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Foreword

South East Europe and the Black Sea region continue to be rocked by Russia’s war on Ukraine. As the war begun to look like it was grinding to an attritional halt, fault lines in Western unity were beginning to appear. Although Bulgaria’s government collapsed government in June, NATO and the EU have made efforts to reassure its SEE allies, through various diplomatic engagements. NATO’s Madrid conference in late June has likely rallied its allies further, closing any emerging cracks in Western unity in the short term. The EU has awarded candidacy status to Ukraine and Moldova - as some of the Balkan countries have been left knocking on the EU’s door.

Speculation of further aggression temporarily shifted from the Black Sea to the Baltics in June but Moldova’s Transnistria region remains vulnerable. The southern Caucasus continues to experience a heavy dose of realpolitik, as have their central Asian neighbours across the Caspian Sea. In the meantime, many young Georgians continue to rally against their government, as nearby Nagorno-Karabakh simmers, remaining largely unresolved.

Serbia and Hungary remain the clear outliers in the region in regards to the war, with Bosnians preparing for what will be a heavily scrutinised election in October. Turkey’s engagement continues to be documented in the region, with Erdogan wielding some clout at NATO’s Madrid conference.

This Peace and Security Monitor takes deep dives into the region, distilling actionable policy recommendations, providing clear analysis to decision makers and supporting the Platform’s push for peace and humanity.
Russia’s war in Ukraine has exacerbated Transnistria’s external dependence and Transnistria’s already fragile position is thrown into further disarray.

A drawn out conflict in Ukraine is likely to present an opportunity for Moldovan influence in Transnistria, however, Moldova will need to act strategically to maximise its leverage.

A Russian breakthrough in Southern Ukraine would likely present an existential risk to the Transnistrian de facto authorities. Their political survival therefore depends on Ukraine’s military success against the Russian invasion.

Most scenarios of a peace deal between Russia and Ukraine would deepen Transnistria’s isolation from Russia and are therefore unlikely to improve Transnistria’s strategic position.

From the viewpoint of Transnistria’s ability to survive as an independent state there are only bad and worse options as Transnistria’s preferred scenario of a favourable peace deal between Russia and Ukraine seems extremely unlikely.

The best way to prevent Transnistria from becoming a source of regional instability is to keep hostilities away from its borders by strengthening Ukraine and Ukraine’s ability to defend itself militarily against Russian aggression.

**Introduction: A strategic conundrum on the brink of collapse**

Ever since declaring its declaration of independence in September 1990, Transnistria perceived the primary threat to its independence to come from the Moldovan state. As a result, much of its foreign policy was focused on countering this strategic imbalance by leaning on Russia. Russia wilfully acted as a security guarantor by providing peace troops. The Kremlin became an economic guarantor, funding Transnistria’s otherwise highly unsustainable, export-oriented economic and welfare model[1] through the provision of quasi-free gas, direct financial support and investments. This allowed the Transnistrian regime to buy up elite and popular support and, critically, to avoid any significant social unrest or other serious challenges to the regime. This allowed the Transnistrian government to model itself as a state that can provide better services to their citizenry, in competition with neighbouring Moldova.

However, given Transnistria’s geographic distance to Russia and landlocked position Ukraine quickly emerged as Transnistria’s window to Russia and the world as well as a strategic partner.[2] It allowed for the rotation of Russian troops against the will of Moldovan government and western pressure. The open border also gave rise to a profitable shadow economy and other illicit business models, aided by the privatization of formerly state-owned enterprises and only possible through the use of Ukrainian infrastructure[3] to transport goods to and from international markets. The dependence on Ukraine lead to its status as a mediator in the negotiation process with Moldova since 1995[4]. For as long as Ukrainian-Russian relations were stable, Transnistria’s position in the region was secured and its strategy of dual alliance allowed it to choose the best from both worlds.
Beginning with the Orange Revolution of 2004 Ukrainian-Russian relations began to sour, and Ukraine set out to gradually embark on a path towards European integration. The EU, deeply sceptical of Russia’s influence in the eastern neighbourhood area, encouraged Ukraine to combat illicit trade across the Transnistrian-Ukrainian border. This weakened Transnistria’s position in the region and forced it to turn towards the Moldovan market[5]. This pivot, however, became a source of increasing economic opportunities when in 2006 the EU granted preferential treatment for Moldovan exports through the Generalized System of Preferences (GSP)[6] and the Autonomous Trade Preferences regime (ATP) in 2008[7]. As a result, Transnistria’s economy has become exceedingly dependent on the European market, which it can access only through Moldova. 69% of Transnistria’s exports go to Europe[8], whereas exports to the Russia-led Eurasian customs union have fallen to 14% before 24 February[9] from 40% in 2015[10]. Recognising its need to balance between Russia and the EU[11] as a pragmatic response to preserve its fragile statehood[12], Transnistria has therefore found itself in a net of conflicting alignments, which already before Russia’s renewed aggression against Ukraine became difficult to navigate.

On 27 February 2022 Ukraine closed its border to Transnistria, making Transnistria fully dependent on cooperation with Chisinau in order to access international markets.[13]

Russia’s war in Ukraine has exacerbated Transnistria’s external dependence and Transnistria’s already fragile position is thrown into further disarray. This article will seek to predict how different scenarios in the war in Ukraine will impact Transnistria’s ability to survive as an independent state.

Scenario 1: A drawn out conflict in Ukraine: An opportunity for Moldovan influence

As long as the conflict in Ukraine drags on away from the Transnistrian border and the sanctions regime against Russia continues to build, Transnistria’s single dependence on Moldova and by extension the European Union will only continue to grow. This comes amid news that Transnistria’s economy is expected to shrink by 17-20% this year.[14] A drawn-out conflict in Ukraine would also give Moldova’s more time to modernise its military.[15]
This could further strengthen Moldova’s influence over Transnistria. Russia, being occupied elsewhere, will likely be unable to effectively punish or counter such a move in order to help Transnistria’s position.

This, at least in theory, gives the government in Moldova significant clout to exert both economic and political pressure on Transnistria. Already consultations between the governments in Tiraspol and Chisinau are at a high level[16] as both sides are eager[17] to avoid any misunderstandings that could escalate the situation on the ground.

The government in Chisinau could attempt to use this influence over trade flows to decrease the attractiveness of the Transnistrian economic model, based on foreign trade, support from Russia and to a lesser degree smuggling[18]. This could inflict serious damage onto the Transnistrian economy but would also increase tensions between both sides or could even create unrest within Transnistria. This is demonstrated by the already serious crises over medical imports into Transnistria, which has reportedly led to a continuing shortage of medication in pharmacies.[19] Any economic downturn would accelerate outmigration and worsen Transnistria’s already severe demographic crisis.[20]

Moreover, Moldova could attempt to cut a deal with the elites in Transnistria conditioning the flow of goods from and to Transnistria on small democratic reforms and improved compliance with human rights. One point of both leverage but potentially also cooperation is the highly pollutant-emitting metallurgical plant in Rybnitsa[21], which accounts for more than 50% of Transnistria’s output and depends on imports from Romania for its operation. If Moldova were to block these imports on ecological grounds it could effectively shut down the plant and throw the Transnistrian economy into immediate crisis. On the other hand, it could also negotiate access to the plant and cooperate on improving its sustainability.

These examples highlight that during a prolonged conflict in Ukraine, the Moldovan government can leverage Transnistria’s isolated position for both increased economic pressure or concessions and increased cooperation. An aggressive implementation would increase the risk of internal unrest whereas a cooperative strategy would mean the gradual abdication autonomy and deepen the integration with Moldova. Both would threaten Transnistria’s status as an authoritarian rentier state and thereby threaten a core mechanic of Transnistrian statehood.

This scenario of course depends on Chisinau’s willingness and ability to use its leverage. While it could severely weaken Transnistria’s independent statehood, Russian peace troops, Transnistria’s ultimate guarantors of independence are highly unlikely to allow for any full integration and would likely attempt to interfere with the prospect of deeper Transnistrian-Moldovan integration, thereby increasing the risk of internal instability and unrest.

Russian and Transnistrian soldiers march together on May 9, 2016, on the streets during a military ceremony held in Tiraspol, the breakaway region of Transnistria. Photo: Transnistrian diplomacy website via Balkan Insight.
Modern attempts to integrate Transnistria into Russia can be traced back to 2014 under the neo-imperial Novorossiya project[23], an ill-conceived effort to re-unite lands north of the Black Sea, that were conquered by Russia in the mid-18th century and part of a Russian province that also included large parts of Transnistria[24]. However, attempts to create people’s republics across southern and eastern Ukraine failed[25][26] and the project quickly descended into chaos[27], lacked popular support and the project was abandoned in 2015, since it ran afoul of Russia’s commitment to the Minsk agreements (excluding the Donbass)[28]. Russia’s current war against Ukraine represents its second go at the idea, this time through purely military means.

For a long time, Russia has treated Transnistria as a proxy to exert influence over the entirety of Moldova[29]. However, following the recognition of the Donbass republics Russia seems to have abdicated this policy of using secessionist regions to pressure and gain influence over other countries’ internal politics and instead, opted for securing its self-defined sphere of interest[30] through open expansionism. Russia would likely use the window of opportunity to annex a territory, whose population has consistently expressed an overwhelming desire to join Russia[31], particularly to avoid a “Ukraine scenario”, where the thread of invasion would give Moldova time and initiative to build-up significant defensive capabilities, which it currently lacks[32].

Russia’s ambition to include Transnistria into its newly expanded territory was suggested through a map that the Belarussian president Lukashenko presented in a televised address, that indicated the military objectives in Ukraine and showed an arrow pointing from the Odessa region into Transnistria.[33] Similar comments were made by Rustam Minnekayev who explained that a land bridge in southern Ukraine would offer a “way out for Transnistria”.[34]

Despite their ideological preference towards being part of the Russian world, “Russkiy mir”[35], the political and economic elites in Transnistria
have strong incentives to maintain their independence. Joining Russia and losing access to foreign markets would almost certainly mean impoverishment relative to Moldova and instability as well as loss of status having fully become a peripheral imperial subject. Secondly, elites in Transnistria would now have to fully subordinate to Moscow with little guarantee of their maintained status as local kingpins.[36] Thirdly, the manner and the destruction with which Russia conducts its so-called “liberation” will surely add to Transnistria’s desire to keep the war as far away from their borders as possible.

Tellingly, the Transnistrian regime and state media have been very quiet about Russia’s military operation and in an interview on 08 July 2022 with Rossiya TV[37], President Vadim Krasnoselsky, not only emphasised Transnistria’s desire for “peace” but added that Transnistria over time had acquired its unique national identity as a “multinational people” that was neither Moldovan, Romanian nor Russian. Ostensibly directed at Moldova, these comments can be similarly applied to Russia’s imperial agenda. Krasnoselsky even went on to defend the Moldovan government against the notion of “Russophobia” and played down the significance of recent explosions, implicitly explaining why neither Transnistria (nor Moldova) would be in need to be liberated by Russia.

However, should Russia be able to take Mykolaiv and Odessa and advance to Transnistria, it will likely pay no attention these preferences. Even though it cannot state this openly, Transnistria’s political survival therefore depends on Ukraine’s military success against the Russian invasion.

**Scenario 3: A peace deal between Russia and Ukraine**

Transnistria’s current strategy to lie low and hope for the best is reflected as its preferred scenario, which is also the most unlikely. For Transnistria, to regain its pre-invasion status quo, it would necessitate a type of peace deal between Russia and Ukraine that would not only seize hostilities but also lift many of the sanctions against Russia that have cut-off Transnistria’s trade with Russia. This exceedingly unlikely prospect seems only imaginable if Russia were to credibly abdicate its imperial ambitions, which almost by definition include its maintained support for Transnistria.

Participants of a Pushkin lookalike contest in Tiraspol on 06 June 2022, the poet’s 223rd birthday. ТСВ Приднестровье Telegram
Provided that a peace deal would be signed by an independent Ukraine, hostile to Russian influence in the region and on route to becoming a member of the EU[39], Ukraine is highly unlikely to allow Transnistria to counter Moldova’s influence by letting it use their common border for illicit trade. Depending on the outcome of the conflict, a peace deal might even stipulate that Russia withdraw its troops from Transnistria, effectively ending Transnistria’s prospect to remain independent.

Most scenarios of a peace deal between Russia and Ukraine would deepen Transnistria’s isolation from Russia and are therefore unlikely to improve Transnistria’s strategic position and might even accelerate its decline. However, even though Ukraine has publicly declared[40] it would not accept a peace deal that would require it to cede territory to Russia, such a deal could be interpreted by elites in Transnistria as Russia retaining its chances to push its chances another time. Under these circumstances, evoking the threat of a bellicose Russia to protect its interests, Transnistria would have additional leverage to balance its dependency on Moldova and actually likely retain some of its preinvasion status quo. On the other hand, the farther a peace deal keeps Russia away from the Transnistrian border, such as one that renegotiates the status of Crimea[41], the higher the chances for a gradual integration into Moldova and a deterioration of independent Transnistrian statehood.

**Conclusion and outlook**

From the viewpoint of Transnistria’s ability to survive as an independent state there are only bad and worse options as Transnistria’s preferred scenario of a favourable peace deal between Russia and Ukraine seems extremely unlikely. Transnistria can expect its isolation and external dependence to increase, with very little control over its trajectory. It seems likely that over time Transnistria’s statehood will continue to be weakened and internal crises magnify.

However, the Moldovan government will have to act strategically in order to both take advantage of Transnistria’s weakened position and to avoid its decreased instability from spilling out of control. While such a scenario would be potentially disastrous for Transnistria, it would also threaten Moldova internal security as well as its path towards deepened integration with the European Union.

Despite being surrounded by an increasingly pro-European Moldova and post-Maidan Ukraine and continuing its economic integration with the west, Transnistria’s culture remains staunchly and perhaps surprisingly pro-Russian.[42] As captured brilliantly by this quote of a resident in 2014: ‘My head is in Russia but my legs are walking to Europe.’[43], Transnistria remains torn between two worlds. This also helps it to maintain its own identity against integration with Moldova. Building a more common identity between Moldova and Transnistria would require success stories through sustained cooperation and increased youth mobility between Transnistria and the EU as well as a more open EU presence in Transnistria that goes ‘beyond quiet diplomacy’[44].

Facing a difficult outlook and attempting to offer Moldova a way to summarily solve the Transnistrian headache, the government in Tiraspol has expressed openness to a Moldovan future in the EU[45] and even possible unification with Romania in exchange for recognition Transnistrian statehood[46]. While the first scenario is unlikely to be fulfilled in the near future and the latter very unlikely in general, such a recognition would be strategically unwise for both Moldova and the EU to accept, as it would likely give Russia a safe haven in the immediate neighbourhood to operate from as a fifth column, with little room to leverage or mitigate the risk.
Recommendations

- The best way to prevent Transnistria from becoming a source of regional instability is to keep hostilities away from its borders by strengthening Ukraine and Ukraine’s ability to defend itself militarily against Russian aggression.
- Assisting Moldova to modernise its military will help deter security forces in Transnistria from engaging destabilising actions and strengthen Moldova’s strategic imbalance over Transnistria.
- The Moldovan government should use its strategic leverage over Transnistria by gradually pressing for democratic and human rights in exchange for economic cooperation and while managing its instability. Critically, Moldova will have to continue its own reform process in order to credibly engage Transnistria.
- The high level of consultation between all sides should be maintained in order to continually build mutual trust and mitigate external attempts to destabilise the region.
- The high level of trust coupled with gradual decoupling from Russian influence and economic cooperation should be used to achieve a long-term objective on the path to reintegration: a negotiated democratisation of Transnistria.


[33] Newsweek, (01/03/2022), Lukashenko’s Map Might Have Revealed Russia’s Strategy In Ukraine, Moldova, accessed on 24/06/2022, https://www.newsweek.com/lukashenko-map-might-have-revealed-russias-strategy-ukraine-moldova-1683935


[36] In fact, Russia has shown no hesitancy to have unruly elites in the Donbass republics assassinated by Wagner units: Foreign Policy, (25/10/2016), Is Russia Killing Off Eastern Ukraine's Warlords?, accessed on 24/06/2022, https://foreignpolicy.com/2016/10/25/who-is-killing-eastern-ukraines-warlords-motorola-russia-putin/


[38] bne intellinews, (28/04/2022), Moldova rejects Ukraine's offer to seize Transnistria, accessed on 24/06/2022, https://www.intellinews.com/moldova-rejects-ukraine-s-offer-to-seize-transnistria-242742/


[43] Foreign Ministry of Transnistria, (04/03/2022), З а я в л е н и е М И Д П М Р в связи с обращением РМ в ЕС, accessed on 24/06/2022, https://mid.gospmr.org/ru/node/8924


[46] TASS, (01/06/2016), The Unraveling Of Moscow's 'Novorossia' Dream, accessed on 24/06/2022, https://tass.com/world/1446091

[47] Office of the President of Transnistria, (08/06/2022), Neutrality declared by Moldova is fiction - Foreign Minister of Transnistria, accessed on 24/06/2022, https://tass.com/world/1446091
Russia's invasion of Ukraine is likely to cause a new wave of foreign investment arbitration cases that could result in millions of dollars of compensation to claimants against Russia.

Russia adopted multiple measures that not only affect the rights of unfriendly countries' investors in regards to their investments in Russia but it also makes the situation unfavourable for other foreign investors, as well.

While Russia has not designated Turkey as an unfriendly country, the measures affect some rights of Turkish investors.

Ukraine has been designated as an unfriendly country by Russia. Consequently, the Ukrainian investors' assets are in greater danger of being expropriated in comparison to Turkish investors.

Russia would probably try to invoke a multitude of general defences available under customary international law to preclude the wrongfulness of its measures. However, the jurisprudence suggests that they are not applicable.

There is a solid legal basis for investors' claims against Russia, in which Russia has a negligible chance of defending itself. However, there will be significant difficulty in enforcing an award.

Key takeaways

- Russia's invasion of Ukraine is likely to cause a new wave of foreign investment arbitration cases that could result in millions of dollars of compensation to claimants against Russia.
- Russia adopted multiple measures that not only affect the rights of unfriendly countries' investors in regards to their investments in Russia but it also makes the situation unfavourable for other foreign investors, as well.
- While Russia has not designated Turkey as an unfriendly country, the measures affect some rights of Turkish investors.
- Ukraine has been designated as an unfriendly country by Russia. Consequently, the Ukrainian investors' assets are in greater danger of being expropriated in comparison to Turkish investors.
- Russia would probably try to invoke a multitude of general defences available under customary international law to preclude the wrongfulness of its measures. However, the jurisprudence suggests that they are not applicable.
- There is a solid legal basis for investors' claims against Russia, in which Russia has a negligible chance of defending itself. However, there will be significant difficulty in enforcing an award.

Introduction

Following Russia's invasion of Ukraine on 24 February 2022, an unprecedented range of sanctions were imposed against Russia, notably by the US, the UK, and the EU. In response, Russia designated several countries as 'unfriendly.'[1] To tackle the consequential economic impacts of these sanctions, Russia adopted multiple measures that, as this article reasonably assumes, not only affect the rights of unfriendly countries’ investors with investments in Russia but also make the situation unfavourable for other foreign investors.

Russia has 65 bilateral investment treaties (BITs) with other countries.[2] These treaties seek to provide protection for foreign investors under international investment law. Breaching such obligations triggers the dispute settlement mechanisms of these treaties.

Russia's measures are susceptible to breaching its investment treaty obligations

The Russian President, the Cabinet, and Central Bank imposed emergency economic restrictions on Russian residents and, in some cases, against foreign nationals.

The majority of Russia's measures are addressed to its residents.[3] Obligating legal entities to follow these measures is problematic for investors. This is because the purchasing of shares of a local entity by foreign nationals and establishing a branch in the host state's territory are the most common form of foreign investment.

These measures include compulsory exchange of contracts’ profit to rubles [4], prohibition and restriction of transfer of foreign currency outside Russia[5] and cash withdrawals[6] [7] [8], prohibition and restriction of conducting specific transactions with unfriendly countries' nationals[9] [10] [11] restrictions on intellectual
property rights of unfriendly countries patent holders [12], and draft laws allowing the seizure of unfriendly nationals' properties and companies [13] [14].

A list of these measures has been collated at Annex A illustrating 14 examples of Russian measures. [15]

The Russia–Turkey bilateral economic relation

Statistics

Russia and Turkey have a strong and strategic alliance. The statistics support the positive effects of such a close relationship between these two countries on their economic ties. In 2019, the bilateral trade between Moscow and Ankara was €23 billion. The figure for the volume of Turkish investment in Russia was $10 billion during the same period. [16] A report in 2018 indicated that "... Turkish investments ... concentrate on the construction sector ... as well as low to medium technology sectors such as alcoholic beverages, chemicals, and glass production."[17]

While Russia has not designated Turkey as an unfriendly country, its measures affect some rights of Turkish investors.

Russia–Turkey BIT 1997

Russia and Turkey signed the present BIT in 1997. [18]

Citizenship and incorporation in accordance with each contracting party's legislations are the criteria for protected natural and legal persons as investors under Article I(1).

Protected investments are 'all kinds of assets invested by investors' of either contracting parties in the territory of the other party under Article I(2).

Possible violations of the BIT by Russia's measures

Fair and Equitable Treatment (FET)

There is no consistent definition of this protection. However, the interpretation of different arbitral tribunals contains elements such as stability, transparency, protection of the investor's legitimate expectations, procedural propriety and due process, acting in good faith, and freedom from coercion and harassment.[19]

Moreover, this protection has been interpreted widely. Article II(2) and III(1) of Russia–Turkey BIT provided this protection.

Among the measures mentioned earlier, what can probably be a breach of this obligation is a forceful exchange of trade returns to rubles (Annex A, No.1). [20] It seems to be against the investors' legitimate expectations as they could expect to hold their credits in the currency of their choice. Furthermore, forcing investors to accept less favourable conditions can be a form of coercion. This is similar to when Argentina forced Total to surrender its receivables in exchange for shares, which resulted in finding Argentina in breach of FET. [21] Other measures like prohibiting specific transactions, restricting the currency of transactions, interfering with nationals' contractual obligations, and trade restrictions (Annex A, No. 4,6,7,9,10, and 11)
seem to be grounds for violating this obligation for the same reasons.

**Free Transfer**

Investors should have the possibility to transfer their returns abroad freely. Article VIII of Russia-Turkey BIT permitted this right for investors. Under this provision, investors have the right to unimpeded transfer, without delay, and in freely convertible currency.

Most of Russia’s measures, specifically those relating to the currency exchange and transferring money (Annex A, No. 1,2,3,5,8,10) are susceptible to breach of this obligation.

**Key Personnel**

Article IV of Russia-Turkey BIT obligates the parties to facilitate entry and residence of investors of the other contracting party and let them “employ any employee of key personnel of their choice regardless of citizenship…”

However, the Russian President signed a decree on 4 April 2022 introducing visa restrictions for citizens of unfriendly countries.[22]

Such an order limits a Turkish investor’s options for employing its key personnel to Turkish citizens and other friendly countries’ nationals.

**Expropriation**

Expropriation can be direct, which includes the actual taking of the foreign investment and depriving the investor of their title, or indirect, which produces a similar effect.

Article VI of Russia-Turkey BIT covers both types of expropriation. However, as Turkey has not been designated as an unfriendly country, there is a negligible chance of direct expropriation for investments of Turkish investors.

However, compulsory exchange of trade returns to rubles (Annex A, No. 1) would probably have an equivalent effect to expropriation as it obligates Russian subsidiaries of foreign companies to exchange their trade returns to rubles, a currency with significantly lower value compared to common currencies like US Dollar or Euro.

The tribunal in Suez v Argentina accepted that a “regulatory taking” can happen when states “enact measures that reduce the benefits
investors derive from their investments but without actually changing or cancelling investors’ legal title to their assets...”[23]

The Russia-Ukraine bilateral economic relation

Statistics

“Bilateral economic relations between Russia and Ukraine reached a watershed in 2014 when Ukraine stopped purchasing gas from Russia.” [24] Ukrainian exports to Russia also collapsed from $29 billion in 2011 to $5 billion in 2021. [25]

A contract is in force between Russia and Ukraine until 2024 regarding the transit of Russian gas to the EU across Ukraine.[26] In addition, Ukrainian nationals can be shareholders of Russian companies or Russian subsidiaries of foreign companies. The Russian occupation and control of the Donbas region can also make Russia-Ukraine BIT applicable for investments made in this region by Ukrainian investors. It means that disputed investments can also be made outside the Russian territory. Similar disputes were brought against Russia after annexing Crimea in 2014 regarding the investments made in that region. [27]

Possible violations of the BIT by Russia’s measures

Most Favoured Nation (MFN) and Non-discrimination

As an accepted principle in international investment law, there should be no discrimination based on origin (nationality). This principle is known as the Most-favoured-nation principle. Non-discrimination is another similar principle.

Article 3(1) of the Russia-Ukraine BIT contains such principles. Russia is violating these principles by labelling countries “unfriendly countries” and imposing severe restrictions on them.

Legal Protection

Russia-Ukraine BIT contains a specific clause under Article 2(2) obligating the contracting parties to guarantee “the complete and unconditional legal protection” of the other party’s investments. Proposing draft laws against assets of unfriendly countries’ nationals (Annex A, No. 13 and 14)[29] in addition to measures relating to the intellectual property rights (Annex A, No. 12) are clear violations of such obligation.

Other Protections

What was previously stated about violating the obligation of freedom of transfer (Article 7 of Russia-Ukraine BIT) and direct and indirect expropriation (Article 5 of Russia-Ukraine BIT) under Russia-Turkey BIT is also applicable to Ukrainian investors. The only difference is that Ukraine has been designated as an unfriendly country, with the assets of its investors in a more precarious situation and more susceptible to being directly expropriated than Turkish investors.

Dispute settlement options

Article 9 of Russia-Turkey BIT and Article X of Russia-Ukraine BIT both give three options for dispute settlement, subsequent to a six months cooling-off period:

Russia-Ukraine BIT 1998

Russia and Ukraine signed the present BIT in 1998 [28] The definitions of protected investors and investments are similar to the language of the Russia-Turkey BIT.
(1) Competent court or arbitration court of the host state (in this case Russia);
(2) The arbitration institute of the Stockholm Chamber of Commerce; and

Among these options, the first option is the least favourable for investors as they need to accept the jurisdiction of Russian courts. The choice between the second and third options depends on the assessment of each investor and the comparison of ad hoc versus institutional arbitration.

Russia’s possible defences

As Russia has conducted international wrongful acts that engage its international responsibility, and there is no specific defence under either BITs, they will probably invoke defences under customary international law to justify their economic measures. Some of the well-known defences have been codified in ARSIWA 2001, they include necessity, force majeure, and countermeasures. [30]

Necessity

Necessity can preclude the wrongfulness of conduct only if such conduct, inter alia, “is the only way for the State to safeguard an essential interest against a grave and imminent peril.” [31] While investment tribunals constituted after the Argentine financial crisis “confirmed that economic survival of a state could constitute essential interest, most arbitral tribunals held that rigorous conditions for invoking necessity, …, were not met.” [32] Russia would have difficulty proving that its measures were the only available option. Moreover, the state’s contribution to the situation of necessity is another exception for invoking this ground. [33]

Force majeure

Force majeure is “the occurrence of an irresistible force or an unforeseen event, beyond the control of the State, making it materially impossible in the circumstances to perform the obligation.” [34] The existence of these conditions in the case of Russia is disputable. Moreover, like necessity, this ground is unavailable if force majeure is due to the conduct of the state invoking it. [35]

Countermeasure

Russia may argue that its measures against investors of unfriendly countries are countermeasure in response to wrongful measures of these investors’ home states, notably imposition of sanctions against Russia. A successful invocation of this ground depends on the nature of investors’ rights. If investors’ rights are seen as belonging to their home states only, Russia’s measures could be justified. [36] However, investment law jurisprudence does not support this interpretation of investors’ rights.

Enforcement obstacles

The solid legal basis of investors’ claims against Russia and the negligible chance of precluding the wrongfulness of measures for this country does not mean that a successful claimant with an award against Russia can enforce it without facing any obstacles.

First of all, Russia can start the setting aside proceeding against any arbitral award before
the competent court of the place of arbitration to bar the enforcement of award in other jurisdictions.[37]

Second, Russia would not enforce any unfavourable award voluntarily. It means that beneficiaries must locate Russia’s assets in different jurisdictions and initiate proceedings for recognition and enforcement of their arbitral awards under Article V of the New York Convention 1958. [38] This is the Convention that governs the procedure for enforcing an arbitral award issued outside the jurisdiction that the enforcement of the award is invoked against.

Last but not least, even if some assets can be located, Russia, as a foreign state, can still invoke its properties’ immunity from execution. It is accepted as a rule of customary international law, with some exceptions, that the properties of a foreign state are immune from execution before a court of another state. [39]

Conclusion

This article surveyed, the recent Russian measures put into place to tackle the economic impacts of international sanctions for its invasion of Ukraine.

Reviewing the BITs between Russia and the two countries in question (Turkey and Ukraine) illustrates the firm grounds for these countries’ investors’ claims against Russia. These proceedings against the Russian State could result in compensation awards involving millions of dollars to the claimants.

Moreover, Russia would have a complicated task of justifying its measures with the current defences available under customary international law.

However, a successful claimant would not have an easy road ahead in enforcing their awards against Russia in different jurisdictions.

Recommendations for foreign investors in Russia

- Investors should start collecting evidence for their potential dispute, including all decisions and correspondence with governmental agencies.
- Investors’ immediate concern shall be to act in a manner not to hinder any future claim against Russia.
- Investors are strongly advised to consider all grounds available under the BIT applicable to their dispute and favourable jurisdictions to enforce future awards before taking any legal measures for commencing investment arbitration proceedings.
- Investors need to start locating any of Russia’s state-owned assets in different jurisdictions as a safeguard for enforcing any future awards.
Annex A: List of Russia’s economic measures

This list is gathered without any claim of exhaustiveness.

(1) Obligation to sell 80% of foreign currency credited to the accounts of Russian residents in Russian banks under foreign trade contracts with non-residents; [40]

(2) Prohibition of transfer of foreign currency by residents to their accounts opened with banks and other financial market organisations located outside Russia; [41]

(3) Prohibition of transfer of funds by residents without opening a bank account using electronic means of payment provided by foreign payment service providers; [42]

(4) Prohibition of transactions by residents on granting loans and credits in Russian ruble and transactions creating the right of ownership in securities and immovable property with persons of foreign states committing unfriendly acts against Russia without the permission of the Governmental Commission; [43]

(5) Prohibition on the export of cash or monetary instruments in foreign currency exceeding 10,000 USD in value; [44]

(6) Payment of debts by residents to foreign creditors associated with unfriendly states only in rubles and via a particular type of account; [45]

(7) Pre-payment or advance payment by residents to foreign persons is capped (1) at 30% of obligations under each contract; [46]

(8) Requirement of Russian Central Bank permit for payment by a resident for subscribed shares or another form of equity of a non-resident legal entity and contribution by a resident to a non-resident in the form of capital investment under general partnership agreement; [47]

(9) Restriction in the payment of dividends by Russian limited liability companies to foreign persons associated with unfriendly states and persons under their control. Such payments can only be made in rubles to a specific form of accounts; [48]

(10) Restriction on the amount of monthly transfers for Russian banks account holders [49] and cash withdrawals for resident and non-resident legal entities and individuals; [50]

(11) Trade restrictions; [51]

(12) Restrictions on intellectual property rights protections of patent holders from unfriendly states; [4] [52]

(13) Draft law on appointment of external administration for the management of a company owned or controlled by nationals of unfriendly states; [53]

(14) Draft law on the compulsory seizure of property owned by foreign states and persons of unfriendly states. [54]

References

[1] Russia’s list of “unfriendly countries and territories” includes Albania, Andorra, Australia, Canada, all European Union member states, Iceland, Japan, South Korea, Liechtenstein, Micronesia, Monaco, Montenegro, New Zealand, North Macedonia, Norway, San Marino, Singapore, Switzerland, Taiwan, the United Kingdom (including Jersey, Anguilla, the British Virgin Islands, and Gibraltar), the United States, and Ukraine. ‘Russian government approves list of unfriendly countries and territories’ (TASS, 7 March 2022) <https://tass.com/politics/1418197> accessed 18 June 2022


[3] Under Russian currency laws, the following persons are considered residents: (1) citizens of the Russian Federation, (2) foreign citizens and stateless persons permanently residing in the Russian Federation based on a permanent residence permit, and (3) legal entities established in the Russian Federation and their branches, representative offices, and other subdivisions.

[4] Presidential Decree No.79 (28 February 2022)


[6] Presidential Decree No.81 (1 March 2022)


[9] Decree No. 81 (n 6)

[10] Presidential Decree No. 95 (5 March 2022)

Governmental Decree No.506 (29 March 2022); Governmental Decree No.299 (6 March 2022); Federal Law No.46-FZ (8 March 2022)

Draft Law No.104796-8 ‘On the external administration for the management of a company’ (12 April 2022)

Draft Law No.103072-8 ‘On amendments to article 235 of part one of the Civil Code of the Russian Federation and regulation of certain...


Martin Russell, ‘Russia–Turkey relations: A fine line between competition and cooperation’ European Parliamentary Research Service (2021) PE 679.090, 2


Rudolf Dolzer, Christopher Schreuer, Principles of International Investment Law (2nd edn, OUP, 2012) 145


Total S.A. v. Argentine Republic, ICSID Case No. ARB/04/1, Decision on Liability (27 December 2010), para. 338

Suez et al. v. Argentine Republic, ICSID Case No. ARB/03/19, Decision on Liability (30 July 2010), para. 132


ibid.

ibid.

Decree No. 81 (n 6)

ibid.

Decree No. 95 (n 10)

Central Bank Press Release (n 11)

Presidential Decree No.126 (18 March 2022)

Presidential Decree No.254 (4 May 2022)

Central Bank Press Release (n 7)

Central Bank Press Release (n 8)

Presidential Decree No.100, 8 March 2022; Governmental Decree No.311 and No.312 (9 March 2022)

See n 12

External administration draft law (n 13)

Compulsory seizure of properties draft law (n 14)
The same month that Russia invaded Ukraine, tensions rose in Nagorno-Karabakh, with Azerbaijan seizing an Armenian populated village of Farukh and use of heavy weapons being reported for the first time in the region since the ceasefire agreement.

Armenia adopts an approach of strategic silence on the war in Ukraine, aiming to maintain stable relations with both Russia and the West amidst peace talks with Azerbaijan.

Azerbaijan takes advantage of international preoccupation with the war to test Russian power in the region and achieve tactical gains in Nagorno-Karabakh.

Georgia’s ruling Georgian Dream Party’s perceived passive reaction to the war in Ukraine leaves the country more politically polarized than ever and possibly costs them EU candidate country status.

Regional powers Turkey and Iran, are likely to see any Russian collapse as an opportunity to enhance their influence in region

With so much recent attention justifiably focused on Russia’s invasion of Ukraine, it is easy to overlook how the war in Ukraine might be affecting another key neighboring and influence region of Russia – the South Caucasus[1]. And whilst it is not an understatement to say that Russia’s invasion of Ukraine has fundamentally shifted the political and security climate globally, the war has put the three South Caucasus countries of Armenia, Azerbaijan and Georgia in a particularly volatile climate.

The Caucasus contains several protracted conflicts – Abkhazia and Tskhinvali/South Ossetia in Georgia and Nagorno-Karabakh in Armenia and Azerbaijan. Any outburst of new hostilities at present in these areas opens up the possibility of the region becoming engulfed into a space of proxy war[2]. This is particularly worrisome as many fear that the uncertainty and preoccupation created by Russia’s invasion of Ukraine significantly increases the possibility that these areas might relapse into violence[3].

If Russia emerges in some form victorious from the war, there is a possibility that it will try to capitalize on the momentum and extend its military action into Georgia[4]. If Russia is defeated, other regional powers, such as Turkey or Iran, might take advantage of what they perceive as Russian weakness and enhance their influence the region in order to gain a new foothold that had not previously been possible[5]. As Russia’s war in Ukraine looked more likely, Armenia, Georgia and Azerbaijan tried to navigate maintaining stable relations with Russia. This was balanced against the public desire to support Ukrainian territorial integrity[6], whilst also accounting for unique internal political agendas[7].

Armenia

As soon as tensions in Ukraine escalated into war, authorities in Stepanakert – the de facto capital of Nagorno-Karabakh – started expressing concerns the situation in Ukraine would result in renewed hostilities and escalation in the region[8]. These fears turned out to be justified, March 11, 2022 a 120mm mine shell landed in an Armenian-populated village of Khanabad, making it the first use of heavy weapons in the region for the first time since the cease fire signed on November 9, 2020[9]. Over the next several weeks there was a continued increase in military build-up, with Azerbaijani soldiers entering Armenian-populated villages,
deploying drone attacks, and shutting off gas to Armenian areas in what Armenian officials described as “Azerbaijan’s embarkment on a new military campaign, timed to take advantage of Russian and global preoccupation with the war in Ukraine”[10].

The concern of Russian preoccupation rings particularly loudly for Armenia, due to its long-term dependence on Russia as a security guarantor and Russia’s more recent role as a deployer of peacekeeping troops in the Nagorno-Karabakh region[11]. With the current peacekeeping mandate only extending until 2025, to have it prolonged it is essential for Armenia to continue staying in Russia’s good graces[12]. However, Armenia also does not wish to eliminate the European Union or other Western partners by an overt declaration of support[13].

For these reasons, Armenia has been engaging in ‘strategic silence’, aiming to do as little as possible not to provoke a response from either Russia or the West by abstaining from voting in international fora, such as the vote to suspend Russia from the U.N. Human Rights Council on April 7, 2022 [14].

However, whilst eager not to eliminate Russia as its security guarantor, the war in Ukraine also brought about a resurgence in Armenia and Azerbaijan negotiations mediated by other third parties. The latest rounds of renewed negotiations have been initiated and led by the European Union, and in particular the European Council president Charles Michel, with heads of Armenia and Azerbaijan meeting twice in Brussels throughout April and May, with a third meeting planned at the end of summer [15]. These negotiations [16] seem so far to have been the most promising in a long while, with both sides agreeing to start a speedy process towards a peace agreement[17].

The negotiations have not come without backlash, with Moscow expressing displeasure about being side-lined, with the Russian Ministry of Foreign Affairs calling the negotiations a "shameless attempts of Brussels to appropriate the subject of the well-known Russian-Azerbaijani-Armenian agreement reached at the highest level”[18]. Domestically, the Armenian public has protested against President Pashinyan’s readiness to make concessions to Azerbaijan[19].

Azerbaijan

Just days before Russia’s invasion of Ukraine, Azerbaijan and Russia signed a wide-ranging agreement deepening their diplomatic and military cooperation and elevating their relations to the status of an alliance[21]. Many perceived the timing of this agreement as not coincidental and a tacit declaration of support for Russia in this conflict.
However, President Ilham Aliyev himself denied these allegations, claiming that the document had been in the works for months and that its scheduled signing just so happened to unfold on the backdrop of the escalation of events in Ukraine[22].

This behavior on the part of Azerbaijan is not surprising. Although they have stably been growing closer to Russia as a strategic partner over the past years, Azerbaijan also shares historic ties with Ukraine, with Ukraine having voiced their support for Azerbaijan to have their territorial integrity recognized in the Nagorno-Karabakh region back in October 2020[23]. Not wanting to sour relations with either of these partners, Azerbaijan has been adopting an approach of strategic silence, similar to that of Armenia and abstaining from voting on all United Nations Resolutions condemning Russian actions[24]. Instead, Azerbaijan has been trying to keep its support of Ukraine off the radar, through unpublicized supplying of humanitarian aid and fuel[25].

On their end, Baku justified these actions as necessary for securing their civil works and infrastructure projects and as proportional response to the illegal built-up of new fortification lines by the Armenian military[28].

Azerbaijan’s seizure of Farukh and refusal to withdraw forces, even with Russian peacekeeper presence and calls from Moscow to do so, raises questions on the extent of Moscow’s influence over Baku[29]. It also demonstrates, that in the medium-term, despite the signing of the new alliance agreement with Russia earlier this year, Azerbaijan will still continue to also serve as a sphere of Turkey in the region, using its capabilities to undermine Russia, when possible to push Ankara’s influence in the South Caucuses.

Georgia

At the beginning of Russia’s invasion of Ukraine, Georgia was already facing major political turbulence. Having recently come out of a lengthy parliamentary boycott and still facing controversy over the arrest of ex-president and prominent opposition member Mikheil Saakashvili, Georgia was struggling with a protracted crisis of sharp polarization[30].

The issue of Ukraine started playing into this polarization already in early February[31], when the opposition came out criticizing the ruling party for adopting a resolution in support of Ukraine that failed to explicitly mention the Russian Federation or the threat of possible invasion[32]. A day after Russia invaded Ukraine, the ruling Georgian party declared that they would refuse to join any Western sanctions on Moscow, describing them as unproductive. “...Ukraine is being bombed, and we see that there is nobody to stop this...sanctions are not effective means” stated the Georgian Prime Minister Irakli Gharibashvili in an interview justifying the government’s approach, “We sympathize with everyone, but we must protect our country and people first”[33].

This stance proved to be highly controversial among the Georgian public, causing the mass
demonstrations that had by that point already been going on for several days in solidarity with Ukraine to grow, turn political and voice demands for the resignation of the Prime Minister [34]. The ruling Georgian Dream’s party received criticism for their passive reaction to Russia’s invasion of Ukraine government from the president of Georgia, Salome Zurabichvili. Zurabichvili went as far as to travel to Paris and Brussels without government authorization to reaffirm Tbilisi’s alliance with the West and meeting directly with French president Emanuel Macron and EU leaders Charles Michel and Ursula von der Leyen[35]. The tensions further escalated when Zelenskiy recalled Ukraine’s ambassador to Georgia citing Georgia’s “immoral” stance on sanctions and refusal to let a plain containing Georgian volunteers wishing to join the fighting in Ukraine take off.[36]

Even following the recall, Ukraine continued calling on Georgia to take more active action in light of the two countries’ similar experiences of dealing with Russian aggression, notably, going as far as calling on Georgia to open a second front on Russia[37]. On their part, the ruling Georgian Dream party continuously references their humanitarian aid to Ukraine and their public support in international formats, such as their co-sponsorship of the UN resolution on the Russian aggression against Ukraine, as proof of their commitment to supporting Ukraine[38].

The pursuit of such “pragmatic policy” is not without its basis[39]. Georgia is justifiably concerned by the security threat posed by provoking Russia, which is effectively holding the occupied territories of Abkhazia and Tskhinvali/South Ossetia with its resident Georgian ethnic minorities as hostage[40]. On the other hand, many feel that such a reserved stance will only serve to weaken Georgia’s pro-Western ambitions and security situation[41], a perspective that has seemingly been reinforced by Russia’s enlistment of troops from the occupied territories of Abkhazia and Tskhinvali/South Ossetia[42] and the preparation for a referendum on unification with Russia in the occupied region of Tskhinvali/South this summer, on July 17[43].

Yet, Georgia has not failed to take advantage of the window of opportunity to accelerate its path of European integration by following Ukraine in submitting an application for EU membership, alongside Moldova[44]. However, unlike Ukraine and Moldova, on June 23 the European Council did not grant Georgia status as candidate country, instead only recognizing its “European perspective,” a type of informal prelude to candidacy[45]. This decision was followed by massive public outcry, with tens of thousands gathering in the streets calling on Prime Minister Irakli Garibashvili to resign within a week over his government’s failure to secure EU candidate status for the country[46].

It is difficult to predict how the situation will unfold in the coming weeks, and what the implications of the past few months and EU’s this most recent decision will be on Georgia in the medium and long-term. With overwhelming public support for EU integration and the government trying to package the nod from EU of granting it “European perspective” as a “well-deserved achievement”[47], it is highly likely, that at least publicly, Georgia will continue to remain committed to its European aspirations and seek closer ties with the EU. However, in the background of that, the government’s dealing with Russia over the past few months also raises the real possibility that a quite reorientation of Tbilisi’s foreign policy towards Moscow has begun.

From the pro-Europe protest following the announcement that Georgia did not get EU candidate country status. ‘Guram Muradov, ‘Tens of thousands rally for Europe outside the Parliament of Georgia’ (20 June 2022, Civil.ge) Source: https://civil.ge/archives/497046
Conclusion

Looking over how the past several months have unfolded across the three countries of the South Caucuses, it appears that the war in Ukraine indeed had a destabilizing effect on the regional conflicts of the South Caucuses.

Hostilities were re-ignited in Nagorno-Karabakh to capitalize on Russia’s and the West’s distraction from the region, and to possibly gain extra leverage for future negotiations. Although, the reports of clashes in Nagorno-Karabakh have subsided[48] following the resurgence of the EU-facilitated negotiation, hopefully indicating that tensions will not escalate further to the feared degree. Georgia’s break-away regions also saw a rise in tensions, likewise taking advantage of a time when Georgia is particularly careful of taking any measures that might provoke Russia.

However, the jury is still out as to whether the war managed to create enough of a power vacuum to allow new actors to challenge Russia’s influence in the region. On the one hand, 2022 undoubtably saw several third actors making plays in the South Caucuses, with the European Union adopting a mediator role in the Nagorno-Karabakh peace talks, progress being made in the process of normalization of Armenia-Turkey relations[49], and Iran initiating expansion of trade relations and joint production projects in the region[50].

On the other hand, Russia still remains the main facilitator of normalization negotiations between Armenia and Turkey[51] and the only actor with military presence in all three South Caucuses countries[52]. Moreover, in a recent statement in response to EU’s criticism of Georgia not joining sanctions, the Prime Minister Garibashvili declared “We do not want war, even if it is the price of joining the EU”[53], indicating, that even for a country striving for EU membership as strongly as Georgia does, the security threat posed by Russia remains much too real and pressing.

Furthermore, the war in Ukraine has also affected Russian-South Caucuses relations on the economic front. On 1 May, the Ukrainian Main Directorate of Intelligence put forth accusations that Russia is in talks with Georgia, Armenia and Azerbaijan to re-export sanctioned Russian products to world markets via these three countries[54]. Although Tbilisi denies these accusations, Georgia’s economic relations with Russia seem to have been intensifying, with imports from Russia to Georgia rising by 27% in the first four months of 2022. A similar increase in trade, in particular through the use of little regulated cryptocurrencies, has been reported in Armenia[55].

In parallel to deepening economic ties, for many the West’s commitment to building closer relations with the South Caucuses, has also fallen under questions with the European Union’s June 23 decision to not grant candidate country status to Georgia, which was a decision carrying much more symbolic than practical weight. When asked about the reason behind the differentiating treatment between Georgia and Ukraine and Moldova, French President Emmanuel Macron commented that Georgia is in “a different place geopolitically”[56] making the decision possibly indicative of wider regional approach.

In opposition, Moscow seems to have reasserted its commitment to maintain its position in the region, by announcing on the 9th of June their readiness to assist the signing of a peace agreement between Yerevan and Baku by...
International actors should invest in mediation efforts in the region to both prevent escalation in any conflict areas and to counterbalance Russian influence in the region in the long-term. In particular, the European Union should dedicate ample resources to the Azerbaijan–Armenia peace talks it has initiated, to avoid a repeat of its 2020 mediation of the Georgian parliamentary boycott, which ultimately proved unfruitful and undermined their authority in the region.

The European Union should increase engagement with Georgia under the format of the Association Agreement and hold bilateral discussion to better define what is meant by “European perspective” to ensure that missing out on candidate country status does not result in backsliding on reforms and a shift of political outlook favorably towards Russia.


[27] Ibid.

[28] Ibid.


[38] Ibid.


[40] Ibid.


Anon, ‘Georgian PM Garibashvili: “We do not want war, even if it is the price of joining the EU”’ (Jam News, 14 June 2022) <https://jam-news.net/georgian-pm-garibashvili-we-do-not-want-war-even-if-it-is-the-price-of-joining-the-eu> Accessed 26 June 2022


The establishment of the Kosovo Specialist Chambers (KSC) reveals having political and societal implications both internationally and locally.

- The KSC can be used to reinforce Serbia’s dialectical positioning towards Kosovo, which oscillates between the need for compromise and a discourse on Serbian victimization.
- The KSC can be seen as a leverage for Belgrade in shaping the relations between Belgrade and Pristina at the EU level.
- The KSC might be used to destabilize Kosovo politically and socially.
- KSC has not benefitted from local legitimacy, which might undermine its objectives of social reconciliation and stability in the region.
- In the long run, KSC might however support the integration of Kosovo Serbs within the Kosovo entity (as members of the Kosovo constituency) by enhancing their confidence towards Kosovo’s institutions.

Aleksandar Vucic and the Serbian Progressive Party (SNS)

Power in Kosovo

Last April 2022, Aleksandar Vučić was elected president of the Republic of Serbia for a second term. His Serbian Progressive party (Sprska Napredna Stranka – SNS), however, failed to win a majority of votes (42.9%) and will therefore have to govern in coalition[1]. Here, the 11.51% of the Serbian Socialist Party (Socijalistička partija Srbije, SPS[2]), a longtime and firm ally of the SNS, should facilitate the formation of a new government, and allow Vučić to maintain a relative majority in parliament[3].

President Aleksandar Vučić is a Serb born in Belgrade[4] and has long been involved in Serbian political life. In 1998–1999, Vučić led the Ministry of Information under Milošević’s Yugoslav government[5] and then joined the Serbian Radical Party (Narodna radikalna stranka – NRS). After a few years, together with Tomislav Nikolić, he co-founded the SNS party in October 2008 to distance from the radical line adopted by Vojislav Seselj, the political leader of the NRS[6]. In 2012, Aleksandar Vučić became the leader of the SNS. The same year, he was appointed as Minister of Defense. He was elected for the Prime Minister of Serbia in 2014 and 2016 and accessed Serbian Presidency for the first time in 2017[7].

Since its creation, the SNS political line has been deeply intertwined with the Kosovo issue.

The creation of the SNS in October 2008 coincided with the Kosovo’s unilateral declaration of independence the same year (February 2008). The SNS adopted moderate rhetoric towards the former Serbian province[8]. This was perhaps the first step of the SNS and Vučić in the construction of a new “international and European” representation of Serbia, as a more flexible actor and with which it
will be possible to dialogue, particularly on the question of Kosovo. Four years later, when Vučić became the leader of the SNS, the dialogue between Kosovo and Serbia under the guidance of the European Union opened. From 2012, and until recently, Vučić reiterates the imperative to find a compromise with the Kosovo government on the Kosovo question. Without compromise, the risks of a resurgence of violence in the former Serbian province has been described as great. In 2019, Vučić stated “Albanians do not want it (a frozen conflict) (...) it is a matter of time when they will attack the Serbs”. Compromise here, from Vucic’s perspective, never meant recognition.

The dialectic between the demonstrated willingness of the Serbian government to negotiate and the risks of violence against Serbs in Kosovo, by the Albania Kosovars, characterizes the ambiguity of the SNS – and Vučić – rhetoric towards Kosovo since its beginnings. A rhetoric that oscillates between liberalism and ethno-nationalism and allows Serbia to retain a form of power over the territory.

Indeed, Serbian politics towards Kosovo revealed contradictory. The willingness to find a compromise does not equate with respect for the sovereignty of the former Serbian province. Regularly, Serbian representatives enter the territory of Kosovo uninvited, causing political and societal tensions. The ongoing existence of Serb parallel institutions on the Kosovo territory also testify a stranglehold by Belgrade on the political, social and economic life of the new entity. These institutions that are Serbian symbols in Kosovo territory might contribute to delegitimizing the Kosovo government by Kosovo Serbs.

**Power over the KSC**

Aleksandar Vučić and his SNS party do not have any control over the KSC. The Kosovo Specialist Chambers are in the Hague. They are constituted as an independent court, even if they are part of the Kosovo judicial system. Besides, they are composed of international judges and prosecutors. However, Vučić and his SNS party may have benefited – and still do – from the “competition” between the EU and Russia to expand their sphere of influence in the Balkan region. The need to keep Serbia under its sphere of “control” no doubt played a role in the EU’s desire to appease Serbia and meet some of its demands, notably the creation of the KSC. So, although they have no direct power over the KSC, Vucic and the SNS nevertheless seem to enjoy significant leverage in shaping relations between Belgrade and Pristina.

**Position on the KSC**

In 2014, Vučić’s government supported and welcomed the establishment of the Kosovo Specialist Chambers. This position stands in sharp contrast with the negative view the Serbian government had of International Justice Tribunals, particularly the International Criminal Tribunal for the former Yugoslavia (ICTY). The lack of conviction by the ICTY of former KLA members and the later acquittal of Ramush Haradinaj nurtured in Serbia the idea that “there is no international justice when it comes to crimes committed on the territory of the former Yugoslavia”. In this context, the creation of the Kosovo Specialist Chambers to examine KLA war crimes was seen as a response to “the demands of Serbia to investigate crimes committed against Serbs during the conflict in the former Yugoslavia”.

**Interests in the KSC**

The establishment of the KSC fits perfectly into the ambivalent rhetoric supported by the Serbian government, and especially that of Vučić, regarding Kosovo. It allows Serbia to adopt a posture of conciliation and cooperation with the international community, at the same time as the existence of the KSC feeds the narrative of Serbian victimization, for Kosovo Serbs but also more broadly for Serbia as a whole.
Indeed, the Serbian government hardly cooperated in bringing before the ICTY former alleged war criminal such as Radovan Karadžić or Ratko Mladić. When it comes to the KSC, however, “Serbia will continue doing all it can, (…), to help collect additional evidence for organ trafficking” along with pursuing a “constructive dialogue with Pristina”[21]. Through its cooperation with the KSC, Serbia positioned itself as the “bright spot” in the region, which supports the discourse of the Vučić’s government of Serbia as a central player in the pacification and stabilization of the region.

This is apparent in the recent discourse of Minister of Foreign Affairs of the Republic of Serbia, Nikola Selaković, at the UNSC session on April 21st. Selaković declared that “while President Vučić was building bridges of cooperation in the region, such as the Open Balkan initiative, solidarity-based exchange of deficit goods, joint infrastructure projects, Albin Kurti was destroying it all by undermining the dialogue process”[22].

The minister here contrasts the good deeds of the Serbian government with the bad deeds of the government in Pristina. The underlying objective is to project a negative image of the former Serbian province internationally in its treatment of Kosovo Serbs and the crimes committed against them. Indeed, the establishment of the KSC validates, to a certain extent, the Serbian narrative of victimization, that then tends to facilitate the Serbian government’s forgetting (at best) or denial (at worst) of its own history of war crimes. Pristina’s alleged reluctance to contribute to justice for Kosovo Serbs also ultimately supports the Serbian government’s refusal to recognize Kosovo’s independence.

Needs

Belgrade’s cooperation with the KSC allows Serbia to keep its foot in its process of joining the European Union. Maintaining its ties with the European Union (EU) is also central as the EU is one of the main financial supporters for Serbia (indicative funding allocation 2014–20: €1.539,1 billion)[23][24].

Furthermore, the KSC gives Serbia a chance to present themselves favorably, at least internationally. This is of huge importance in the current context of the conflict in Ukraine where Serbia strives to resist the EU pressure to “take sides” and to formally and firmly sanction Russia’s invasion of Ukraine[25].

From a more “local” angle, Serbia’s support for KSC might be seen as directed towards Kosovo Serbs mainly. Indeed, support for the KSC is part of a broader affirmation concern for Serbs in Kosovo and should be understood in the context of the current allegations by the Serbian government of violence against Kosovo Serbs[26] and the negative portrayal of the KSC by Pristina’s institutions. In this narrative, Belgrade is the protector of the Kosovo Serbs, not Pristina. This is a likely a political need for any Serbian politician. By doing this, Vucic might prevent the building of trust between Serb and Albanian communities within the Kosovo territory, and the building trust for Kosovo Serbs in Kosovo institutions. In short, and indirectly, support for the KSC can be seen as a tool at Belgrade’s disposal to destabilize Kosovo politically and socially.
The Serbian minority in Kosovo

**Power in Kosovo**

To better grasp the effective power of Serbs in Kosovo, it is important to distinguish between the national and the local/municipal level first, but also between areas where Serbs are a majority or not. The Constitution defines the new entity as multicultural and multiethnic. Serbian language, together with Albanian language, is an official language of the new entity[27]. The Constitutional text also provide representational opportunities for the Serbian community with ten seats granted in the Assembly of Kosovo[28], and an additional role for Kosovo Serbs at the executive and judicial levels[29]. At the national scale, quotas and cultural safeguards provide Serbs in Kosovo with some form of power to balance their minority status on the territory. However, the ability for the Serbian minority to exert those rights largely depend on whether Serbs inhabit Serbian majority areas or not.

Indeed, among the 38 municipalities that compose the Kosovo administrative map, Serbs were granted with ten of them, within which they are a majority. For those Serb majority territories, the Constitution of Kosovo recognizes specific powers in terms of economic development, primary and secondary education, first health care, or social services[30]. The Constitution also provides the municipal body with rights in selecting “the station police commanders”[31] and managing its own cultural affairs[32]. In addition, the Serb municipalities of Gračanica, Mitrovica and Štipce have also competences in health care, higher education (Mitrovica), and culture [33]. Through the election of Serb representatives at the municipal and national levels, Kosovo Serbs have a say in the way they are governed, in the relations they want or do not want to establish with the Albanian community, and in their daily life. However, these “privileges” only partially exist for Serbs living in areas where Albanian are a majority. Following the conflict, Serbs in Kosovo fled to the

![The "Missing" monument for Serbs who disappeared during the 1998–1999 conflict. Gračanica, in front of the Cultural Center. Photo: Emilie Fort, 2018](image-url)
north or neighboring Serbia or gathered, particularly in the East and South of the territory. Some, however, remained and are now surrounded by Kosovo Albanians. Even though the conflict formally ended more than 20 years ago, tensions between the Serb and Albanian communities in the territory are still high – albeit variable[34].

**Power over the KSC**

The Court has been established to adjudicate KLA members with alleged war crimes committed against Serbians and Albanian Kosovars[35]. As a result, some Kosovo Serbs will have to testify before the KSC. These testimonies can be understood as a form of power over the effectiveness of transitional justice and the proper functioning of the KSC.

**Position on the KSC**

Yet, the position of Kosovo Serbs towards the KSC is complex. While they mostly support its establishment, they also raise certain doubts. Particularly, “there is a widespread lack of understanding as to the KSC’s mandate and working methods”[36]. For some, the KSC is just one more court, and like the previous ones (notably the ICTY), it will fail to deliver effective justice for the Serbs[37]. Very few Kosovo Serbs believe that the KSC will pursue high-ranking KLA members. Some others consider that the KSC will be an example of former KLA members and Kosovo elites corruption[38]. These positions towards the KSC raises a larger problem which is that of the lack of legitimacy of the KSC within the Serbian and (perhaps especially) Albanian communities[39].

Despite those suspicions towards KSC mandate and effectiveness, it is important to note that a survey conducted in 2017 found that “53.2% of Serbs in Kosovo believe that “it is important to deal with all crimes committed, or crimes suffered by all civilians, during and in the aftermath of the 1998–99 war.”[40]

**Interests in the KSC**

As noted above, there is a common belief within the Kosovo Serb community that international and national courts do not deliver justice for Serbs, let alone for Kosovo Serbs. So, here, the main interest for Kosovo in the Kosovo Specialized Chamber might be to be heard and the crimes committed against the Serb community during the war in Kosovo acknowledge both locally and internationally. Concretely, the KSC could bring them justice for the loss or disappearance of their loved ones. Finally, their participation in KSC hearings makes them real agents for building their future within Kosovo as an independent entity and as a society.

**Needs**

Beyond actual interest, however, the KSC could meet various needs of the Serbian community. First, their participation in the KSC could contribute to strengthening the confidence of the Serbian community in the institutions of Kosovo, and in particular the judicial system. This could improve relations between Kosovo Serbs and Kosovo institutions. But more importantly, it could encourage a certain distancing between Kosovo Serbs and Serbia. We see that the lack of confidence in justice underlies an idea close to that of victimization noted in the discourse of Vucic and the Serbian government. By taking part in this local justice (albeit based in The Hague), there could be an opportunity for Kosovo Serbs to deconstruct this idea of prejudice against the Serb community. This could open new avenues towards integration and cooperation. Secondly, for Kosovo Serbs, but more broadly for the Kosovo society, the KSC could make it possible to lay the foundations for the construction of a common history, which is a necessary step towards reconciliation.

**Conclusion**

Despite Vucic and SNS political involvement in Kosovo and Kosovo politics, Vucic and the SNS have no power or control over the KSC activities.
And while KSC constitute a useful tool to support Vucic and SNS ambiguous and contradictory narrative towards Kosovo, the KSC might also benefit for Kosovo Serbs to extract from Serbia’s power. However, to reach those positive outcomes, KSC must have local legitimacy.

Recommendations

- KSC must have local legitimacy in order to promote stability and reconciliation in Kosovo. Stability and reconciliation are central objectives of transitional justice identified by the European Union[41]. As numerous experts note, however, the lack of local ownership and local legitimacy could hinder the reaching of these goals and rather precipitate intercommunal violence. Besides, this lack of local ownership “contradicts the European Union’s normative guidelines regarding the need for local consent and ownership over transitional justice processes”[42].

- The Kosovo and Serb governments should commit to providing local communities – both Serbs and Albanians – with information to better understand the functioning and objectives of the KSC in order to advance local legitimacy.

- The EU and the international community should consider opening local branches of the KSC in Serbia and Kosovo as it might help reinforcing local ownership.
References


[26] For example, in date, Vucic told the media that “Their (the Kosovo Albanians) goal is to clean the Sirinić parish so that Serbs could not stay in the south of Kosovo”, in Euractiv (21 May 2022), Vucic claims Kosovo is ethnically cleansing Serbs, https://www.euractiv.com/section/politics/short_news/vucic-claims-kosovo-is-ethnically-cleansing-serbs/, accessed 22 June 2022


[37] Andrea Trigoso (08.06.20), The Kosovo Specialist Chambers: In Need of Local Legitimacy, OpinioJuris http://opiniojuris.org/2020/06/08/the-kosovo-specialist-chambers-in-need-of-local-legitimacy/, accessed 15/06/2022


PEACE & SECURITY MONITOR

Out of Sight – Out of Mind?
Shifting Migratory Routes and Border Violence along the “Balkan Route”

Pauline Zapke

- Despite reporting from human rights organisations, rulings of national or European Courts the practice of state-led border violence and pushbacks continues in the Balkans.
- With migration along the Serbian-Romanian border to increase this summer, practices of pushbacks are likely to present a risk of violence to migrating people.

On June 28th a joint investigation by Lighthouse Reports, der Spiegel, Report München, LeMonde and Guardian was published on how the Greek police forcibly recruited refugees to carry out pushbacks of 1000s asylum seekers by threatening, beating and looting them. Testimonies, satellite images and other documents were evaluated for the investigation, showing how the police systematically used refugees to carry out illegal pushbacks to Turkey. [1]

On June 24th shots were fired in Serbia in a conflict between smuggling gangs near the North-Western Serbian border. The incident occurred after Balkan Insight published an investigation revealing a smuggling group associated with a Serbian-Syrian translator have been implicated in violence against rivals and people on the move. Former collaborators testified about the close connections of the group with the Serbian police.[2]

Abstract

The article aims to analyse current shifts in the migratory routes along the “Balkan route” towards the Romanian border and an increase of violent, illegal pushbacks. It is highlighted how the developments along the Romanian border are a continuum of border deterrence, where border violence became a method of migration control along the EU external borders of the “Balkan route” on the dispense of the rights of people on the move.

Introduction

Today in the (Western European) public discourse the “Balkan route” is often referred to as being “closed”. Despite this, migration along this route is still occurring. Since the official closure of the Balkan Route in 2016, the practices of illegal pushbacks have increased along the main migratory routes at the Hungarian and Croatian border. Monthly reports are documenting how people on the move are violently pushed back from EU territory. People however continue to attempt to cross the route and transform their paths along new routes – most recently the path along the Romanian border. At the same time, human rights organisations are documenting how the shift in routes also coincides with increasing pushbacks. These practices are systematically deployed along the border as part of a system of violent border control and migration management in the aftermath of the so-called “refugee crisis” in 2015.

Border Violence along the “Balkan route” since 2015

Even though the (media) attention has had a peak during the so-called “refugee crisis” in summer 2015, the “Balkan route” has already been used as a migratory route before and continues to exist until the present day. People moving along the route are today mostly coming from Afghanistan, Pakistan, Bangladesh, and Syria. [3]
During the so-called refugee crisis in 2015, the migratory routes through the Balkans attracted wide media attention. The transit through the Balkan route towards the EU was facilitated by a formalised corridor. The formalised corridor was firstly established in Serbia and North Macedonia, then followed by other countries such as Croatia and later extended to Germany, when people on the move - after being stranded in Budapest at the Keleti train station - moved towards Western Europe. The approach shifted to gradually closing the corridor as the political focus changed from Willkommenskultur to migration control and border closure of the EU external borders along the Balkan route. [4] Seven years later, there is nothing left of the former “formalized corridor”.

Today, people on the move face fences and experience border violence by the national border police and FRONTEX, who are restricting their movement and pushing systematically people back from EU territory to countries as Serbia.[5]

Already in 2015 Hungary started constructing a fence to its border to Serbia and pushback practices were implemented, where people were forced back over the border without being able to claim asylum. The fence of 155 kilometres at the Hungarian border is heavily protected and militarized with loudspeakers, patrols, thermal imagining cameras and alarms.[6]

Pushbacks were even formally legalized by national law with the Hungarian Asylum Act and the Act on the State Border. The laws implemented the 8-kilometer rule, where people were taken back to Serbia when they were intercepted in Hungary within 8 km from either the Serbian or the Croatian border. [7] Border violence by the border police against people seeking protection became thus systematically known at the border, where people on the move testified to be beaten, robbed and forced back over the border by police units without being able to claim asylum. [8]

In 2016 Hungary adopted also restrictive asylum laws, which limited the access to asylum to specific transit zones, where people faced inhumane treatment.[9] After a judgment by the European Court of Justice against the centres, these particular transit zones in Hungary have been closed. [LJ2] As claiming asylum was restricted to the zones, people cannot claim asylum anymore directly within the country, but they can only ask for asylum after having received a single-entry permit by the embassies in Belgrad or Kyiv, where they need to submit a “statement of intent” or if they belong to certain exceptions.[10] But Hungary did not remain alone, as other countries along the route also followed with measures of border deterrence. Slovenia and Serbia, also started.
building fences to neighbouring countries to restrict the movement of people.[11] 10 EU states as well as Serbia, Albania and Northern Macedonia agreed on a plan in October 2015, which intended to reduce the number of people along the "Balkan route". [12] The agreement focussed on intensified border protection and registration systems, as well as new camps and reception centres.

Changing routes within a system of violent border management

Migration control, the erection of fences, militarization of borders and border violence is disrupting the movement of people and forcing many people to remain in bordering countries to the EU, such as Serbia and Bosnia and Herzegovina.

According to UNHCR 9,000 people remain along the route in May 2022.[15] The policies are resulting in people on the move, who are stuck in a limbo, who are moving forward and backward for weeks, months or even years to attempt even more dangerous border crossings to EU countries. [16] Also partly because of the deterrence and militarisation of borders, migration routes are shifting. People on the move are transforming their movement patterns within a restrictive system of border management to

The practices of migration control along the "Balkan route" became a political focus in bi- and multilateral relations in the region.[13] A clear focus on migration control has already been integrated by the European Union and its member states in its relations with Western Balkan countries, especially during the EU accession process, where enhancing migration control is placed at the core of the partnership. [14]
attempt other paths to seek protection: While in 2015, thousands of people arriving along the route were crossing over Serbia to Hungary, the route shifted over the years.

Serbia to Bosnia and Herzegovina and Croatia

In 2018 the main migratory route shifted from Serbia towards Bosnia, as people tried to cross over to Croatia, where again reports of border violence were documented. The Croatian border police increasingly carried out extremely violent pushbacks, which have been described as severe human rights violations by organisations such as Amnesty International and Human Rights Watch. Even reports of chain pushbacks from Slovenia to Croatia back to Bosnia became public. Despite the repeating denial of Croatian authorities concerning the incidents, several media, as Lighthouse Reports and human rights organisations, documented the violent practices, even by video footage. And the European Court of Human Rights ruled against Croatia after a pushback, which resulted in the death of a 4-year old girl.

As the route is increasingly used, more police units were deployed to the border. Human rights organisations documented increasing illegal and violent pushbacks at the Romanian-Serbian border. A report by KlikAktiv and the German NGO ProAsyl documented the developments between June 2020 and November 2021, and present evidence how border violence by the police, the European border and coast guard agency, FRONTEX, has increased.

Romanian-Serbian border

In the last 18 months, people on the move also attempt to use increasingly the route over Romania. The Serbian NGO Klikaktiv, specialising in legal and psycho-sociological support, analyses that the route became increasingly frequented since winter 2019/2020. In the first half of 2021 border crossings officially registered were at 9000, an increase over 200 % in comparison to the year before. That is partly because people, are adapting their movement due to violent migration control at the Hungarian, Slovenian and Croatian border. Klikaktiv details in their annual report 2021 further, that arrivals, especially of people from Afghanistan and Syria, are also increasing.

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The Serbian NGO Klikaktiv documented over 3700 pushbacks in that time period, but the practices are continuing till today.
attempt other paths to seek protection: While in 2015, thousands of people arriving along the route were crossing over Serbia to Hungary, the route shifted. The report by Klikaktiv underlines that most of the people on the move were trying to apply for international protection in Romania. Further, the report indicates that the police systematically ignored the request by telling people to go back to Serbia. The interviews show that people did not have access to effective remedies or legal representation and are thus systematically deprived of their rights. The actions of the Romanian police are described as being similar to those deployed by the Hungarian and Croatian police at other borders: people on the move are robbed of their belongings, are kicked, punched with batons and attacked by police dogs. The reports also show that the Romanian police is using humiliating methods, as the clothes or shoes of people are destroyed, forcing people to return Serbia barefoot.[26] In Serbia the people also did not have the possibility to claim asylum, as the police handed out documents, asking people to leave Serbia within 30 days, as people would have entered Serbia illegally. These practices are criminalising people on the move and are leading to precarious conditions of protection seekers.[27] Until June 2022 these incidents continue to be reported on at the Romanian Serbian border, which shows that the situation for people on the move stuck at the EU external border, remains difficult, as practices of state-led violence are growing. The example of Greece border guards forcibly recruiting people on the move to carry out pushbacks, also underlines the increase of inhumane and degrading treatment.[28]

**Human rights violations**

The evidence collected by Klikaktiv document similar developments to other borders along the Balkan route. Violent practices by the police and the authorities towards people on the move are documented since 2016 with the Border Violence Monitoring Network collecting over 1500 testimonies on pushbacks across the Balkans and Greece.

Most of the migrants, who are stuck in Serbia or Bosnia witnessed pushbacks several times. In April 2022 30 testimonies of pushbacks impacting 832 people on the move were reported.[29] The reports show patterns of violations, indicating that these practices are systematically applied. In almost all cases, violence is used, and people have no access to legal remedies.[30] These practices are illustrating that violence has become a systematically tolerated method of migration control. [31] Pushbacks, which are carried out daily along the "Balkan route", are illegal by European and international law, they violate the prohibition of collective expulsions, the right to asylum enshrined in the European Convention on Human Rights and the principle of non-refoulement of the Geneva Convention. Furthermore, the violence used is a breach of the law on torture or inhumane and degrading treatment. [32] Both national and European courts have repeatedly ruled the practices illegal:

- In 2021, the European Court on Human Rights ruled against Croatian police due to the case of the 4-year-old girl, Madina, who died after a pushback by the Croatian police. [33]
- In 2020, the Slovenian Administrative Court further ruled that the national police carried out an illegal collective expulsion and violated the applicant’s right to the prohibition of collective expulsions and the principle of non-refoulement. The judgment further reinforced, that potential risks of pushbacks and violence for the person in Croatia were not considered prior his readmission. [34]
- The European Court of Human Rights has also ruled in 2021 that Hungarian authorities violated in a pushback case the prohibitions on torture and collective expulsion and violated the right to an effective remedy.[35]
- The European Court of Justice has also ruled in 2018 against the restrictive Hungarian asylum system as a breach of EU law. [36]
- A report by the Council of Europe’s Anti-Torture Committee criticised the systematic and violent pushback of people on the move at the EU’s external border in Croatia and the lack of cooperation by the authorities.[37]
Conclusion

Even though the reports of human rights violations are not new, neither the numerous documentations, nor the rulings of national or European Courts have so far brought an end to the practice of state-led border violence and pushbacks. On the contrary, the practices are continuously carried out and repeating themselves at other borders, as the situation along the Romanian border is showing. This illustrates a worrying state of the rule of law in the EU when it comes to the rights of those seeking protection. Policies of border deterrence are not preventing migration. Instead of criminalizing people seeking protection, illegal practices by EU countries should be politically addressed and immediately stopped. These practices are violating human rights and breaching European Law and international law. If the European Union wants to hold up credibility towards the rule of law and human rights, they must respect their own commitments. If not, the human rights rhetoric of leaders of the European Union and its Member States deteriorates into empty words.

Recommendations

- The European Union and its member States must protect the right to asylum and the respect for human rights at the EU external borders. The systematic practices of pushbacks, violating international and European law, must end and safe migratory routes must be opened.
- Judicial decisions criminalising the illegal pushbacks should be implemented better. Outreach advisors from judicial institutions should conduct regular field monitoring missions of local police and border control units.
- Instead of increasing the funding from agencies like Frontex, which are involved in human rights violations, funding should be allocated to organisations safeguarding human rights, for instance to local NGOs, issuing psycho-social, administrative and legal support for migrating peoples.
References


[20] Lighthouse Reports, (06/10/2021), "Unmasking Europe’s Shadow Armies" (2021), accessed on: (15/06/2022), https://www.lighthousereports.nl/investigation/unmasking-europes-shadow-armies/


[37] European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), (03/12/2021), Report to the Croatian Government on the visit to Croatia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) (2020), accessed on (28/06/2022), https://www.ecoi.net/en/file/local/2064878/2021-29-inf-eng.pdf
• Ankara is increasing its trade and investment, media and cultural ties with Western Balkan states.
• Tirana appears to welcome Turkey’s overtures, describing Ankara as “strategic partner”.
• Tirana’s ban on human rights group that supports alleged Gülenists and purchase of Bayraktar drone indicates a deepening strategic relationship between the two states.

Background

On 21 June, the Organised Crime and Corruption Reporting Project (OCCRP) released a report that alleges environmental concerns about the construction of Vlora airport. The consortium for its construction includes a Turkish company with ties to the Turkish President, Erdogan, and is led by a controversial businessman from Kosovo and a personal friend of the Albanian Prime Minister Rama[1].

On 15 June, Turkey opened a TV station in the Balkans, a new digital flagship channel, consolidating its multifaceted presence in the region[2].

This reflects a growing trend: Ankara is increasing its engagement with the Western Balkan countries. Since the Justice and Development Party (AKP) rose to power in the 2000s, Turkey’s political, economic, and commercial influence in the Balkan region has increased, especially in countries with Muslim populations. Ankara has increased trade ties and has been involved in the construction of commercial and cultural projects, including religious sites.

During the last decade, Western Balkans have been stuck in a stalled accession process with the EU, which is currently going through an ‘enlargement fatigue syndrome’[3]. Several foreign actors have been trying to increase their presence in the region, using their (geo)economic clout.

Domestically, the AKP party has promoted a different narrative of Turkishness based on Muslimhood, a paradigm that has been conflated the broader literature with the term “Neo-Ottomanism”. Thus, the role attributed to Muslimhood has been identified as a key determinant of identity and the distinguishing feature between the Kemalist era and the AKP era. More specifically, during the first few years of the AKP rule, the Muslim identity had been upgraded from a mere component of Turkishness to an independent variable in itself. This paradigm shift in Turkish politics was subsequently reflected on a foreign policy level, shaping Turkey’s relations with its neighbours and partners.

Indeed, religion has been a key component of the AKP party policy, in line with the “Strategic Depth” doctrine[4]. The Muslim population comprising over 25% of the region’s total population and has been epicentre of Turkey’s cultural diplomacy in the region. However, Turkish policy driven by its Islamic ideology is often overstated. Rather than idealism, its policy is driven by pragmatism. Thus, earlier this month, Turkish Foreign Minister Cavusoglu openly supported Serbia’s European integration process during his visit to Belgrade, another reminder of its pragmatic approach in the region, by cultivating ties with all Western Balkan states[5].

The article will draw a parallel between Turkey’s increased economic, humanitarian and cultural presence in the region and its instrumentalisation to achieve political gains. It will focus on the case of President Erdogan’s
increased pressure on Western Balkan states, in particular Albania, over the (illegal) extradition of alleged ‘Gulenists’ amid an ongoing crackdown on opponents which has been taking place since 2016.

Such was the case of Lac town in Albania. Following an earthquake in 2019, Turkey funded over 524 apartments. Following President Erdogan’s visit in January, it was announced that the town’s main square will be renamed after him. On January 17, 2022, a restored Ethem Bey Mosque in Tirana was inaugurated by Turkish President Erdogan, the Albanian Prime Minister Edi Rama.[10]

In a joint press conference with the German Chancellor, the Albanian prime minister confirmed that Turkey is "not a third actor" but a strategic partner of Albania.[11] Earlier in January, the two sides had signed a defence deal and Albania became the first Balkan country to buy Turkish drones.

This particular drone, world renowned drone, Bayraktar TB2, has so far been procured for countries like Azerbaijan, Qatar and Ukraine. Bayraktaras have been pivotal in the conflicts in Nagorno-Karabakh and Ethiopia. Albania is expected to spend €8.2 million for these military drones. The Bayraktar stands out among the most advanced UAV systems globally. Albania’s governmental budget had to be amended on June 22 of the previous year for the purchase.[12] Previously, in 2020, Albania, together with Qatar, a key geopolitical ally of Turkey, became the first buyer of an anti-drone system developed by a Turkish defence firm[13].

**Turkey in Albania: Economic and cultural ties**

Turkey and Albania have intensified bilateral ties in the last two decades, reaching 8.2% in 2020[6], Albania has been a key country for Turkey’s Western Balkan strategy.

According to Mustafa Sentop, a Turkish parliamentary speaker, 600 Turkish companies are currently operating in Albania, employing approximately 15,000 people.[7] Moreover, Turkish investments in Albania have more than doubled in the past 8 years, exceeding €2.7 billion, with Turkey becoming Albanian’s fourth largest trading partner after the Netherlands, Switzerland and Italy.[8]

Despite facing severe economic conditions domestically, with rising inflation, increasing levels of poverty, and high figures of unemployment, Turkey has stepped in as a humanitarian aid provider to certain Western Balkan states, including Albania. Turkey has provided various forms of aid, including ventilators, PPE, diagnostic kits for Covid-19, and more importantly, vaccines. [9] The Turkish state has also contributed to the reconstruction of houses hit by earthquakes.

Leveraging growing geo-economic importance for political gains: The case of alleged Gulen supporters in Albania

In April, the Albanian government expelled the Albanian Helsinki Committee, one of the oldest human rights groups in the country from the commission handling asylum cases.[14] This decision has been partially attributed to the organisation’s open position against the commission’s refusal to grant refuge to asylum seekers from Turkey that flee political persecution because of their alleged support for Fethullah Gulen, a Turkish US-based cleric.
an ally turned enemy of Erdogan and his party. Ankara has been accusing him of being the mastermind behind the unsuccessful coup attempt against the Turkish President in July 2016. Since then, Turkey has demanded the extradition of Turkish citizens with alleged ties with the Gulenist movement living in partner countries, including Albania and other Western Balkan states such as Kosovo[15], Serbia[16], and Bosnia Herzegovina[17]. In 2018, six Turkish nationals were arrested in Kosovo over alleged ties with schools financed by Gulen’s movement. They were subsequently deported to Turkey. Amid broader criticism from local media which dub the move as “kidnapping”, the then Prime Minister of Kosovo, Ramush Haradinaj, said that he was not aware of the operation which was carried out by secret intelligence service and the police[18].

Responding to Erdogan’s latest demand for Albania’s commitment against the Gulenist movement, the Albanian Prime Minister Edi Rama, stated that Albania: "has no debt towards the president of Turkey and Turkey, just as the president of Turkey and the Republic of Turkey owe us nothing because there can be no debt between friends and a brotherly friendship".[21]

Nevertheless, there are cases of Turkish asylum seekers entering Albania irregularly who have been denied their right to appeal against the rejection of their application and were subsequently deported due to alleged ties with the Gulen movement. In January 2020, a teacher from Turkey, who entered Albania in July 2019 with a fake passport to travel to Canada was extradited for his alleged support to the Turkish cleric. This was one of the first high-profiled cases, drawing international attention. It was widely reported by the national media that the Turkish state intelligence agency, MIT, was directly involved in the extradition. Interestingly, the Turkish state media hailed the "successful operation" of the MIT.[22] However, the Albanian government denied any foreign interference.

Human rights organisation and lawyers have raised concern about the deteriorating state of asylum-processing for cases of Turkish nationals, highlighting that any person applying for political asylum should be granted the right to have his case processed by the state authorities according to international law, in particular the Geneva convention. The Rapporteur on Albania for the Parliamentary Assembly of the Council of Europe, Andrej Hunko, also labelled the decision as "worrying extradition".[23]

Parallels could be drawn between Turkey’s recent pressure on Sweden and Finland for the extradition of Gulenists or alleged supporters of the PPK group.[24] In the case of the Nordic countries, Turkey is using its political leverage as a bargaining chip rather than its economic one, given its right to veto their bid for NATO membership, submitted in May.

President Erdogan visiting a square renamed after him in the city of Lac, Albania, RTV 21 Media

In his most recent visit to the Albanian parliament in January President Erdogan called for Albania's commitment to the fight against cleric Fethullah Gulen and his allies as a precondition for Turkey’s material support.[19] This statement indicated a broader tendency for issue linkage between Turkey’s multifaceted geoeconomics presence in the country. Albania’s compliance with a long-standing demand from Ankara, contradicting international law and human rights. In previous official visits in 2018 and 2020, Turkish prime minister, Mehmet Cavusoglu, also made clear this coupling between Turkish investments and the hand-over of Gulen supporters, urging the Albanian government to close all businesses owned by Fethullah Gulen.[20]
Domestic priorities as the key driving force behind the Turkish issue linkage strategy

Turkey’s efforts to crackdown dissidents abroad by instrumentalising their leverage over partner states should be analysed under the prism of domestic key drivers, mainly the President’s dropping approval rates, and more importantly, the ongoing crackdown against perceived or actual dissidents launched in 2016, following the unsuccessful Coup. The Turkish government and its president are currently facing a global inflationary trend with Turkey particularly exposing the fragility of Turkey’s economy. AKP’s next electoral battle will take place in 2023 amid increasing political challenges following the election of opposition candidates in mayoral elections in Ankara and Istanbul in 2019. Erdogan has been blamed for his unorthodox economic policy and his questionable insistence on pushing for lower interest rates to tackle inflation[25], depriving the Turkish central bank of its independence. Indicatively, inflation in Turkish exceeded 73.5% in May.[26]

The unsuccessful Coup against the Turkish President was a turning point for Turkish politics and the strategy of the ruling party. Indeed, since 2016 there is a growing tendency to equate political opposition with terrorists underlying this discursive strategy employed by AKP elites.

Following the unsuccessful Coup of July 2016, Erdogan’s former ally, Fethullah Gulen, and his transnational Islamic social movement have been an object of securitization by AKP’s political leadership. It can be argued that the post-2016 purge amid a prolonged state of emergency signals a struggle for the alternation of the domestic political balances within the state structures. It also shows an attempt to get rid of potential challengers in the name of the protection of the legitimate government.

Thus, characterized by Erdogan himself as "a gift from the god", the Coup also provided him with a key rationale for the formalization of the state of emergency that included the suspension of the existing constitution and a weakening of the parliament in favor of a more centralized-authoritarian executive rule.[27]

Hence, AKP’s strategy of pressuring partner neighbouring states to comply with its extradition demands against alleged traitors of the Turkish state is an extension of its domestic policy of reinforcing an ultimate dichotomy drawn between friends and enemies of the state. This dichotomy provides a legitimising narrative for the increased authoritarianism under President Erdogan.

Concluding remarks

As it has been already mentioned, and can be applied to other Western Balkan states, such as Kosovo and Bosnia & Herzegovina, AKP government regularly chooses to instrumentalise its deep and increasing economic and cultural presence, in exchange of political gains, including demanding the extradition of alleged members of Fethullah Gulen’s movement.

During the last two decades, Albania has made remarkable progress in democratisation. In this year, Albania was given a score of 67/100 in Freedom House’s index for democracy, rule of law and freedom. Nevertheless, the expulsion of the Albania Helsinki Committee in April is an alarming development. The EU should stay alert in order to safeguard that NGOs organisations focusing on migration, refugees and human rights will not face collateral damage to Tirana's flourishing partnership with Ankara. Otherwise, Albania could jeopardise years of progress in rule of law.

Even though Albania is the country with the biggest alignment with the EU in terms of foreign policy, external relations and security,[28] However, the rule of law is one of the fundamental values of the EU, including the independence of the judiciary body, and compliance with international law. The increased phenomena of illegal extraditions in Albania amid ongoing political and economic pressures from an external influential actor such
The EU should apply greater monitoring scrutiny to ensure that Albania does not enforce double standards in the processing of asylum applications and that the right to subsequently apply for appeals, is in line with the provisions of the Geneva convention.

The EU should once again step up its economic aid to guarantee the socioeconomic resilience of the Western Balkan states. The current inflationary pressures related to the disruption of supply chains due to COVID-19 and the ongoing war in Ukraine renders the Western Balkan states particularly “vulnerable” socioeconomically, and therefore subject to increased pressures by external actors with economic leverage in the region.

However, the EU's economic aid should be conditioned to compliance with the rule of law and the obligation emanating from international law and treaties, including the Geneva convention. Even though the Turkish government's insistence on the deportation of serves a domestic purpose, in particular Erdogan's fight against perceived or actual political enemies, partner states such as Albania should not turn a blind eye under economic or political pressure.

Finally, given the magnitude and the growing dynamic of Turkish-Albanian bilateral economic relations, it would be essential to guarantee a minimum threshold of transparency of Turkish funding activities. Enforcing greater disclosure of funding in a public register would help illustrate what share of Turkish funding goes to which activities or beneficiaries, an effective indicator for tracing motives and political aims linked to donor.
Sheriff Enterprises, the largest company in Transnistria, is a corporatocracy with significant political influence in the unrecognised state. The Kremlin linked company has been accused of predatory business practices such as price manipulation and holding a monopoly on multiple Transnistrian industries. With the help of the Transnistrian President, Vadim Krasnoselsky, Sheriff Enterprises have filled the Transnistrian government with loyalists allowing them to further expand their political and economic power. Sheriff Enterprises are beginning to branch out and foster their relationship with the EU. In 2021, 54 percent of Transnistria's exports went to the EU and only 14 percent to Russia. At the time of writing, neither Transnistria nor Sheriff Enterprises have supported or condoned Russia's invasion of Ukraine.

Presently, Sheriff Enterprises has consolidated its power both economically and politically in Transnistria. A key example of this is in the most recent presidential elections at the end of 2021, one of their ex-employees, Vadim Krasnoselsky, retained his role as the president of this unrecognised state. On 30th May 2022, he appointed another ex-Sheriff employee, Alexander Rosenberg to the position of Prime Minister.[3]

Due to the Russian invasion of Ukraine and Moldova’s candidacy to the EU being accepted, Sheriff Enterprises’ future is precarious: will it open itself up further to the EU market and risk damaging its relationship with Russia or remain with Russia and lose out on the larger opportunities of the EU.

The Unrecognised State of Transnistria

Nestled between Moldova and Ukraine, Transnistria positions itself in direct and unequivocal opposition to Moldova and instead aligns more with the nostalgia for a Soviet or Russian past.[4] Its flag is the only country in the world to still contain the hammer and sickle. This implies a congenial relationship.

Introduction

This article aims to highlight Sheriff Enterprises business practises both in Transnistria and abroad and illustrate where their political power lies in the Transnistrian government.

I will then focus on how the war in Ukraine has affected their relationship with Russia and whether this means a greater alignment and partnership with the EU.

In Transnistria, a Russian backed autonomous region of Moldova, Radio Free estimates that Sheriff Enterprises controls an estimated 60 percent of the region’s economy.[1] Transnistria is a tiny strip of land that runs along the Eastern bank of the Dniester River with a population of around 470 000.[2]
with Russia who helped them gain their “independence” from Moldova in 1992.[5] Russia provides free natural gas to the breakaway state and adds the mounting debt onto Moldova’s, as Transnistria, in the eyes of the international community and Russia, is part of Moldova. As of last September, the debt constituted $7 billion.[6] The Kremlin then uses this debt as political leverage over Moldova.[7] Transnistria, when both it and Moldova were part of the Moldavian Soviet Socialist Republic as part of the USSR, was the region’s industrial powerhouse.[8] Its economy was oriented more towards Moscow and Kyiv than Chișinău. Transnistria had a larger number of businesses than the rest of Moldova. These were typically led by owners who have maintained their strong links to the Kremlin.[9]

The Unrecognised Corporatocracy of Sheriff Republic

Sheriff Enterprises was formed in 1997 by two ex-KGB officers, Viktor Gușan and Ilya Kazmaly. According to their own website, they have the most production facilities in Transnistria and their commercial and industrial partnerships include banking services, telecommunications operators, textile factories, electricity and energy producers, and cognac producers.[10] This is only a small portion of the many companies under the Sheriff umbrella. Jonathan Casewell, a journalist for De Facto Borders, believes that what began a smuggling operation from the Black Sea and Ukraine became a “legitimate” business.[11] They spent the next couple of years buying up former Soviet factories.[12] Called “privatisation”, this was the selling off old Soviet owned businesses to private owners across the former USSR states. [13] Valery Litskay, a Transnistrian political advisor who played a key role in the privatisation of Transnistrian state businesses, highlights that “Sheriff won the competition… they offered the best prices and guarantees that the factories would keep running.”[14] This rise to become the powerhouse of Transnistria was littered with Sheriff Enterprises’ competition. Litskay states that they have a “very dark criminal past” and that “if you go to [their] cemeteries, you will see a whole alley of bandits.”[15]

They have since grown from their violent origins and have spread out throughout the region, a consolidating trajectory that is typical for post-soviet businesses that survived the often violent transition into a market economy. Sheriff’s perceived role in Transnistria is illustrated by their logo of a Sheriff’s badge implying they are a force for law and order within Transnistria.

Sheriff Enterprises now operates most of the trading in the region owning gas stations, supermarkets, and telecom companies. According to unofficial data, the holding controls approximately 50% of the construction market and around 90% of the fuel market.[16] On their own website, Sheriff Enterprises describes itself as “the most significant, dynamically developing business partnership of successful enterprises in Transnistria”. [17]

Sheriff Enterprises has been accused of predatory business practices such as price manipulation and holding a monopoly on multiple Transnistrian industries.[18] Like with United Fruits in Guatemala and the International Association of the Congo in the Democratic Republic of the Congo, Sheriff Enterprises’ outsize economic and political grip on the country support the notion of Transnistria being a corporatocracy.
Sheriff Enterprise and Transnistrian Brain Drain

Transnistria’s economy is based on four large industrial plants catering to different sectors: steel, textiles, cement, and electricity, with the majority of the production being exported.[19] Sheriff Enterprises is partnered with Tirotex, a textile company, a textile company. Sheriff are also the biggest employer in Transnistria. According to their own data, Sheriff Enterprises employs over 13 000 Transnistrians, which is 17% of the employed citizens in their economy.[20]

Transnistria’s wages average between $250 – 300 per month. This is lower than the rest of Moldova and is causing Transnistria to haemorrhage young people, with its population decreasing to as low as 475 000 from around 706 300 during the Soviet era.[21] Transnistrians typically have a Transnistrian passport and then either a Russian, Moldovan or Ukrainian one too, so it is easy for them to emigrate to one of these three countries, even though the war in Ukraine has made moving to these countries much more difficult. This brain drain will only worsen Transnistrian’s economic prospects. Sheriff Enterprises is a company that has branched out into other countries, including those in the EU, highlighting their growing profits. This illustrates that they have the capital to raise their wages and yet have not. This seems antithetical to one of their goals on their website to ‘create decent living conditions for the people in Transnistria.’[22]

Smuggling Origins and Money Laundering

Sheriff Enterprises’ origins are in smuggling, and it would seem that current status still may provide an outlet for smuggling.[23] From 2012–2014, Sheriff Enterprises were in control of a large-scale cigarette smuggling operation before seceding the reins of this operation to two Sheriff-controlled companies in Transnistria – Almavis and Tabimport.[24]

These two Transnistrian companies are exempt from import–export taxes. The United Nations Economic Commission for Europe states that “Transnistria considers commercial transactions with Moldova as part of foreign trade activities, and accords exports and imports to/from Moldova preferential market access. Products purchased from Moldova are exempted from quotas, customs duty and ecological tax, while products destined to Moldova are exempted from providing the appraisal act for each shipment.”[25] Almavis and Tabimport also ignore the customs legislation of the Republic of Moldova, which allows for the import into Transnistria only the quantities necessary to ensure domestic consumption.[26] At the beginning of 2022, two million packs of cigarettes were seized in Căușeni, which is close to the border of Transnistria.[27] According to data from the Moldovan Centre for Journalistic Investigations, during the first nine months of 2020 alone, more than 3.3 billion cigarettes were transported to Moldova, the equivalent of 165 million packs of cigarettes. These cigarettes are then smuggled out into Moldova, Ukraine, Romania, Poland and other EU countries.[28] This smuggling activity alone resulted in around $60.2 million dollars damages to the state budget of Moldova due to lack of tax revenue[29], causing great harm to both Transnistria and Moldova. These two states are the poorest in Europe[30] and thus the tax revenue this smuggling is bypassing could help grow the Moldovan and Transnistrian economy and provide more stable lives for their inhabitants. The European Union Border Assistance Mission to Moldova and Ukraine (EUBAM), with the Moldovan Customs Service and the Moldovan National Public Health Agency, ruled that from 1 May 2021, tobacco products intended for the Transnistrian region should be affixed with special consumption labels.[31] Although this may not slow down smuggling into Transnistria, it may provide some assurance that a percentage of the cigarettes going into Transnistria are more difficult to smuggle out.
The deficit caused by the smuggling operation in Transnistria reverberates across Moldova and Europe to countries where Sheriff operations have started turning a profit. Sheriff Enterprises has three main holdings in Germany: Aquatir, Styleicone and Kartina Digital. They are a caviar company, a textile company and a TV broadcasting company respectively. Sheriff also owns two out of the three main banks in Transnistria, Prisbank and Agroprombank, with the third, Transnistrian Republic Bank, controlled by the government. These banks are blacklisted by the US authorities, meaning their operations in US dollars are subject to screening and restrictions. Hence, the money coming in from their German holdings are not required to undergo rigorous financial checks when passing through the Transnistrian banks. The money flows from Sheriff owned companies in Germany to the Sheriff owned banks in Transnistria and then into the pockets of Sheriff’s shareholders. The Germans holdings can therefore theoretically be used to launder money back to Transnistria.

A Corporatocracy in Action

Within Transnistria, the political and economic elites are closely intertwined. Sheriff is the financial backer of the political party Obnovlenie, ‘Renewal’ in English, which currently hold 35 of 43 seats on the Transnistrian Supreme Council. Both the former president Yevgeny Shevchuk and the current president Vadim Krasnoselsky worked for Sheriff Enterprises, the former as the deputy director and the latter as the company’s security chief. Viktor Gușan has been described by a member of Renewal, Anatoly Dirun, as being ‘the person with the most influence (..), both in politics and economics.’ Due to the amount of influence Sheriff Enterprises holds over the economy and therefore the country, if regulations were proposed or taxes changed that would adversely affect them, Sheriff will likely apply political pressure.

Ex-President Shevchuk, who served from 2011 to 2016, understands how influential Sheriff Enterprises are in the political landscape of Transnistria. He began to limit Sheriff’s economic power by removing the 100% duty on imports from Moldova, announcing plans to create a second mobile phone licence to challenge Sheriff’s monopoly and attempting to make them pay $250m as compensation for their numerous tax privileges.

Sheriff Enterprises which were already backing the challenger Vadim Krasnoselsky in the 2016 elections stepped up their campaign. On the TV channel associated with Sheriff Enterprises, TSV, they promoted information about alleged schemes Shevchuk had undertaken to personally enrich himself. On the day of the elections, TSV announced Krasnoselsky’s victory immediately after the polls closed. Krasnoselsky ended up winning the election by a landslide – 62.3% of the vote compared to Shevchuk’s 27.4.

The most recent presidential election in 2021 was another landslide for Krasnoselsky who received 79.4% of the vote. The Central Electoral
Commission in Tiraspol eliminated Krasnoselsky’s competitors one by one for different reasons before polling day.[39] The Electoral Commission has long been criticized for an alleged lack of impartiality and independence.[40] Any checks and balances that should be in a functioning democracy are either missing or in place to serve Sheriff Enterprises. The six years of Krasnoselsky’s presidency have entrenched Sheriff in the political system. As well as controlling the presidency, Sheriff Enterprises established themselves in the Supreme Council the year before. In 2020, Krasnoselsky’s party, Renewal, won 29 out of 33 seats in the Supreme Council elections.[41] The remaining 4 candidates all have links to Sheriff Enterprises, they include three businessmen who have economic relations with the holding company and a political scientist also close to Sheriff.[42] Elections in Transnistria will always be contentious as election monitoring organisations will not send observers to their elections as Transnistria is an unrecognised state. Therefore, sending a mission would in effect signal to the global community that Transnistria’s elections were the legitimate democratic process of a country, not an unrecognised state.

By consolidating their power and indicated by very low election turn outs[43] Sheriff has destroyed any sense of legitimacy of the Transnistrian elections and whilst Transnistria keeps its position as an unrecognised state, their elections will continue to be unmonitored and susceptible to tampering.

**What the War in Ukraine Means for Sheriff Enterprises**

Sheriff Enterprises has historically been close to Russia, both in trading, its origins, and its culture. The Russian government closely monitors the Transnistrian government’s policy decisions and was the only country to observe the 2021 presidential elections.[44] The war in Ukraine has created diverging options for Sheriff Enterprises. If they continue to support Russia, Transnistria may be dragged into a war and suffer the same sanctions that Russia is suffering. However, if they condemn Russia, the free gas, Russian peacekeepers, and tacit support from the Kremlin may disappear.

Viktor Gușan is watching this war closely as he owns various properties in the Kyiv and the
Odesa region of Ukraine[45] and is a citizen of both Russia and Ukraine (besides Moldova).[46] According to the Skhemy, Gușan controls a 600m² dwelling in the Odesa region of Ukraine. It stands on 6000m² of land that includes two docks, security buildings, a garden, vineyards and a guest house. He is currently being investigated by Ukrainian prosecutors for unauthorized construction on particularly vulnerable lands along the Danube. His property outside Kyiv is designated as agricultural, although only Ukrainians can legally own farmland.[47] If Transnistria were to publicly support Russia’s invasion, Gușan may see those properties seized.[48] At the time of writing, the Transnistrian government have not supported Russia’s invasion of Ukraine,[49] unlike the other unrecognised USSR regions of South Ossetia and Abkhazia.[50] It is likely that Sheriff Enterprises will also continue to remain silent. The ability for Ukraine to seize Viktor Gușan’s properties, as well as Ukraine and the EU to halt any imports–exports from Sheriff Enterprises is a real concern for Gușan. Last year, 54 percent of Transnistria’s exports went to the EU and only 14 percent to Russia.[51] Sheriff Enterprises will want to continue this trade and so will aim to keep the EU on side.

He even parroted Kremlin propaganda by stating that “Russophobia is a kind of Nazism” [52] , even though he defended the Moldovan government against this notion, a sign of seeking to lower the temperature in the regional conflict. Even if Krasnoselsky succeeds in keeping peaceful relation with all sides, it is by no means guaranteed that Sheriff Enterprises will not suffer from the economic fallout of the war in Ukraine. This comes amid news that Transnistria’s economy is expected to shrink by 17–20% this year.[53] Sheriff’s monopoly on Transnistrian politics does not extend the beyond the borders of Transnistria and since Ukraine closed its borders to Transnistria on 27 February 2022[54], Transnistria’s trade will be flowing through Moldova, giving the government in Chisinau significant to leverage if it so choses. Therefore, further integration with the EU-market seems very likely, however, Sheriff is in no position to dictate the conditions of this transition. At best, they can hope that a Moldovan government, pushing deep reforms across government sectors, will have little capacity do deal with Transnistria and allow for a weakened status quo. At worst, the government of Moldova has the capacity to shut down to effectively shut down the Transnistrian economy by restricting the flow of goods, even though that would not necessarily be a strategically wise move.

The Future of Sheriff Enterprises

Moldova’s main strategic goal with Europe was to be granted EU candidate status and to join the EU single market.[55] This was finally accepted on the 23rd of June 2022.[56] This historical moment though is largely symbolic and is more a recognition of the country’s desire to begin the lengthy accession process and a direct result of the war in Ukraine. There will be numerous goals that Moldova will need to reach before their accession is granted. One of these will be a peaceful resolution with Transnistria.

Vadim Krasnoselsky, the president of Transnistria, was interviewed on the 6th June 2022 by Russian TV where he called the ties Transnistria has with the Russian people “indestructible” and “multifaceted”.

Christine Schindler, Tiraspol: Abandoned Munitions Factory, 2014, Flickr,
The EU oversees national tax rules to ensure businesses in one country do not have an unfair advantage over companies in other member states. The EU also works with EU countries on the coordination of economic policies and corporate and income taxes.[57] The free trade deal that Moldova signed with the EU in 2014 and has been in effect since 2016; This is the Deep and Comprehensive Free Trade Area (DCFTA). [58] It is a good road map for how Transnistria and Sheriff Enterprises may handle the accession process. The DCFTA aims to gradually approximate Moldovan legislation, rules, and procedures to those of the EU.[59] Initially, Transnistria distanced themselves from this treaty as they aimed to gain a trading partnership with Russia to further build their independence from Moldova. However, under pressure from Transnistrian businesses, like Sheriff Enterprises, the Transnistrian government formulated a set of "Measures for Facilitating the Transnistrian Regions Trade with the EU". This included EU conditionalities and a strong commitment by Transnistria to implement them. On paper, this does seem as if Transnistria is on its way to aligning with EU economic norms, although the conditions have not been made public.[60] This impedes any monitoring by non-governmental organisations of Transnistria's compliance with the conditions. Although it is impossible to ensure the economic changes Sheriff and Transnistria are implementing due to the DCFTA, a closer working relationship with Chișinău and the EU will help to modernise Transnistria's economy. Sheriff Enterprises will be looking at these trade deals and closer alignment with the EU with some consternation. Russia may begin to think about shutting off the free gas subsidies, a key benefit to Sheriff Enterprises holdings, especially their electricity company. This though could be liberating. Without the dangling carrot of free gas held over Transnistria's head, they will no longer have to fear the stick of Russian retribution and involvement and they can pursue avenues away from the Russian oligarchs' interests. Sheriff Enterprises would have to show that they can run their company legitimately and without the help of the Kremlin and, by doing so, help Transnistria prosper.

Conclusion

The economic power of Sheriff Enterprises may be shifting, and this could be a positive outcome for Transnistria and even Sheriff themselves. Sheriff Enterprises’ origins and their present do seem to be embedded within the criminal side of the economy. It will take close monitoring and reporting to ensure Sheriff Enterprises do not stray back into criminality. A monopoly only hurts a country, and a country run by a monopoly is damaging to both innovation and to the population. Transnistria is at a crossroad: to continue down the same path of corruption, smuggling and prosperity for the few or the path of prosperity for the whole of Transnistria. However, whichever road Transnistria takes and whichever future awaits Sheriff as a result, might very well be decided outside of Transnistria.

Recommendations

- Transnistria should pass anti-trust laws to ensure a healthy and competitive marketplace where innovation thrives.
- Transnistria’s conditions in accepting the DCFTA should be made public by the EU. This will allow non-governmental organisations to monitor whether Sheriff Enterprises are aligning themselves with the EU conditionalities.
- The Moldovan government and the EU should use their current economic leverage over Transnistria to incentivise further integration into the European market in exchange for gradual economic reforms.
Recommendations


[9] Ibid, accessed 10 June 2022


[23] Robert O’Connor, Transnistria Isn’t the Smuggler’s Paradise It Used To Be’ (Foreign Policy, 5 June 2019) <https://foreignpolicy.com/2019/06/05/transnistria-isnt-the-smugglers-paradise-it-used-to-be-sheriff-moldova-ukraine-tiraspol> accessed 10 June 2022


[29] Ibid,