and infrastructure development.

- ***Inter-municipal cooperation***

- a) Functional cooperation

Functional cooperation refers to municipalities working together to provide services in a specific sector, such as health. Functional cooperation is governed by an agreement between local government units and allows them at once to remain independent and to access the benefits of working together at a bigger level in order to provide services to their citizens that they might not be able to do otherwise. This type of cooperation is a right enshrined in the European Charter of Local Self-Government, which states that “local authorities shall be entitled, in exercising their powers, to co-operate and, within the framework of the law, to form consortia with other local authorities in order to carry out tasks of common interest.” (Art. 10.1)

Inter-municipal cooperation is a popular topic at the moment and came up in all working groups at the Conference. This is in recognition of the fact that while many municipalities might not be functional, to change the territorial organisation of local government is a highly sensitive political process and will likely take some time to achieve, if it is at all feasible. Inter-municipal cooperation is also often seen as preparing the groundwork for an eventual territorial reorganisation. Dedja and Brahim write: “We consider inter-communal collaboration as a possible transitory solution towards a full territorial reorganisation. This, because the experience of other countries has confirmed that in order to reach the voluntary amalgamation of the communes (through finding an approximate optimal size for performing a set of basic services) the tradition of inter-communal collaboration has served as a strong point of reference through offering practical and concrete examples.”¹⁵ The voluntary amalgamation of communes is clearly a preferable approach to a top-down redesigning of borders and is probably the only way that such an amalgamation would be in keeping with

¹⁴ Dedja, Taulant and Brahim, Fran (2006) “The Dilemma of the Revision of the Administrative and Territorial Division in Albania: Obligatory, Voluntary Amalgamation, or Inter-Communal Collaboration as a Transitory Solution?” Conference Paper, Tirana, pp. 17-18.

¹⁵ Dedja, Taulant and Brahim, Fran (2006) “The Dilemma of the Revision of the Administrative and Territorial Division in Albania: Obligatory, Voluntary Amalgamation, or Inter-Communal Collaboration as a Transitory Solution?” Conference Paper, Tirana, p. 19.

the spirit of local self-government as defined in the Charter and various national legislations. The Charter specifically says that “changes in local authority boundaries shall not be made without prior consultation of the local communities concerned, possibly by means of a referendum where this is permitted by statute.” (Art. 5), though, as Dedja and Brahimi point out, it is not clear how exactly this consultation should take place and to what extent the results would need to be respected. Finding a balance between local democracy and effective local self-government is not necessarily easy. In this context inter-municipal cooperation could be an important step in creating the conditions that would make such a balance achievable.

b) More general cooperation

National association of municipalities have been formed in all countries in the Western Balkans and are active to a greater or lesser extent. The raised question here is to what extent these associations can claim to be the legitimate voice of municipalities in the country, and defenders of their interest, or rather whether they can also be captured by political parties and then be less inclined to serve the interest of municipalities led by opposition party mayors or councils, as is already often the case with the Ministry of Local Government. It is also questionable to what extent such associations are effective lobby groups and to what extent they are mere talking shops. These are pertinent questions. As a survey of local government in Macedonia showed already in 2004, “citizens clearly feel that the municipal government is not listening to them, and therefore is not representing their interests”.¹⁶ This is how a more structural problem of politics in the Western Balkans – the absence of democratic governance and a difference in understanding of local government – is reflected within the perspective of decentralisation.

2) *Distribution of powers, responsibilities and resources*

- ***Horizontal balance of power and responsibilities***

The horizontal level refers to the balance of powers at the local level between the legislative, executive and judicial branches of government. The horizontal balance of powers can also refer to the balance between different ethnic communities. As Rizvan Sulejmani writes, the “concept of balanced division of political, economic and security governance, by levels and by collectives” does indeed imply “a division of power between the central and local government, but also a division of power and the responsibilities among the communities, as well.”¹⁷ In this regard, one of the most important issues within the Western Balkans remains the challenge of the protection of minorities in a decentralisation process, created by either

¹⁶ Adams, Joanne (2004) “Assessment of Intra-Municipal Relations and the Role of Neighbourhood Self Government”, OSCE Spillover Monitor Mission to Skopje, p. 11 (available at http://www.osce.org/documents/mms/2004/07/3396_en.pdf).

¹⁷ Sulejmani, Rizvan (2006) “Decentralisation or Federalisation: the Case of Macedonia”, Conference Paper, Tirana, p. 2.

- a) an urban/rural divide within a municipality or
- b) an "ethnic" divide within a municipality.

- ***Vertical balance of power and responsibilities***

The vertical balance of powers and responsibilities is clearly a major challenge in decentralisation efforts in general, and countries in the Western Balkans are no exception. The challenge is related to what remains an unclear allocation of responsibilities between levels of government: allocations are often both vague and overlapping. Not only is this a question of how the responsibilities are allocated, but also one of how they are carried out. In other words, even if responsibilities are clearly allocated on paper, but the central administration maintains actual control, then it is difficult for local governments to act autonomously or to take initiative. This is clearly related to the question of the distribution of finances. Often responsibilities are devolved without sufficient financial resources also being devolved, which means that neither the central government nor the local government carries out the responsibility, to the detriment of citizens. The issue is of truly great importance because a number of aspects of human development are in fact maintained at local levels, where many of the rights and freedoms guaranteed by the state are in principle to be realized: such as ensuring public security; creating new jobs; and providing medical care, standard education and transport. These are the kinds of state services that cannot be allowed to "fall through the cracks" due to a lack of clarity over which level of government is responsible.

In this sense, it is not always clear what the role of the central government should be, particularly with regard to shared functions or functions technically devolved to local governments: should central governments be responsible for making policy (and leaving the implementation to local governments), or should they focus on supervision or control, or should they really have no role at all? The point coming out of the Conference was certainly not to say that central governments should not have any role at all, and in particular that the central government should not be neglected in the various "capacity building" activities of international donors. It was highlighted by some conference participants that it is important to keep the central level in mind and that while much can be done at the local level, limits are soon reached. In fact, *the local and central level will always be mutually interdependent*. Further, it is not only weak local governments but also weak central governments (in terms of capacities, etc.) that pose an obstacle to decentralisation. In a decentralised administrative structure, the central state has a function that cannot be neglected. It must regulate and harmonize, creating incentives that coordinate and rationalize the activities of the parts of the whole. So when talking about the vertical balance of power and responsibilities, it is important to keep in mind that this is not exclusively a question of local government units being too weak or lacking capacities to deliver services, but that central and/or regional governments are often also too weak to provide the framework in which this should take place.

With regards to Bosnia and Herzegovina, this question is even more complicated, as the state structure is so fragmented. As conference participant Zdravko Miovcic pointed out: "Mutually contradictory assessments may be equally applicable for BiH: that it is neither centralized nor decentralized. Namely, in comparison with central and local authorities, mid-levels of governance enjoy considerable powers and dispose of most of the resources. Seen from the central level, BiH is excessively decentralized; seen from the local level, it is a matter of unbearable centralization of competence, power and resources. To be more interesting, both perceptions are adequate and both should be followed by appropriate policy actions."¹⁸

- ***Distribution of resources***

The question of the distribution of resources is absolutely key to effective local self-government and was a preoccupation in all working groups at the Conference. To a greater or lesser extent, local government units in the region suffer from unstable resource availability and thus financial dependency on the centre. However, this dependence varies according to the importance and size of the local government unit, which means according to its ability to raise revenue from taxes, local fees and other sources of its own. Taxes remain the principal source of municipal income, but sometimes the municipalities do not have any means of collecting their own taxes and revenues. The state taxation authorities collect the taxes and subsequently pay the yield to the municipalities, which therefore rely organisationally on the state for collection of local taxes and charges. Furthermore, given the poor economic situation of many municipalities, own revenues do come near to covering the costs associated with providing the services that they are required to provide. Therefore, municipalities are reliant on state grants and transfers, which represent a substantial source of funding. Also, municipalities are provided with targeted or specific grants, which are usually earmarked.¹⁹ Another purpose of transfers is to compensate for inequalities arising between municipalities as a result of their size and local tax potential. However, the grants are not always based on objective criteria that take into account the characteristics of the local government unit and, as we will see in the next section, this remains a great challenge.

Another important point is that resources, including state grants, do not always seem to be appropriate with a regard to the responsibilities placed on the municipalities, particularly with regard to shared competences. This leads to what is called an "unfunded mandate": where municipalities are required to implement projects without possessing the requisite financial resources. As Dhimitri and Dhuka write about Albania (though this is true in other countries as well): "Recently, there are a lot of reforms undergoing in other sectors which directly

¹⁸ Miovcic, Zdravko (2006) "Bosnia and Herzegovina between Centralization and Decentralization", Conference Paper, Tirana, pp. 3-4.

¹⁹ Cf. also Byrne, Sarah (2006) "Fact Sheets on Fiscal Decentralisation in the Western Balkans", International Research and Consulting Centre, Fribourg (available at http://www.federalism.ch/files/categories/IRCC/fiscal%20fact%20sheets_10_05.pdf).

imply effects to local governments with new tasks of duties, even though the authorities are not all the time accompanied by transfers or funds, such as in the field of environment, health protection, social housing, urbanization and legalisation of informal areas, etc. All these decision are increasing the *unfunded mandate* case, the financing of which is becoming a considerable share in the local budget."²⁰ Finally, concerning the distribution of funds from the central level, it must be mentioned that a tendency has been observed in which the quantity of grants and transfers reflects the political allegiance of the local government unit; whether or not this is the same as that of the central government.

- ***Equalisation of resources***

The topic of the equalisation of resources was discussed both in the working group and in the plenary session in connection with the theme of "process management and finances." The keynote speaker for this topic, Prof. Dr. Bernard Dafflon, provided the following succinct summary of the discussion: "Fiscal equalization is important because it is the sign of solidarity between local governments and also between regions. With increased autonomy in revenue sources and in the assignment of functions, the likely outcome is that rich municipalities will become richer and poor municipalities will not have the same access to financial resources and the same resource opportunities. Therefore, there should be some kind of solidarity between local governments, vertical or horizontal. There are various technical formulas for equalization. This is certainly a complex topic, but the core of the problem is not the formulas: the core of the problem is about ethic and equity. Equalization is not a simple technique for taking money from rich municipalities to distribute to poorer ones. It is another attitude: local government units with higher than average financial capacity accepting to share part of their resources with municipalities and local government units which do have not as much resources and more needs. On the other hand, equalization should not do away with incentives from low-capacity local governments. Equalization is not charity: it is a basic financial help to develop oneself. So there is a symmetrical attitude: on the one side, high capacity local governments would show solidarity; on the other side, low capacity local governments would consider this aid not as a due, but as an opportunity to develop and take initiatives and responsibility in that direction. This again is a citizen's attitude, not simply an economic technique."²¹

All of the country presenters highlighted the priority of the equalisation of resources. The absence of any real resource pooling and fiscal equalisation creates huge disparities between areas and, hence, levels of local service provision. Particularly in the health, education and social welfare systems, huge inequities are present. Indeed, the current unfairness in

²⁰ Dhimitri, Albana and Dhuka, Majlinda (2006) "Process Management and Finances in Albania", Conference Paper, Tirana, pp. 7-8 (italics theirs).

²¹ Dafflon, Bernard, Third Plenary Session: Summary and Analysis of the Conference Proceedings (June 2006)

provision, in some cases, amounts to a denial of basic rights.²² Furthermore, the uneven development of different regions, if it is not sufficiently balanced through equalisation, clearly could lead to tensions in what are already polarized societies. On the other hand, if some regions are perceived to be receiving preferential treatment from the central government, this would also exacerbate tensions.

- ***Access to own revenues***

One of the main difficulties for local government units is the huge disparity between the economic situations of different municipalities. Even when the tax system appears to be generous to municipalities, in view of current economic situation, the taxes do not produce much revenue. So while own revenues allow local government units a degree of independence, and a source of income that they can control, this is not of much use if own revenues amount to next to nothing. Another solution should be envisaged as citizens' power to contribute is limited, there is no point in simply granting municipalities the right to levy new taxes in addition to those already collected by the central government. Further, the more the emphasis is placed on own revenues, the greater the room for inequality between municipalities, as those that are richer and more economically developed will raise actual revenue from this, whereas poorer municipalities will not see much benefit from own revenues. Rather, the reform of local finance should include the genuine assignment of sources of income from the central government to the local authorities.

- ***Decentralisation and/or privatisation***

Another interesting question raised at the conference was that of the friction between decentralisation understood as transfer to a local public authority and decentralisation as privatisation (transfer to a private authority). This is also related to the simultaneity problem mentioned above, that the combined push towards a market economy with the initiation of decentralisation processes has left many people (often those in rural regions) deprived of adequate basic social services. Conference participants Artan Hoxha and Zhani Shapo provide an informative illustration with the example of the decentralisation of water supply services in Albania: "the water supply decentralization process seems very slow. Less than 15% of consumers are served by municipality or commune (M/C) water supply schemes. The rest of the consumers are still served by the central government public owned enterprises. The sector suffers significant lack of financial resources, outdated technology and poor management. State budget subsidies to these enterprises increased significantly during the last five years. The decentralization of the sector was hindered by the competing policy debates of decentralisation *versus* privatisation and decentralisation at the level of M/C *versus* regionalisation of the service. The role of M/C was and still is limited just to the

²² UNDP (2005) „National Human Development Report – Better Local Governance in Bosnia and Herzegovina”, available for download at http://hdr.undp.org/docs/reports/national/BIH_BOSNIA_HERCEGOVINA/bosnia_2005_en.pdf

adoption of fees for the service with the final no objection by the National Water Regulatory Authority. In the background of the ambiguities and delays stand also the vested interests in maintaining the *status quo*. Paradoxically, according to credible public opinion surveys, the citizens believe that the water supply is an exclusive responsibility of M/C. Due to the bad performance of the sector such misperception affects negatively citizens' trust on M/C. On the other side M/C feel alienated by this *status quo*. On May 2006, the Inter-ministerial Committee on Decentralisation adopted an ambitious action plan, based on clear principles and methods, aiming to ensure the achievement of the Government program objectives, for finalising the decentralisation of the sector and full transfer of the related property rights over the water enterprises to M/C. Decentralization of the sector will be implemented in all the cases while encouraging of inter-communal cooperation and/or private sector participation in the sector will be encouraged during and/or after the decentralization according to local circumstances. Government is taking clear commitments for resolving the inherited arrays as well as to continue supporting investments in the sector. The process seems accelerating significantly this year.²³

3) Constitutional and legal framework

The legal framework for decentralisation is given on three levels:

- a) At the level of the Constitution,
- b) At the level of national legislation (such as a local self-government law and sectoral laws), and
- c) In international agreements, notably the European Charter of Local Self-Government of the Council of Europe.

- **Constitutional framework**

Constitutional frameworks cross-cut most of the themes already addressed, notably in the Introduction. Major findings of the participants of the Conference confirmed the relevance of the constitutional and legal framework, the leitmotiv being that no viable and effective local governance is possible without proper constitutional and legal frameworks to provide a stable institutional setup for the decentralisation processes. Generally speaking, decentralisation in the Western Balkans is still in the *transformation* phase, whereby depicted structural challenges do not give much hope that the *consolidation* phase will follow soon. The major problems identified refer to the following levels and aspects of constitutional politics and policy:

- a) The stability of constitutional models – once accepted, constitutional models should be given some time and not hastily revised;

²³ Hoxha, Artan and Shapo, Zhani (2006) "Constitutional Framework Analysis: the Albanian Case", Conference Paper, Tirana, pp. 5-6.

- b) The ineffectiveness of constitutional and legal norms in a non-functional captured state – corruption persisting as a major problem;
- c) The need for flexibility in constitutional and legal solutions: the transitional nature of the societies and decentralisation speaks rather in favour of the combination of different models of decentralisation, devolution, de-concentration and delegation (the problem common to Albania, Croatia and Serbia);
- d) Major importance of the possibility of judicial enforcement of constitutional guarantees for municipal autonomy;
- e) Within multiethnic divided societies, the success of decentralisation heavily depends on the functionality of power-sharing arrangements, which until now have not proved successful in the Western Balkans.²⁴

- ***Sectoral laws and the local government law***

A very important question concerning the legal framework that was brought up during the Conference is the relationship between the legislation in a particular sector in which local governments are implicated, such as health, and the general law on local self-government. Tasks are delegated by both the local self-government law and the sectoral laws, or, what seems to happen often, are delegated in the local self-government law but then to a greater or lesser extent pulled back through sectoral legislation. This is clearly a very complicated matter, given the mass of legislation involved. Rizvan Sulejmani showed that, in the case of Macedonia, it was necessary to make changes and amendments in over forty other laws, and to adopt a number of bylaws, only to regulate the transfer of competences (in addition to passing the Law on Local Self-Government, the Law on Financing of Local Self-Government Units, the Law on the City of Skopje and the Law on the Territorial Organisation of Local Self-Government in the Republic of Macedonia).²⁵

Ideally, as Vesna Ilic Prelic argues: "Apart from the tasks that, according to the Law on Local Self-Government, are transferred to the competence of local authorities in the entirety, it is also envisaged that certain tasks can be delegated from the state level to the local self-government level by sectoral laws. The tasks are delegated always when it is in the interest of a more efficient and more rational implementation of citizens' rights and meeting their needs."²⁶ However, this is often not the case, as Dhimitri and Dhuka write about Albania (but which is certainly true in other countries as well): "the recent amendments of sector laws are

²⁴ Interestingly enough, the relation between decentralisation and ethnic conflicts, otherwise dominating the decentralisation discourse and policy in the Western Balkans, notably Macedonia and Kosovo, was not in depth analysed.

²⁵ Sulejmani, Rizvan (2006) "Decentralisation or Federalisation: the Case of Macedonia", Conference Paper, Tirana.

²⁶ Prelic, Vesna Ilic (2006) "Constitutional and Legal Framework for Territorial Organization and Power Distribution in the Republic of Serbia", Conference Paper, Tirana, p.2.

predisposed to treat local government as de-concentrated bodies or as agents of the central government even for own exclusive functions by defining tasks and duties instead of giving full authority in exercising those functions, through respecting minimum standard defined by national policies. The recent amendments in the Urban planning law are for sure not decentralising the sector, but are creating all the chances for having a more centralised scheme and practice in the field of exclusive own function, as urban planning is."²⁷

- ***International relations***

Countries in the Western Balkans have ratified the European Charter of Local Self-Government and have put a significant effort into the modification of the legal framework and the updating of their legislation in order to meet the requirements of the Charter. In Albania, for example, the Charter is directly part of the national legal system, as according to the Constitution, all ratified international agreements are directly implemented *and prevail over the laws of the country that come into conflict with it*.²⁸ The same is true for Bosnia and Herzegovina. However, simply enacting laws clearly is insufficient and implementation remains a very great challenge. As Conference participant Zdravko Miovcic noted with regard to Bosnia and Herzegovina: "It is important to note that BiH is one of the few countries which accepted obligations arising from the Charter with no reservations, although with no consideration for the actual level of preparedness or capacity to fulfil them."²⁹

An interesting question that came up in the debate, and as well in a couple of the papers, is the question of international relations: to what extent can national governments sign agreements in areas that are actually within the field of responsibility of local governments, without at least consulting them on the matter at hand.

Clearly the national government is the main actor in international relations, but if it undertakes commitments in areas that are not directly within its mandate, then the credibility of the agreement could be questioned. This is more so a problem the more decentralised a state is, or if it is a federation. This is a question to be kept in mind not only by the countries concerned themselves, but also by their negotiating partners. Vehid Sehic cautions against the experience of Bosnia and Herzegovina: "The fact that Bosnia and Herzegovina, as the state with responsibilities it has now, cannot efficiently fulfil the conditions of the European Union but that the European Union nevertheless wants the state of Bosnia and Herzegovina and its institutions as the partner, and not the institutions of the entity level is neglected. It is unacceptable that Bosnia and Herzegovina as a state ratified many international documents and took over obligation and responsibility for their implementation and that at the same time it does not have legal and institutional

²⁷ Dhimitri, Albana and Dhuka, Majlinda (2006) "Process Management and Finances in Albania", Conference Paper, Tirana, p. 5, fn. 10.

²⁸ Albanian Constitution, Chapter II--International Agreements, Art 122.

²⁹ Miovcic, Zdravko (2006) "Bosnia and Herzegovina between Centralization and Decentralization", Conference Paper, Tirana, pp. 3-4.

mechanisms for doing so.”³⁰ Even with regard to Albania, a state with a much stronger central government than Bosnia and Herzegovina, Dhimitri and Dhuka asked: “should local governments have the right, by law, to be consulted for every decision taken by the central government that implicates them directly or indirectly? What are the consultation mechanisms and should they be provided for by law?”³¹ Of course, as Dhimitri and Dhuka point out, this is not only a question of international relations, but affects a wide range of sectors in which central governments could take decisions that have effects on local governments. This question is also related to the one that we discussed earlier concerning municipal associations: whether these associations are the best way for such consultation to take place.

The other question of international relations concerns cross-border or other international cooperation between local government units. This point was brought up in particular by Miljenko Doric, who informed on the twinning between towns and municipalities from Croatia with local authorities from other European countries taking place very often. Recently, many counties (regions) have joined the Assembly of European Regions and are trying to speed up their development through these and other bilateral contacts. The first Euroregion that included Counties from Croatia was established between Baranya in Hungary, several Counties from Slavonija in Croatia and the Tuzla Canton in Bosnia and Herzegovina. Such trans-frontier co-operation was very important in the 90’s for three reasons: economic, ensuring peace and overcoming border barrier restrictions. In February 2006, a new model of interregional co-operation was established between all the Adriatic regions from the six Adriatic countries. This Euro-region includes seven Croatian Counties (regions). Typical activities of such trans-frontier cooperation, of which other examples include the Gnjilane/Gjilan-Presevo-Kumanovo-Trgovishte micro-region and the Ohrid-Prespa Euro-region, are natural resource management, tourism promotion, local economic planning and development, reconciliation and combating transnational organized crime. Clearly there are benefits to be gained from such cooperation, though there is often reluctance on the part of central governments due to fears of secessionist tendencies.

4) *Politics and the electoral system*

The role of political parties in the local governance system can be critical, namely: the high degree to which local governance has been politicised, either through the capture of the local government by political (or other) interest groups, or through the relationship between local governments and the central governments. A partisan approach to issues of local self-government was detected in many countries, and difficulties faced by some opposition mayors/municipalities were highlighted. With regards to the political interest group capture

³⁰ Sehic, Vehid (2006) “Analysis of the Bosnia and Herzegovina Constitution”, Conference Paper, Tirana, p. 5.

³¹ Dhimitri, Albana and Dhuka, Majlinda (2006) “Process Management and Finances in Albania”, Conference Paper, Tirana, p. 7.

of local government, this is strongly related to the electoral system at the local level where, in most countries in the region, local representatives are elected through party lists. This has a greatly negative impact on the accountability of local councillors because they therefore owe their primary allegiance to the party, and are required to be accountable to the (not very democratic) party hierarchy and not to the actual local citizens who voted for them. Single-party domination of local politics has a detrimental effect on local policy making. This makes politics in a sense non-rival, because candidates no longer need the support of voters, as they are effectively guaranteed power by their 'party machines'. Though opposition parties could present a threat, what then arises is more of a clash between competing power groups than an evidence-based choice on which councillor would do a better job for the local citizens.

The other relevant point about political parties is to what extent they are actually interested in working for decentralised governance. As Rizvan Sulejmani points out, "for the constitutional framework to be able to produce the effect of stability and equality there should be a respectable political force that will be permanently pushing it forward, promoting it, cherishing it and preserving it."³² However, this is not always the case. A key example would of course be Bosnia and Herzegovina, where the political elite has not shown a commitment to reform and ordinary citizens are apathetic and disenfranchised. The UNDP National Human Development Report for Bosnia and Herzegovina goes so far as to suggest: "our analysis also suggests a still more negative possibility: that the absence of strategies has not come about by chance or benign neglect, but is a direct consequence of dominant political forces' implicit opposition to change. It is a depressing prospect but the key obstacle to decentralization may not be systemic weaknesses, but outright political opposition."³³

5) *Autonomy and accountability*

An important question discussed in working groups and in the plenary session were the degree of, and the balance between the autonomy and accountability of local government units. The two key points were that, on the one hand, local government units are not as autonomous or as accountable as they should be, and on the other hand, that these two are related i.e. a greater degree of autonomy would first require advances in accountability. More autonomy implies an accountable and capable local self-government.

Speaking of the first point, accountability is clearly lacking in many local government units. With regards to capability, we can say that technically independent local governments are actually weak due to lack of resources and legislation which gives with one hand and takes away with the other (see the point about sectoral laws above). In other words, the actual powers of the local authorities, as declared by law, are not solid enough due to the failure to

³² Sulejmani, Rizvan (2006) "Decentralisation or Federalisation: the Case of Macedonia", Conference Paper, Tirana, p. 6.

³³ UNDP (2005), op. cit. p. 135.

harmonise sectoral legislation with the principles of newly adopted local government legislation, and to limited financial and human resources. As well, as mentioned previously with regard to the vertical balance of power and responsibilities, central administrations often retain a great deal of control over local government units. According to Denisa Sarajlic Maglic, this "situation should significantly change in BiH with the adoption of the Law on Principles of Local Self-Governance, which will provide a basis for introduction of a proper system of oversight. Strengthening the External Audit Office would result in inclusion of municipal governments in the audit process within BiH. Oversight, however, must be distinguished from control. Municipal-Cantonal and Municipal-Entity relations are currently characterized by excessive control and little genuine oversight. Rather, the oversight process should ascertain that municipalities meet performance standards and spend their resources in accordance with law and their mandates. By focusing the oversight mandates and capabilities of the Cantons and Entities on legal supervision and auditing, municipalities will retain their self-rule and gain legitimacy as accountable and effective parts of government."³⁴

The obvious question that follows this discussion about accountability, and a question raised during the Conference, is what local government units can do to enforce their autonomy vis à vis central governments.

In all countries concerned, the principles of local self-government are stipulated in relevant legislation, which quite clearly provides that local government units are autonomous and have the right to exercise their constitutional and regulatory functions. Since this is so decreed in the legislation, the local government units would in principle have recourse to a judicial remedy if they thought that their legally, and even constitutionally, guaranteed autonomy was being infringed upon by the central government. Furthermore, as the primacy of international law is recognised, it is therefore possible for the European Charter of Local Self-Government to be relied upon in courts in the countries that have ratified the Charter. In the same manner, disputes concerning the legality of local government acts are to be referred by the central government authorities to the Constitutional Court or to another competent judicial body. Furthermore, and Dhimitri and Dhuka point out in the case of Albania: "While they are directly elected and can be elected again or not, the Mayor can be dismissed by the central government – the Council of Ministers – in case of serious breaches of the law." But, at least, "the Mayor can appeal such a decision of the Council of Ministers in front of the Court, as a premise for balance from another independent power, as the judiciary is."³⁵ The court can, in such cases, act as a balance. However, it remains doubtful as to whether the Constitutional Courts are the most appropriate courts to deal with questions concerning relations between local governments and the central government.

³⁴ Sarajlic-Maglic, Denisa (2006) "Process Management and Finances - The Case of Bosnia and Herzegovina", Conference Paper, Tirana, p. 4.

³⁵ Dhimitri, Albana and Dhuka, Majlinda (2006) "Process Management and Finances in Albania", Conference Paper, Tirana, p. 4.

Perhaps another dispute resolution body, whether a court or other type of institution, would be more appropriate and effective.

6) *Cross-cutting issues: the autonomy of local government and the transitional nature of societies*

The main distinction that can be made in the issues brought up during the Conference is between those that addressed more specific questions of how the decentralisation process is proceeding³⁶ as opposed to those that questioned broader issues of state organisation, with decentralisation as an aspect of that.³⁷

Understandably, these are often intrinsically linked, such as with the question of the territorial organisation of decentralisation. Both general and more specific issues show that in most cases the autonomy of local government is not a one-way street. The nature and level of local autonomy depend very much on broader institutional frameworks and the political setup in a country.

It is clear that the local government in the Western Balkans is being heavily challenged already in its initial, *transformation* stage, let alone the stage of its *consolidation*. In this regard, the Conference sent an important warning against the “traps of decentralisation” due to the still transitional nature of the overall social and economic environment for the reforms.

³⁶ Cf. Bosnian paper by Z. Miovcic, Serbian paper by V. Ilic Prelic, Albanian paper by A. Hoxha and Z. Shapo, and Croatian paper by Z. Lauc

³⁷ Cf. Albanian papers by A. Dhimitri and M. Dhuka, and by T. Dedja and F. Brahim; Bosnian papers by D. Sarajlic-Maglic and V. Sehic; Serbian paper by B. Djokic

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- *Bosnia and Herzegovina between Centralisation and Decentralisation*, by Zdravko Miovcic
- *Constitutional and Legal Framework for Territorial Organization and Power Distribution in the Republic of Serbia*, by Vesna Ilic Prelic
- *Constitutional Framework Analysis: the Albanian Case*, by Artan Hoxha and Zhani Shapo
- *Decentralisation or Federalisation: the Case of Macedonia*, by Rizvan Sulejmani
- *Experiences and Tendencies in Local and Regional Self-Government in the Republic of Croatia*, by Zvonimir Lauc
- *Local and Regional Self-Government in Croatia*, by Miljenko Doric
- *Process Management and Finances in Albania*, by Albana Dhimitri and Majlinda Dhuka
- *Process Management and Finances – The Case of Bosnia and Herzegovina*, by Denisa Sarajlic-Maglic
- *The Decentralisation Process in the Republic of Serbia in View of Optimal Territorial Organization*, by Bratislav Djokic
- *The Dilemma of the Revision of the Administrative and Territorial Division in Albania: Obligatory, Voluntary Amalgamation or Inter-Communal Collaboration as a Transitory Solution?* by Taulant Dedja and Fran Brahimi

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V. Annex: List of Themes and Conference Participants

Theme 1:

Constitutional Frameworks and Inter-governmental Relations

Keynote Speaker

Professor Dr. Lidija R. Basta Fleiner

Director, International Research and Consulting Centre, Institute of Federalism, University of Fribourg

Participants

Mr. Artan Hoxha,

President, Institute for Contemporary Studies, Tirana

Mr. Zhani Shapo

Freelance Consultant, Tirana

Prof. Zvonimir Lauc

President, the Croatian Institute for Local Government and Professor of Constitutional Law, Faculty of Law, Osijek, Croatia

Mr. Vehid Šehić

President, Forum of Tuzla Citizens

Mr. Rizvan Sulejmani

Minister for Local Self-Government, Republic of Macedonia

Ms. Vesna Ilić-Prelić

Deputy Minister for Public Administration and Local Self-Government, Serbia

Mr. Aziz Lila

Deputy Minister, Ministry of Local Government Administration, Kosovo

Theme 2:

Decentralisation & the Local/National or Local/ Regional/National Level

Keynote Speaker

Dr. Ivan Krastev

Chair of the Board and Programme Director, Political Research, Centre for Liberal Strategies, Sofia

Participants

Mr. Taulant Dedja

Member of Albanian Parliament and Member of the Committee on the Environment, Agriculture and Local and Regional Affairs of the Council of Europe Parliamentary Assembly

Mr. Fran Brahimi

Director Local Finances, Ministry of the Interior, Albania

Mr. Zdravko Miović

Director, EDA Development Agency, Banja Luka

Mr. Miljenko Dorić

Member of Croatian National Parliament and Chairperson: Sub-Committee on Local and Regional Democracy, of the Council of Europe Parliamentary Assembly (also attending the Conference as representative of this Committee)

Mr. Milorad Todorović

Deputy President of Coordination Centre for Kosovo and Metohija and

Assembly Member of State Union Serbia and Montenegro Assembly

Mr. Andrej Petrov

Mayor of the Municipality of Karpos and President of the Association of the Units of Local Self Government of the Republic of Macedonia

Mr. Bratislav Djokić

Assistant Minister for Public Administration and Local Self-Government, Serbia

Theme 3:
Process Management & Finances

Keynote Speaker

Prof. Dr. Bernard Dafflon

Professor of Public Finances and Public Finance Management, Chair of Public Finance, University of Fribourg

Participants

Ms. Albana Dhimitri

Deputy Mayor of Tirana Municipality

Ms. Majlinda Dhuka

Director of Law Dept, and Tirana City's Attorney at the Municipality of Tirana

Ms. Denisa Sarajlić Maglić

Policy Director for the Governance Accountability Project in Bosnia and Herzegovina

Ms. Dubravka Jurlina-Alibegović

Head of Department, the Institute of Economics, Zagreb

Mr. Besnik Osmani

Permanent Secretary, Ministry of Local Government Administration, Kosovo

Other participants

Mr. Giovanni Di Stasi

President, Congress of Local and Regional Authorities, Council of Europe

Mr. Fatos Beja,

Chair of the Parliamentary Commission on Law and Public Administration, Albania

Mr. Gjergj Sinani

Member on the Advisory Committee on the Framework Convention for the Protection of National Minorities, Council of Europe

Mr. Fatos Hodaj

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Mr. Artur Kurti

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Senior Political Adviser, Prime Minister's Office, Kosovo

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Mrs. Brilanda Bushati

Mrs. Julinda Sokoli

Mr. Blendi Gerdoci

Mrs. Edlira Tukaj

Prof. Dr. Esmeralda Uruci

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