

Comments to the amendments of the Law on the engagement of the Serbian Armed Forces and Other Defence Forces in Multinational Operations

Amendments to the set of laws governing the defence system and the Serbian Army are under way. While public hearings on the amendments of the Law on Defence and Law on the Serbian Armed Forces have taken place (despite the public not being properly notified of the consultation process), there are no plans for a public discussion on the Law on the engagement of Serbian Armed Forces and Other Defence Forces in Multinational Operations (hereinafter: Law on MNO), owing to the fact that the amendments have been earmarked for an expedited procedure. Bearing in mind the nature of the proposed amendments, as well as the fact that new strategic documents this act is supposed to be aligned with are expected early next year, the expedited procedure does not seem warranted.

In the absence of a public debate, the Belgrade Centre for Security Policy takes this opportunity to comment on the amendments and point out those it considers problematic or inadequately explained.

Limiting the oversight role of the National Assembly

The amendment of Article 7 of the current law envisages that the **National Assembly, upon the proposal of the Government, shall decide on** the deployment of Serbian Armed Forces (SAF) and other defence forces in MNO. Based on the decision, **the Government shall adopt a detailed Annual Plan covering the involvement of the SAF and other defence forces**. Provision is made for the **entire plan to be prepared by the Ministry of Defence (MoD)** in conjunction with the competent authorities. Under Articles 7 and 8 of the currently applicable law, the National Assembly adopts a detailed Annual Plan, based on which it decides on the involvement of the SAF and other defence forces in multinational operations.

These amendments certainly render the entire process more flexible and operational, as the approval of the Annual Plan by the National Assembly is no longer required; however, its control role is reduced. Namely, the proposed wording implies that the National Assembly shall make the decision, in the absence of time limits, containing the names and mandates of the missions, as well as the number of deployable SAF members. According to the currently applicable law, the powers of the National Assembly are much wider, for example, through the adoption of the Annual Plan, it also held the purse strings for involvement in multinational operations. The role of the Assembly in deciding on involvement in MNO is certainly important for ensuring greater democratic legitimacy and enabling public debate, hence it is important to strike a balance between efficiency and democratic oversight.

Deciding on the inclusion of civilians in multinational operations without the National Assembly

Article 10 has been retained, which stipulates that the **Government shall decide on the inclusion of civilians in the MNO**. When it was adopted in 2009, the Law on MNO was harmonised with the Law on Police, which stipulated that the Government shall decide on the involvement of members of the Ministry of Interior (MoI) in MNO. However, Article 21 of the new Law on Police stipulates that the decision is to be taken by the competent authority, which allows for the Law on MNO to be amended so as to stipulate that the decision is to be made by the National Assembly. Posting civilian experts to peace missions on foot of a Government decision is certainly more operational, but it also raises the issue of parliamentary control over the adoption of such decision, which BCSP [highlighted](#) back in 2009 when the Law on MNO had been enacted.

Furthermore, it is not clear why the proposed amendments exclude the wording of Article 7 of the currently applicable law, pursuant to which the competent ministries prepare parts of the Annual Plan regarding its members, rather it stipulates that the MoD shall draft the entire plan. Amendments to Article 17 of the current law provide that the **Government shall adopt a Report on involvement of the SAF and other defence forces in MNO, which shall be drafted by MoD in conjunction with the competent authorities**. The report has a different name than the previous Annual Plan Implementation Report, which was also adopted by the Government, but it is substantially the same. In addition, a provision has been introduced that requires the Government to submit a report to the National Assembly and the President of the Republic for briefing purposes, which is certainly a good solution given the remit of these institutions. As well as the Annual Plan, this report is prepared by the MoD in conjunction with the competent authorities.

The Ministry of Defence still at the forefront of planning and implementing the civilian component of MNO

A paragraph providing for the establishment of a **MNO Coordination Body** has been added to Article 17. In principle, such a solution is welcome and widespread in other countries; it is certainly desirable if more civilian involvement in MNO is planned in order to provide a platform for resolving potential problems and sharing experience and know-how. The adoption of the *whole-of-government* approach to civilian capacity building and the establishment of this inter-ministerial body was also [advocated](#) by the BCSP as one of the better solutions for coordinating activities between the different stakeholders involved in this process. However, it seems that it will constitute only a formal mechanism for the involvement of other ministries, since the MoD plans and conducts all activities related to MNO involvement: drafts the decision

the Government proposes to the National Assembly for adoption, prepares the Annual Plan, draws up a report in respect of SAF and other defence forces' involvement in the MNO, organises training and issues certificates of competence to members of the SAF, but also to civilians. Namely, as of next year, there are plans to hold a training course for civilians at the Peacekeeping Operations Center of the General Staff of the SAF, which was not covered by this law, rather a paragraph was added to Article 15 stipulating that the Government is to enact regulations that will regulate specialised training for civilians.

This draft law missed the opportunity to set down in detail the civilian dimension of decision-making and planning, although the need and benefit of civilian involvement in multinational operations is recognised. The focus of this law remains on the military component of missions, hence the role of the Ministry of Foreign Affairs (MFA), which should take the lead in this process, has not been defined. Although the changes of the Law on Ministries this year added to the remit of the MFA in terms of organising and ensuring the inclusion of civilians in missions, this draft law only mentions the MFA as part of the Coordination Body.

Furthermore, no provision has been made for decision-making concerning the involvement, selection or training of persons not sourced from the state administration, but for example from the private sector or civil society that can significantly contribute to the involvement of civilian experts in multinational operations. As BCSP already [pointed out](#), developing civilian expertise outside the state sector can help bridge the gap between the expertise currently being sent to missions and untapped potential.

Lack of detailed guidelines regarding the deployment to MNO without prior training

Article 12 of the current law prescribes that members of the SAF and other defence forces may not be assigned to the MNO without prior training or obtaining a certificate of competence. Based on previous practice, paragraph 2 has been added to this article, which allows persons to be **assigned to missions without prior training, for a period not longer than 45 days, where necessary in order to provide support to the forces engaged in the MNO**. Until now, members of the SAF have been assigned by way of an official travel order issued by the Minister of Defence, and it was important to ensure they were assigned lawfully under the conditions applicable to the forces engaged in MNO, in respect of the rights they enjoy.

Although this amendment is undoubtedly necessary, it would be pertinent to:

1. specify who decides and in what circumstances these persons are assigned to MNO,
2. prescribe the minimum criteria for training or preparation for assignment to the MNO (which in practice they attend anyway), since they are exposed to the same risks and threats in the zone of operation as well as the forces within the mission contingents.

Restriction of rights of SAF members and other defence forces during involvement in MNO

The proposed amendments to the MNO Law to a certain extent reduce the scope of the rights of members of the SAF and other defence forces when involved in MNO, which were guaranteed to them under the currently applicable law.

Firstly, the deletion of paragraph 3 of Article 25 is planned, which **guarantees compensation for risk on duty and additional pay for geographical and climatic conditions**. Since missions differ in terms of geographical and climate conditions, as well as the degree of danger to which MNO forces are exposed, we are of the opinion that the current wording should be kept, which provided for the calculation of compensation in accordance with the risk coefficient.

Then, by way of amendment to paragraph 4, the period for which home travel expenses were payable was increased (this compensation was payable to those who were assigned to MNO for a period longer than 7 months). This amendment certainly limits the right to go home, which is guaranteed by the current law once every 6 months, and besides that, it could have an affect on [motivation for involvement in MNO, especially for women](#), who, due to separation from the family, are generally less inclined to take opt for such a move.

Most importantly, the deletion of part of paragraph 5 of the same Article, which provides that **personal insurance is provided at the expense of the competent ministry**, as well as Article 28 of the applicable law, which also concerns mandatory personal insurance is very problematic. It is necessary to clearly define how personal security is to be provided for members of the SAF and other defence forces that are sent to MNO.

Finally, this draft law failed to avail of the opportunity to set down in detail the complaint procedure for members of the SAF and other defence forces, during and after involvement in MNO. Namely, Article 23 of the applicable law provides that the authorised senior officer shall decide on the rights and obligations of SAF members in MNO. SAF members generally reluctantly decide to initiate the appeal process¹, and it is important to define precisely the procedure according to which they can contact independent bodies, such as the Defence Inspectorate or the Ombudsman, if they are faced with a problem or a violation of their rights.

¹ Belgrade Centre for Human Rights, Ombudsman's Possibilities for Monitoring the Respect of the Rights of Members of the Armed Forces in United Nations Peacekeeping Operations, Belgrade, 2017.