

*Chapter Eleven*

**Catalysts for Change:  
Bosnia and Herzegovina's Downward  
Spiral and the Need for U.S. and  
German Leadership**

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On February 10, 2012, Bosnia and Herzegovina (BiH) finally elected a new Council of Ministers, some 16 months after the October 2010 general elections, headed by the Croatian Democratic Union's Vjekoslav Bevanda. The announcement of a share-out of positions among the six participating parties,<sup>1</sup> listed by post and ethnicity, was announced at the end of 2011. The passage of two laws demanded by the European Union as prerequisites to enacting the Stabilization and Association Agreement—a Law on Census and a Law on State Aid—preceded the actual government formation by roughly a week. The international community heralded the passage of these laws and the formation of the government, encouraging the incoming government to make up for lost time and embark on accelerated efforts to resume the long-stalled reform process.

These hopes are misplaced; the new government's formation is a false dawn. Without a fundamental policy rethink and shift in both Washington and Berlin, the current downward trajectory in BiH will continue. The problem is now so deep-seated in both the State Department and *Auswärtiges Amt* that such a change can only be effected at the very top.

The international community is projecting its hopes onto what it would like to see as a blank slate, but what really is a reshuffling of the same old

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<sup>1</sup> These are the Social Democratic Party (SDP), led by incoming Foreign Minister Zlatko Lagumdžija; the Union of Independent Social Democrats (SNSD), led by Republika Srpska President Milorad Dodik; the Party of Democratic Action (SDA), led by Sulejman Tihić; the Serbian Democratic Party (SDS), led by Mladen Bosić; the Croatian Democratic Union (HDZ), led by Dragan Čović; and the HDZ 1990, led by Božo Ljubić.

deck with little substantive change from the outgoing government. The SDP, in opposition since its loss in the 2002 elections, has received its share of ministerial and subordinate positions, but effectively had to abandon both the governing agenda (“Platform”) it forged with the SDA and two smaller parties which compose the Federation government: Working for Improvement (RzB) and the Croatian Party of Rights (HSP). Their ability to affect the course of policy in such a disparate and divided coalition is highly doubtful. The SDP, which campaigned on a pan-BiH non-nationalist agenda, appears to have accepted responsibility without actual power or even much influence. This move is likely to alienate many of the party’s voters and exact a cost at the October 2012 municipal elections, further strengthening the nationalists’ dominance in a constitutional system designed around their interests.

Illustrating the government’s lack of unity, there ensued months of wrangling over the 2011 budget. The lack of a 2011 budget, only agreed in mid-February, impeded the ability of the state to service its international debt and to agree on a 2012 budget. SNSD members in the Presidency, Council of Ministers (incoming Finance Minister Nikola Špirić was the last government’s Chair of the Council of Ministers), and House of Representatives seem to be collaborating in an effort to run the clock and ratchet down the budget for 2012. In this tactic, they are emulating the American right-wing approach to the U.S. government—to “starve the beast” of the state-level government of revenue, yielding more for their own cash-strapped entity.

This episode is indicative of a far broader trend that has been accelerating since 2006. The Republika Srpska (RS) continues to escalate its challenge to the state, stymying, starving, or actively dismantling state institutions established after—and even at—Dayton. Those created after Dayton, despite being agreed by intergovernmental agreement among the entities and having the status of constitutional law, are challenged as being unconstitutional and the products of “legal violence” against the RS. Even the structure and competence of institutions embodied in the Dayton Peace Agreement as drafted in 1995, such as the Constitutional Court, are questioned by Banja Luka. The sectors most under attack are those in the judicial and financial sector. The ultimate goal has been openly declared by RS President Milorad Dodik—the “peaceful dissolution” of the state. The international reaction to this sustained and openly

acknowledged campaign to unravel, delegitimize, and ultimately split the state of Bosnia and Herzegovina has been feeble at best.

### **Building the Perfect Storm**

The current downward spiral began in 2005, when the prevailing view among the international community was that the peace implementation and state-building process in BiH had reached an irreversible and self-sustaining stage. While unfinished business was acknowledged—most notably constitutional reform and police restructuring—the sense was that these reforms were achievable in the short-term. The conclusion was that the international role could “transition” away from the executive powers embodied in the Office of the High Representative (OHR) and a Chapter 7 EU military implementation and deterrent force, EUFOR. These would be succeeded by an EU-led effort to prepare Bosnia for EU integration at the same time efforts to promote its NATO integration were pursued. Replacing the “push of Dayton with the pull of Brussels” was the phrase often employed to illustrate this intended change. It was assumed that Bosnia and Herzegovina, with some additional minor changes that were within grasp, would propel itself into the EU and NATO; it was just a question of when.

Reflecting this broadly held view, the body established to oversee enforcement of the Dayton Peace Accords, the Peace Implementation Council (PIC), represented in its narrower Steering Board,<sup>2</sup> selected former German government minister and Bosnia mediator Christian Schwarz-Schilling to succeed Lord Paddy Ashdown as High Representative. On his first night on the job, in an address to BiH citizens, he stated that he would not employ his executive “Bonn Powers,” which gave him the authority to impose or rescind laws and remove officials should they impede compliance with Dayton, except to ensure compliance with the International Criminal Tribunal for the former Yugoslavia (ICTY) and to ensure public security. This statement amounted to announcing unilateral disarmament at the very beginning of his tenure.

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<sup>2</sup> “The Steering Board members are Canada, France, Germany, Italy, Japan, Russia, United Kingdom, United States, the Presidency of the European Union, the European Commission, and the Organisation of the Islamic Conference (OIC), which is represented by Turkey.” [http://www.ohr.int/pic/default.asp?content\\_id=38756](http://www.ohr.int/pic/default.asp?content_id=38756).

SNSD leader Milorad Dodik became RS Premier in March 2006, assembling a governing majority seven months before general elections. It seemed a bold, even risky move at the time. Almost immediately, RS cooperation on establishment of already agreed upon state competences stopped; no further reforms were agreed upon. This soon proved not to be a stall due to transition, or even in preparation for elections in October 2006. It was the advent of a new approach: to deny the legitimacy of prior agreements, entered into by Dodik's predecessors, to establish new state competences. This became clear in April 2006 with the failure of the "April Package" of constitutional amendments to secure requisite support in the BiH Parliamentary Assembly. From this point on, efforts were focused on impeding the function of state-level institutions and returning their powers to the Republika Srpska.

An international non-governmental effort by the U.S. Institute of Peace and Dayton Peace Accords Project to forge consensus around a package of constitutional reforms began in 2005, using the Council of Europe's Venice Commission opinion as a guidepost. These amendments would have strengthened the state by creating some new EU-required competences (Ministries of Agriculture and of Science and Technology, for example) and codifying post-Dayton bodies like the Ministry of Defense, Court of BiH, State Prosecutor's Office, High Judicial and Prosecutorial Council, and Indirect Taxation Authority into the written constitution. In addition, the relationship between the state and entities would have been clarified and provisions discriminating against the ability of citizens not aligning themselves with the three "constituent peoples" would have been changed. It appeared a deal was at hand, but the re-entry of some party leaders into active politics, e.g. Party for BiH leader Haris Silajdžić, changed that working dynamic. All three RS-based parties involved in the process, the SNSD, SDS and Party for Democratic Progress (PDP), stated they would support the package of proposed reforms, but go no further. This made Bosniak, Croat, and non-nationalist political forces all concerned that this might be the last chance to amend Dayton. Self-interest regarding some of the provisions of the package soured Silajdžić on it. The HDZ's need in the 1990s to differentiate itself from the party that spawned it led to its rejection of the package. When voted upon in April 2006, the reforms, subsequently commonly dubbed "the April package," failed by two votes to achieve the required two-thirds majority.

In May 2006, Montenegro held a referendum on independence from the joint state with Serbia. The vote won the required qualified 55% majority. From this point on, RS Premier Dodik began to speak of holding a referendum in the RS. While kept undefined until early 2011, the clear implication to listeners throughout BiH was of a vote on RS independence. By this point, the electoral campaign had effectively begun, with Dodik and Silajdžić acting as foils for one another and collectively driving the discourse deeper into divisive territory. This served them both well, giving each resounding electoral victories. However, the rhetorical dualism was not matched in the realm of political power. Dodik's position as undisputed victor in the RS gave him far more effective statewide power than Silajdžić's position as Bosniak member of the state Presidency gave him.

Following the most ethnically polarizing elections since 1996, it should have been abundantly clear to the international community by early 2007 that its governing assumptions regarding the dynamics in BiH were not congruent with the reality on the ground. This eventually registered with the High Representative, whose opening statement and overall "ownership" approach had contributed to the new situation—but only in time for him to be shown the door. Regardless of this, it remained the international aim to close the OHR in the near future. Schwarz-Schilling's successor, Slovak diplomat Miroslav Lajčák, arrived to great expectations in mid-2007. Yet when tested in late 2007 in a confrontation with Dodik,<sup>3</sup> he emerged bested, and attempted to change the subject by pressing for initialing a Stabilization and Association Agreement (SAA) with the EU. The calming effect of this move, however, was short-lived; the desired momentum for the European path never developed. In addition, it further damaged the credibility of the EU in the eyes of Bosnian politicians, who

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<sup>3</sup> "Attempts to achieve police reform ground to a halt, and a shift [from EU requirements] to Dayton fundamentals led to an imposition of some changes regarding the quorum for the Council of Ministers, so the government's work could not be as easily halted without responsibility. When confronted by Dodik, however, Brussels instructed Lajčák not to pursue the fight further, since Kosovo's status question was their primary regional concern... Lajčák went so far as to effectively reverse his earlier action by negotiating with Banja Luka, making Dodik the undisputed victor in a fight with the international High Representative." From "The International Community in Bosnia and Herzegovina: Experiment without a Strategy," by the author, published in *Bosnia and Herzegovina: Between EU-Integration Toolbox and International Community Exit Strategy*, Heinrich Böll Stiftung BiH and Center for Policy and Governance, Sarajevo, 2010.

saw a demonstration of how the stringency of EU standards were modulated downward for purposes of expediency and crisis management and saw that EU leverage over Bosnian politicians could run in the opposite direction as well.

By February 2008, the PIC Steering Board moved away from a time-driven approach to a benchmark-driven definition of requirements to be met for OHR closure; its announced five objectives and two conditions (the “5+2” criteria). The objectives were entrenching the rule of law; ensuring fiscal sustainability; completion of the requirements to end Brčko Supervision; and resolution of state and defense property ownership. The conditions were signature of an SAA and a determination by the PIC Steering Board that conditions permitted the closure of OHR. A larger number of objectives and conditions were discussed within OHR and the PIC Steering Board before the announcement. Apparently, High Representative Lajčák’s idea that these criteria were achievable by the end of 2008 prevailed.<sup>4</sup>

While it was a step in the right direction to establish some standards for OHR closure (to the consternation of EU foreign policy chief Javier Solana and the Commission, which reportedly protested the constraint), the PIC Steering Board set an illogically low standard. What had been proven over the course of 2006 was that *the political and structural incentives in the Dayton system drive inexorably toward state dissolution unless checked by external actors*. From 1996–2005, this built-in flaw was compensated for by increasingly strategic and assertive international action. In 2006, this international approach was abruptly curtailed without addressing the structural incentives in Dayton, which drive BiH toward polarization and division. These incentives were now given free rein. RS Premier Dodik served as the perfect example of what sort of politicians these incentives produced. Dayton not only preserved the nationalist leaders who signed it, as one would expect, but also generated new nationalists, since it delivered political profit while maintaining lack of accountability to citizens. The transformation of Dodik from internationally hailed moderate (who could have received many votes from within the Federation had he not made his right turn in 2006) into nationalist populist per-

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<sup>4</sup> Discussions with international officials in Sarajevo (2008), The Hague (2009), and Berlin (2010).

fectly illustrates the perverse effects of the Dayton constitutional order, when combined with international retrenchment.

The logical solution would have been—and remains—to make clear that the Dayton enforcement instruments—the Office of the High Representative and an executive EUFOR—would remain until BiH adopted a new constitutional order by broad popular agreement, and until this order proved its self-sustained durability. Unfortunately, rational assessment is not always the main driver in international policy design; it certainly is not in the case of BiH. Too much political capital had been invested in the “transition” to an EU lead in BiH and the Western Balkans to allow the facts on the ground to alter the policy. The result: entropy and a rules-free environment, which only encourages further inflammatory rhetoric and political risk-taking. Political miscalculation is increasing both in frequency and gravity.

### **“I Think I Can, I Think I Can...”<sup>5</sup>**

The underlying premise of the European Union’s approach to the Western Balkans as a whole is that the conditional open door to EU membership will impel political leaders in these countries to make the necessary reforms to meet the club’s standards and gain entry. The reform processes leading to the entry of many Central and Eastern European former socialist countries into the EU in 2004 convinced the EU, and its institutions in particular, of the inherent transformative power of an EU membership perspective. The fact that the ongoing eurozone crisis has not hit those new members that have adopted the common currency<sup>6</sup> nearly as hard as it has hit many older, even founding members, highlights the depth of the transformations undergone within them. The belief that the EU had perfected a winning formula which it could simply plug-and-play was seductive.

But the assumptions of the underlying thesis bear consideration. It is assumed that the interlocutors of the EU are representative politicians or civil servants ultimately accountable to their electorates. These local officials are assumed to have built the political and social consensus for the

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<sup>5</sup> From the children’s classic, “The Little Engine that Could.” See [http://en.wikipedia.org/wiki/The\\_Little\\_Engine\\_That\\_Could](http://en.wikipedia.org/wiki/The_Little_Engine_That_Could).

<sup>6</sup> Cyprus, Estonia, Malta, Slovenia, and Slovakia.

required reforms and policies. The EU also assumes that their local interlocutors have the will to do the required heavy lifting to meet the EU's standards, embodied in an SAA, Partnership Document, and the *acquis communautaire*. The experience of the past six years hardly bears out these assumptions; quite to the contrary. The Commission's own Progress Reports and independent analyses demonstrate the abject lack of progress toward the targets defined in the SAA or *acquis*, in terms of both legislation and implementation.<sup>7</sup> Yet the more the efficacy of the EU membership perspective in BiH is questioned, the more fervently it is proclaimed, like a sacred incantation. EU official statements—and often even casual conversations—often carry a pronounced theological flavor regarding the transformative powers of EU processes.

In addition, the EU's bureaucratic culture is one of *Prozess über Alles*; process drives European integration. The author was once told passionately by a straight-faced EU official that “we are not concerned with outcomes; we only care about process.”<sup>8</sup> One concrete reflection of this mentality is the indulgent curve on which meeting the 5+2 criteria are graded. Once declared complete, a requirement is closed forever, even if it is unpacked or reversed almost immediately. This explains the “completion” of the requirements of “entrenching the rule of law” as state judicial organs have been subjected to unrelenting assault from the RS and “fiscal sustainability” as the state enters the second year without a legislated budget—and its own-revenue stream threatened by the RS. Only forward movement registers. Desperation to declare progress also leads to exceedingly low standards. The European Court of Human Rights ruled in December 2009 in the Sejdić-Finci case that BiH's constitution and electoral code were non-compliant with the European Convention on Human Rights, since the plaintiffs, Roma activist Dervo Sejdić and Jewish community figure and diplomat Jakob Finci could run neither for the Presidency or be seated in the House of Peoples. Remediating these violations, long identified as problematic, became a legal requirement. The BiH Parliamentary Assembly has floundered for more than two years on the issue;

<sup>7</sup> See 2011 Bosnia and Herzegovina Progress Report at [http://ec.europa.eu/enlargement/pdf/key\\_documents/2011/package/ba\\_rapport\\_2011\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2011/package/ba_rapport_2011_en.pdf). See the Foreign Policy Initiative's latest assessment on BiH progress toward meeting EU requirements at [http://www.vpi.ba/eng/content/documents/Monitoring\\_of\\_The\\_BiH\\_European\\_Integration\\_Process\\_2010\\_Annual\\_Report.pdf](http://www.vpi.ba/eng/content/documents/Monitoring_of_The_BiH_European_Integration_Process_2010_Annual_Report.pdf).

<sup>8</sup> Conversation with EU official, Sarajevo, Summer 2009.



no evidence of agreement on full compliance with the ruling is in sight. Despite this, the EU has stated that it is only demanding “credible effort” toward developing a solution. This—a step down from the “credible progress” articulated previously—hardly conditions BiH politicians to take the EU seriously.

The ugly truth is that Bosnia’s political elites have long since completed their cost-benefit analysis on meeting the EU’s standards, and come to the conclusion that they have more to lose than to gain. It is certainly true that actually meeting the EU’s standards and joining the club would serve the overwhelming majority of BiH citizens. But it is also irrelevant, given the lack of accountability of political elites to the citizenry. The Dayton system affords political leaders wide latitude to leverage both fear and patronage; the former becoming more dominant with the international retreat from responsibility to enforce Dayton and the dual impact of fiscal irresponsibility and the financial crisis limiting the funds available to buy political support and social peace. These leaders understand the international dynamic and their own self-interest extremely well. They have figured out the international community. The reverse is not true. Therefore, these entrenched elites have managed to derive maximum benefits from the EU with little to no durable reform—even *reversals* of prior reforms. Continuation of the current EU policy is a sucker’s game, with the benefits flowing overwhelmingly to those most resistant to effective and accountable governance. Remaining on this path does no service or credit to the EU—or its taxpayers.

This dynamic does not mean that the EU cannot succeed in Bosnia and Herzegovina. But it does mean that the standard approach of dealing with the political leadership as the EU’s partner cannot succeed under current conditions. This reality demands two fundamental shifts in the EU, and by implication, the entire international approach. The first is to change the prevailing conditions by re-establishing a popular sense of certainty that the Dayton rules will be enforced until they are changed consensually by Bosnians themselves. The second is to focus on developing and supporting a popular constituency for a functioning state that can meet EU standards and other international obligations.<sup>9</sup> The EU usually relies on the applicant government to do this work. In BiH, this is not the case, for rea-

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<sup>9</sup> *Inter alia*, these include the Council of Europe, OSCE and NATO, with which BiH is a partner and aspirant to membership.

sons explained previously. Taken together, these policy changes would radically alter the incentives for BiH politicians, robbing them of their ability to mobilize fear and finally subjecting them to the deep popular disdain they have duly earned for 20 years of disastrous policies.

Intellectual honesty and logic compel the conclusion that the current approach is not working; analysis and diagnosis should follow—I offer my own above. Yet the EU prescription remains what it was in 2006: closure of the OHR is expected to spur a flowering of responsible political behavior and self-driven progress—“ownership.” If only OHR would get out of the way...

Attempts to square the reality on the ground with how it should work in theory has led to repeated and ongoing retreats on standards and unilateral declarations of progress, in the vain hope that these will generate the momentum to prove them true *post hoc*. Worse, the need to maintain theological purity creates strange bedfellows. The EU and RS’ shared goal of eliminating Dayton’s civilian enforcement tool, the OHR, has made them allies of convenience—though some EU officials and member state diplomats convey the impression that for them this *de facto* alliance is one of conviction. It is unlikely that this is the sort of “partnership” that those who proclaim the transformative power of the EU had in mind.

### **Bureaucratic Autopilot, the Great Divide— and the Great Unraveling**

From the international unity forged in 2005 behind the erroneous assumptions and resulting doomed policies, PIC Steering Board members have progressively moved apart from each other and into two distinct camps in their assessments of the situation in BiH. The dominant grouping maintains a fundamentalist view in the original assumption made in 2005: BiH can and must be shorn of its international training wheels (OHR and Ch. 7 EUFOR) and take “ownership” of its fate—it will then drive itself into the EU. The enlargement mechanisms—all “soft power”<sup>10</sup>

<sup>10</sup> Despite Joseph Nye’s coinage of the term and its wide application as a concept (see [http://en.wikipedia.org/wiki/Soft\\_power](http://en.wikipedia.org/wiki/Soft_power)), there seems a distinct subtext to its usage by EU and many member state officials. This could be summed up as: the EU’s attractive power obviates the need to apply or threaten violent force (unlike those simple, brutish, trigger-happy Americans).

tools—hold all the necessary means and incentives to impel reform and make BiH functional. The EU continually declares it has a “reinforced presence” in BiH with the arrival of EUSR/Head of Delegation Peter Sørensen, despite the closure of the EU Police Mission and halving of EUFOR’s troop strength. Potential for violent conflict, despite compelling evidence to the contrary,<sup>11</sup> is dismissed out of hand. The PIC SB members adhering to this view are France, Germany, Italy, and Spain,<sup>12</sup> as well as the EU institutions of the Commission and External Action Service. Establishing untrammled EU primacy as international actor in BiH seems the motivation. Russia is also aligned with this position, one believes not so much out of conviction as on the resulting exclusion of the U.S. Russia would also applaud the removal of remaining impediments to Republika Srpska’s efforts to redefine the state on its own terms (and ultimately leave it altogether).

The second group is similar in size to the first, but has neither a unifying conviction nor any institutional pillar on which to lean. They have agglomerated on the basis of their growing skepticism that EU enlargement alone provides a foundation for BiH stability, let alone progress toward functionality. This group includes the U.S., Great Britain, Turkey, Japan, Canada and the Netherlands. This group wishes to hold fast to the 5+2 criteria for OHR closure and tends to see the need for more assertive international political engagement, particularly in attacks on the state and talk of its dissolution. One also hears from representatives of these countries that they have expended too much effort and resources on building state institutions to allow the fruits of that endeavor to unravel.

The polarization of views among PIC Steering Board members has grown, particularly since early 2010, shifting fence-sitters such as Germany on one side and Japan and Canada on the other into opposing camps. Individual Steering Board member positions of course do not move in lockstep. Yet this polarization appears durable; since 2010 countries have seldom shifted from one camp to the other. On divisive matters

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<sup>11</sup> See the October 2011 Democratization Policy Council—Atlantic Initiative joint security study “Assessing the potential for renewed ethnic violence in Bosnia and Herzegovina: A security risk analysis,” by Vlado Azinović, Kurt Bassuener and Bodo Weber, Sarajevo, 2011. <http://www.atlanticinitiative.org/images/stories/ai/pdf/ai-dpc%20bih%20security%20study%20final%2010-9-11.pdf>.

<sup>12</sup> Spain and the Netherlands are observers on the PIC Steering Board.

such as how to address the challenge of the RS' referendum on the judiciary and the RS National Assembly's Conclusions (which asserted that post-Dayton state-building was unconstitutional), resisting direct attacks on state judicial institutions from the RS, maintaining OHR's budget, and maintaining an executive operational EUFOR, to name but four issues, this alignment held and deepened. A lack of trust in the EU's good faith has been articulated to the author by a broad cross-section from this camp. Efforts by the U.S. and Britain to pursue (or shore-up) policy objectives through "the Quint"—which also includes France, Germany and Italy—are doomed from the start in such an environment.

The continental EU group's inability to shift policy in its desired direction by convincing other Steering Board members with rational argument has led it to pursue its desired policy outcomes by deception and bureaucratic subterfuge. The undercutting of the international High Representative (and then-EU Special Representative) Valentin Inzko by External Action Service chief Baroness Catherine Ashton on May 13, 2011, when she visited Banja Luka and cut a deal with RS President Milorad Dodik to shelve ("for now") his referendum on the judiciary<sup>13</sup> in exchange for the initiation of a Structured Dialogue on the judiciary, is but the most well-known example. Attempts to force a *fait accompli* in gutting OHR's budget soon afterward and the ongoing sidelining of OHR within the international community in BiH are others.

The policy pursued by the EU bureaucracy and supported by most of the large member states is divorced from the ground reality in Bosnia because it is not *about* Bosnia. It is about establishing EU institutional primacy in BiH, while unilaterally divesting themselves of the legal responsibility of peace implementation and enforcement undertaken by signatories of Dayton. The "reinforced EU presence" introduced with the decoupling of the EUSR and OHR in mid-2011<sup>14</sup> has therefore not created

<sup>13</sup> Ashton was photographed in a meeting with Dodik and their staffs in a room with a map of the RS running contiguously through Brčko District and without a BiH state flag. In a press statement after the meeting, she thanked Dodik for his "leadership." See <http://www.europeanvoice.com/article/2011/may/ashton-holds-crisis-talks-in-bosnia/71076.aspx> The meeting photograph was published on May 14, 2011 in *Oslobodjenje* and widely noted. Interestingly, all photos of this meeting available online have the map cropped out.

<sup>14</sup> Despite efforts by some EU members to condition this decoupling (notably the UK), as well as misgivings by a number of non-EU PIC SB members that this would intensify

greater clarity on and mutual support between the different institutional and legal roles of the EUSR and High Representative; quite the reverse, as some American diplomats had feared when the idea was first mooted.

In 2008, the author asked an EU member state diplomat the rationale for the fixation on closing OHR and making EUFOR non-executive. He replied “so long as the OHR and EUFOR are here, we’re responsible. When they are gone, we are not responsible—the Bosnians are responsible.” The EU approach on the ground seems targeted at preventing the OHR from exercising its responsibility, while running away from filling the resulting void. Considering the BiH politicians who hold the power, the Dayton systemic incentives that keep them there, and their track record of irresponsibility enabled by that very constitutional structure, this is a certain recipe for further and ultimately violent state dissolution. It is just a question of when.

Despite this bleak trajectory, in recent months the U.S. position seems to be softening. American—and British—will to resist the EU’s demand for primacy in BiH at any cost seems to be fading. Instead, one detects a hope for the best and a wish to accentuate the positive, despite deep-seated misgivings. This leaves the others in this camp less unified and self-assured in pressing their own concerns. The most recent manifestation of this dynamic was at the December 2011 PIC Steering Board meeting. Ending Brčko Supervision has been an *idée fixe* for continental EU members (Netherlands excepted), not so much on its merits (which are highly dubious, given its strategic importance and Dodik’s open calls for state dissolution) but rather as a way of weakening American resolve to resist the outright closure of OHR. Considering that the Supervisor and Chair of the Arbitral Tribunal are both Americans, this was an easily defended position, even had the U.S. been alone in its concerns with the PIC Steering Board. It was not. Yet the U.S. relented to European demands to move toward closure, while mooting the legally questionable fudge of ending Supervision but maintaining the Arbitral Tribunal. One wonders what would be left to arbitrate if the Final Award were declared implemented.<sup>15</sup> The U.S. retreat on this issue was unreciprocated with any

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the institutional rivalry between the EUSR and OHR, the decision to decouple was made by the EU majority in 2011.

<sup>15</sup> See the Brčko Final Award at [http://www.ohr.int/ohr-offices/brcko/arbitration/default.asp?content\\_id=42738](http://www.ohr.int/ohr-offices/brcko/arbitration/default.asp?content_id=42738), paragraphs 66 and 67.

concession from the EU. For the first time—but probably not the last—Turkey raised its objection to this policy in a footnote to the Steering Board’s communiqué.

The EU bureaucracy, backed by most member states, is effectively in the driver’s seat of international policy on BiH, careening at an accelerating speed toward a cliff. The U.S. is in the passenger seat cringing and wringing its hands, but is unwilling to seize the wheel lest it damage the driver’s self-esteem. Turkey, Canada, and Japan are stuck in the backseat, with Turkey becoming increasingly critical of the driving and eyeing the door. Russia watches from a safe distance, waiting expectantly for the crash.

### **How to Change the Dynamic**

The currently failing and increasingly dangerous international approach would be relatively simple, which is not to say easy, to change.

The first step must be to elevate the decision-making on the overall policy direction above the bureaucratic level in Washington. While the upcoming U.S. presidential election, political gridlock, economic suffering, and heavy foreign policy docket all militate against any attention for Bosnia, nothing short of this level of attention will do. So long as the State Department bureaucracy below the Secretary is effectively directing the policy, there will be disincentives to face the reality that the policy is failing. Absent an obvious catastrophic failure, bureaucrats will not cast a vote of no confidence on a policy of their own design. Once that policy failure occurs, it will become an unconcealable *political* problem for their masters.

The U.S. is the universal connector of the West; no overall policy shift on Bosnia is likely without American impetus. A decision by Secretary Clinton or President Obama himself to review and recalibrate the policy is therefore required, ensuring that the country would not be allowed to split, and the means to prevent that would be maintained in Bosnia until the Dayton rules are changed by popular consent to develop a state that works and no longer has built-in incentives for ethnic division. The President and Secretary need to name a special envoy to whom they could subcontract the work of aligning the Western PIC Steering Board members, and ultimately the Russians, around a policy and posture that could succeed.

The other pivot point is in Berlin. Germany is the undisputed center of gravity of the current EU. As in the U.S., a changed Bosnia policy can be arrived at only from the top: Chancellor Merkel herself. Senior officials in the *Auswärtiges Amt* are deeply invested in the current policy. Suggestion of a course correction on Bosnia would thus have to come from one of Merkel's peers or from within her own parliamentary fraction. In 2011, Merkel demonstrated her ability to engage directly and decisively in the Balkans, ruling out Serbian EU candidacy until the question of its southern border was definitively resolved. This move has proven a game changer, despite it being deeply unpopular in Brussels and many EU capitals. Articulation of a new Bosnia policy baseline, as sketched out earlier in this article, including making clear that RS secession would be *prevented*, not just not recognized, would best come from Merkel herself. This would wrest the direction of the policy from the Brussels bureaucracy—and would in turn be backed vigorously by London, The Hague, Washington, Ottawa and Ankara. Following a shift in Berlin, it is doubtful there would be any significant resistance within the Union—or indeed from Russia.

### **Conclusion: Restore the Foundation; Bosnians Must Do the Rest**

It is crucial that international actors be honest and realistic about their power to effect change to make Bosnia and Herzegovina work. The EU's default assumption that would-be members themselves need to chart their course and move toward EU membership is a logical, fair and moral one. The reason this is not happening in BiH's case is not that a popular constituency for such a course, even with the attendant pain of adopting EU-required reforms and standards, cannot be built—this seems quite plausible. Rather, it is because those who make the decisions in BiH's electoral oligarchy have far more to lose than to gain from moving in that direction and can maintain their position as a comfortable and powerful elite by keeping the system as is, absent some modifications to make themselves even *more* secure. The danger is that with the non-enforcement of the Dayton rules by the OHR and EUFOR, reflecting diminished international will, the dysfunctional system is naturally defaulting toward further disintegration, state collapse and ultimately violent dissolution. While nobody can predict with certainty where, when or how the impending crash will come, it is inevitable so long as the current trajectory is main-

tained. There is simply no internal brake on the current downward spiral. That can only come from external actors.

The proposed shift amounts to a simple and proper division of labor among the international guarantors of the Dayton peace and the people of Bosnia and Herzegovina, who are simultaneously beneficiaries of the peace and victims of the resulting system's perverse incentives and protections for predatory elites. Popular confidence that Dayton's Annex 4 Constitution, flawed as it is, will remain until consensually changed by a critical mass of each self-defined group of citizens actually makes such a change far more probable—perhaps with greater velocity than many believe possible. This renewed clarity, coupled with popular belief that the means and will to back this changed policy are there, would eliminate or dramatically reduce the potency of fear as a political tool, constraining the ability of political actors to maneuver and subjecting them to the deserved deep discontent toward their policies and their impact. Re-establishing a sense of certainty in personal security among all Bosnian citizens and communities is the foundation that will allow popular discontent and economic hardship to work for progressive change, rather than loom as a risk factor, as it does today.

Recognition in Foggy Bottom and the White House that current U.S. policy on Bosnia is doomed to fail is the first step toward preventing catastrophic failure and adopting a strategy for success.