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Briefing

Sliding toward the Precipice: Europe's Bosnia Policy

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Executive Summary

Over the past three years, Bosnia's political environment has noticeably worsened: the current trajectory could lead to attempts at secession and renewed conflict. Among Bosnians, perceived threats to personal safety and livelihood have risen to new post-war heights as international listlessness has permitted Bosnian politicians to believe they can pursue wartime objectives without challenge. For years the European Union has claimed that reform in Bosnia and Herzegovina is heading in the right direction, albeit slowly. EU officials point to the Stabilization and Association Agreement (SAA) signed on 16 June 2008 as evidence of progress.¹ But Bosnia has not only stagnated over the past three years – it has been sliding backwards at an accelerating pace.

The Republika Srpska (RS) is trying to strangle the state in hopes of eventual international acquiescence to RS independence, while raising periodically the possibility of holding a thinly-veiled referendum on secession. Some Bosniak leaders continue to question the legitimacy of RS, thereby increasing Serb belligerence, while others, fearful of international abandonment, have begun contingency planning to pick up where the war left off in September 1995 and reclaim land taken by Serb forces. Croats are increasingly concerned about their position between the two larger groups, and increasingly rely on ties with Zagreb to articulate their interests.

A trial balloon by France and Spain to withdraw the anaemic EU military mission (EUFOR) has only generated greater insecurity. Though EUFOR's pullout no longer seems imminent, a divided international community lacks adequate capacity to deter RS secession or consequent violence. The international community has lulled itself into believing that operational capacity is not needed – that the force is a mere psychological balm. Scenario-based contingency planning between the EU's political mission and its rump military mission is non-existent. In an eerie echo of the failures of analysis and political will at the beginning of the 1992-1995 war, the EU reassures itself with procedural checklists while ignoring political dynamics that have placed Bosnia on a trajectory to conflict.

Since 1996, the system of largely mono-ethnic voting constituencies enshrined in the constitution, which is part of the 1995 Dayton Peace Accords, has infused fear into every election campaign, systematically rewarded nationalists, and marginalized Bosnians who seek to establish a civic political centre. The international community contained Dayton's centrifugal force through military might and assertive international oversight in the form of the Office of the High Representative (OHR). Both elements are now moribund.

While the EU talks about the importance of constitutional reform², it has shown little appetite to tackle the problem with the required urgency or vision. Brussels continues to believe incremental progress in Bosnian state-building remains possible by tinkering around the margins of the Dayton constitution. As the closure of OHR looms, the EU's reluctance to invest its follow-up mission with executive powers (or use OHR's powers) and a reduction of military deterrence to symbolic levels have permitted Dayton's centrifugal forces to tear at the seams of Bosnian state.

To be sure, Bosnia is not at the brink of war, but it has slid well down the slope in that direction. As the situation deteriorates, the cost of international engagement to end the threat and place the country on stable footing will climb, perhaps exponentially. The November 10 meeting of EU foreign, development and defence ministers (GAERC) provides an opportunity to take the first

¹ “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 [hereinafter, *Joint Report*].

² “Evolution of the constitutional framework will be essential...to ensure a functional and efficient state capable of delivering on BiH's obligations in the EU accession process and as a potential future Member States [sic].” Solana and Rehn, *Joint Report*, pp 5-6.

steps toward checking this emerging crisis. In the short term the EU should bolster international capacity to deter anti-Dayton actions by nationalist politicians that could tip Bosnia into the abyss. Then, in order to move Bosnia beyond crisis management, they should signal that fundamental constitutional reform will be the focal point of international involvement in the EU's forthcoming mission, which will join the EUSR with the EC Delegation. This would set the stage for action by the broader Peace Implementation Council (PIC), the international steering board for OHR that meets later in the month.

Recommendations:

To the GAERC and the PIC:

1. Bolster EUFOR's credibility by securing enough troops and lift to respond to and deter conflict. Also return to regional basing of forces for rapid reaction. Brčko, Banja Luka, and Mostar all require EUFOR forces.
2. Ensure that the over-the-horizon forces tasked to back EUFOR in case of emergency are sufficient in number, type, and readiness to react to contingencies, and then articulate publicly what this force constitutes.
3. Develop with NATO a use for Bosnia's many former military facilities for basing, transit, and regular exercises, both for Bosnia's NATO vocation and to bolster deterrence. Special attention should be given to Eagle Base in Tuzla.
4. Identify a list of sanctions that could be applied to politicians in the event of violations of the Dayton Accord. This should include asset seizures, visa bans and possible criminal prosecutions.

To EU member states and institutions:

1. Acknowledge that popularly driven – not top-down – constitutional reform is necessary for Bosnia's functionality, stability, and democracy. Make this a requirement, along with the standard *acquis* package, for EU membership.
2. Define specific EU requirements for Bosnian constitutional reform. These should include all human rights provisions demanded by the Council of Europe. The EU's guidelines should aim at de-linking citizenship rights from self-identification with one of the three constituent peoples (including for public office), external guarantees of state sovereignty, and an end to ethno-territorialism.
3. The post-OHR EUSR/EC Delegation mission should only be inaugurated once the PIC's current five objectives and two conditions are met in full. The new mission should have the attainment of constitutional reform as its declared goal. A strategy to achieve this end should be developed this winter, and the mission should be structured accordingly. The clarity of the mission's goal and structure must be ensured in advance of the announcement of OHR's closure date.

The Head of the EUSR/EC Mission must be vested with executive powers as overall commander of EUFOR, though not with day-to-day operational responsibilities. The EUSR/EC mission head should be able to request backup forces from the EU and NATO, and remove and prosecute officials who threaten the peace and public order. While not as expansive in scope as the Bonn Powers of the High Representative, these powers are essential until Bosnia has a new constitutional order.

I. Bosnia's Changed Political Matrix: A Tale of Two Cities

Bosnia today represents a paradox. On the one hand, Bosnia's current political trajectory is leading the country slowly but surely towards renewed conflict, and it is uncertain whether anyone in the international community will undertake any serious preventive or pre-emptive measures to head off the crisis. International efforts to forestall potential conflict are at best anaemic in the face of increasingly strong centrifugal nationalist forces. Fatigue is evident throughout the international community as national capitals have lost interest, convinced that Bosnia is at least stable, if stagnant, and preoccupied by other, more urgent crises.

Republika Srpska's (RS) Premier Milorad Dodik steadily chips away at state-level institutions in the hope of rendering the state so dysfunctional that he can eventually use this as an excuse to secede. Bosniaks and Croats are locked in a dysfunctional shotgun marriage in the Federation, as they watch an international community that is seemingly unwilling to stop Dodik from eroding many hard-won gains. Croats dream of their own third entity or union with Croatia, aware that their percentage of Bosnia's population is now slipping close to single digits.

On the other hand, not only has most of the war-time damage been repaired in Sarajevo, but since 2000 modern glass buildings have sprouted along the city's once ravaged main thoroughfare, transforming large portions of the city beyond recognition. The tallest building in the former Yugoslavia – the 172-metre Avaz Twist Tower – is nearing completion near the city's train station, while in the Serb-controlled suburbs modern buildings are sprouting with equal rapidity. In Banja Luka, the capital of Republika Srpska (RS), new roads, industrial areas and buildings have grown along with the extravagant RS government building to give this previously low-key city a skyline. New construction and businesses are visible throughout the country, and visually, signs of improvement are everywhere.

DPC discussions with business people indicate that there is a substantial increase in inter-entity business, and that a number of Federation businesses, attracted by economic reforms in the RS, have registered there for tax purposes. RS businessmen are making increasing forays into the Federation. Although most Bosnians are aware of the difficulties facing the country, they do not wish to see renewed conflict and are tired of war. Most of them assume that the international community will prevent over-zealous nationalist politicians from ruining the country. But will it?

In spite of the signs of change and growth all about them, many Bosnians interviewed by DPC are increasingly nervous about the possibility of a return to war.³ Last year, when the rhetoric around reforms to the Council of Ministers became especially bellicose, some Bosnians began to hoard such basic commodities as flour and cooking oil.⁴

A. How Likely Is Conflict?

Many international officials discount the possibility of renewed conflict in Bosnia, noting that the country now has one army, albeit with separate ethnic contingents and chains of command, and that the vast majority of heavy weaponry, such as tanks and artillery, have been removed or destroyed. They point out that the Serbs no longer enjoy a preponderance of heavy weapons, that Bosnia has signed an SAA with the EU and that the country is a member of NATO's Partnership for Peace (PfP).

But on the ground, Serb politicians accuse Bosniaks of re-arming, while Bosniaks accuse Serbs of doing the same; both sides deny they themselves are arming.⁵ In the meantime, the proliferation of unregulated hunting clubs, veterans' organizations and private security companies, all of which

³ See Vegard V. Hansen, "Time to Re-calibrate," *Transitions Online*, December 11, 2007, available at www.tol.cz.

⁴ DPC interviews in Bosnia, October 2008.

⁵ DPC interviews with Serb and Bosniak officials, Sarajevo and Banja Luka, September and October 2008.

are permitted to carry long-barreled weapons – a right denied to Bosnia’s police – is worrisome. One senior Bosnian official even went so far as to show DPC a map portraying potential military movements against the rival ethnic group.⁶ One high-level international official in Bosnia told DPC that the activities of the many armed groups was of grave concern, and some of them seemed organized in a manner that could lead to their rapid deployment in an infantry war.

Talk of possible conflict is troubling. Mindful of their experience during the 1992-1995 war, aware of Dodik’s steady course toward secession and fearful of being abandoned again by the international community, Bosniak politicians are now preparing for the worst: an attempt by RS to withdraw from state-level institutions. As one Bosniak official told DPC: “If RS tries to leave, there are 500,000 Bosniaks in Sarajevo and only 70,000 Serbs between us and the Drina [River]”.⁷ Other Bosniak officials and party leaders mentioned responding to RS secession by cutting RS in two at Brčko, retaking formerly Bosniak-majority cities such as Foča and Višegrad, and much of Eastern RS. Others mentioned vague deals with the Croats that would permit them to regain traditionally Croat areas of northern Bosnia’s Posavina.⁸ Still others mused about Croatia’s unwillingness to abide a “radical Serb entity along its long border,” and that country’s potential to rapidly seize Posavina and Brčko quickly to create facts on the ground.⁹

All of this talk of war, of course, is conditioned on the premise that RS tries to secede or further weaken existing state structures and institutions, or that the OHR is shut down without the Dayton Peace Accords having been fully implemented. The Party of Democratic Action (SDA), the single largest and most influential Bosniak party, has stated that it recognises the right of RS to exist, a sharp contrast to the Bosniak member of the state presidency, Haris Silajdžić, whose inflammatory statements are discussed later in this paper.

The SDA laid this out explicitly in a declaration (party platform) it adopted on September 20, 2008 at a meeting of the party’s governing board in Brčko. The four-page document clearly outlines all areas of the Dayton Peace Accords that the SDA feels have not yet been implemented. It then states that the OHR may only be closed if the Dayton Peace Accords are fully implemented and goes on to state that in the event the OHR is closed down before this happens, then in keeping with Dayton’s Article XII/1, the country will return to the Constitution of the Republic of Bosnia and Herzegovina, i.e., the pre-war constitution that made no provision for the existence of RS.¹⁰ Both Serb and Bosniak politicians told DPC that this document is tantamount to a threat of war in the event of RS secession.

B. The Altered Political Matrix

All this is occurring within a significantly altered political matrix that bears little resemblance to the ten-year period from December 1995 to December 2005. Today, the once seemingly omnipotent OHR is gutted, demoralized and adrift, lacking support from many EU capitals and Brussels. The once-mighty NATO-led IFOR of 60,000 troops and its robust successor SFOR have been replaced by an anaemic EU-led EUFOR of less than 2,500 troops, few of which have operational capacity. The massive international civilian presence headed by OSCE, UN, IPTF, UNHCR and an entire host of non-governmental organizations, has shrunk, as have accompanying assistance levels. While a considerable international civilian presence remains, it is woefully uncoordinated, with each organization following its own bureaucratic imperatives. Consensus, the principle on which international policy in Bosnia was once based, has disappeared from the Peace Implementation Council (PIC). The once-feared Bonn Powers of the OHR are now useable only with the acquiescence of Bosnian politicians.

The international community is confused about which direction Bosnia should take, and the argument about the future of the OHR and the Bonn Powers overlooks the essential fact that a

⁶ DPC interview, Bosnia and Herzegovina, October 2008.

⁷ DPC interview, Sarajevo, October 2008.

⁸ DPC interviews, Sarajevo, September, October 2008.

⁹ DPC interviews, Sarajevo, October 2008.

¹⁰ “Deklaracije o potpunom provodjenju dejtonskog mirovnog sporazuma”, 20 September 2008.

lack of international political will already has led to the essential death of both. The EU has yet to decide on an effective course for the EU Special Representative (EUSR), and both Brussels and Washington are distracted by other, more pressing crises. As a result, the tools the international community has at its disposal to influence the direction of Bosnian politics are disappearing rapidly.

This paper examines the current policy matrix in Bosnia, and asks two important questions. What can be done to avert conflict? And what tools are available to EU and US policy-makers and how must they be applied to promote a functioning, self-reforming Bosnia?

II. The Dayton Constitution: A Foundation of Sand

A. Dodik vs. Silajdžić

The two Bosnian politicians most responsible for the current political state of affairs are Milorad Dodik and Haris Silajdžić. The president of the nearly all-Serb Alliance of Independent Social Democrats (SNSD), Dodik currently is premier of RS. Previously known as a pragmatic politician, in recent years he appears to have become more opportunistic and rhetorically grabbed the tiger of nationalism by the tail as he worked at breaking the hold of Radovan Karadžić's Serbian Democratic Party (SDS) over RS politics. Silajdžić is the only wartime politician still active on Bosnia's political scene. Following a break with Alija Izetbegović's Party of Democratic Action (SDA) in 1997, Silajdžić founded the nearly all-Bosniak Party for Bosnia and Herzegovina (SBiH). Together, Dodik and Silajdžić have used the last two and a half years to poison the political atmosphere and raise tensions to heights not seen since the war.

In early 2006 tensions were much lower and both men appeared to be cooperating with the constitutional reform process then underway. Both men's parties had given their consent to what became the so-called "April package" of constitutional amendments. While not revolutionary in their essence, their passage would have changed the manner in which Bosnia's central government functioned and imbued state-level institutions with a better chance to begin a real and sustainable reform process. The constitutional reform package failed to pass, due largely to Silajdžić's re-entry into Bosnian politics, which forced his party to renege.¹¹ The failure of the package angered Dodik, who had set his personal credibility against the wishes of some in the RS political establishment. It also made Silajdžić appear to be an untrustworthy partner. Dodik, who apparently had an interest in a strengthened state Prime Minister role, abandoned that hope and shifted his attention to the RS's overwhelmingly Serb electorate, with attendant and amplifying nationalist rhetoric, determined to remain RS Prime Minister. From Banja Luka, Dodik can control not only the RS, but the central state as well, given his party's strength in the Bosnian government and the structural ability of the RS to stymie the state machinery. So while the April package was underwhelming, its failure was damaging.

As the October 2006 parliamentary elections approached, both men turned to ever-escalating nationalist rhetoric, one feeding off the other as both used fear to homogenize their respective electorates behind them. Silajdžić referred repeatedly to the 1995 Srebrenica massacre and called for the abolition of RS, referring to it as illegitimate and a creation of genocide.

Serbs have responded by saying that if the RS is abolished, then the existence of Bosnia itself will be in question. Dodik and the RS parliament referred to the RS as "sovereign" and promised to defend it against Silajdžić, while threatening a referendum that would confirm RS' status within the Dayton framework should anyone try to abolish RS. Although at that time Dodik never linked the referendum specifically with secession, the subtext was apparent to both Serbs and Bosniaks.

¹¹ The reforms would have had the presidency elected in parliament rather than directly. Given his party's relative weakness compared to the rival SDA, Silajdžić knew he stood slim chance of being elected president were that provision to remain.

International officials who assumed the rhetoric was only part of pre-election posturing were disappointed when it continued well into 2007 and 2008. With municipal elections looming in October of 2008 the rhetoric between the two became even more heated.

The extent of the yawning gap between Silajdžić and the RS may be seen in his appearance before the UN General Assembly on September 23, 2008. In his speech, Silajdžić decried “ethnic apartheid” in Republika Srpska, calling on the UN to “right the wrongs” and ensure that in a new Bosnian constitution, “genocide will not be rewarded,” presumably through the continued existence of the RS.¹² Although he claimed he was appearing in his capacity as the president of the presidency, the Serb representative on the three-member presidency, Nebojša Radmanović, declared that the presidency had not cleared Silajdžić’s speech. Dodik supported Radmanović and called the speech “yet another attack on the RS and on the Dayton Accord”.¹³

The Dayton constitution defines Bosnia as a state of three constituent peoples – Serbs, Croats, and Bosniaks. Despite progress in softening the edges of this definition, including through Constitutional Court decisions that remain unimplemented, the constitution’s vesting of citizenship and political representation in ethnic terms gives nationalist politicians an inherent advantage over politicians who attempt to appeal to voters on a non-ethnic basis. Encouraged by a constitutional principle that legitimacy is derived on the basis of one’s group, politicians typically run on platforms best summarized as “we will protect you from them,” a potent promise in a still-traumatized society that exploits the latent fears most Bosnians carry from the war.

Dayton’s multilayered representation of ethnic collectives provides plentiful opportunity for gridlock and inter-ethnic confrontation, and amplifies the friction that helps keep political classes ensconced in power. The result is a protected political class that is largely unaccountable.

Bosnia’s political system may be democratic on the surface, but it functions like a cartel. No party is happy with the current order: all have maximalist projects they wish to pursue, given the opportunity, yet all recognize the threat to their political and economic perquisites if they allow establishment of a system that encourages competition for political middle ground rather than ethnic fiefdoms. Indeed, there are ample indications that a country-wide will exists to create a political centre capable of tackling universally recognized social and economic problems, and in so doing, making Bosnia ready for EU membership.¹⁴ Yet the Dayton system generates leaders who are unwilling to address Bosnians’ most pressing concerns.

There is also an oft-ignored intergenerational element – the generation that emerged from the war holding the reins of political and economic power dominates almost every sphere. There is little or no upward mobility among political or social elites, further accelerating youth emigration and frustrating those who return from abroad. These elites have little intention of giving up their privileged positions.

B. The International Community’s State-building Project

In spite of constitutional arrangements that encourage ethnic pandering and exclusivity, the country’s recovery has been visible, especially in the physical sense. Per capita, Bosnia’s international assistance far outweighed that given other post-conflict countries, or those undergoing democratic transitions¹⁵

¹² 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. In the initial release of this report, DPC unintentionally misquoted Dr. Silajdžić in this paragraph. We regret the error.

¹³ “Silajdžić blasts RS from UN podium”, *B92*, September 24, 2008.

¹⁴ The UN Development Programme (UNDP), with funding from the Netherlands, published an innovative study in May 2007, “The Silent Majority Speaks”: <http://www.undp.ba/index.aspx?PID=3&RID=43>. The Executive Summary maintains that people have “two long-term aspirations: 1) Joining the EU and inviting the EU to help shape the future of BiH and 2) Constitutional change and a new political structure.”

¹⁵ Since Dayton, more than \$14 billion has been devoted to Bosnia, a country with less than 4 million citizens. <http://www.state.gov/r/pa/ei/bgn/2868.htm>

Two years after the November 1995 signing of the Dayton Peace Accords, the OHR was given supreme executive, judicial and legislative authority – the so-called Bonn Powers – to ensure implementation of the peace agreement.¹⁶ The PIC approved these to break the gridlock that prevented even minimum functionality of the Bosnian state. The High Representative could impose laws or strike out laws, remove persons from political or administrative positions, and even ban individuals from political life, to ensure the Dayton Peace Agreement was implemented. Until 2006, these powers were used increasingly by each successive High Representative to build the state from the very weak structure spelled-out in Dayton.

The Stability Pact in the immediate aftermath of the Kosovo war opened the door to the EU and NATO for all Southeast European countries, so long as they met these organizations' standards.¹⁷ Suddenly the new goal was to make Bosnia ready to become an EU candidate, which entailed state-building and provided High Representatives Wolfgang Petritsch and Paddy Ashdown justification for using the Bonn Powers to build state institutions. This effort was possible because of consensus within the PIC, the presence of SFOR peacekeepers and a substantial international civilian administrative presence coupled with substantial aid. The threat of removal loomed large in the minds of politicians, who assumed an omniscient international community had plenty of compromising material on them, even in instances where the EU insisted the Bonn Powers not be used, such as meeting requirements for the Stabilization and Association Agreement.

C. The Chimera of “Ownership”

Even before the state-building effort began in earnest, the term “ownership” became a perennial in international discussions. The idea was that Bosnian politicians should take over “ownership”, i.e., responsibility, of key functions from the international community and not rely on international actors to resolve difficult issues.

At the same time an idea emerged that use of the Bonn Powers created dependency, allowing Bosnian politicians to avoid responsibility for their decisions. In 2003, the European Stability Initiative's Gerald Knaus and Felix Martin wrote an influential article in the *Journal of Democracy*, titled “Lessons from Bosnia: Travails of the European Raj,” in which they made this case in stark terms, accusing then-High Representative Paddy Ashdown of harbouring a neo-colonial attitude in his pressure on Bosnian politicians to pursue a reform agenda.¹⁸ The thesis was: without the pressure from international actors, Bosnian politicians would be able to find their own equilibrium and the country could develop organically, enticed by the EU's open door.

But the very word “ownership” begs the questions what is being owned, and who the owner is. Bosnia's cosseted political elites were certainly annoyed by the High Representative's efforts to manage evolution from above. This was manifested through resistance to passing reforms, and then foot-dragging on implementing them when resistance became too costly. On the other hand, asking Bosnians to take ownership of an inherently dysfunctional constitutional system and asking them to reform it was as disingenuous as asking them to ride a bicycle with square tires, crooked handlebars and no chain all the way to Brussels.

Bosnian political elites had little interest in pursuing reforms on their own, so the idea has been fully discredited¹⁹. To be sure, left to their own devices since 2006, just as Knaus and Martin predicted, Bosnia's politicians have indeed found their own accommodation. The problem is that

¹⁶ The PIC Steering Board met in Bonn on December 10, 1997. See http://www.ohr.int/pic/default.asp?content_id=5182

¹⁷ <http://www.stabilitypact.org/about/default.asp>

¹⁸ <http://www.journalofdemocracy.org/articles/gratis/KnausandMartin.pdf>

¹⁹ The European Commission still embraces the term. High Representative for Common Foreign and Security Policy Javier Solana and Enlargement Commissioner Olli Rehn wrote to EU foreign ministers on 31 October 2008 regarding their “ideas on the transition from the OHR to increased local ownership”. *Cover letter to Joint Report*.

accommodation meant stopping reforms and attempting to further extend hard-won fiefdoms into *de facto* one-party statelets.

D. “If You Build It, They Will Come:” Prodding Evolution from Above

The High Representatives’ efforts to drive reform reached their zenith under Paddy Ashdown, from May 2002 to January 2006. Despite being seen as polar opposites, he and ESI shared one fundamental assumption: that the Bosnian political elite could be convinced of their self-interest in building a functional state capable of entering the EU. Ashdown was far-and-away the most far-sighted and strategic-thinking High Representative, and the achievements of his term were considerable – including most visibly reforms, pursued with the US and NATO, resulting in Bosnia’s formerly belligerent armies unifying into the State Defence Forces.

But the guiding philosophy was that the Bosnian political elites, or elements of them, could be converted into believing in the institutions and reforms passed, as they would see their political self-interest in attaining EU membership. Even if initial state-building project were resisted, Ashdown hoped that Bosnian politicians would undertake the efforts to make the new institutions and systems function as devised. The hope was that the process would become internally driven, and that the converts would behave as new believers in a Bosnian state within the EU. He just had to prime the pump. If he built the state, they would come to embrace it and make it work.

Stagnation in the drive to reform set in even before Ashdown’s departure, with the inability to pass the last of his security sector reforms, police restructuring. The subtext of the reform was utterly correct, but never advertised – to defang the RS’s last vestiges of coercive force. Wrapping it in non-existent European standards on policing was assumed to make it more saleable, but in fact gave the new RS Prime Minister, Milorad Dodik, the ability to pick it apart.²⁰

E. Throwing Away the Stick – The International Community Unilaterally Disarms

Ashdown’s successor, Christian Schwartz-Schilling, was chosen to close the OHR as the last High Representative. His philosophy tracked closely with ESI’s view (he was closely associated with and advised by ESI), and in his opening speech to Bosnians upon taking over, he said he would use his Bonn Powers only to ensure cooperation with the war crimes tribunal at The Hague and to prevent threats to peace and stability.²¹ This approach further loosened restraints on Dayton’s centrifugal forces.

EUFOR, which succeeded SFOR in its peace implementation role in December 2004, withdrew from Banja Luka in early 2007, leading to a reorganization of EUFOR to a Sarajevo-based mission. Despite the real reason being the need for British and Dutch troops to fight in southern Afghanistan, the EUFOR drawdown was justified with the specious assertion that Bosnia had stabilized to the point that these troops were no longer needed. Given the increasingly negative political rhetoric at the time, the decision appeared ill-considered.

The substantial reduction of international peace-keeping forces and the High Representative’s unwillingness to use the Bonn Powers meant that the credibility of the international community was severely damaged. Eventually the Bonn Powers atrophied to the point where they are now no longer useable without the explicit consent of all three ethnic groups.

²⁰ Instead of simply stating that it was a requirement for SAA, the EU attempted to justify its legitimate demand by reference to European policing standards. The RS could reasonably ask which ones, given the variety of policing arrangements among the 27 EU members.

²¹ http://www.ohr.int/ohr-dept/press/p/presssp/default.asp?content_id=36763

III. The Roles of the EU and US

A. The EU Dynamic: Brussels Dogma vs. Bosnian Reality

The EU operates in a political dimension removed from the on-the-ground reality in Bosnia. Its policies are predicated more on bureaucratic imperatives within the EU than on how it can work effectively to ensure Bosnia's survival and build its capacity to join the EU as a productive member. As a result, EU policy has often been unable to keep pace with developments on the ground.

Despite the evident backsliding in Bosnia, the EU is champing at the bit to declare "mission accomplished" for the post-war peace implementation in Bosnia as soon as it plausibly can, transitioning from the OHR to an EU mission of ill-defined goals and mandate. This is not because the mission of putting Bosnia irreversibly on the path to functioning statehood and EU membership has been completed. Rather, a number of EU member states and the Brussels machinery itself despair of losing momentum after declaring progress in Bosnia.²² Brussels hopes to convert virtual progress into something more real through the alchemy of the EU accession process, whose success thus far in assimilating Central and East European countries has convinced its architects of its universal applicability.

Perversely, Bosnia's worsening political crisis compels some who do recognize the problem to think of transition as a way out. One member state diplomat described the impetus to transition as a "leap of faith," driven by hope that the accession process would create a virtuous cycle, but also despair of what else to do.²³ The sense that any movement is better than standing still is evident, even if it entails actually weakening the EU's posture. The diplomat related that the continuation of OHR and its executive mandate made the EU seem ineffectual, whereas an EUSR mission without executive powers could not be held responsible.

A cursory glance at a map ought to disabuse EU officials and member states of the illusion that they can somehow escape the consequences of Bosnia's further decline and potential collapse. The consequences of failure in Bosnia would be inescapable for the EU – as they were in 1992-1995. In the event of state collapse or conflict, the EU would once again have to accept refugee flows, a potential regional war with Croatian and Serbian participation, potential effects on Kosovo, since the EU relies on KFOR troops for backup, and all the attendant economic and political costs. The war in Bosnia was a debacle for the EU's claim to have a Common Foreign and Security Policy. The EU's foreign policy reputation would suffer perhaps mortal damage were Bosnia to slide into conflict once again.

B. American Distraction and Desperation

Given the US role in helping to belatedly end the war, negotiate a peace, and devote significant political and military resources to enforcing it, Washington maintains considerable credibility in Bosnia. This is true among all three communities, though attitudes range from resentment among most Serbs to hopeful expectation among many Bosniaks. Based on its past policy, the US still has considerable weight as a political actor. It in fact punches above the weight of its real political leverage, mainly because the EU, which should by all rights be dominant by dint of resources devoted, has yet to establish itself as a coherent policy actor, as opposed to a deep-pockets donor and desirable address. The US still has unrivalled ability to twist arms in Bosnia, a role the EU finds distasteful.²⁴

²² DPC Interview with EU member state diplomats, October 2008. Javier Solana and Olli Rehn wrote to EU foreign ministers that "a paradigm shift is necessary to re-establish the momentum after the signature of the SAA". *Joint Report*, p 2.

²³ DPC Interview with EU member state diplomat, October 2008.

²⁴ "A step change is needed to an EU approach based on soft power, carefully channeled and leveraged." Solana and Rehn, *Joint Report*, p 5.

Yet the US, like the EU, has adopted a faith-based Bosnia policy. It hopes that the EU's proclamation that its transformative power and accession processes will make Bosnia functional is true. Since the international community as a whole has not identified the source of the problem, it has not developed a clear goal for its role in Bosnia, save the goal of getting it into the EU. Without a clear goal, there can be no strategy – and there is none. Instead, there is simply a desire to achieve vaguely defined incremental progress.

IV. The Way Forward

At present, the international community active in Bosnia, represented in the Peace Implementation Council, is waiting for fulfilment of five objectives – a package of reforms distilled from the many incomplete items in OHR's Mission Implementation Plan – and of two conditions.²⁵ The five objectives are all important in their own right, including the resolution of the Brčko District's relationship to the state and the disposition of state property, but do not change the fundamental dysfunction of the state. Those two objectives are not yet met, and are unlikely to be met even by the March 2009 PIC. The last remaining condition – a stable political and security environment – is seen by most as the most crucial element to allow for closure of the OHR. Given the current state of Bosnian politics, it is unlikely to be met soon either.

There are a variety of national positions, inside the EU and outside, on how to approach the 5+2 model, ranging from very strict adherence (Britain and the Netherlands) to pushing transition by June 2009 regardless of their completion, and carrying the leftovers to the new EUSR mission (Sweden).²⁶ But as the goal of international engagement in Bosnia is unclear, this is more a competition of attitudes and postures than one of strategies. Achieving 5+2 in full is essential to reinforcing the sense among Bosnia's politicians that standards are actually solid, not infinitely flexible. That is the message sent by the EU's ignominious retreat on police reform last fall: the more recalcitrant one is, the more the EU will bend to one's position.²⁷ But achieving 5+2 is not a strategy.

Given the devaluation of the institution's credibility, the main value of OHR is now as a placeholder for the EU to identify a goal for its joint EUSR/EC Delegation mission and develop its structure and strategy to achieve it. To preserve what state-building has accomplished thus far, and to allow reform processes – including adoption of the *acquis* and other European standards – to move forward under their own power in the future, that goal must be fundamental constitutional reform. But to make headway toward that goal, the international community must restore its deterrent capacity on the ground.

A. Keep the Lid On – Restore Deterrence

The EU's military deterrent to potential conflict is no longer credible. Restoring the credibility of this deterrent is imperative to prevent conflict sparked by an incident or launched by design. Reducing the popular perception of threat also will reduce the ability of nationalist politicians to manipulate through fear, thereby reducing their sway and allowing citizens to consider voting differently. Furthermore, a credibly secure environment expands the possibilities for broadly popular constitutional solutions.

²⁵ See http://www.ohr.int/pic/default.asp?content_id=41352 for the PIC Steering Board Declaration in February 2008, which enumerates them. See also the DPC post-PIC assessment at <http://democratizationpolicy.org/wp-content/uploads/2008/03/post-pic-assessment.pdf>

²⁶ The Commission appears to take the strict position. Solana and Rehn, *Joint Report*, p 2.

²⁷ In 2007, efforts to achieve a police restructuring deal foundered on the incompatibility of RS Prime Minister Milorad Dodik's desire to maintain an RS police in that name, and Haris Silajdžić's determination that this would be unacceptable. In the end, the EU was willing to back off from its conditions, accept minor reforms and tick the box on police reform to allow the SAA agreement to be initialed on December 4, 2007. See http://www.ohr.int/ohr-dept/presso/pressr/default.asp?content_id=40935.

To restore the credibility of deterrence, simply maintaining EUFOR in its current form is insufficient.²⁸ The sense among many that EUFOR can remain as a psychological prop without operational capability is a dangerous delusion. EUFOR must have the strength, dispersion throughout the country, and mobility to react to realistic contingencies. Forces must be present in Banja Luka, Brčko, and Mostar, in addition to Sarajevo.

Defining, ensuring the credibility, and highlighting publicly the over-the-horizon capacity to back-up EUFOR is also an essential element of reasserting deterrence to conflict. Merely calling on troops from KFOR in Kosovo, as seems the case now, is hardly a credible plan. It only creates a shell game that could be easily exploited by local political actors.

Finally, Bosnia itself tried to get some of its numerous facilities adopted as NATO forward operational, training, or transit bases. Eagle Base in Tuzla is the most visible – and probably most plausible example. The regular presence, even if rotational, of capable combat forces through Bosnia would bolster deterrence. Both the EU and NATO should reconsider the possibilities of forward-deployment of forces in Bosnia for contingencies elsewhere.

B. Use the EU's Leverage to Develop a Popular Constitutional Order

For Bosnia to function for its own citizens, much less be a viable candidate for EU membership, it needs a popularly accepted constitutional order which allows for truly representative governance. As detailed earlier, the transmission mechanism between citizens and their representatives in entity and state levels of government does not function in Bosnia.

For the foreseeable future there will likely be a need for some collective rights to be enshrined in the constitution, as well as some methods of decentralization. There will also surely remain solid support for nationalist parties and policies well into the future. But under current conditions, with structural impediments to non-nationalist politics, imperatives for nationalist politicians to homogenize “their” people with fear, and plausible fear that violence is possible, it is impossible to determine the baseline level of nationalism in relations to those who vote nationalist out of fear, or sit the democratic process out altogether.

The Council of Europe's Venice Commission, the OSCE's Office for Democratic Institutions and Human Rights, and numerous other international bodies have described in detail how the Dayton constitution runs contrary to international human rights norms and standards.²⁹ The April 2006 package was aimed at addressing these in a minimal fashion.

One hears in the diplomatic community that merely the bare essential constitutional reforms for Bosnia's EU aspirations and functionality must be adopted.³⁰ Approaching the problem with this mentality may appeal as being more attainable in the short-term, but misses the point. The reason for Bosnia's dysfunction is the very essence of its constitutional order – basing rights on “constituent peoples” rather than individuals. Unless this is addressed, a political centre cannot form, citizens cannot begin to command their politicians to respond to their concerns, and Bosnia cannot begin to reform itself.

The greatest leverage the EU possesses with Bosnia, or any country aspiring to membership, is the door that says “ENTER.” Prior to crossing the threshold to membership, the EU is in a position to demand practically any condition for entry into its club, and has its own self-interest to consider in ensuring new entrants can handle the responsibilities of membership. As many

²⁸ Although conceding that “evolution of the ESDP operations should take into account the political developments”, top Commission officials emphasize, “EUFOR-Althea should evolve in the direction of a non-executive operation.” Solana and Rehn, *Joint Report*, p 5.

²⁹ The March 11, 2005 Venice Commission *Opinion on the Constitutional Situation in Bosnia and Herzegovina and the Powers of the High Representative* is probably the most detailed critique of the Dayton constitutional model, and makes clear the country has no chance of entering the EU with its current governing structure in its point #26. See [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)

³⁰ DPC Interviews with EU member state diplomats, October 2008.

commented bitterly after Romania and Bulgaria entered the EU, the ability to press for change is vastly reduced once a country is admitted to the Union.³¹

To their credit, the EU High Representative for the Common Foreign and Security Policy Javier Solana and European Commissioner for Enlargement Olli Rehn do state in their Joint Report that constitutional reform is needed in Bosnia, and that the EUSR should have this reflected in his mandate, but they state that “ownership and responsibility to decide on the actual shape of any constitutional evolution should remain with the BiH authorities.”³² This suggests that the Commission either fails to understand that the Dayton incentives create Bosnian politicians utterly unwilling to reform in areas inimical to their electoral self-interest, or that the Commission has not thought about alternative approaches to constitutional reform.³³

The EU has every right, indeed a responsibility to Bosnians and its own citizens, to make thorough constitutional reform a requirement for Bosnia’s entry into the EU, and articulating broad guidelines on what elements the constitutional order must (or must not) contain. It should insist that the process directly include Bosnia’s citizens, and not rely on the political class thriving under the status quo. The EU could play a facilitating and advising role in the process to develop a constitution acceptable to a critical mass of all Bosnians, and among all self-defined groups of people (including “others” and “Bosnians” who are effectively left out of the equation at present).³⁴

C. Ensure an Orderly Transition to a Goal-Oriented and Strategic EUSR/ECD

The Office of the High Representative has been damaged beyond repair over the course of the past three years. The transition to a new mission led by a “double-hatted” EUSR/EC Head of Delegation could indeed be a positive move. The two recommendations above – increasing the international deterrent power on the ground and identifying constitutional reform according to articulated guidelines – are two essential factors in making this transition effective. There are others:

- a) Maintain the integrity of the PIC’s 5+2 formula: Given the growing recognition that the situation has deteriorated and a change in approach is needed, there is a bureaucratic imperative to “maintain momentum” and move as quickly as possible to close the OHR. This can lead to lowered standards and “box ticking.” But with the doubt local political actors have about the firmness of international conditions, especially following the police reform debacle last year, lowering the bar on these, or carrying them over as leftovers to the new mission, would dig the hole deeper. Achieving the second condition – a positive assessment by the PIC of the environment – is essential, and seems highly unlikely in the coming months.
- b) Vest the EUSR/ECD Head of Mission with executive powers: The executive authority to maintain peace and security in Bosnia, and the means to enforce that authority, needs to be in the hands of the EUSR/EC Head of Delegation after the transition from OHR. This is not an argument for maintaining the full breadth of the Bonn Powers in terms of imposing laws – none will stick durably until there is a new constitutional order. But the ability to deter threats to state integrity and public security are needed until Bosnia has

³¹ See “Europe’s Marxist Dilemma: It is easier to influence a country before than after it joins the club,” Charlemagne, *The Economist*, April 24, 2008.

http://www.economist.com/research/articlesbysubject/displaystory.cfm?subjectid=3856661&story_id=11089474&CFID=28750192&CFTOKEN=92599596

³² Javier Solana and Olli Rehn, *Joint Report*, pp 5-6.

³³ Javier Solana and Olli Rehn do not acknowledge the systemic problem, instead simply blaming the politicians who respond to the Dayton system’s incentives: “The vast majority of the population supports future EU membership. Their leaders, meanwhile, are mired in the nationalist logic and talk of the past.” *Joint Report*, p 1.

³⁴ In the near future, DPC intends to publish a detailed report exploring options for Bosnian constitutional reform, how agreement across ethnic divides could be reached, and what role the international community can play in fostering it.

capable and accountable governance. This includes removing and prosecuting those who threaten the peace.

- c) Appoint the right EUSR/ECD Head of Mission: It remains unclear at present whether the new mission would be led by a person chosen by the Council or Commission. With the role being inherently political, the job needs to be filled by someone with innate political skill, who is comfortable reaching out to Bosnian citizens and confronting politicians. This is essential for achieving constitutional reform and forcing responsiveness from the political class. The individual needs to view him or herself as a catalyst, wedding the leverage of the EU to the unmet concerns of the population, and squeezing the political class in between to force them to be responsive.

The ideal candidate would be a big city mayor from a tough town or governor – someone with political acumen and administrative experience. It is not a job for a diplomat or a functionary. The selection must be demand-driven, around the qualities necessary for the job, not supply-driven. And it is essential that the EUSR/EC Head of Delegation have sufficient political heft to call ministers and heads of government directly, for the mission will demand that level of support.

- d) No vacuum: The goal, structure, mandate and tools of the EUSR/EC Delegation head must be clear well before the PIC decides on OHR closure. There can be no gap in between.
- e) Restore international coordination on the ground: With the decline of the Bonn Powers, the OHR, which once ensured a modicum of coordination among international actors in Bosnia, no longer serves that function. The new EUSR/ECD office should explicitly include this function, and reinvigorate the meetings among diplomats and international agency heads for policy coordination toward constitutional reform as well as individual institutional parameters. This process should include major donors and actors outside the EU, and even some that are outside the current PIC structure.

V. Conclusion

The EU and PIC have crucial decisions to make on their engagement in Bosnia, and soon. The state-building effort has dead-ended and is unravelling, both through malign neglect and through active efforts from the RS to reverse it. No durable progress on state building or instituting European standards can be foreseen in the current environment. The EU and international community have become impotent bystanders to this downward spiral, and show no evidence of summoning the will to arrest it.

The unravelling of Bosnian governance threatens to undo not only the state-building project, but the state itself. Some EU diplomats are apparently thinking the unthinkable – accepting Bosnian disintegration - or flirting with what would be a way station to that end – accepting a “federal” state that allows the RS to operate nearly independently and have the right to secede.³⁵ The willingness to flirt with such ideas apparently rests on the highly dubious assumption that Bosnia could break into components without bloodshed. This is wishful thinking. And if it becomes a majority view, will almost certainly bring another catastrophic failure to the EU’s efforts at creating a common foreign and security policy.

How the EU can shift away from this trajectory is simple to see, though difficult and time-consuming to do: midwifing a new constitutional order in Bosnia. This would require an utterly new approach to the country, one that would take the EU machinery out of standard procedures and its comfort zone. It would require leapfrogging the political elites and dealing directly with

³⁵ DPC interviews with EU member state and other PIC member diplomats, September and October 2008. The use of the word “federation” in former Yugoslavia carries a very specific connotation: the right to secede as spelled-out in the 1974 Constitution. Out of ignorance, international actors often bandy this term about as a synonym for decentralization. But when used by the RS, one can be sure the usage is very deliberate.

Bosnian citizens and a broad array of civil society organizations. It would require the EU to augment the Stabilization and Association Process with other foreign policy tools in Bosnia. It would also be a clear admission that the path until now has been misguided. Therefore, to date it remains in the EU's and member states' "too hard" file.

The EU has shown it can adapt to new challenges – the development of the enlargement process was hardly smooth, but it did help secure democracy and functioning economies in Central and Eastern Europe. The EU can certainly handle the problems of Bosnia, but only if it is honest with itself about the nature of the problem at hand and can summon the will to deal with it. There is a chance for a real EU success in Bosnia. But first it has to get real.