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Briefing

HOW TO PULL OUT OF BOSNIA-HERZEGOVINA'S DEAD-END: A Strategy for Success

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Executive Summary

The international community's 13+ year effort in Bosnia and Herzegovina is failing. A continuation of the current trajectory will ultimately result in renewed conflict. Bosnian citizens now harbour greater fear of conflict than at any point since Dayton. Both the EU and the US have a lot to lose.

Growing international frustration is evident in wishful thinking and desperation. While the EU has reduced its peace implementation force (EUFOR) to mere symbolic levels, the international community desperately embraces vague three-party agreements among nationalist leaders. Many hope that a transition from the Office of the High Representative (OHR) to a "reinforced" EU Special Representative (EUSR) will "restore momentum" to Bosnia's European perspective.

State-building and reform processes in Bosnia and Herzegovina ground to a halt in 2006 and have since slid backwards. Republika Srpska (RS) Premier Milorad Dodik and Bosniak member of the State Presidency Haris Silajdžić helped drive this downward spiral. Yet while their actions and rhetoric generated angst and insecurity, they are the logical products of deeper structural problems.

The Dayton constitution makes leveraging fear politically profitable and politicians unaccountable. Bosnian politicians pursue their self-aggrandizing, maximalist goals at the expense of the general welfare. Thanks to the absence of credible options, most citizens feel unrepresented in government. This must be remedied for the country to work.

The international community can reverse out of this dead-end only if the EU and US act in concert to prevent further generation of the fear and insecurity that fuels politics in Dayton Bosnia and Herzegovina. They must then pursue constitutional reforms with broad popular legitimacy, creating incentives for responsive government. Otherwise, the country cannot even begin to meet EU standards. High-level US re-engagement is also essential to arresting Bosnia's downward slide. In any event, the international community's oversight role is far from over. Acceptance of this need for long-term engagement is required.

Recommendations:***To the EU:***

- 1) Appoint a politically capable leader as High Representative/EUSR.
- 2) Articulate clear constitutional reform guidelines and make constitutional reform the core of the EUSR mandate.
- 3) Give the EUSR executive authority to confront anti-Dayton activity.
- 4) Ensure that EUFOR has credible operational capacity throughout the country to deter and respond to threats to public security and the Dayton Peace Accords.
- 5) Authorize the EUSR to decide on fulfilment of EU conditions and all sanctions.
- 6) Ensure EUSR possesses anti-organized crime and corruption investigative capacity.
- 7) Maintain a broad international coalition in Bosnia and Herzegovina.

To the Peace Implementation Council:

- 8) Insist on full completion of the 5+2 formula prior to closing OHR.

To the US:

- 9) Appoint a Presidential Special Envoy to the Balkans to demonstrate US engagement and promote international policy cohesion.
- 10) Post a US flag officer in the NATO HQ Sarajevo to identify training and exercise opportunities.

I. The Current Trajectory

The decline of the Office of the High Representative (OHR) over the past three years has revealed the Dayton constitution's inherent dysfunctionality. Since the October 2006 general elections precious little has been accomplished on the state-level, as central institutions have begun to unravel.

Bosnia's two entities have taken divergent paths: the Republika Srpska's (RS) leadership, led by Premier Milorad Dodik, is attempting to prove the RS is, as members of his government often say, "the better part" of Bosnia and Herzegovina to justify taking back competencies moved to the state under earlier reforms. Dodik claims that the state of Bosnia and Herzegovina is conditional, while Republika Srpska is permanent. He has flirted with an independence referendum since 2006, and openly emulates Montenegro's independence drive. He has suggested that Bosnia transform itself into a loose collection of federated sovereign ethnic states. His nationalist foil, Bosniak member of the State Presidency Haris Silajdžić, continues to imply that the RS is illegal, as it is a product of genocide, and should disappear in any constitutional reform process.¹ He appears to hope that American intervention will make this happen. The Federation, with its flagrantly irresponsible governance, has made Dodik's effort to paint the RS in a favourable light easier by delaying privatization and running a 1bn KM (convertible mark, €513m) deficit - while the Federation legislature granted itself a substantial rise in pay at the outset of the massive international financial crisis.

While the population at large shows no desire for conflict, the international factors that assured them a resumption of conflict was impossible are rapidly vanishing. EUFOR, the woefully undermanned EU-led force responsible for the military aspects of Dayton implementation and guarantees of a safe and secure environment is withering away, with impending withdrawals of French, Spanish, Irish and Finnish troops, and Swiss helicopters. The looming closure of OHR - and lack of clarity about the EUSR's mandate - add to the uncertainty. Importantly, there are signs that Bosnia's political antagonists are re-arming through police forces, private security firms, and hunting clubs. Their capabilities are unknown, since they are unregulated at state level and have been ignored by EUFOR. They are now a potent psychological reality. As a result of all these factors, citizens of all ethnicities, particularly minority returnees, are now more fearful of renewed conflict than at any point since just after the war.

The "Prud process" of talks and vague agreements among the leaders of three ruling nationalist parties (SNSD, SDA, HDZ) initiated in early November 2008 has led thus far to just two successes: a state budget for 2009 and likely agreement on Brčko District's relationship to the state. The rest of Prud's proclaimed agreements remain unrealized and, in the case of constitutional reforms, unrealizable under present circumstances. A January meeting in Banja Luka led to a declaration by the three leaders that the country's future constitutional order would consist of four regions, including a Sarajevo district (and presumably a fifth - Brčko District). Wildly differing interpretations immediately emerged, with Dodik claiming that a Croat-majority entity would have to be carved solely out of the Federation, as the Republika Srpska was inviolable - and, in fact, deserved more territory, since it was promised 49% at Dayton. The Bosniak and Croat party leaders, Sulejman Tihić and Dragan Čović had differing views, but both appeared to think that the four territorial units would include the partial dismemberment of the current RS. The controversy surrounding the competing interpretations has deepened public insecurity.

The international community seized on the Prud agreement and its sequels in the hope that Bosnia's political leadership would sort out the country's outstanding issues. This would conveniently allow the international community and the EU in particular to avoid an uncomfortable reckoning with a policy that has run aground in Bosnia. The embrace of Prud reflects international desperation for a way out of its dead-end in Bosnia. Having self-appointed spokesmen of the three constituent peoples appeals to the international community as one-stop shopping, but it subverts state institutions and assumes that they do indeed speak for the majority. In essence, this is warlord politics without the guns - yet.

¹ Statement by H.E. Dr. Haris Silajdzic, Chairman of the Presidency of Bosnia and Herzegovina, Head of Delegation of Bosnia and Herzegovina at 63rd Session of the General Assembly, on the occasion of General Debate - New York, September 23, 2008.

OHR has effectively ceased to function as a guarantor of the still uncompleted Dayton Peace Accords. In February 2008, the PIC Steering Board agreed to a set of five objectives and two conditions that had to be achieved before OHR could be closed – the “5+2” formula.² The five objectives are: resolution of state property issues, resolution of defence property, establishing the legal relationship of Brčko District to the state, fiscal sustainability, and entrenchment of the rule of law. The two conditions included the signing of a Stabilization and Association Agreement (SAA) with the EU and a “positive assessment of the situation in BiH by the PIC Steering Board based on full compliance with the Dayton Peace Agreement.”³ While all the objectives are important, their delivery will not fundamentally change the nature of Bosnian politics. The SAA was signed last year, while the second condition is a judgment call on the part of the PIC. While some PIC members seem inclined to declare victory at the March PIC, others – the US, Great Britain, Turkey and the Netherlands – await clarification on what a post-OHR, EU-led reinforced EUSR will entail, particularly how it could react to crises. As yet, none has proposed a model. They are waiting for Brussels.

The EU has long expressed a desire for transition from OHR to an EU-led mission, yet specifics on the new EUSR’s mandate and size, aside from its “double-hatting” with the European Commission Delegation, remain unclear. Views diverge within the EU. Most members believe that the lure of EU membership is sufficient to motivate Bosnian politicians to build a more functional state. Others are convinced this “soft power” approach is insufficient, and want the EUSR to have strong tools to keep the country from backsliding. Most EU states lack a Bosnia policy, and will probably go with the flow when a decision is made.

Bizarrely, given the desire of the EU to see OHR close and take the lead, international and Bosnian political actors alike wait, like a cargo cult, for policy pronouncements from the new Obama administration.

False Assumptions, No Escape

The international approach to Bosnia remains based on the assumption that, given the right incentives, the country’s ethnocrats will transform into agents of change and eagerly undertake the reforms required to join the EU. This was always shortsighted, and ought to be thoroughly discredited, given Bosnia’s three-year downward spiral. Yet it remains the default setting in Brussels and many EU capitals. Worse yet, some EU capitals despair that Bosnia and Herzegovina may simply be unworkable as a state.

The SAA initialling in December 2007 and signing in June 2008, achieved by abandoning the principles the EC set for police reform, were designed to deliver momentum, but didn’t. Nevertheless, many EU members hope that by closing OHR and opening a reinforced EUSR they will finally change the dynamic and establish momentum. Yet the only momentum discernible in Bosnia is the accelerating drift backward.

Whatever fate befalls Bosnia, the EU will be stuck with the results. It can reduce its commitment to the country’s stability in the near term, but this will inevitably militate toward collapse – and Bosnia will not collapse peacefully. A resumption of conflict would not only mean that the EU would have to police, *ad infinitum*, a Cyprus-like Bosnia with exponentially more troops than it deploys at present, but it would also have to cope with regional destabilization and refugee flows.

The failure of Bosnia and Herzegovina would also gravely damage US-EU relations, confirming to pessimists in Washington that the EU cannot even handle its own backyard. The 1991-95 rifts between Europe and the US that almost tore NATO apart would reappear with a vengeance. The Islamic world, already deeply sceptical of Washington’s (and, increasingly, Brussels’) policies in the Middle East and beyond, would see the “abandonment” of Bosnia as further proof of an anti-Muslim bias.

² The Feb. 27, 2008 PIC Steering Board Declaration is at http://www.ohr.int/pic/default.asp?content_id=41352. DPC’s assessment of the Declaration is at <http://democratizationpolicy.org/wp-content/uploads/2008/03/post-pic-assessment.pdf>

³ Ibid.

II. The Problem is Structural

Bosnia and Herzegovina differs markedly from new EU members. The Dayton constitution prevents politicians from forging the political and social consensus needed to allow a functional state, much less one capable of meeting EU membership conditions.

Dodik and Silajdžić are the most visible and tangible manifestations of Dayton's structural flaws, but they are just symptoms of far deeper problems. The incentives inherent in Dayton's constitution promote nationalist agitation and homogenization; politicians feel no sense of accountability to the citizenry. The Dayton system is more oligarchical than genuinely democratic, with fierce competition within or among nationalist parties professing to protect "their" constituent people. Fear is the currency of Bosnian politics, and it pays its practitioners very well – at the people's expense.

To a majority of citizens, Bosnian political elites appear closely intertwined with business, criminal and media circles. Though citizens have no faith in politics to pursue their interests (78.5% according to a November 2008 regional Gallup poll,⁴ the Dayton political order compels them to vote for these ethnic elites, frequently turning use of the franchise into a vote against. Many choose not to vote at all. Despite this, the elected political leaders constitute the partners with whom the EU works on the country's European perspective.

Unless it has a governing system with broad popular buy-in (e.g., among all three constituent peoples and the "others" who do not identify with those three), Bosnia cannot survive, much less enter demanding clubs like the EU or NATO. There is no reason to believe that Bosnia's leading politicians will deliver such a system, no matter what the incentives are. Bosnia's politicians do not suffer the indignities to which they subject their citizens, and they have every reason to believe that Brussels will cave in on its own professed conditions.

III. The Solution: Some Creativity Required

For Bosnia to move forward under its own power, a strong EU mission with major US engagement will be required. Its first priority must be constitutional reform.

There is some basis for optimism in all the gloom. Dissatisfaction with the political class across the board is notably high. Milorad Dodik failed to capture a number of key municipalities in last October's local elections, and may have peaked in his effort to consolidate power in the RS. In the eastern RS the Mayor of Foča, Zdravko Krsmanović, managed to get re-elected, despite a major effort by Dodik's party to unseat him and paint him as a traitor. Krsmanović has proposed that there be only two levels of government – local and state, with more resources collected and spent at the local level. Given both the abysmal performance of the Federation and its cantons, as well as the increasing likelihood that the deepening economic crisis will soon hit the "better entity" hard, such an idea may gain currency throughout Bosnia and deserves greater attention. The bottom line, however, is that the "givens" of Bosnian politics may not be as rigid as many in the international community assume.

To meet the challenge, the EU-led (but US-backed) mission must include all of a number of critical elements, guided by the overarching goal of assisting Bosnian citizens in a constitutional reform process to attain functional and accountable governance. Only then will EU accession finally gain traction.

An EU-led international effort to achieve a viable state must involve activities never before performed by the EU. This will require creative and artful political leadership that actively works around the political elites to develop constituencies for accountable governance. Bosnia's politicians would be forced to respond, caught between EU conditions and incentives and a growing popular will for these to be implemented.

⁴ Gallup Balkan Monitor 2008 Analytical Report, www.balkan-monitor.eu

The European Commission will surely protest that such an approach is impossible and institutionally unprecedented. But as Timothy Garton Ash recently wrote in a scathing article on the EU's Common Foreign and Security Policy, "where there is a political will, there is an institutional way."⁵

To succeed, the EU, US, and Peace Implementation Council must undertake ten measures, all of which are crucial.

Measures to be taken by the EU:

1) Appoint a politically capable leader as HR/EUSR

The High Representative/EUSR is an inherently political job. The ideal candidate is one with experience in elected office, but none were nominated. The HR/EUSR must be held by a leader, confident on the international stage, with experience of coalition-building, dealing with difficult partners, and an ability to confront adversaries in political battle. He must also be able to access important EU and non-EU leaders to secure the necessary resources, meaning coming from a major EU power. The nominee who has the best set of skills for the role is British candidate Emyr Jones-Parry, former Ambassador to the UN and NATO.

2) Articulate a clear set of constitutional reform guidelines

EU foreign policy chief Javier Solana and Enlargement Commissioner Olli Rehn claim constitutional reform is necessary, but do not explain why.⁶ The current constitution stymies the development of a state order with broad democratic legitimacy across national confines. Without this, the state cannot survive, much less enter the EU.

The EU must articulate clear, simple guidelines regarding the elements that must – and must not – be included in Bosnia and Herzegovina's constitutional order. In addition to adoption of the Venice Commission's March 2005 recommendations,⁷ which formed the basis for the failed April package of 2006, DPC suggests:

- *Ensuring more efficient and less disruptive ways of protecting "Vital National Interests," and their clear definition;*
- *Rejection of ethno-territorial principles; and*
- *Greater local control over revenue and governance.*

The EU can demand such changes. It can also make clear that the entities will remain fixtures so long as their residents want them, that decentralization is logical, and that some collective protections are both necessary and acceptable in a multinational state such as BiH. External security guarantees will also be essential. The EU would not be dictating a constitution, but merely stating its own bottom lines – in its own interest as well as the interest of BiH citizens. The EU, together with the US, must facilitate a process through which constitutional changes could be agreed. Wide public and "expert" consultations before solutions are agreed is essential for popular legitimacy.

3) Maintain executive powers to protect the peace

According to the Brussels orthodoxy, the reinforced EUSR cannot have executive powers, for that would contradict the precept that the EU only works in partnership with any state's political leaders. One suspects the real reason is that acknowledging a need for such powers would belie the declarations of progress that allowed the initialling and signature of the SAA.

⁵ <http://www.guardian.co.uk/commentisfree/2009/jan/08/eu-middle-east-gaza>

⁶ "The signature of the Stabilization and Association Agreement meant a qualitative change in relations between the EU and Bosnia and Herzegovina that significantly reinforced its European perspective." Javier Solana and Olli Rehn, cover letter to *Joint Report – EU's policy in Bosnia and Herzegovina: the way ahead*, letter and report to EU Foreign Ministers obtained by DPC, 31 October 2008.

⁷ Opinion on the Constitutional Situation in Bosnia and Herzegovina and the Powers of the High Representative: [http://www.venice.coe.int/docs/2005/CDL-AD\(2005\)004-e.asp](http://www.venice.coe.int/docs/2005/CDL-AD(2005)004-e.asp)

The potential for renewed conflict is real if not imminent. Until Bosnia has a self-sustaining state, external conflict prevention tools remain necessary. The EUSR must have the authority to act to prevent threats to the peace, as well as the Dayton Accords, until a popular replacement is agreed.

4) Restore EUFOR's operational and deterrent capacity

It is no coincidence that the rise in public fear coincides with EUFOR's radical 2007 drawdown to a Sarajevo-based, road-bound force incapable of rapidly projecting power throughout the country. Patrolling ceased last year, when the then-EUFOR commander judged it "provocative." Potential belligerents with unfulfilled agendas now fear no external restraint.

Bosnians' rising fears of threats to their security result in large measure from the current inflammatory rhetoric and occasional incendiary incidents. This insecurity only amplifies politicians' ability to leverage fear, further impeding efforts to construct the popular accommodation necessary for a functioning state.

EU member states must cease their unilateral withdrawals from the force, and conduct scenario-based contingency planning to determine EUFOR's appropriate force strength and deployment plan. This would likely yield a greater number of troops and regional deployments to Brčko, Banja Luka and Mostar.

Troop shortages are not the rationale for EUFOR's drawdown: it is the assertion that the troops aren't doing anything. Increased use of Bosnia and Herzegovina's numerous potential training opportunities, renewed patrolling, and monitoring/inspecting private security firms would give EUFOR troops enough to do.

5) Authorize the EUSR to decide on fulfilment of EU conditions and impose all sanctions

Ongoing discussions on the tools for a reinforced EUSR include visa bans, asset freezes, and the ability to halt EU project funding to sanction leaders and institutions. To be credible, EUSR must have the authority to employ these tools. Bosnian political actors must not be allowed to circumvent the EUSR with Brussels or member-state capitals.

6) Ensure the EUSR has strong anti-organized crime capacity

The existing OHR/EUSR has an anti-organized crime and corruption unit. Given the commingling of politics and organized crime in Bosnia and Herzegovina – and the leverage over the justice system enjoyed by the strongest politicians – the need for a continued independent investigative capacity is compelling. To ensure that the continuum from investigation to prosecution is as insulated as possible from political interference, there also remains a need to maintain international judges and prosecutors at the Court of Bosnia and Herzegovina's two special chambers for war crimes and organized crime.

7) The EU must maintain a broad international coalition

The EU is the logical lead actor in Bosnia and Herzegovina, but it cannot do the job alone. Other international actors, including the US and Turkey, remain essential to EU efforts. US engagement, coordinated behind a common strategy with the EU, remains crucial. Other non-EU PIC Steering Board members – Russia, Japan, and Canada – also have an interest in Bosnia's stability. Others who play an active role on the ground, such as Norway and Switzerland, should also be included in a post-PIC consultative mechanism. While without formal authority, this forum would coordinate efforts on policy and among donors. Third-country nationals should also be able to serve in the EUSR.

In recent years, Moscow has taken advantage of its position in the PIC to play the spoiler among a divided West, at no political cost to itself in a country where it has no vital interests at stake. Should the West align behind a coherent strategy, Russia is less likely to expend political capital on Bosnia.

Measures to be taken by the PIC:

8) Insist on full completion of the 5+2 objectives and conditions

Restoring a sense among Bosnian leaders that conditions are not infinitely flexible is essential for forward movement, so full compliance with the five objectives and two conditions is likewise essential.

Measures to be taken by the US:**9) Appoint a Presidential Special Envoy for the Balkans**

The lack of high-level US engagement in Bosnia has allowed the EU to fall back on what it does best when it cannot decide on a policy: focus on process. The assumption that the Stabilization and Association Process (SAP) constitutes a Bosnia policy remains dominant.

There is a clear need for American re-engagement through a Presidential Special Envoy. The Envoy should be familiar with the politics in the Balkans, enjoy access to the President, Secretary of State, and National Security Advisor, enjoy good relations with Congress, and forge a coherent strategy toward the region with EU partners. The Envoy should represent the US at the March PIC.

10) Post a US Flag Officer at NATO HQ in Sarajevo

The failure of the US to maintain command of the NATO HQ in Sarajevo was seen by all Bosnians and EU members as a signal of waning US commitment. Given the wartime experience, the US has unique credibility in military matters. The US should announce it plans to fill the command when it becomes vacant next year. In the meantime, it should send a flag officer to head a joint NATO-EU task force to identify training and exercise opportunities in Bosnia and Herzegovina.

IV. Conclusion

A strategy to protect the common investment of the US and EU in a peaceful Bosnia is urgently needed. Doing so will constitute a tacit admission that the international community has been travelling toward a dead-end for some time. Yet the consequences of remaining on the current path could be catastrophic failure.

The EU, with the backing of the US and other interested partners, must now develop creative policy approaches and tools to help ensure that the country can achieve self-sustaining functionality. Only when Bosnia and Herzegovina has achieved that status can the international effort be said to have succeeded.