

**ENSURING BOSNIA'S FUTURE:
A NEW INTERNATIONAL ENGAGEMENT STRATEGY**

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TABLE OF CONTENTS

EXECUTIVE SUMMARY AND RECOMMENDATIONS	i
I. INTRODUCTION	1
II. THE OHR IN 2006	4
A. THE BONN POWERS	4
B. GOING “COLD TURKEY”	5
C. A DIFFICULT YEAR	6
D. REHABILITATIONS.....	8
III. UNFINISHED TASKS	9
A. CONSTITUTIONAL REFORM	9
B. THE JUDICIARY	11
1. War Crimes Chamber	12
2. Civil law.....	14
C. POLICE REFORM.....	14
D. MILITARY REFORM.....	15
E. EDUCATION	17
IV. EUROPEAN INTEGRATION	19
A. THE ETHNIC ELEMENT	19
1. Council of Europe.....	20
2. European Union integration.....	20
B. EUROPEAN SIGNALS.....	22
C. ECONOMIC INDUCEMENTS.....	24
V. THE PIC’S OPTIONS	25
VI. CONCLUSION	26
APPENDICES	
A. MAP OF BOSNIA	30
B. GLOSSARY OF ABBRIVIATIONS AND ACRONYMS	31

ENSURING BOSNIA'S FUTURE: A NEW INTERNATIONAL ENGAGEMENT STRATEGY

EXECUTIVE SUMMARY AND RECOMMENDATIONS

International policy in Bosnia is in disarray, and a new engagement strategy is required. The present High Representative, whose performance in 2006 has been much criticised, announced on 23 January 2007 that he would leave by mid-year. The Peace Implementation Council (PIC), to whom he reports and which is responsible for guiding implementation of the Dayton Peace Accords, meets on 27 February to decide the way forward. The most immediate issues to be resolved are whether the Office of the High Representative (OHR), and the robust 'Bonn powers' available to it, should continue in their present form.

This is not the time to begin disengagement: Bosnia remains unready for unguided ownership of its own future – ethnic nationalism remains too strong – and 2007 promises new tensions with the approach of the Kosovo status decision. But the central role in pressing Bosnia's politicians to meet the many outstanding Dayton commitments and become a candidate for genuine European integration should now be played by the European Union, through its Special Representative (EUSR). OHR should be closed by the end of 2007, the Bonn powers – now effectively unexercisable – should terminate with it, and – to avoid uncertainty, and enable time for effective planning and implementation of the transition – these decisions should be made and announced without delay.

The looming decision on Kosovo's status will test the very fabric of the Bosnian state. Milorad Dodik, prime minister of Republika Srpska (RS), the Serb entity in Bosnia, and Serbian Premier Kostunica are exploiting the prospect of Kosovo's independence to stoke separatist sentiments. Dodik's threat to call a referendum on RS's status if Kosovo becomes independent has increased tension with the Muslim-Croat Federation, the other constituent element of the Bosnian state. An increasingly assertive Dodik is openly challenging international authority to oversee Dayton implementation and the construction of viable state-level institutions. For the first time since 1997

there is a real prospect the RS may do more than merely obstruct.

Although there have been successes, much remains to be done to implement Dayton. Constitutional and police reforms are essential if Bosnia is to be viable. Changes in the judicial, military, public broadcasting and educational systems are also needed. Many reforms that have been passed have not been fully carried out. A strong EU Special Representative (EUSR), backed by the U.S., is needed to carry through peace implementation, facilitate resolution of conflicts between the sides and push hard for new laws and other state-building steps.

Previous High Representatives used the extraordinary Bonn powers, which made their office Bosnia's ultimate authority, to dismiss senior officials, ban from public life important politicians and enact controversial legislation. These powers, dependent on OHR's political credibility and the strength of the international military presence (the NATO-led SFOR until 2005, now EUFOR), have been hollowed out not only by the present incumbent's deliberate and announced reluctance to use them, but – just as importantly – by EUFOR's dwindling enforcement capability. While a case can certainly be made for the formal retention of the powers, particularly in the context of likely increased tensions in the period ahead, Bosnian officials are now more likely to defy a Bonn powers imposition, and it would be difficult to the point of impossible for the international community to turn the clock back successfully.

It is time instead for the EU, always seen as the ultimate anchor for a stable Western Balkans, to become the active core of the international effort in the country. The notions that Bosnia, which is still badly scarred by the 1992-1995 war, could be treated as any other applicant and that the mere attraction of membership at a distant date would suffice to overcome its polarising ethnic nationalism have proven mistaken. The EU must deploy new and different policy tools to

keep peace implementation and progress toward membership on track.

An EUSR to whom the PIC also assigns the responsibility to monitor and be involved with all aspects of Dayton implementation, must show Bosnians of all ethnicities why it is in their practical interest to be part of a unified state and move towards the EU. To do so, he or she should rely on existing mechanisms such as EUFOR and the EU Police Mission (EUPM) and have available much larger EU funds, reinforced with bilateral aid, especially for rule of law and infrastructure projects, and use – and withhold – them as necessary to persuade Bosnian politicians to make tough decisions and compromises. Over time, if the inducements and disincentives are substantial enough, applied with the requisite decisiveness and political skill, and complemented as they must be by a heavily engaged U.S., they can change political dynamics so that Bosnians begin to take the initiatives themselves.

A good deal has been achieved in the past eleven years but the international community has not yet reached a point where it can safely declare victory and leave. The EU needs to lead a new stage of active international engagement that will not be brief. Disengagement before essential reform benchmarks are met and self-sustaining institutions established would put at risk all the gains made and the survival of a unified Bosnia, as well as increase the prospect that much of the Western Balkans would return to chaos.

RECOMMENDATIONS

To the Peace Implementation Council (PIC) and the Steering Board:

1. Agree to and announce as soon as possible the closure of the OHR by the end of 2007 and the transfer of all its responsibilities for the Dayton Peace Accords, minus the extraordinary “Bonn powers”, to the European Union, to be exercised through its Special Representative (EUSR).
2. Recommend that the new EUSR, with Bosnian partners, focus on achievement of the following benchmarks, in implementation of the Dayton Peace Agreement and satisfaction of steps on the path to eventual EU membership:
 - (a) completion of constitutional reform;
 - (b) educational reform (dismantlement of educational segregation);
 - (c) economic reform (completion of privatisation and creation of a common economic space);
 - (d) judicial reform;
 - (e) police reform;
 - (f) media reform (public broadcasting); and
 - (g) arrest of Radovan Karadzic and Ratko Mladic.
3. Recommend that donors more generously support economic development, job creation and infrastructure improvement in Bosnia, both through their own projects and by coordinating closely with EU projects and, where appropriate, contributing to them.
4. Insist Serbia publicly renounce all territorial claims on Bosnia.
5. Hand over the issue of rehabilitation of Bosnians previously banned from positions of public trust and the police, by the OHR or the UN International Police Task Force (IPTF), to the newly-formed Bosnian government commission.

To the General Affairs and External Relations Council (GAERC) of the European Union:

6. Adopt by 30 June 2007 a Joint Action which:
 - (a) appoints a forceful, experienced and widely respected EUSR, who will be double hatted as head of the EC Delegation to Bosnia;
 - (b) provides the EUSR with a robust mandate, including responsibility for monitoring and encouraging implementation of the Dayton Peace Accords pursuant to the authorisation of the Peace Implementation Council and facilitating further progress towards EU membership pursuant to the Stabilisation and Association Process; and
 - (c) instructs the EUSR to:
 - (i) coordinate activities of the civilian organisations and agencies in Bosnia so as to help ensure the implementation and sustainability of the Dayton Accords and further progress towards European integration;
 - (ii) maintain close contact with the government and parties involved in the political process and facilitate the resolution of any difficulties arising in connection with implementation of the Dayton Accords;

- (iii) follow closely and report on security and rule of law issues and liaise with all relevant bodies to that end;
 - (iv) provide political advice to the EU Force (EUFOR) Commander and the head of mission of the EU Police Mission (EUPM) and ensure coordination between EUPM and all other actors; and
 - (v) monitor and report on implementation of the Dayton Accords to all relevant bodies including the PIC, the UN Security Council and the EU.
7. Authorise the EUSR to form an office staffed by a number of national and international experts similar to the current OHR.
8. Begin planning for deployment of an EU rule of law mission.

To the European Commission and the EU's Budgetary Authorities:

9. As soon as possible:
- (a) at least double financial assistance allocated to Bosnia within the Instrument of Pre-Accession (IPA) so as to reach the allocation planned for 2010 by 2008;
 - (b) conclude by June 2007 negotiations with Western Balkan countries on relaxation of visa regimes; and
 - (c) condition assistance to Serbia on its cooperation with international policy in Bosnia.

To EU Member States, the U.S. Government and International Financial Institutions, including the European Bank for Reconstruction and Development (EBRD), the European Investment Bank (EIB) and the World Bank:

10. Continue active engagement in Bosnia under EUSR political guidance and increase financial and technical assistance for bilateral and EU projects especially in support of rule of law, infrastructure reconstruction and development.

Sarajevo/Brussels, 15 February 2007

ENSURING BOSNIA'S FUTURE:

A NEW INTERNATIONAL ENGAGEMENT STRATEGY

I. INTRODUCTION

International policy in Bosnia and Herzegovina (henceforth Bosnia or BiH) is in disarray. The present High Representative (HR) Christian Schwarz-Schilling, whose performance since he took up the position on 31 January 2006 has been widely seen as undermining the credibility and influence of his office (OHR), announced on 23 January 2007 he would step down by the end of June 2007.¹ The informal "Quint" (France, Germany, Italy, U.S., UK) and larger Peace Implementation Council (PIC) and its Steering Board face difficult policy choices. What should be the goals now of any international presence? What should be the OHR's function and for how long should its mandate be extended? Are the extraordinary "Bonn powers"² still capable of exercise, and should they be retained? What role should the European Union Special Representative (EUSR) play? What instruments and funding should be at its disposal? What other policy tools are available to prevent Bosnia's breakup and move it toward European integration?

The playing field has clearly changed since the 1990s, not least because the OHR has lost standing, and its Bonn powers have fallen into disuse. The question is what policy tools are now the most appropriate for dealing with the challenges in Bosnia's new political landscape.

Since the Dayton Peace Accords ended the Bosnia war in November 1995, the international community

has invested enormous resources in rebuilding the country. An international peacekeeping force separated the warring parties, kept the peace and eventually set the stage for complete freedom of movement and the beginning of refugee return, while overseeing the reduction of the former combatants' armed forces.

The initial post-war international presence included 60,000 troops in the NATO-led Implementation Force (IFOR), with perhaps as many aid workers, NGO personnel and civilian administrators and consultants. A four-year phase of intensive international investment (1996-2000) saw assistance for infrastructure reconstruction, refugee return and economic and structural reforms. With the military expenditures factored in, the international community is thought to have spent tens of billions of dollars since Dayton was signed. The results of this investment are visible. Bosnia has come a long way, and the international peacekeeping forces – now the EU-led EUFOR – have not suffered a single fatality due to hostile action.

But Dayton is a complex blueprint for reconstruction of a country, not simply a peace treaty. In addition to traditional peacekeeping, the international community is charged with overseeing state building.³ To cement the gains it has made, declare victory and leave, it must first help Bosnia finish a complex array of time-consuming tasks, including but not limited to police, military and judicial reform, disarmament, refugee return, human rights guarantees and protection of cultural and religious monuments. Implementation of Dayton's eleven annexes has been painful and slow. Many centrifugal forces continue to tug at the country. Moreover, additional issues not specifically mentioned in the Dayton agreement – such as education reform – must be resolved if the state-building project is to succeed. Bosnia also faces all

¹ Dr Schwarz-Schilling, who has had a long and distinguished career in German politics as well as international service and was a founding Board member of the International Crisis Group, has communicated his disagreement with earlier drafts of this report, but declined invitations to identify specific errors. His own views on what he has achieved as HR and what now needs to be done are summarized in his article, "Bosnia run by the Bosnians", *Wall Street Journal Europe*, 12 February 2007.

² For an explanation of those powers, see Section II A below.

³ For more detailed examination of some of these issues, see Crisis Group Europe Report N°80, *Is Dayton Failing: Bosnia Four Years After The Peace Agreement*, 28 October 1999; also the General Framework Agreement for Peace at http://www.ohr.int/dpa/default.asp?content_id=379.

the challenges of economic development, transition and rapid urbanisation.

Today's Bosnia is a fragile state comprised of two entities, Republika Srpska (RS) and the Bosniak-Croat Federation, with separate economic spaces.⁴ The central government is weak and at the mercy of the entities. State-level institutions are fragile, with no real authority over the entities. As OHR acknowledged in June 2006, "BiH is still far from being a functional, efficient and stable state".⁵ The constitutional arrangement established in Annex IV of the Dayton Peace Accords, as it noted, has created an "unaffordable and frequently incompetent system of three layers of government in one entity and four in the other. To function at all, state-level governance demands complex negotiation and decision-making among what are, in practice, three national-political establishments".⁶ The intensive engagement necessary has left internationals exhausted and impatient with Bosnia's apparent inability to move forward on its own.

Bosnia is undergoing two distinctive transitions. The first is from war to peace. The second is the more classic one seen throughout Eastern Europe after the Berlin Wall fell, to democracy and a market economy. In Bosnia's case, the second has yet to really begin, derailed mainly by the ethnic divide. Many, if not most, politicians continue to pursue wartime aims, often using the language of fear that so effectively mobilised national populations during the 1990s.⁷ For the Bosniaks this means a unified state under the control of an effective central government that they dominate. For the Serbs this means their own independent state, and possibly union with Serbia. For the Croats this means their own third entity, although they have generally supported a stronger central government which would guarantee them one third of the power and weaken the Federation. Ethnic identity and politics are key, meaning that Dayton is "war by other means". The peace agreement

attempted to reconcile Bosniak desires for a unified state with the reality of Serb and Croat wartime gains. The result is the awkward, dysfunctional Dayton constitution.

In June 2006, the international community declared that it wanted to transition from an OHR-led presence equipped with the Bonn powers that have given the High Representative the right to intervene in all aspects of Bosnian political life,⁸ to an EU-led presence that would be headed by an EU Special Representative (EUSR) with powers still to be determined. Prior to the 22-23 June 2006 PIC⁹ meeting, the OHR presented a nine-page paper to its members entitled "OHR-EUSR Transition: The Way Ahead". It said "the HR [High Representative] believes that sufficient progress has been made to begin concrete work on the OHR-EUSR transition. The HR therefore proposes that the PIC authorise OHR to begin preparations to close on 30 June 2007". The meeting gave this authorisation.¹⁰ But less than nine months later, on the eve of a PIC meeting on 27 February, the policy debate appears to have shifted, with the HR now arguing for and several key PIC members considering extending the OHR mandate beyond summer 2007.

Some have argued that an early shut down of the OHR is needed so that Bosnians can take "ownership" of their transition. But that raises some larger questions. Can ownership be taken up overnight? Are Bosnian politicians and institutions strong enough to withstand an abrupt removal of international tutelage? What precisely would Bosnians have ownership of, and what would be the result? An international expert in Bosnia told Crisis Group: "The international insistence on ownership is similar to asking the Bosnians to ride a bicycle all the way to Brussels on their own, and we are about to remove the training wheels, except that the bicycle has square tyres, and the international community doesn't want to stick around to put round ones in place".¹¹

⁴ Officially there are two entities, Republika Srpska and the Bosniak-Croat Federation. However, the Croat parts of the Federation have parallel structures that often prevent the Federation from acting. The Croat portions of Herzegovina appear to work overtime to maintain the ethnic separatism they fought for during the war.

⁵ "OHR-EUSR Transition: The Way Ahead", OHR document presented to the PIC, June 2006.

⁶ *Ibid.*

⁷ A fledgling group of politicians attempts to speak across the ethnic divide but they have relied on international support and often do poorly in elections. They include Zlatko Lagumdžija, Sulejman Tihić, Mladen Ivanković-Lijanović, Boris Belkić and possibly Nikola Špirić.

⁸ See "Political Declaration", from the ministerial meeting of the Steering Board of the PIC, 30 May 1997; also PIC Bonn Conclusions, 10 December 1997.

⁹ The PIC comprises 55 countries and agencies that support the peace process in various ways. Its Steering Board consists of Canada, France, Germany, Italy, Japan, Russia, the UK, U.S., and EU Presidency, the European Commission and the Organisation of the Islamic Conference (OIC) represented by Turkey.

¹⁰ "Towards Ownership: From Peace Implementation to Euro-Atlantic Integration", PIC Communiqué, 23 June 2006.

¹¹ Crisis Group interview, Sarajevo, November 2006.

Even more than the ownership concept, developments in neighbouring Kosovo undoubtedly fuelled the international community's 2006 stance. Since mid-2005, impatience over Bosnia had been growing, especially in Washington, where focus on Kosovo final status had acquired increasing urgency, with many feeling that Bosnia must be resolved first. The temptation to close OHR and declare victory appears to have been motivated more by a sense of impatience, weariness and other priorities than belief that self-sustaining objectives have indeed been achieved.

But Kosovo is a reason to keep a strong international presence in Bosnia in 2007, rather than eliminate it. It risks undermining Bosnia's fragile stability, not least because Belgrade regularly links a Kosovo settlement to RS's future.¹² In January 2007, Premier Vojislav Kostunica stated that "if we would renounce Kosovo, then we would also renounce the right to defend and protect Republika Srpska as a part, an independent part of Bosnia and Herzegovina".¹³ Foreign Minister Vuk Draskovic said "citizens of Republika Srpska would have the same right to self-determination and independence inasmuch as the UN Security Council would accept a similar demand of the Kosovo Albanians".¹⁴ A member of the Serbian delegation, Ivica Dacic, said much the same to the Council of Europe.¹⁵

RS Prime Minister Milorad Dodik has also linked Kosovo and RS, threatening during the 2006 Bosnian elections to call a referendum, the nature of which he left tantalisingly vague. Many internationals dismiss the possibility of attempted secession, saying Dodik is too smart and pragmatic to take that risk. Nationalist rhetoric to the contrary, he does not seem keen on destabilising Bosnia. He told Crisis Group that if Kosovo became independent, he would permit RS citizens to demonstrate – "a right enjoyed in every European democracy" – but "I will not permit violence and will use the police if necessary to

enforce order".¹⁶ On the other hand, domestic political imperatives could lead him to champion a referendum in the emotional turmoil surrounding the Kosovo status process.¹⁷ Since Belgrade wants to scare the international community away from any form of Kosovo independence, while at the same time hoping for territorial compensation should that happen, it is likely that attempts at linking RS to Kosovo will intensify as a status decision draws nearer.

The international community's Bosnian strategy has been indecisive since mid-2006, with policy-makers becoming ever more concerned that 2007 may be the wrong time for an OHR shutdown in view of Dodik's statements and possible repercussions of Kosovo status talks. This report examines the tasks that need to be completed in Bosnia prior to disengagement. It discusses the available policy options and proposes a fundamental reassessment of the terms of engagement. It recommends that the PIC do proceed with the shutdown of the OHR, only slightly delayed, making a clear statement in February in favour of a transfer by the end of 2007 from the OHR to a robust EUSR with a new mandate, policy tools and instruments. The EU needs a sufficient transition period to build up its financial and technical resources and guarantee a successful handover.

¹² Relations between Serbia and Bosnia are likely to sour further in March or April 2007 when the International Court of Justice (ICJ) is expected to decide Bosnia's lawsuit against Serbia. If the court rules against Serbia, which is considered probable, Bosnia may seek damages (reparations), which the RS would oppose. RS Prime Minister Milorad Dodik has publicly stated that he would not accept such a verdict of the court, "even if this leads to a new international disagreement". "Dodik: Nećemo prihvatiti presudu", B92, 11 February 2007.

¹³ "Kostunica sa sindikalcima Zastave", B92, 12 January 2007.

¹⁴ "Ako Kosovo dobije nezavisnost, i RS bi mogla da traži isto", *Nezavisne novine*, 15 January 2007.

¹⁵ "Dačić nagrađen aplauzom za povezivanje Kosova i RS", *Dnevni avaz*, 25 January 2007.

¹⁶ Crisis Group interview, January 2007.

¹⁷ Many RS politicians clearly do not wish to see a referendum organised at this stage, however. "Milan Jelić: Prestale priče o ukidanju RS", *Nezavisne novine*, 6 February 2007.

II. THE OHR IN 2006

On 23 January 2007 at a press conference, Schwarz-Schilling called for a continuation of the OHR with Bonn powers, but added that “following my talk with [German] Chancellor Merkel on 11 January, I wrote to inform her that I would not seek an extension of my mandate beyond 30 June this year”.¹⁸ He repeated the same message in follow-up consultations in European capitals and Washington.¹⁹ The announced departure after slightly less than one year in office of the HR, who is expected also to give up his second hat as EUSR on the same schedule,²⁰ underlined the seriousness of Bosnia's situation and opened a window on the policy choices facing the international community over the next several months.

2006 was a bad year for reform in Bosnia and the OHR. Nationalist rhetoric increased sharply, from both Serbs and Bosniaks. The state parliament's work was blocked for four weeks following the 24 May Serb walkout from the Assembly. Police reform was obstructed, constitutional reform failed, and broadcasting reform appeared to be moving backwards. The International Monetary Fund (IMF) and World Bank warned of fiscal instability. And the impending Kosovo status decision prompted RS politicians, notably Dodik, to speak – openly and unchecked – of a referendum.

A. THE BONN POWERS

The High Representative's Bonn powers – the “strong arm” of the international community – were significantly weakened during 2006, to the point that they are probably no longer useable for any but the most benign, lowest common denominator decisions – and certainly not tough interventions like forcing through laws, and removing or banning politicians

Annex 10 of the Dayton Peace Accords provided for “a High Representative to facilitate...mobilise...and, as appropriate coordinate the activities of the

organisations and agencies involved in the civilian aspects of the peace settlement”. It designated the holder of that office as “the final authority in theater regarding interpretation of this Agreement on the civilian implementation of the peace settlement”. Since early 1996 there have been five High Representatives. The first, Carl Bildt, (1996-1997) quickly realised that left to their own devices, most Bosnian politicians preferred to strengthen their ethnic fiefdoms, while RS and the Herzegovinian Croat areas openly flouted most Dayton obligations. The resulting gridlock prompted decisions to strengthen the HR at two 1997 PIC meetings, Sintra (30 May) and Bonn (10 December). The latter confirmed that the HR is the highest legal authority in Bosnia, in effect above even the constitution.²¹ The Council of Europe's Venice Commission concluded that “to all intents and purposes, it [OHR] constitutes the supreme institution vested with power in Bosnia and Herzegovina”.²²

High Representatives have used the Bonn powers to institute significant reforms, including passing laws, amending constitutions, issuing executive decrees, appointing judges, freezing bank accounts, overturning judicial decisions and removing and banning elected politicians and others from holding public office or position.

To enforce these decisions, the HR has always been forced to rely on his political credibility, support of international peacekeeping troops, and to a considerable extent, the goodwill and co-operation of the parties. The first real test of Bonn powers was on 5 March 1999, when Carlos Westendorp (HR 1997-1999) removed RS President Nikola Poplasen from office.²³ Although Poplasen hung on for several months, he was marginalised by both the international community and RS politicians. After he finally stepped down, all OHR decisions were considered binding, and Bosnian politicians followed them, albeit sometimes less than willingly.

When Poplasen was removed, SFOR still had 30,000 troops in Bosnia, giving some credible muscle to OHR in any serious confrontation, and there were numerous occasions when its intervention was

¹⁸ “Statement by High Representative and European Union Special Representative Christian Schwarz-Schilling to the Media”, 23 January 2007. Germany currently holds the EU presidency.

¹⁹ See also his *Wall Street Journal Europe* article, op. cit.

²⁰ EU foreign ministers extended his mandate as EUSR, which had been scheduled to expire at the end of February, to 30 June, “Conclusions on Bosnia and Herzegovina”, General Affairs and External Relations Council (GAERC), 12 February 2007.

²¹ Bonn PIC Declaration, 10 December 1997, Article XI:2.

²² See the Venice Commission report “Opinion on the Constitutional Situation in Bosnia and Herzegovina and the Powers of the High Representative”, 11 March 2005.

²³ For more on this see Crisis Group Europe Report N°62, *Republika Srpska – Poplasen, Brcko and Kosovo: Three Crises and Out?*, 6 April 1999; also Crisis Group Europe Report N°71, *Republika Srpska in the Post-Kosovo Era: Collateral Damage and Transformation*, 5 July 1999.

required, particularly in Mostar and other parts of Herzegovina. Its successor, EUFOR, is now an anaemic force which will be down to 2,500 by mid-summer and lacks even adequate transport.²⁴ OHR's real power consequently has become much more fragile, compounding the impact of the loss of political credibility in 2006 and an accompanying perception that the international community has lost interest.

The trend, until Schwarz-Schilling, was for each HR to expand on use of the Bonn powers. Westendorp, the first who enjoyed them, used them reluctantly but with increasing frequency.²⁵ Wolfgang Petritsch (1999-2002) called for Bosnian politicians to take "ownership" of the Dayton process and was initially reluctant to use the Bonn powers. When it again became evident political elites were unwilling and Dayton would not be implemented, he also resorted to them increasingly in order to implement a number of positive policy decisions.²⁶

Lord (Paddy) Ashdown (2002-2006) had immersed himself in Bosnian affairs during the war and came to the OHR without delusions: he wielded the Bonn powers, boldly, leaving behind perhaps the strongest legacy of any HR.²⁷ However, though he exercised the Bonn powers more than any other HR, Ashdown also significantly cut back on their use for imposing legislation as his term in office progressed. He did this both because he considered them less and less sustainable in Bosnia itself and in Western capitals, and because their use would have been inconsistent with the standards the EU required Bosnia to show itself capable of meeting on its own to earn European integration.²⁸

Use of the Bonn powers has achieved substantial breakthroughs. These included a single currency, the Central Bank, common license plates, the State Border Service, the State Investigation and Protection Agency, a state-level court and civil service agency, national emblems, military reform, freedom of movement, a value added tax, intelligence service reform, banking reform, abolition of payment bureaus, property rights and refugee return. Domestic

war crimes courts have begun to function, and support networks for war crimes suspects have been significantly weakened.

Many Bosnian politicians welcomed, at least privately, OHR interventions to resolve difficult issues, since they were unwilling to take the political risks that would come with supporting the integrationist policies Dayton demanded. A former OHR official summed up their attitude: "It is amazing what can happen when they think their careers are at risk but also amazing how, left to their own devices, they will not take responsibility for anything".²⁹

B. GOING "COLD TURKEY"

When Schwarz-Schilling took office as High Representative on 31 January 2006, he was not a newcomer to the Balkans. He had taken a strong moral stance in 1992, resigning from the German government to protest EU and German unwillingness to stop the fighting in the former Yugoslavia. During the war he delivered humanitarian aid to Bosnia; after Dayton he was the International Mediator for the Federation, which required frequent visits to mediate between Bosniaks, Serbs and Croats.

Schwarz-Schilling returned to Bosnia with firm ideas as to how the OHR should operate. These included to a large extent ideas espoused in a July 2003 article published in the *Journal of Democracy*,³⁰ which was critical of the activist Ashdown approach and argued that the international community's use of the Bonn powers was counterproductive to creating functional democracy and that it should downsize and leave Bosnia's politicians to sort out their own problems.³¹

²⁴ Due to insufficient transport helicopters and vehicles, many internationals joke that if EUFOR ever carries out a raid to arrest Radovan Karadzic, the war crimes indictee, it will have to use public transport or hitch-hike.

²⁵ Westendorp made 76 decisions during his term.

²⁶ Petritsch made 250 decisions during his term.

²⁷ Ashdown made 447 decisions during his term. Ashdown is a former Board member of Crisis Group.

²⁸ Requirements under the Feasibility Study and the proposed Stabilisation and Association Agreement, for example.

²⁹ William C. Potter, *A Bosnian Diary: A Floridian's Experience in Nation Building*, (Florida Historical Society Press, 2005), p. 147.

³⁰ Gerald Knaus and Felix Martin, "Travails of the European Raj", *Journal of Democracy*, July 2003, vol. 14, no. 3. Schwarz-Schilling was a prominent supporter of the European Stability Initiative (ESI), the Berlin-based think tank with which the authors of that article were associated; two of its founding board members, Knaus and Dieter Wolkewitz, advised him while he was mediator. Schwarz-Schilling's advisers at OHR also included Wolkewitz and others who have been associated with ESI. The ESI web site describes Schwarz-Schilling as "one of the main supporters of ESI when it was set up in 1999", <http://www.esiweb.org>.

³¹ According to this analysis, creation of functional democracy was of paramount importance. The paper assumed Bosnia was a normal Eastern European country in transition and did not fully factor in the divisive post-war ethnic politics. It promoted democracy as the overarching ideal but did not

Many in the U.S. and EU supported those conclusions, which provided political cover for drawing down resources in Bosnia at a time when they were needed elsewhere, even though OHR had not yet completed its main tasks.³²

Schwarz-Schilling promptly announced a radically different approach from that of his predecessor. In a televised address on 31 January 2006, he said "Bosnia and Herzegovina must be fully sovereign. That means that I must step back".³³ He told the RS daily, *Nezavisne Novine*, "I won't impose laws"³⁴ and added in a talk to the Organisation on Security and Cooperation in Europe (OSCE) in Vienna on 16 March, "I have made it clear that I will use the Bonn powers without hesitation should this be necessary to maintain peace and stability or to further BiH's cooperation with the ICTY. I have made it equally clear that I will not use the Bonn powers for anything else".³⁵

The abrupt style change threw the OHR into turmoil. A senior staffer told Crisis Group that the statements "completely emasculated us and gave a road map to everyone who wanted to obstruct us".³⁶ Another noted that "the first three months of a new administration are used to establish boundaries and credibility. Right at the very outset he gave away all

discuss whether its precursors – functional state institutions, security and rule of law – existed and whether, left to its own devices, Bosnia might begin to disintegrate. A similar analysis can be found in David Chandler's *Bosnia: Faking Democracy after Dayton* (Pluto Press, 1999).

³² International community opinion was in constant flux. Ashdown tried unsuccessfully to interest capitals in mid-2004 in closing OHR before Dayton's tenth anniversary, in November 2005, and certainly before the 2006 elections. A year later the PIC expressed a new willingness to consider, as reflected in policy statements, Communiqué by the PIC Steering Board, 24 June 2005.

³³ High Representative's television address to citizens of BiH, 31 January 2006.

³⁴ "I won't impose laws", *Nezavisne Novine*, 6 February 2006.

³⁵ Address to the Permanent Council of the OSCE, 16 March, 2006. On at least one occasion Schwarz-Schilling used Bonn powers, without apparently fully considering consequences. On 14 September, two and a half weeks ahead of the 1 October elections, he appointed Norbert Winterstein as special envoy to Mostar, with broad powers to resolve a series of delicate issues, including unification of public utility companies, a solution to a broadcasting dispute and final steps on civil service appointments. The appointment was overdue but the timing questionable since it guaranteed increased votes for nationalist Croat candidates. An OHR employee told Crisis Group it was viewed in Mostar as an attempt to interfere in the elections.

³⁶ Crisis Group interview, OHR employee, December 2006.

his ammunition".³⁷ The HR did not appear to intend a gradual phase-out of the powers so as to reduce the shock to Bosnia's body politic but rather an abrupt, "cold turkey" withdrawal.

Before the UN Security Council on 18 April, Schwarz-Schilling set out three policy priorities for 2006: constitutional reform, the October elections and a Stabilisation and Association Agreement (SAA) with the EU. There were two further areas of interest – educational and economic reform – as well as resolution of the legal status of numerous OHR decisions that had removed and banned individuals from public life and decertifications of police officers left over from the now disbanded UN International Police Task Force (IPTF) that had operated under Dayton's Annex 11. "One of my key tasks in this process", he told the Council, "is to oversee the end of the OHR".³⁸

As part of his 100-days speech to parliament on 24 May, the HR called for passage of highly controversial legislation, including education, constitutional, police, pharmaceutical, banking and economic reform.³⁹ With elections barely three months away, it was unlikely anything would happen without robust international intervention. Yet the HR made no use of the Bonn stick to push forward his recommended reforms. Whatever window there was closed when an RS budget boycott shut the parliament for nearly a month, followed by summer holidays.

C. A DIFFICULT YEAR

While there has always been criticism of High Representatives, it reached a level during the past year among international and Bosnian officials such that the incumbent's ability to do the job properly was seriously compromised. Nearly all Crisis Group interlocutors⁴⁰ expressed concern about OHR leadership and policy guidance. Several OHR staff whom Crisis Group interviewed said the HR and his advisers marginalised associates of previous

³⁷ Crisis Group interview, OHR employee, November 2006.

³⁸ Speech by the High Representative, Christian Schwarz-Schilling, to the UN Security Council, 18 April 2006.

³⁹ Speech by the High Representative, Christian Schwarz-Schilling, to the BiH Parliament, 24 May 2006.

⁴⁰ In preparing this report Crisis Group interviewed a majority of the PIC Steering Board ambassadors in Sarajevo, more than a dozen international and Bosnian OHR employees and officials in other international organisations in Sarajevo, as well as members of Bosnia's political elites, governmental institutions, and NGOs and of international organisations and NGOs, most of whom asked to remain anonymous.

administrations and refused to listen to advice outside their own inner circle.⁴¹ One said “the front office is...always looking towards Brussels, not...what’s happening on the ground...they don’t want to believe what we have to say, and now we advisers are not saying as much”.⁴²

An early misstep was Schwarz-Schilling’s opening speech to the OHR staff, during which he reportedly told national employees they would soon all be unemployed and should find work with the Bosnian government without worrying about the salary differential.⁴³ Most Bosnian OHR employees, however, are viewed as adversaries by government officials and have at best marginal chances of joining that bureaucracy. The speech had a demoralising impact among both Bosnian and international staff.⁴⁴

A recurring theme from many interlocutors interviewed by Crisis Group was that the HR has frequently fallen asleep in meetings. He himself told daily *Dnevni Avaz* that “during the course of a meeting I close my eyes to better concentrate on the theme and more closely follow the interlocutor”, then pretend to “wake up”, which “surprises” the interlocutor and serves as “a very effective tactic”.⁴⁵ Nevertheless, the impression of frequent naps at sessions with important personalities has cost the HR respect among interlocutors, not least Bosnia’s politicians and Steering Committee ambassadors.

Bosnian disrespect emerged publicly in the latter part of 2006, with two weeklies openly – and in one case scatologically – deriding the HR on their covers.⁴⁶ The immediate context was Dodik’s continuing during the September election campaign to threaten an RS independence referendum, notwithstanding a public warning by the HR during a visit to Vienna⁴⁷ that he would be sacked if he maintained such

rhetoric. Dodik’s behaviour in turn encouraged Bosniak nationalist politicians to continue calls for abolishing RS. And his challenge to the HR’s authority continued into the new year, stating in an interview with the Croatian news weekly *Globus* in January 2007 “I enjoy the support of a considerable number of people in the RS.... If the High Representative wants to see that I can gather 200,000 people in Banja Luka, he can try to remove me, and we shall see what will happen. Do you want me to bring 50,000 Serbs to demonstrate in Sarajevo now?”⁴⁸ All this significantly reinforced a perception of OHR’s impotence, in a context where the basic integrity of the state was very much in issue.

Schwarz-Schilling may also have inadvertently weakened the state-level institutions that the international community struggled hard to establish. Dodik’s call for creation of a special RS department to deal with organised crime, economic crime and corruption, even though this has been under the jurisdiction of the state-level Court of BiH since 2003, was interpreted by many observers as an attempt to undermine the authority of such institutions. However, the HR publicly welcomed Dodik’s plan, reportedly before seeing a translation of the laws in question or consulting with the court or the High Judicial and Prosecutorial Council.⁴⁹ It subsequently became apparent that he was unfamiliar with the workings of the court: one of his staffers told Crisis Group that the HR “asked the judges who appointed them, not realising that he was tasked with appointing them”.⁵⁰

A significant number of international officials interviewed by Crisis Group favoured shutting the OHR down in June 2007, not so much because they felt this timing was necessarily right, but rather because they were dissatisfied with Schwarz-Schilling’s tenure and feared the damage that might result in the coming sensitive months.⁵¹ That said, it should be acknowledged that, with his announcement that he does not seek to remain in office beyond the expiration of his original mandate, Schwarz-Schilling has now acted helpfully to permit this issue to be

⁴¹ Crisis Group interviews, OHR employees, November and December 2006, January 2007.

⁴² Crisis Group interview, OHR employee, November 2006.

⁴³ Crisis Group interviews, OHR high-level official and other employees, November and December 2006.

⁴⁴ Crisis Group interview, OHR employee, January 2007.

⁴⁵ “Bonske ovlasti su posljednji instrument koji cu koristiti”, *Dnevni Avaz*, 16 December 2005.

⁴⁶ See the influential weekly *BiH Dani*, 22 September 2006 and *Novi Reporter*, 25 October 2006.

⁴⁷ During an 18 September visit to Vienna, Schwarz-Schilling threatened to use his Bonn powers to remove Dodik if he continued to threaten a referendum. According to OHR Spokesman Chris Bennett, Schwarz-Schilling told Dodik “that if Dodik continued to call for a referendum he would have to remove him”. See “Bosnian Serb leader won’t drop independence talk”, Reuters, 19 September 2006.

⁴⁸ “Predsjednik vlade Republike Srpske”, *Globus*, 17 January 2007.

⁴⁹ Crisis Group interviews, OHR employees, November and December 2006; Crisis Group interview, Court of BiH employee, November 2006.

⁵⁰ Crisis Group interview, Court of BiH employee, November 2006.

⁵¹ Crisis Group interviews with Steering Board Ambassadors and OHR employees, November and December 2006, January 2007.

decided on its objective merits, without being complicated by personality issues.

D. REHABILITATIONS

The one area where Schwarz-Schilling did not hesitate to use the Bonn powers – rehabilitation of officials removed from office by his predecessors – is becoming an issue of increasing public controversy, linked to the question of whether (or for how much longer) the Bonn powers are useable.

High Representatives, using their Bonn powers, had removed 185 Bosnians on grounds ranging from abuse of office to obstructing refugee returns and the Dayton Accords.⁵² These individuals were likewise banned from any other public office until further notice. Separately, the old IPTF, acting under the authority of the UN Security Council, had decertified or barred from their jobs 793 local and state-level police over past and present activities.⁵³ Legally the OHR is responsible for any rehabilitations of persons removed under OHR decisions; the Security Council is responsible for any rehabilitations of persons affected by IPTF decisions.

While there was widespread agreement that these two sets of actions needed to be re-examined, some internationals were concerned that if the Bosnians were permitted to overturn them, they might go one step further and do the same with other decisions taken on the basis of the same international authority. In an effort to partially forestall this, Ashdown used Bonn powers to rescind a number of the OHR decisions in 2005.⁵⁴ He was legally unable, however, to rescind the UN decisions and did not attempt to do so. Schwarz-Schilling continued this pattern. His sixteen “rehabilitations” are the single largest non-administrative segment of his Bonn powers decisions as HR. Schwarz-Schilling also limited the scope of the bans, allowing any formerly barred official to hold a position in a public enterprise or institution

and to serve in a political party, regardless of the nature of the previous infraction.⁵⁵

While the PIC has agreed it is timely to reassess the old actions,⁵⁶ some of the rehabilitations have suggested an unwillingness to listen to people currently or formerly within OHR with institutional memory.⁵⁷

Rehabilitation of former officials was never a priority for Bosnian politicians, given public perceptions that many of those removed may have been engaged in inappropriate activities. But the situation has always been different regarding the dismissal of local police, where the Bosnian perception is that in some cases the UN may have acted precipitously, without affording the dismissed officers the right of appeal.⁵⁸

Independent of the OHR, Bosnia's Human Rights Ministry in February 2007 set up a commission to review the police dismissals and report to the newly formed government.⁵⁹ This has a healthy aspect: the first ever attempt by Bosnia's politicians to take the initiative of assuming “ownership” of a controversial subject from the international community. Nevertheless, although at this stage the commission challenges only the past actions of the IPTF, many in the international community fear it implicitly aims at the OHR's Bonn powers, thus raising the old concern about the potential unravelling of many of Bosnia's hard-won gains that have been imposed with those powers.

A need clearly exists to revisit some of the earlier actions taken by the international community, both regarding removal of individuals by High Representatives and decertification of police by the IPTF. In order to encourage the principle that Bosnian initiatives to exercise local ownership should normally be welcomed but also to limit the risk that this particular initiative could develop into an assault on more fundamental elements of the structure international engagement has

⁵² OHR removals and decisions related to The Hague Tribunal are available at www.ohr.int. The figure includes those removed from political party leadership and two sweeping rounds in 2004, when Ashdown sacked 59 and nine Bosnian Serb officials on 30 June and 17 December, respectively.

⁵³ Nicholas Wood, “Bosnia defies the UN over dismissals in police”, *The New York Times*, 11 February 2007.

⁵⁴ Between spring 2005 and January 2006, Ashdown rehabilitated 36 individuals, including sixteen he had provisionally removed in 2004 due to non-cooperation with The Hague.

⁵⁵ “Decision further limiting the scope of the ban from public office in the removal decisions issued by the High Representative”, OHR, 4 April 2006; “Decision lifting the ban from office within political parties in the removal decisions issued by the High Representative”, OHR, 7 July 2006. Ashdown had earlier issued a decision allowing formerly banned individuals to serve other than as managers in civil service agencies (but not in the security sector).

⁵⁶ PIC Steering Board Communiqué, 15 March 2006.

⁵⁷ Crisis Group interviews, former anti-fraud department official and OHR employee, December 2006.

⁵⁸ “On Mount Olympus: How the UN violated human rights in Bosnia and Herzegovina, and why nothing has been done to correct it”, ESI report, 10 February 2007.

⁵⁹ Wood, “Bosnia Defies the U.N.”, op. cit.; “On Mount Olympus”, op. cit.

built, the OHR and the Security Council respectively should authorise the Bosnian government to decide all cases of removal and decertification brought to it by the newly formed commission. While this should be done proactively before any direct challenge is made to Bonn powers, the development shows the increasing likelihood that those powers might well no longer survive an effort to use them in a controversial manner against a powerful constituency.

III. UNFINISHED TASKS

The main dysfunctional areas of Bosnian life, the “square tyres on the bicycle” that need fixing, may be divided into five chief areas: the constitution, judiciary, police, education system and military.⁶⁰ Real reforms in the judiciary and military did not begin until 2002 and 2003 respectively under Ashdown. Police reform and attempts to work on the constitution also did not begin in earnest until late in Ashdown's administration. Efforts to abolish the ethnic segregation in the education system have been stymied. What few changes there have been are fragile and endangered. Strong international engagement is still needed to complete them.

A. CONSTITUTIONAL REFORM

Bosnia's constitution, Dayton's Annex 4, constrains individual rights in favour of ethnic group rights and efficient and rational governance in favour of multiple layers. Bosnia has three presidents and gives the ethnically-based entities predominant power over the central state. This makes it impossible for Bosnia to live up to the commitments it undertook when it joined the Council of Europe, as the Venice Commission explained when it pointed out that the priority ethnically-based voting and rights of ethnic groups enjoy over individual rights violates the European Convention on Human Rights. It also noted that Brussels requires a single interlocutor with capacity to deal with the wide range of issues in EU legislation (the *acquis communautaire*) and does not wish to negotiate with two entities separately.⁶¹ The central government must have legislative power to create the conditions for an SAA and to implement it. At present, it is unable to ensure compliance with any commitments to the international community, whether the Council of Europe, EU or Hague Tribunal.⁶²

Over time the Dayton constitution emerged as a straitjacket. The international community both viewed

⁶⁰ Public broadcasting reform is another area in need of reform.

⁶¹ “Opinion on different proposals for the election of the Presidency of Bosnia and Herzegovina”, European Commission for Democracy through Law (Venice Commission), CDL-AD (2006) 004, Strasbourg, 20 March 2006.

⁶² “Opinion on the Constitutional Situation in Bosnia and Herzegovina and the Powers of the High Representative”, European Commission for Democracy through Law (Venice Commission), CDL-AD (2005) 004, Venice, 11 March 2005, available at [http://www.coe.ba/pdf/CDL-AD\(2005\)004-e.pdf](http://www.coe.ba/pdf/CDL-AD(2005)004-e.pdf).

it as a sacred cow, which if slaughtered would incite renewed war, and engaged in state-building activities that amended it in practice. Beginning in 2000, it began more aggressively introducing reforms under a section⁶³ that allowed the granting of more power to the state.⁶⁴ While these reforms were welcome and needed, they did not address the fundamental problem – the constitution itself.

Meanwhile, RS continues to rattle Bosniak nerves and the constitutional order. Numerous laws and its constitution have, until changed by HR decrees, referred to RS “sovereignty”, a term its politicians still use in speeches. RS has frequently obstructed Dayton implementation, and even established separate foreign representations and negotiated its own trade accords with neighbours. Although a substantial majority of RS residents would like to join Serbia, the political elites prefer either guarantees for the entity in an explicitly confederal Bosnia and an end to the transfer of competencies to the central government, or their own independent state.⁶⁵

In an attempt to stop the constitution from splitting at the seams and to make a unified Bosnian state more viable, between May and October 2005 Bruce Hitchner (Dayton Peace Accords Project) and Donald Hays (former principal deputy HR) brought together the representatives of the eight leading parties in the House of Representatives. This group reached a rough consensus about constitutional reform, including replacing the three-man presidency with a single president elected by the parliament rather than popular vote.⁶⁶ The European Commission (EC) invited the party leaders to Brussels on 12-14 November 2005, and they visited Washington under the auspices of the U.S. Institute of Peace (USIP) on 19-20 November. The leaders signed an agreement with the State Department to push for a reform package in parliament by March 2006,⁶⁷ almost the

latest it could affect the governments to be elected in the October 2006 elections.

By mid-March 2006, the parties had agreed to relatively modest but precedent-setting draft amendments that would replace the three-man presidency with a less-powerful, single president and two rotating vice presidents, all three of whom would be elected by both houses of parliament. The lower house of the state parliament would be more than doubled in size to 87 seats. The upper House of Peoples would have 21 deputies, seven from each group, and its powers greatly reduced.⁶⁸ The state would no longer have to secure entity approval to implement laws dealing with EU-directed reforms, and the chairman of the council of ministers would become a real prime minister.⁶⁹ The EU Council, the EC, the Council of Europe and the PIC backed the amendments, as did the OHR, although it had not made a major contribution to what was primarily a US-led effort. Some 53.5 percent of Bosnians polled in April 2006 also supported the proposed changes.⁷⁰

The parliament was to adopt the amendments at the end of April, but when the time came for the House of Representatives to vote, the six parties still backing them did not have the necessary votes. A first session on 25 April dragged on past midnight. During frequent breaks, the U.S. and UK ambassadors and EC delegation officers could be seen cajoling recalcitrant lawmakers. A late night vote on 26 April missed the required two-thirds majority by two votes (26-16). The “no” votes were mainly cast by the splinter Croatian Democratic Union 1990 (HDZ 1990) and Haris Silajdzic’s Party for Bosnia and Herzegovina (SBiH), the former because their amendments had been rejected, the latter because they felt the changes did not go far enough and might permit the Serbs to continue to obstruct government.⁷¹

Constitutional reform is now stalled. Although the PIC appears to be backing a flagging U.S.-led effort to pass the original amendments, as U.S. Ambassador Douglas McElhaney urged in a speech marking the Dayton’s eleventh anniversary,⁷² Washington increasingly acts as if it recognises this is unrealistic.

⁶³ The General Framework Agreement for Peace, Annex 4, Article 3.5a, op. cit.

⁶⁴ Since 2000, international community interpretations of this clause have created state-level institutions, including but not limited to the State Border Service, the Court of Bosnia and Herzegovina, the Prosecutor’s Office of Bosnia and Herzegovina, a state-level customs agency, VAT, and the state-level justice and defence ministries.

⁶⁵ In addition to his referendum rhetoric, Dodik, in January 2007, further unsettled Bosniaks by calling for a third, Croat entity, “Milorad Dodik: svaki narod treba dobiti svoj entitet u BiH”, *Vecernji list*, 15 January 2007.

⁶⁶ “Revealed: US plans for Bosnian constitution”, *The Guardian*, 10 November 2005.

⁶⁷ Crisis Group interviews, Bruce Hitchner, 7 November 2006.

⁶⁸ “Bosnians agree to reform presidency, parliament”, Reuters, 18 March 2006.

⁶⁹ “Constitutional reform falters”, Transitions Online, 27 April 2006, at www.tol.cz.

⁷⁰ “Bosnia citizens support constitutional reform”, *Dit-net.com*, 16 May 2006.

⁷¹ “Constitutional reform falters”, Transitions Online, op. cit.

⁷² “Ustavne promjene veliki korak za bolju BiH”, *Nezavisne Novine*, 21 November 2006.

Schwarz-Schilling said the March package was a major advance, and “in his capacity as EU Special Representative he would seek to play a key role in taking the issue of constitutional reform forward”.⁷³ A more activist High Representative might have thrown the institutional resources and prestige of his office behind the process, even hinting at the ultimate use, if necessary, of his Bonn powers, and seen to its passage but OHR has done little, and Schwarz-Schilling is now a lame duck. Today there seems to be no strategy for pushing the package through, much less improving it. The recent decision of SDP leader Zlatko Lagumdžija to retract his party's support and SDA parliamentarians' post-election second thoughts mean there is no longer even a theoretical majority. The seven-party coalition about to form the new state-level government is fundamentally divided on the issue.

Constitutional issues are likely to take the limelight again in 2007, however, when the European Court of Justice considers a lawsuit filed by Jacob Finci, a prominent Bosnia human rights activist and Jew, challenging the constitution's clauses that essentially prohibit all citizens who are not either Serbs, Croats or Bosniaks from being elected or appointed to certain public offices. If the court rules in favour of Finci, it would throw Bosnia into a constitutional crisis that would affect everything from voting systems to personnel appointments, to the entity system of government and how the country's highest governing institutions operate.

B. THE JUDICIARY

An efficient fight against organised crime and corruption is one of the conditions the EC set for Bosnia to obtain a Stabilisation and Association Agreement. Since 2002 the international community has invested substantial effort in strengthening the judiciary, with new criminal and criminal procedure codes imposed and a state-level court created to address both inter-entity and war crimes. The job, however, is far from finished, and it appears that ethnic forces, in particular within RS, want to weaken the changes already made and prevent new ones. The international community needs to continue pushing reform and most importantly providing the technical and financial support necessary to ensure effective functioning of the new laws and courts.

⁷³ “Schwarz-Schilling: Constitutional reform critical to future of Bosnia and Herzegovina”, OHR press release, 17 November 2006.

Judicial and police reform was part of the Annex 11 mandate for the IPTF but that body lacked significant international backing and spent most of its energies on the police, running only a modest judicial reform program (JSAP). Even before Ashdown became HR in 2002, the PIC had as much as admitted that judicial and prosecutorial reform had failed, and it would be necessary to start over.⁷⁴ Subsequent progress has been remarkable, with creation of the High Judicial and Prosecutorial Council, the State Court (with its special chambers for war crimes and organised crime) and the re-selection of all judges and prosecutors. However, Bosnia is divided into three, four, or fourteen territorial-hierarchical jurisdictions (depending on how the one state, two entities, one autonomous district and ten cantons are counted); it also has four separate sets of laws, two of which are replete with contradictory provisions. War crimes indictees and some jurists even claim that old Yugoslav laws should apply for war crimes which are alleged to have been committed when those laws were still formally in force. This fragmentation is a boon to criminals.⁷⁵

HR Petritsch laid the groundwork for reforms by imposing the state court and appointing judges.⁷⁶ Ashdown took numerous measures aimed at creating a state-level court that could tackle cross-entity organised crime, money launderers and corrupt officials, and also try war crimes on Bosnian territory. While he imposed many decisions, among them reducing first-instance courts from 78 to 47 and requiring judges and prosecutors to re-apply for their jobs,⁷⁷ his most important actions regarding the judiciary were:

- Creation of a new BiH-level criminal code and state criminal procedure code that are hybrids of the Anglo-American adversarial system and the continental system. For example, cases are tried with strong defence counsel and prosecutors and without either an investigative judge (as in the latter system) or a jury (as in

⁷⁴ See PIC Steering Board communiqués, 28 February 2002 and 7 May 2002.

⁷⁵ See Crisis Group Europe Report N°127, *Courting Disaster: The Misrule of Law in Bosnia and Herzegovina*, 25 March 2002.

⁷⁶ “Decision on appointment of judges and on the establishment of the court of Bosnia and Herzegovina”, OHR, 9 May 2002. Petritsch had imposed a blueprint for the state-level court in November 2000.

⁷⁷ Ashdown's judicial reforms in 2002-2003 are listed in the “24th Report by the High Representative for Implementation of the Peace Agreement to the Secretary-General of the United Nations”, OHR, 13 October 2003.

the former). Ashdown imposed the codes in January 2003 after it was clear parliament would not pass them.⁷⁸

- Building up the state court Petritsch had created in November 2000 by lobbying EU and NATO countries in 2002 to fund it and second judges and prosecutors to it. International judges and prosecutors are key to two departments created by OHR. The first of these, the Special Department for Organised Crime, Economic Crime and Corruption, created in 2002,⁷⁹ has prosecuted cases involving high-level, former politicians and officials. OHR also oversaw establishment of the War Crimes Chamber, which has been taking cases from The Hague since 2005.⁸⁰

The idea behind the Court of BiH and the Special Department was to match criminals who operated over the inter-entity boundary line with a court that could do the same. It was envisioned that internationals would work beside nationals for the first few years to ensure both impartiality and freedom from intimidation by local thugs.⁸¹

Though the Special Department started strongly – imprisoning a notorious sex trafficker, Milorad Milakovic,⁸² and indicting former BiH presidency member Ante Jelavic for abuse of office (financial malfeasance) in 2001 – its conviction rate is low, it has lost several high-profile cases, and it is suffering from the international community's tendency in the past year to reduce funding and other backing. The appeals panel has fully confirmed just one of 22 verdicts.⁸³ Convictions the department has obtained

have had mixed results. Jelavic, for example, fled Bosnia prior to the October 2005 guilty verdict and ten-year sentence and is safe in Croatia, whose constitution bars extradition of citizens.

In the past year, the international community also appears to have lost enthusiasm. OHR employees told Crisis Group that the HR was unenthusiastic about his predecessor's rule of law reforms, and failed to support their full implementation.⁸⁴ Donor funding arrives piecemeal, on a bilateral basis.⁸⁵ A person close to the Court of BiH said lack of OHR coordination extended to all rule-of-law activities.⁸⁶

Local efforts against organised crime and corruption were crippled in 2003, when the ruling SDA/SDS/HDZ coalition rejected legislation tabled by three opposition parties that would have provided for seizure of assets gained from illegal activities.⁸⁷ Regulations on asset seizure are either ignored or are not used efficiently. Although Bosnia is a signatory to the Council of Europe convention on money laundering, which requires search for and confiscation of property acquired through criminal activity, the obligation is rarely implemented. The new criminal code states: "No one can retain illegally acquired property" but in the two years since that law has been in place, assets worth only approximately €250,000 have been seized. Lawyers say the existing regulations are not sufficient, and a precise law is needed. "If we had the legal possibilities to act, we could seize €5 million of assets in real estate and cash from just one man now under investigation", a source close to the Bosnian judiciary said, adding, "we know that this man can't prove the origin of his property but it's hard for us to prove this under the current regulations".⁸⁸

1. War Crimes Chamber

The Court of BiH's War Crimes Chamber, inaugurated in March 2005 after nearly two years of planning, has been lauded as the first national court

⁷⁸ "Decision Enacting the Criminal Code of Bosnia and Herzegovina", OHR, 24 January 2003; "Decision Enacting the Criminal Procedure Code of Bosnia and Herzegovina", OHR, 24 January 2003.

⁷⁹ "Decision Enacting the Law on Amendments to the Court of Bosnia and Herzegovina", OHR, 6 August 2002.

⁸⁰ The War Crimes Chamber was established as a joint initiative of The Hague Tribunal and OHR, as the former will have tried only several dozen suspects by end-2008, when it ends trials, and by end-2010, when it finishes with appeals.

⁸¹ "Bosnia takes international approach to stem corruption", *The Christian Science Monitor*, 7 April 2004.

⁸² Milakovic's trafficking operation was featured in "21st-Century Slaves", *National Geographic*, September 2003.

⁸³ Statistics spreadsheet obtained by Crisis Group. The appeals panel often revokes the first-instance verdict and retries the case; in several cases, including abuse of office and embezzlement trials of former Federation defence minister Miroslav Prcce, appeals resulted in acquittals on several counts. Other high-profile cases, such as those of former Federation deputy defence minister Hasan Cengic and former

deputy Interpol head Asim Fazlic for abuse of office, ended in full acquittals.

⁸⁴ Crisis Group interviews, OHR employees, November and December 2006, January 2007.

⁸⁵ Canada, for example, signed a contract in November 2006 with the High Judicial and Prosecutorial Councils and the justice ministry to provide €7 million for the court; Germany pledged €600,000 annually until 2009 for the two departments created by OHR.

⁸⁶ Crisis Group interview, court source, November 2006.

⁸⁷ "Bosnia opposition urges anti-corruption laws", Institute for War and Peace Reporting (IWPR), 18 April 2005.

⁸⁸ *Ibid.*

in the former Yugoslavia capable of addressing domestic war crimes fairly and impartially. The Chamber is part of the Hague Tribunal's exit strategy: to continue trials and appeals of high-ranking war crimes suspects from the 1990s conflicts until 2010, while passing the cases of mid- and lower-level suspects to the national courts of the successor states. Despite delays⁸⁹ and various problems before it opened its doors,⁹⁰ the Chamber has brought nineteen indictments against 33 people and handed down eight verdicts.⁹¹

The vast majority of the estimated 13,000 war crimes cases⁹² will be tried not by the well-equipped War Crimes Chamber, but by entity, cantonal and municipal courts, which have neither the facilities, resources nor personnel. The Chamber's jurisdiction is over "Rule 11 bis" cases that The Hague has not deemed sufficiently high level to do itself, plus any cases the investigation of which is not complete when that tribunal closes down. The Chamber also has jurisdiction over "Rules of the Road" cases: Bosnian prosecutors filing war crimes indictments between the end of the war and end-2004 had to send them to the Hague for approval, and these cases were sent back to the Chamber, which is to handle the most sensitive⁹³ and refer the others to lower courts. Sources have estimated that at best, the Chamber will be able to adjudicate 50 to 100 cases, with the rest to go to the entity and local levels.

The problems with the local courts are legion. The laws in Bosnia as a whole lack harmonisation, particularly war crimes statutes. Moreover:

Lower-level courts are hard-pressed to handle their current workloads, much less take on more work, and complex work at that. Courtrooms are decrepit. Prosecutors and judges in some towns spend personal money to buy court supplies or cover telephone bills. They can only dream about witness protection measures. At the start of 2005, cantonal and district courts were coping with 82,866 pending cases, 5,748 of them criminal cases. Basic and municipal courts were saddled with another 1,272,682 cases, according to the 2004 annual HJPC [High Judicial and Prosecutorial Councils] report⁹⁴.

A Crisis Group visit in late 2005 to the Sarajevo Canton Court – one of the country's best – confirmed the backlogs and dearth of equipment. Four prosecutors shared one telephone landline; internet access was only available to the court president down the hall. Backlogged cases were stuffed in unlocked armoires or stacked on desks in unlocked offices. Many were eight years old, and witnesses and accused might have disappeared.⁹⁵ If war crimes trials are sent to lower courts, this one would receive approximately 300, to be spread among four already-swamped prosecutors.

Donor fatigue may also be a limiting factor: justice officials failed in 2006 to convince Western governments of the Chamber's need for some €42 million even though they had pledged in 2003 to support the state court for five years. According to a 2006 report:

Court officials had hoped to raise at least €42 million for the War Crimes Chamber and prison at a donors conference in March 2006 and more for the reform of cantonal and district courts. But only about €7.7 million was pledged... Sweden has since given €2 million more, with conditions. The money is enough to operate through 2007 with steep cuts. The state court plans on spending €22.3 million in international funds this year. Next year, that support will drop by more than half and by 2009 support could be under €5 million. The funding drop could mean a decrease in staffing from 263 right now to 78 at the end of 2009,

⁸⁹ The October 2003 donors conference for the Chamber foresaw the start of its work by the end of 2004.

⁹⁰ Sarajevo's Centre for Investigative Journalism detailed problems with international judges, witness protection, prisons and the Chamber's low profile in Bosnia in an eleven-part series, "Waiting for Justice", at www.cin.ba. See also "High Hopes for Bosnian Court", Tribunal Update, IWPR, 4 March 2005; "Bringing war crimes justice back home", Balkan Crisis Report, IWPR, 26 November 2004; "Questions raised over Sarajevo court readiness", Tribunal Update, IWPR, 23 July 2004; and "Bosnia to try its war criminals, but is new court up to the job?", *The Christian Science Monitor*, 23 December 2003.

⁹¹ "The future of war crimes trials," BIRN Justice Report, 13 November 2006, at www.eu.birn.ba. These statistics are accurate as of 13 November 2006.

⁹² The 13,000 figure is from "The future of war crimes trials", BIRN Justice Report, 13 November 2006.

⁹³ The Chamber's criteria to distinguish between "highly sensitive" and "sensitive" include, inter alia, mass murders and mass rapes as opposed to single murders and single rapes.

⁹⁴ "War crimes case load will fall on BiH local courts", Centre for Investigative Journalism, 30 August 2005.

⁹⁵ Crisis Group interview, Sarajevo Canton Court prosecutor, 24 October 2005.

although salaries for some...may be moved to the state-funded budget.⁹⁶

2. Civil law

Though there are six high courts in Bosnia – the Court of BiH, the two entity supreme courts and constitutional courts, and the BiH Constitutional Court – there is no state-level supreme court for civil cases. The lower civil courts suffer from the same backlogs and bad infrastructure as the lower criminal courts. The World Bank noted that it takes an average of 330 days for commercial contracts to be enforced.⁹⁷ The U.S. commented that “BiH’s legal/judicial system provides no means for quick resolution of commercial disputes. While a legal framework for bankruptcy has recently been established, commercial courts are still in their infancy. Non-judicial dispute resolution mechanisms are few”.⁹⁸ An interlocutor in the Court of BiH told Crisis Group: “Civil law is not sexy but it affects the growth of the country”.⁹⁹

An activist EUSR should prioritise strengthening the rule of law, fighting against organised crime and anti-corruption efforts. Now that many key judicial institutions have been set up, the EUSR can help guarantee their sustainability by coordinating international assistance and advocating for more funds within and outside the EU. The EC claims that “every third Euro of EC assistance funding is spent in the field of justice and home affairs”.¹⁰⁰ But with much of this going to the European Union Police Mission (EUPM) and overall EC funding for Bosnia

decreasing, it is insufficient. Under a strong EUSR, the EU could do more to assist the Bosnia government strengthen the judiciary by launching an EU Rule of Law mission,¹⁰¹ providing direct financial assistance to the courts through Instrument for Pre-Accession Assistance (IPA) funding,¹⁰² and encouraging member states to do more as well.

C. POLICE REFORM

Police reform is another of the EU’s preconditions for an SAA. During the war, the police were a key ethnic cleansing instrument, particularly in RS and the Croatian areas of the Federation. Bosnia was left with three police forces: Bosniak, Croat and Serb, each with its own jurisdictions. The first two have since merged, at least nominally, but the RS has refused all efforts to reform or integrate structures with the others. Although the police in both entities have improved in the past few years and received better marks,¹⁰³ they remain highly politicised, acting at the behest of politicians to obstruct Dayton implementation, in particular refugee return, and are heavily involved in organised crime. The RS force is filled with suspected war criminals and has a history of actively supporting persons indicted by The Hague Tribunal.

OHR has been more engaged on police reform than other issues. Since Crisis Group examined the police reform process in September 2005,¹⁰⁴ little has changed in political dynamics. The international community still insists on police districts which cross entity boundaries, and RS opposes.

The Police Reform Directorate,¹⁰⁵ which RS essentially considers illegitimate, forwarded its final report at the end of 2006 to the council of ministers. The entity and state governments now have a chance to amend it and then will need to adopt an implementation plan. After that, the parliaments will have until March 2007 to adopt the same plan, as

⁹⁶ “Donors cut back support for court”, Centre for Investigative Journalism, 1 June 2006.

⁹⁷ “Investment Climate Bosnia and Herzegovina”, Country Commercial Guide 2006, U.S. Commercial Service, updated 10 July 2006, at <http://www.buyusa.gov/bosniaandherzegovina/en/38.html>. The World Bank noted: “It still takes 467 days to get all (business) licenses, at the cost of 24 average annual personal incomes...[and] with seven required procedures and duration of 331 days on average, property registration remains problematic”. The Bank ranks Bosnia 160th of 175 economies for ease of obtaining licenses, and 139th for property registration. “Doing Business in 2007: How to Reform”, International Bank for Reconstruction and Development/World Bank, Washington, DC, 2006, at <http://www.doingbusiness.org/Downloads/>.

⁹⁸ “2005 Investment Climate for Bosnia and Herzegovina”, U.S. Department of State, 2005, at www.state.gov/e/eb/ifd/2005/41986.htm.

⁹⁹ Crisis Group interview, court source, November 2006.

¹⁰⁰ EC Delegation to Bosnia and Herzegovina website. At http://www.delbih.ec.europa.eu/en/eu_and_country/cooperat ion.htm.

¹⁰¹ In the context of the European Union Security and Defense Policy (ESDP) as done in Georgia in 2004-2005.

¹⁰² For more on IPA funding see Section IV B below.

¹⁰³ Crisis Group interviews, EUPM head of mission, Brig. Gen. Vincenzo Coppola, November 2006; and OHR employees.

¹⁰⁴ Crisis Group Europe Report N°164, *Bosnia’s Stalled Police Reform: No Progress, No EU*, 6 September 2005.

¹⁰⁵ The Police Reform Directorate was created in January 2006 as a result of the October 2005 Political Agreement of the Council of Ministers. This Political Agreement was subsequently adopted by the two entity parliaments and the national parliament. The purpose of the agreement was to create a streamlined police reform process.

per the timeline established by the Council of Ministers' Political Agreement of October 2005. The problem, of course, is that RS boycotted the Directorate; its officials send mixed signals on whether it will reject the report outright or accept it as the basis for further negotiations. Another question is how much watering down of recommendations the EC would be willing to accept.

Dodik said in mid-December that "I will not sign this type of police reform",¹⁰⁶ though since presentation of the final report, some RS politicians appear to be taking a less uncompromising stance. RS President Milan Jelic said "police reform should be continued, and it should be conducted in a way that will not violate the three European principles" laid out by the EU for an SAA.¹⁰⁷ Dodik, however, continues to say that:

Whoever wants to see the truth, and to be fair to himself, will say that that attempt failed. We have from the beginning warned that that leads nowhere, that something cannot be unnaturally forced into realisation that has no basis in the constitution or in law, and especially not in practical life. We said that, others negated that, and led themselves into a blind alley.¹⁰⁸

The new chairman of the council of ministers, Nikola Spiric, called the agreed principles of police reform "not binding", which, although technically accurate, was viewed as being generally unhelpful in the overall debate.¹⁰⁹ Dodik has since softened his public stance slightly, stating that the Directorate's report is "something that we can talk about", although heavily qualifying the parameters of discussion.¹¹⁰

If the international community wishes to see progress on police reform, it will have to remain actively engaged. The EU's Police Mission (EUPM)¹¹¹ will need to continue to provide valuable

technical assistance after 2007, working in close coordination with the EUSR, who should use political influence to keep pressure on the RS. Lessons from the largely successful military reform, described below, may be instructive.

D. MILITARY REFORM

The reforms that placed Bosnia's former warring armies under a single command have been a success, showing that when the international community takes an active interest, coordinates its activities and continues to press, sustainable results can be achieved. But even these reforms are not complete and require more time and international effort.

Begun under Ashdown in 2003, the process reached a climax when NATO invited Bosnia to join Partnership for Peace (PfP), a stepping stone for membership, in late 2006.¹¹² This happened only after NATO dropped the condition of full cooperation with The Hague. Nonetheless, it appears reforms in military terms are being implemented, and Bosnia had otherwise met the technical PfP criteria by mid-2004. The reasons stem from NATO having a strong mandate to begin the reforms; NATO giving no hint it would leave before the job was finished; and the NATO inducement (at least the PfP portion) being far closer to hand than the promise of eventual EU membership. At the outset, the Defence Reform Commission (DRC) was an OHR creation and not a NATO responsibility. NATO, however, provided the benchmarks – conditionality – that made it possible for the professionals on the DRC to form a real consensus to push the project.

The need to reform Bosnia's de facto three militaries – the Army of the Republika Srpska (VRS), and the Federation of BiH's Croat and Muslim components – became clear in late 2002, when an SFOR raid on the Orao Aviation Institute in Bijeljina confirmed U.S. allegations that the factory was selling MiG-21 jet parts to Iraq via Serbia in violation of a UN arms embargo.¹¹³ The scandal deepened when raids in March 2003 seized documentation that revealed VRS spying on NATO and other Western agencies in

¹⁰⁶ "Milorad Dodik: ovakvu reformu policije nikad necu potpisati", *Nezavisne novine*, 7 December 2006.

¹⁰⁷ SRNA news agency, 8 January 2006.

¹⁰⁸ Interview with Milorad Dodik, *Glas Srpski*, 12 January 2007.

¹⁰⁹ "Nikola Špirić, novi predsjedavajući Vijeća ministara pred poslanicima", *Oslobodjenje*, 1 January 2007.

¹¹⁰ "Dodik: Nećemo prihvatiti presudu", *B92*, 11 February 2007.

¹¹¹ The EUPM was first established in 2002 under Joint Action 2002/210/CFSP. Its mandate was extended on 24 November 2005 until 31 December 2007 by JA 2005/824/CFSP. For the mandate text see <http://www.eupm.org/Documents/COUNCIL%20JOINT%2>

0ACTION%202005-824-CFSP.pdf. For more on the EUPM generally see <http://www.eupm.org/Default.asp>.

¹¹² The invitation was extended following the NATO summit in Riga, 28-29 November 2006, after NATO members agreed to drop the condition of full cooperation with The Hague Tribunal.

¹¹³ See Crisis Group Europe Report N°136, *Arming Saddam: The Yugoslav Connection*, 3 December 2002.

Bosnia.¹¹⁴ The PIC noted that Orao revealed “serious deficiencies” in the command and control of Bosnia’s militaries and said measures to ensure systemic reform and political control were essential, not just to prevent repetition but also so Bosnia could eventually join NATO.¹¹⁵

Days later, Ashdown dissolved the Supreme Defence Council of the RS and amended the constitutions of both entities, the RS army law (replacing the word “state” with “Republika Srpska”), and the RS defence law (making that change and also deleting the words “sovereignty” and “independence” as regards the entity, and adding a paragraph that the RS would organise its defence to protect the sovereignty of Bosnia and ensure the armed forces acted under civilian command and in accordance with the BiH constitution).¹¹⁶ Ashdown established the DRC in May 2003,¹¹⁷ which then proposed legislation to parliament in December that defined state-level defence structures, a BiH ministry of defence, state-level command and control, parliamentary oversight and significant downsizing of the armed forces.

The next year and half was a “coercive process”,¹¹⁸ with NATO as DRC co-chair, backed by the PIC and OHR.¹¹⁹ Reforms were still blocked in early 2004, as local officials had not nominated qualified candidates for top positions or secured funding for the state-level

institutions, and entity parliaments had not matched their laws to the new state laws.¹²⁰

The coercive process continued, as NATO and OHR in tandem focused on Hague cooperation as the main condition for PfP.¹²¹ Because of it, NATO summits in June and December 2004 did not invite Bosnia to PfP. In December, because of the news that war crimes suspect Ratko Mladic had celebrated VRS Day in a military shelter outside Han Pijesak,¹²² Ashdown advanced the deadline for entity defence ministries to transfer their work to the state ministry from 2008 to 2005.¹²³ He also extended the DRC mandate to end-2005¹²⁴ and removed 69 PIFWC supporters during 2004.

Pressure continued throughout part of 2005, while Bosnian Serb recruits booed the national anthem and pledged allegiance to RS rather than Bosnia.¹²⁵ But by summer the entities had agreed to abolish their armies and defence ministries and adopt the requisite constitutional amendments.¹²⁶ By year’s end, parliaments had adopted the last laws, entity defence ministries had ceased to exist, and there was consensus on “the elimination of entity competencies, the transfer of all defence responsibilities and personnel to the state, the abolition of conscription and the establishment of a restructured and small reserve force to back-up the downsized professional army”.¹²⁷

The DRC mandate was passed to Bosnia’s ministry of defence (MoD), which is now responsible for implementation. NATO has a two-dozen strong team in Sarajevo¹²⁸ to advise its attempts to address

¹¹⁴ “Yugoslavia’s arms ties to Iraq draw US scrutiny”, *The Washington Post*, 31 October 2002; “Belgrade accused of involvement in arms sales to Baghdad”, *The New York Times*, 31 October 2002; “Bosnia: Ashdown warning over Orao affair”, Balkan Crisis Report, IWPR, 31 October 2002; “Bosnia: Serb military spy scandal”, Balkan Crisis Report, IWPR, 1 April 2003.

¹¹⁵ PIC Communiqué, 28 March 2003.

¹¹⁶ “Decision amending the constitution of Republika Srpska”; “Decision enacting the law on amendments to the law on defence of Republika Srpska”, “Decision enacting the law on amendments to the law on army of Republika Srpska”. Ashdown also issued Federation decisions; see “Decision amending the constitution of the Federation of Bosnia and Herzegovina”; “Decision enacting the law on amendments to the law on defense of the Federation of Bosnia and Herzegovina”. All dated 2 April 2003.

¹¹⁷ “Decision establishing the Defense Reform Commission”, OHR, 9 May 2003.

¹¹⁸ Crisis Group interview, Transition Management Group head Rohan Maxwell, 13 November 2006.

¹¹⁹ A PIC Communiqué on 11 December 2003 urged Bosnian authorities to pass remaining laws, transfer competencies to the new BiH ministry of defence and appoint top staff. Ashdown extended the DRC mandate on 4 February 2004 to continue pressure on the entity parliaments to pass new laws and harmonise existing laws.

¹²⁰ “BiH failing to meet requirements for PfP”, OHR press release, 12 March 2004.

¹²¹ “Serbs may pay for Bosnia NATO setback”, Tribunal Update, IWPR, 18 June 2004.

¹²² “Massacre general kept from justice by old allies”, *The Times* (London), 10 December 2004.

¹²³ “Statement by the High Representative”, OHR press conference, 16 December 2004, at <http://www.ohr.int>.

¹²⁴ “Decision extending the mandate of the Defense Reform Commission”, OHR, 31 December 2004.

¹²⁵ “Fury as Serbs boo Bosnian anthem”, BBC Online, 18 April 2005.

¹²⁶ “Report to the European Parliament by the OHR and EU Special Representative for BiH, January-June 2005”, 22 November 2005, at http://www.ohr.int/other-doc/hr-reports/default.asp?content_id=36026.

¹²⁷ “Report to the European Parliament by the OHR and EU Special Representative for BiH, June-December 2005”, 28 January 2006, at http://www.ohr.int/other-doc/hr-reports/default.asp?content_id=36683.

¹²⁸ The Transition Management Group (TMG). The defence ministry formed the Transition Implementation Expert Team

personnel issues and force structure (the MoD is reviewing the future of every member of the armed forces), property transfer and archives.¹²⁹

Some NATO sources place blame for a number of implementation delays on the fact that the state-level government has not yet been formed after the October 2006 election. A former official noted that some in the ministry, such as two deputy ministers, have tried to obstruct destruction of surplus weapons and consistently take positions contrary to those of the generals. Nevertheless, he said, "They'll do it [implement] if they're ordered to do it, but won't take the initiative themselves".

While the army's structure is greatly improved, there are worries about whether the MoD is yet ready to continue without international guidance.¹³⁰ Under the 3 January 2007 agreement of the seven parties about to form the government, the ministry is allocated to the Bosniaks (the SDA), whose candidate for minister is Selmo Cikotic, a former general, now a "defence intellectual" and not a party man. The SDA also got the security ministry, to which it has nominated Tarik Sadovic, its leader in the RS National Assembly.¹³¹

All told, progress is slow, but it is progress, primarily because NATO will remain in Bosnia through the Partnership for Peace Program, NATO membership is a credible objective and heretofore the OHR has aggressively supported reforms. On the ground the European Union Force in Bosnia and Herzegovina (EUFOR)¹³² may also do more to help BiH make further progress in military reform and towards European integration in close cooperation with the EUSR.¹³³

on 12 January 2006, with thirteen Bosnian members, seven internationals from the U.S. contractor Military Professional Resources Incorporated, and nine Bosnian administrative support staff from the TMG.

¹²⁹ "Defense Reform in BiH – An Executive Overview", TMG document, 10 November 2006.

¹³⁰ Crisis Group interview, 16 November 2006.

¹³¹ Since both ministries are closely monitored by the international community, some SDA leaders are unhappy with the party president, Sulejman Tihic, for settling for portfolios with limited scope for abuse.

¹³² EUFOR replaced NATO-led SFOR on 2 December 2004.

¹³³ For more on EUFOR see <http://www.euforbih.org/sheets/fs050103a.htm>

E. EDUCATION

Segregated schools, in which Bosniak, Croat and Serb children learn according to separate history and language curricula,¹³⁴ have long been criticised in EU directives and PIC communiqués. Reform, including ending segregation, however, is a responsibility of the OSCE, which has no Bonn powers, and Bosnian politicians, who show no interest even though it is required for EU integration.

Dayton did not address education, thus leaving it to the Muslim-Croat Federation and RS. The former is further split into ten cantons, which have responsibility for education. Children in seven of these attend largely mono-ethnic schools that teach Bosniak or Croat curricula. In the three mixed cantons,¹³⁵ there are more than 50 "two schools under one roof", which Bosniak and Croat children attend at different times, learn according to different curricula and have different teachers and administrators. RS schools are centralised and teach a Serb curriculum. Non-Serb children can attend branch schools and be taught their own curriculum. The separate schools and curricula, which began as a way to encourage returns of refugees with school-age children, have evolved into segregation and wasteful duplication that teach a new generation their parents' nationalist hatreds with government imprimatur.

The role of the OSCE, which assumed responsibility to coordinate international community work in July 2002, "has now evolved to information sharing, consensus building and monitoring". The primary goal of its education program is to "encourage and assist the authorities of BiH to comply with the obligations and commitments they undertook when they pledged to reform their system of education".¹³⁶ The OSCE can only point out that Bosnia must implement the agreements it has signed, including four international conventions that stipulate the end of segregation,¹³⁷ the Council of Europe's post-

¹³⁴ The "national subjects" are language and literature, history, geography, nature and society and religious instruction.

¹³⁵ Zenica-Doboj Canton, Hercegovina-Neretva Canton and Central Bosnia Canton, which Muslims and Croats share.

¹³⁶ "Reform of Bosnia and Herzegovina's Education Sector", OSCE Mission website, at <http://www.oscebih.org/education/?d=2>.

¹³⁷ The European Convention for the Protection of Human Rights and Fundamental Freedoms; the International Covenant on Economic, Social and Cultural Rights; the International Convention on the Elimination of all forms of Racial Discrimination; the Convention on the Rights of the Child.

accession requirements from April 2002 and the responsibilities under the SAA negotiations begun in 2005. The state-wide primary and secondary education law, passed in 2003, remains largely unimplemented.

In 2004 Ashdown did use the Bonn powers to ensure that three Federation cantons brought their education laws into line with the 2003 state-level law, striking at the finances of the HDZ, SDA and SBiH parties in several cantons after officials failed to order administrative unification of some of the “two schools under one roof”.¹³⁸ A year later he removed the Central Bosnian Canton education minister for non-implementation.¹³⁹ Even though some schools are administratively unified, they remain segregated. Despite reiterated calls from the PIC and OHR intervention, there are still 54 “two-schools-under-one-roof”, in many of which Bosniak and Croat children and their teachers have no mutual contact. Students often use separate entrances and have separate breaks while teachers do not use the same faculty room.¹⁴⁰

The PIC has cautioned that legislation on paper does not constitute effective reform as long as children do not learn together that they are all Bosnian citizens,¹⁴¹ Schwarz-Schilling has said his education priorities are passage of five laws by June 2007.¹⁴² An OHR official explained: “We want to finalise a few things before we leave, and OSCE has a longer view of things, and so that causes a problem”. The official acknowledged, however, that the strategy to get an agreement at prime ministerial level and then send

bills to parliament “has gone completely belly-up – the laws will probably slip through the cracks”.¹⁴³ Current international efforts lack the coordination the OHR should have provided. Aggressive international engagement will need to continue, along with careful coordination with the OSCE.

¹³⁸ See “Directive suspending all disbursements of budgetary itemisations for party funding for the HDZ”, 30 March 2004; “Directive reducing party funding for the HDZ”, 27 April 2004; “Directive extending the suspension of all disbursements of budgetary itemisations for party funding for the HDZ”, 31 May 2004; “Directive reducing party funding of political parties for their failure to bring their legislation on primary and secondary education in line with framework law on primary and secondary education in BiH”, 7 June 2004. The decisions on enacting primary and secondary education laws in the three cantons of 8 July 2004 are available at <http://www.ohr.int/decisions/mo-hncantdec/archive.asp?m=&yr=2004>.

¹³⁹ “Decision to remove Nikola Lovrinovic from his position as minister of education of the Central Bosnian Canton”, 8 July 2005.

¹⁴⁰ “Two schools under one roof”, OSCE Mission website, at <http://www.oscebih.org/education/2schoolsunder1roof.asp?d=2>.

¹⁴¹ PIC Communiqué, 14 December 2005.

¹⁴² The laws are on higher education, creation of a state-level education agency, vocational-technical education, pre-primary schools and sports education. Speech by the High Representative, Christian Schwarz-Schilling, to the BiH Parliament, 24 May 2006.

¹⁴³ Crisis Group interview, senior OHR official, November 2006.

IV. EUROPEAN INTEGRATION

Since the late 1990s, EU integration has been the international community's main policy inducement in the Western Balkans, a tool more fully defined and confirmed at meetings associated with EU summits (21 June 2003, Thessaloniki; 11 March 2006 Salzburg).¹⁴⁴ Drawing on its experience with post-communist states in Central Europe, Brussels formulated this policy on the assumption that the lure of membership would prove sufficiently strong for Bosnia's political elites and electorates to overcome ethnic nationalism and make the tough choices and compromises needed. The U.S. has actively encouraged this approach.

The EU carrot, however, is proving insufficiently tasty to break the mould in Bosnia. There are few examples of EU requirements that politicians passed on their own initiative. Every significant reform has been imposed. Bosnian inability to take the lead is due in large part to the underlying dynamic – poorly understood in Western capitals – whereby ethnic politics trumps EU-oriented politics. There is little sign this dynamic can change soon unless institutional reforms remove the imperative for politicians to pander to the lowest common ethnic denominator. Moreover, the internal EU debate over further expansion has sent all the wrong signals, causing many Bosnians to question how welcome their country would be in Brussels. New and strengthened EU policy tools and approaches are needed.

A. THE ETHNIC ELEMENT

The war left lasting scars. Though Bosnians are no longer frightened of the other ethnic groups, they remain suspicious and strongly influenced by nationalist rhetoric. This is seen most clearly in the too-numerous elections that have taken place since Dayton, in which they have almost invariably voted for parties of their own ethnic group.¹⁴⁵ Even parties

and politicians considered moderates played the ethnic card in the 2006 elections. Dodik, whose Party of Independent Social Democrats (SNSD) was the big winner in RS, for example, ran a nationalist-populist campaign for the first time in his fifteen-year political career and told journalists Serbs do not feel at home in Bosnia, particularly in Sarajevo. Prominent Bosniak politicians, notably Haris Silajdzic, urged abolition of the entities, particularly RS, which Silajdzic called a genocidal creation.¹⁴⁶ An election-watching NGO noted that just two of the 36 parties – the SDP and Radom za Boljitak – had civically-oriented platforms; 26 had no platforms at all.¹⁴⁷

The nationalist rhetoric worked, though the old nationalist parties (SDA, HDZ, SDS) were defeated by the newer ones (HDZ 1990) or newly populist parties, such as the SNSD and SBiH.¹⁴⁸ The elections made kings of Dodik in RS and Silajdzic in the Federation, leaders whose “diametrically opposing views” appear, at least on the surface, to solidify Bosnia's divisions for another four years.¹⁴⁹

Though most Bosnian politicians continue to give lip service to EU integration, the focus has been on deal-making for the formation of state, Federation and cantonal governments. Just after the elections, Dodik said the RS position on police reform would not change, “even if that means giving up the SAA negotiations”,¹⁵⁰ and he told the RS National Assembly on 30 November that a referendum would

Elections: Dayton Stumbles, 18 December 2000. The October 2006 elections continued the pattern, though Croats voted for a presidency member from the Social Democratic Party (SDP), a non-nationalist party that draws significant support from Bosniaks.

¹⁴⁴ “Old wounds emerge as Bosnia elections loom”, ABC News, 29 September 2006; “Can Bosnia's peace survive?”, *Time Europe*, vol. 168, no. 15, 2 October 2006; “Bosnian Serbs renew nationalist rhetoric in run-up to election”, *Voice of America*, 17 September 2006.

¹⁴⁷ “Predizborni program nema cak 26 politickih stranaka”, *Oslobodjenje*, 15 Septemeber 2006.

¹⁴⁸ The Croatian member of the presidency, Zeljko Komsic, won due to a split Croat vote and strategic Bosniak and Serb voting in the Federation. Silajdzic defeated Tihic for the Bosniak presidency seat but the SDA beat the SBiH in the state and Federation parliaments and most cantons, demonstrating that voting tends to be ethnically based.

¹⁴⁹ “Clashing visions for Bosnia”, Reuters, 3 October 2006; also “Bosnian election shows ethnic discord”, *Deutsche Welle*, 2 October 2006, and “Bosnia, the slow road to nowhere”, *ISN Security Watch*, 5 October 2006.

¹⁵⁰ “Vrijeme je da krenemo naprijed”, *Nezavisne Novine*, 6 October 2006; “RS will not stay without its police”, *Nezavisne Novine*, 6 October 2006.

¹⁴⁴ “EU-Western Balkans Summit”, Council of the European Union declaration, 10229/03, Thessaloniki, 21 June 2003; “Salzburg EU/Western Balkans Joint Press Statement”, Salzburg, 11 March 2006.

¹⁴⁵ See Crisis Group Europe Reports, N°16, *Elections in Bosnia and Herzegovina*, 22 September 1996; N°42, *Doing Democracy A Disservice: 1998 Elections in Bosnia and Herzegovina*, 9 September 1998; N°56, *Breaking the Mould: Electoral Reform in Bosnia and Herzegovina*, 4 March 1999; N°91, *Bosnia's Municipal Elections 2000: Winners and Losers*, 28 April 2000; and N°104, *Bosnia's November*

be an “obligation” if there were any attempts to abolish the entity.¹⁵¹

A state-level coalition was cobbled together on 3 January, and the Presidency's nominee as prime minister, Nikola Spiric of Dodik's SNSD, was confirmed by parliament on 11 January. A government was finally formed on 9 February. While Spiric and the coalition leaders have proclaimed it a priority to sign an SAA and secure EU candidate status by 2009, fulfilling the preconditions for the former and implementing the reforms required for the latter will continue to divide their seven parties.

1. Council of Europe

Bosnia was offered membership in the Council of Europe (CoE) in 2002 following a protracted debate over whether that status would have a salutary effect on the country's politics and reform process. Some argued Bosnia needed to meet CoE standards first, while others hoped that once in the club, Bosnian politicians would be encouraged to take the necessary steps on their own. Eventually, Bosnia was invited in, even though it was clear that it did not satisfy the conditions. Membership, however, was conditioned on Bosnia subsequently fulfilling more than a dozen accession commitments and harmonising its laws and practices with CoE obligations.¹⁵²

Petritsch and Ashdown pressed Bosnia's politicians to honour the obligations – which included full cooperation with The Hague Tribunal, continuing education reform and eliminating discrimination based on ethnicity and school segregation. But a former OHR official under Ashdown familiar with the CoE process noted that – promises aside – there was no enthusiasm for complying with CoE obligations. As little as two months before the April 2004 deadline, foreign ministry representatives were not even attending post-accession meetings, stating that it was not their problem.¹⁵³ The reforms the CoE gave Bosnia credit for two years after accession were almost entirely those discussed above, for example in the justice and education systems and the security sector, which had come at the initiative or on the

imposition of High Representatives, especially Ashdown.¹⁵⁴

Well after the April 2004 deadline, an EC report admonished the Bosnians to meet the still unfulfilled post-accession requirements, particularly on elections and education.¹⁵⁵ At the beginning of his term, Schwarz-Schilling noted that Bosnia had not met all the commitments, notably in the still-segregated education system,¹⁵⁶ and the CoE adopted, also in 2006, a strong resolution on the need for further reforms.¹⁵⁷ But few Bosnians or internationals seem to pay attention anymore to the still outstanding account with the CoE. The game is with Brussels and the EU.

2. European Union integration

The EU's main policy tool for dealing with the Western Balkans since 1999 has been the Stabilisation and Association Process (SAP), which holds out eventual membership as the goal toward which the states should work by establishing and maintaining democracy and the rule of law, ensuring respect for minorities and human rights and reviving economic activity.¹⁵⁸ Bosnia is still at a fairly early stage, negotiating on an SAA, signature of which would signify that the EU considered the country was moving steadily forward and could be expected to make the further reforms necessary for membership itself within a reasonable period. Bosnia's journey toward Brussels, however, has been marked by the same pattern seen in the Council of Europe accession. The attraction of the EU has not been sufficient to stimulate self-starting initiatives. Progress has only been in tandem with an HR actively involved in the political process, exhorting and creating commissions and prepared to deploy the Bonn powers.

The EU laid out a “Road Map” in 2000, with eighteen conditions Bosnia needed to fulfil for the EU to do a

¹⁵¹ “Referendum is obligation of RS”, *Oslobodjenje*, 1 December 2006.

¹⁵² “Bosnia joins Council of Europe”, CNN, 24 April 2002.

¹⁵³ Potter, *A Bosnian Diary*, op. cit., p. 147.

¹⁵⁴ “Honouring of Obligations and Commitments by Bosnia and Herzegovina”, CoE Parliamentary Assembly, Resolution 1383, Strasbourg, 23 June 2004.

¹⁵⁵ “Bosnia and Herzegovina 2005 Progress Report”, European Commission, SEC (2005), 1422, Brussels, 9 November 2005.

¹⁵⁶ “Address by the High Representative to the Permanent Council of the OSCE”, 16 March 2006, at www.ohr.int.

¹⁵⁷ “Report of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe”, rapporteurs Mr Çavuşoğlu, Mr Sasi, doc. 10982; text adopted by the Assembly on 29 June 2006 (21st Sitting).

¹⁵⁸ “Communication from the Commission to the Council and the European Parliament”, COM (1999), 235, 26 May 1999.

Feasibility Study, a crucial first step in the process.¹⁵⁹ These included implementing decisions of human rights institutions, cooperating with OHR on public broadcasting reform, establishing a national institute for standards and removing trade barriers between the entities. None of these have been fully satisfied even today. Most other Road Map conditions, such as closing the communist-era payment bureaus, passing the BiH election and civil service laws, establishing the single passport and implementing property laws, were done only because of intervention by Petritsch. Nevertheless, the EC determined in 2002 that there had been "substantial completion", and Bosnia was ready for a Feasibility Study.¹⁶⁰

While working on the Feasibility Study, the EC noted that:

Decisions taken in the context of the Bonn powers have been instrumental in achieving reform that might otherwise have been delayed or never effected. The number and nature of these decisions reflect a persistent BiH unwillingness or inability to make progress under domestic procedure. They certainly raise justified questions about BiH's ability to sustain a SAA.¹⁶¹

The Feasibility Study itself, published in November 2003, indicated that changes to the constitution would be helpful, advised more reform and increased state-level competencies for the police and noted lagging privatisation of strategic companies. The following year the EC elaborated:

The concern is thus twofold. First, hope for a new and clear reform dynamic has not been clearly confirmed, indeed political obstruction of reform is still frequent. Secondly, BiH "ownership" of reform remains limited; in most advances, international initiative, input and pressure was key.¹⁶²

It took OHR arm-twisting, the desire not to be left behind by the rest of the region and the approach of Dayton's tenth anniversary to make the next stage possible. Just as the U.S. wanted to use the celebrations to stimulate constitutional reform, OHR and the EU wanted a political agreement on police reform so SAA talks could start.¹⁶³ On 14 September 2005, the RS National Assembly rejected the proposed extension of police jurisdiction across the inter-entity boundary. Three weeks later it had a last-minute change of heart.¹⁶⁴ An analyst noted this came "after the EU's recent decision to launch admission talks with Zagreb and Stabilisation and Association Agreement negotiations with Belgrade, which leaves Bosnia as the only country in the region without a formal relationship to the EU or prospect of membership".¹⁶⁵ Ashdown had publicly threatened unspecified sanctions in September and admitted he had spent much of his political capital on police reform, at the expense of other issues.¹⁶⁶

Progress in police reform, another commentator observed, "only occurred after international representatives exerted maximum pressure on local politicians. Even now the governments of the two entities have done little more than agree in principle that police reform is necessary, leaving the details veiled in a cloud of uncertainty that could trigger a political conflict in the next few months".¹⁶⁷ And sure enough, as already noted, police reform is now stalled.

The EC has again laid out what Bosnia must do, this time before an SAA can be signed. The list includes constitutional amendments so elections comply with the European Convention for Human Rights;¹⁶⁸ strengthening state-level ministries and institutions; improving state-entity cooperation, the performance of executive and legislative bodies and staffing and financing of the State Border Service and State

¹⁵⁹ "EU Road Map – Steps to be taken by Bosnia and Herzegovina to prepare for a launch of a Feasibility Study", given by EU Commissioner Chris Patten to BiH Foreign Minister Jadranko Prlic, 9 March 2000.

¹⁶⁰ "Milestones", EC Delegation to BiH webpage, at <http://www.delbih.ec.europa.eu>.

¹⁶¹ "Report from the Commission to the Council on the preparedness of Bosnia and Herzegovina to negotiate a Stabilisation and Association Agreement with the European Union", COM (2003), 692, Brussels, 18 November 2003.

¹⁶² "Bosnia and Herzegovina Stabilisation and Association Report", Commission Staff Working Paper, Commission of the European Communities, SEC (2004), 375, Brussels, 2004.

The same report noted that a number of Road Map commitments were still outstanding, and "none of the Feasibility Study recommendations has yet been fully completed".

¹⁶³ See Crisis Group Report, *Bosnia's Stalled Police Reform*, op. cit.

¹⁶⁴ Paddy Ashdown, "Report to the European Parliament: June 2005-January 2006", Brussels, 28 January 2006.

¹⁶⁵ "Bosnian Serbs accept police reform", RFE/RL Newswire, 6 October 2005.

¹⁶⁶ Ashdown, op. cit.

¹⁶⁷ "Bosnia struggles over first hurdle on road to Europe", Balkan Investigative Reporting Network, 3 November 2005.

¹⁶⁸ The EC regularly urges constitutional and electoral reform and says both will be necessary in the fullness of time, but neither is a strict precondition for signing an SAA.

Investigation and Protection Agency (SIPA); implementing public administration reforms on the books, the October 2005 police reform agreement and public broadcast reform; improving the efficiency and independence of the judicial system and the Constitutional Court's Human Rights Commission and prosecuting corruption cases more vigorously; supporting return and integration of refugees and displaced persons; and cooperating with The Hague Tribunal by finding fugitives, dismantling their support networks and improving entity-level prosecution of war crimes cases.¹⁶⁹

The EC further noted that the economy leaves much to be desired:

Little has been achieved in the area of *free movement of goods*. Preparations in the field of standardisation, certification, metrology and market surveillance remain at an early stage and new legislation is not being properly implemented. A lack of conformity assessment bodies and procedures continues to hinder export capacity. The establishment of a market surveillance structure based on appropriate product legislation and the phasing out of contradictory pre-market controls require urgent action. There are no particular developments to report with regard to the *movement of workers*. Limited progress has been made in the area of *services* and no significant changes have occurred in relation to *right of establishment* and *company law*. Banking supervision has not been brought to the State level and remains an Entity responsibility.¹⁷⁰

B. EUROPEAN SIGNALS

Bosnia made no progress on the SAA list in 2006,¹⁷¹ and recently the EU has sent signals that are interpreted in Bosnia (and elsewhere in the Western Balkans) as withdrawing the welcome mat, further lowering the incentive for taking tough political decisions. Foremost is the enlargement debate,

coupled with stalemate over the EU constitution after failed referendums in France and the Netherlands.

A spring 2006 Eurobarometer poll found 42 per cent of EU citizens polled were against enlargement, up from 39 per cent six months earlier. In five member states – Finland, France, Germany, Luxembourg and Austria – more than 60 per cent were negative.¹⁷² This is not encouraging for applicants who know that a decision to accept a new member must be approved by all member state governments and parliaments.

RS Prime Minister Milorad Dodik – aware that Bosnia has no chance of early EU membership regardless of what laws it passes or otherwise does in the near future – recently said police reform will not happen on his watch, adding, “Bosnia has not ever been in the EU, so what is the problem to wait another five or six years”.¹⁷³ He has also said that by the time Bosnia is close to joining the EU, there will be an entirely new European Commission which is unlikely to care about the current police reform issue.

An EC report on 8 November 2006 put the Western Balkans, including Bosnia, on indefinite hold, denying them firm accession dates on the grounds that each country needed to undertake more institutional reforms. On Bosnia, the EC repeated much of what it said in the Feasibility Study and the commentary on SAA negotiations: while some reforms had been made, the “key issue” of police reform had stalled, “constitutional evolution is essential,” and there was limited progress on economic reform and alignment of legislation with the EU *acquis*.¹⁷⁴

The EC said “rigorous conditionality is applied to all candidate and potential candidate countries. Any new steps in the accession process depend on each country's progress in making political and economic reforms”.¹⁷⁵ This essentially means the EU will treat Bosnia procedurally as it treated its twelve recent entrants. While this is reasonable on its face, perhaps even generous given Sarajevo's less than whole-hearted approach to the process, it does not acknowledge that the legacy of the vicious 1992-1995 war it went through and from which it is still trying to recover may be justification for some

¹⁶⁹ “Communication from the Commission to the European Parliament and the Council: Enlargement Strategy and Main Challenges 2006-2007”, Commission of the European Communities, COM (2006), 649, Brussels, 2006.

¹⁷⁰ Ibid. It also noted segregation in schools and lack of sound employment and agricultural policies and state-level statistics.

¹⁷¹ EU foreign ministers expressed their concern, also at the election campaign rhetoric, “Statement”, General Affairs and External Relations Council (GAERC), 15 September 2006.

¹⁷² “The European Union and its Neighbours”, Eurobarometer/European Commission, Brussels, October 2006.

¹⁷³ “Milorad Dodik: Ja cu za 4 godine izgraditi autoput V-c”, *Start*, 28 November 2006.

¹⁷⁴ “Communication from the Commission to the European Parliament and the Council: Enlargement Strategy”, op. cit.

¹⁷⁵ Ibid.

special consideration. This does not mean there should be a free pass – Bosnia would be given no favour if it were admitted to the EU before it genuinely satisfied all the pre-accession conditions. Nonetheless, its unique recent history and situation suggest a degree of extra international engagement and assistance to help it along the path is appropriate.

Meanwhile concrete EU financial and technical assistance to Bosnia has been rapidly declining since 2001. From 1991 to 2001 the EU and member states spent €4.3 billion in Bosnia.¹⁷⁶ Thereafter funding decreased as the CARDS program became the primary source.¹⁷⁷ From 2000-2006 €502.8 million were allocated.¹⁷⁸ A new funding mechanism for the Western Balkans, the Instrument of Pre-Accession (IPA), replaced CARDS on 1 January 2007. €332 million have been earmarked for Bosnia for 2007-2010.¹⁷⁹ In 2007 IPA will provide €62.1 million, which will gradually increase to €106 million annually by 2010.¹⁸⁰ Only by 2010 will funding to Bosnia reach the same level as in 2001.¹⁸¹ Yet the country faces tremendous challenges today and it should not have to wait another three years to return to that level of funding.

¹⁷⁶ The EC estimates it has committed some €2.5 billion to Bosnia, including €1.032 billion spent by the Humanitarian Aid Office (ECHO) from 1991 to 2000, but not including €1.8 billion from member states, 1996 to 2001. BiH's PHARE and Integrated Return programme to Bosnia and Herzegovina (OBNOVA) money was €890.7 million between 1996 and 2000. For further reading, see the EC Delegation to BiH website.

¹⁷⁷ CARDS (Community Assistance for Reconstruction, Development and Stabilisation) funding. Crisis Group correspondence with EU Directorate General for Enlargement; EU spreadsheets, CARDS outlays for the Balkans.

¹⁷⁸ The ten states which entered the EU in 2004 received on average €32 Euros per capita annually in pre-accession funds. Bosnia received between €11 and €20 per capita with CARDS. Crisis Group correspondence with EU Directorate General for Enlargement; EU spreadsheets, CARDS outlays for the Balkans. In 2007 it is expected to receive no more than €14 per capita under IPA.

¹⁷⁹ It will be used for institution building (involving transfer of know-how); technical assistance and information exchange; secondment of EU experts; assistance in horizontal areas of public management; institution building involving investment; and cross border cooperation.

¹⁸⁰ Crisis Group email communication, official, European Commission, February 2007.

¹⁸¹ When under the CARDS program, €105.2 were allocated. For further reading, see the EC Delegation to BiH website, and http://ec.europa.eu/enlargement/financial_assistance/cards/status2000-2006_en.htm.

Not only is Bosnia receiving much less money than it did in the past, it is also obtaining less than its neighbours. Under CARDS, funding for Serbia and Montenegro ranged between €27 and €69 per capita annually, approximately double to triple what Bosnia received during a comparable period.¹⁸² The situation is as unequal with the IPA. The IPA puts Bosnia in a second tier even within the Western Balkans – an outsider among outsiders – by differentiating between recognised “candidate countries” (Croatia and Macedonia) and “potential candidate countries” (Albania, Bosnia, Montenegro and Serbia). This distinction does not factor in that Bosnia suffered far greater damage than any of the others in the wars of the last decade. Because it is considered an applicant lacking “the administrative capacities and structures to take responsibility for the management of assistance”, Bosnia’s assistance funds will be administered directly from the Commission, the EC delegation in Sarajevo or the European Agency for Reconstruction, and it will be eligible only for “transition assistance,” “institution building” and “cross border cooperation” funding.¹⁸³ Only by 2010 does the EU hope to reach the same per capita figure, around €23 per citizen, in all western Balkan countries.¹⁸⁴

In addition to pre-accession assistance, some €24.1 million in community funds were provided to cover the OHR, EUSR, EUPM, and EU monitoring mission in 2006.¹⁸⁵ Many additional expenses behind these operations were, however, covered by member states through secondment of assets and staff.

The EU visa issue also sends a negative signal.¹⁸⁶ Although Bosnia has a State Border Service that has reduced the transit of illegal immigrants and has introduced high-tech passports, ID cards and drivers licenses,¹⁸⁷ EU member countries continue to impose

¹⁸² Crisis Group correspondence with EU Directorate General for Enlargement; EU spreadsheets, CARDS outlays for the Balkans.

¹⁸³ http://ec.europa.eu/enlargement/financial_assistance/ipa/index_en.htm.

¹⁸⁴ Crisis Group email communication, official, European Commission, February 2007.

¹⁸⁵ European Commission, Bosnia and Herzegovina 2006 Progress Report, 08 November 2006 at http://ec.europa.eu/enlargement/pdf/key_documents/2006/nov/bih_sec_1384_en.pdf

¹⁸⁶ See Crisis Group Europe Report N°168, *EU Visas and the Western Balkans*, 29 November 2005.

¹⁸⁷ The high-tech documentation was implemented under the Citizen Information and Protection System that Paddy Ashdown pushed the state to fund, arguing that it would end the EU visa regime.

stringent visa requirements on Bosnian citizens, citing the country as a transit point of trafficked drugs and illegal immigrants as well as a source of economic migrants and perhaps Islamic terror threats. The result is that Bosnians must queue in the pre-dawn hours in front of Western embassies in Sarajevo, as well as pay new, higher prices for visas for certain countries after price hikes in 2006.

A promising development, however, was the EC's 13 November 2006 decision to negotiate relaxed visa regimes with Western Balkans countries. The negotiations seek to reduce fees and make multiple-entry visas possible for "certain categories" of travellers, most likely students and businesspeople, by June 2007.¹⁸⁸

C. ECONOMIC INDUCEMENTS

Since the end of the war, economics have often divided Bosnia's entities, rather than encouraged cooperation. Growth in GDP, trade, investment, jobs, revenue collection and spending on social services have waned for several years in the country as a whole. Many unemployed remain committed to nationalist policies and their champions on the assumption that this is the only way to benefit from patronage networks and ensure survival.

The RS has pulled well ahead of the Federation in economic reform. Its 10 per cent corporate tax rate (30 per cent in the Federation) lures many Bosniak and Croat businesses. It has made significantly more progress on privatisation and related measures and opened a successful stock exchange. Many Bosniaks in the Federation speak admiringly of Dodik's economic achievements. But increasingly many Serbs question cooperation with the Bosniaks for practical economic reasons, while the difference in the reform pace also reinforces stereotypes many have of Bosniaks as more lethargic, corrupt and nepotistic.

Bridging economic divides and promoting economic reforms are areas where the international community should be able to do more even without Bonn powers. Increased investment and economic reform programs could help gain buy-in from politicians and

a more proactive role in state building. Nearly every ambassador Crisis Group interviewed as well as the head of the World Bank mission called assistance inadequate¹⁸⁹ and agreed large infrastructure projects could provide leverage to extract painful political compromises.

The European Bank for Reconstruction and Development (EBRD) has been one of the main financial institutions supporting infrastructure development in Bosnia. It has provided €257 million in loans for five projects, with another two projects, worth €77 million currently being finalised. European Union co-financing has been minimal, less than €6 million for the seven EBRD projects.¹⁹⁰ The World Bank (WB) lent €135.5 million from 1996 to 2006 for electricity, road and urban infrastructure reconstruction. While the EU supported WB projects from 1996 to 2001, with €42 million in co-financing, it has not topped-up WB support since then.

These funds, and the EU's co-financing, are clearly insufficient. Separately, Bosnia's two most prominent politicians, Haris Silajdzic and Milorad Dodik,¹⁹¹ told Crisis Group the country badly needs infrastructure investment and expressed willingness to compromise on difficult issues, provided they could show their voters practical benefits now, not in ten or fifteen years when EU membership might be at hand. Dodik said if infrastructure funding were increased, it would be easier for RS politicians to make the unpopular decisions the international community seeks.

As explained above, overall EU funding in 2007 will be €61 million, with only a fraction of this going to infrastructure development or other economic reforms.¹⁹² Dodik said only €30 million of the IPA would go to RS, noting that "we just sold the mobile phone provider to Serbia for €646 million. What is €30 million next to €646 million?"¹⁹³ On 23 January

¹⁸⁸ "Joint Statement by Vice President Franco Frattini, Commissioner Responsible for Justice, Freedom and Security, and by Commissioner Olli Rehn responsible for Enlargement on the Adoption of Visa Facilitation and Readmission Mandates for the Western Balkans", European Commission press release, 13 November 2006.

¹⁸⁹ Crisis Group interviews, six Steering Board ambassadors, November 2006, World Bank country director Dirk Reinermann, December 2006.

¹⁹⁰ Crisis Group interview, officer, EBRD Sarajevo, February 2007. Other international financial institutions that have provided support include the European Investment Bank.

¹⁹¹ Crisis Group interviews, Haris Silajdzic, November 2006, Milorad Dodik, January 2007.

¹⁹² Crisis Group interview, EU official, Sarajevo, January 2007.

¹⁹³ Crisis Group interview, Milorad Dodik, January 2007. After the privatisation of RS's mobile telephone provider it was sold to Serbia's state-owned Telekom Srbija for €646 million, a price 38 per cent beyond that offered by the next

2007 he signed an agreement with a Russian company to privatise the Bosanski Brod oil refinery for €121 million, further diminishing the political influence of EU aid. Serbia and Russia are providing economic incentives to support their policies. Unless the EU is willing to match rhetoric with greater investment, it will be hard put to succeed in Bosnia.

V. THE PIC'S OPTIONS

The PIC convenes on 27 February 2007 facing the need to make important decisions on international engagement with Bosnia. As described above, it had previously announced in June 2006 that it wanted to transition from an OHR-led presence equipped with the Bonn powers to an EUSR on 30 June 2007, when the mandate of the present HR, Schwarz-Schilling, was due to expire. That decision, which was based partly on the expectation that Kosovo status would be resolved by the end of 2006, is now very much under review as a result of later developments.

Kosovo status and its ramifications for the region now appear likely to be active considerations for much of 2007. The difficulties experienced in Bosnia in recent months, including the bruising ethnic rhetoric of the election campaign and Dodik's new assertiveness, have likewise played a part. Schwarz-Schilling himself has argued strongly behind the scenes in Washington and other capitals that both the OHR and Bonn powers should remain beyond June 2007.¹⁹⁴ The EU has indicated reluctance to take on the full panoply of OHR responsibilities and authority, including the Bonn powers, but readiness to play a more assertive role through a stronger EUSR. At the same time, it has been slow in taking the decisions required to effect such a transition.¹⁹⁵

The broad policy options under review include to:

- announce what would in effect be indefinite extension of the existing situation, including retention of OHR and the Bonn Powers, beyond 30 June 2007, with a new HR in charge no later than that date;
- decide that by some specific date OHR will be closed down with full responsibilities and authorities, including Bonn powers, transferred to the EU, to be exercised through the EUSR;
- decide that by some specific date OHR will be closed down with full responsibilities but not Bonn powers transferred to the EU, to be exercised through the EUSR; or
- maintain the status quo, with a new HR post-30 June, but review the situation in the latter part of 2007 to determine whether one form of the OHR-EU transition (that is, with or without

highest bidder, Telekom Austria, and which evoked scepticism from Serbian economists.

¹⁹⁴ Crisis Group interviews with OHR officials, November, December 2006, and U.S. officials, January, February 2007.

¹⁹⁵ Crisis Group interviews, Brussels, February 2007.

Bonn powers) can be implemented by a specific date such as the end of the year.

No consensus seems yet to have formed but indications are that especially the U.S. is leaning strongly toward the last of these options, which would maintain flexibility but at the same time leave uncertainty about the nature and extent of international engagement on Bosnia in the longer term.

VI. CONCLUSION

2006 was a bad year for Bosnia. Ethnic-nationalist politics again stalemated reforms so that Bosnia is in danger of falling further beyond most of its Western Balkans neighbours in the process of Euro-Atlantic integration. It was a worse year in the country for the international community, whose primary vehicle, the OHR, lost effectiveness and credibility. 2007 is a dangerous year: the impending decision on Kosovo's final status has the potential to affect the stability of the entire region. How Bosnia and the international community come through it depends on the answers to a series of questions.

Is a strong international hand still needed?

The answer is an unequivocal "yes". Left to their own devices, Bosnia's politicians will continue to play the ethnic-nationalism cards which deepen divisions in a still fragile state. There is no sign this will change in the near future. Bosnia is burdened by the legacy of the 1990s more deeply than any other constituent element that broke away from the old Yugoslavia and is not yet capable of taking full ownership of its national enterprise. As understandable as is the international community's desire to step away and turn to other pressing problems, it is simply too soon to do so without risking everything that has been painfully built up since Dayton.

Does that mean there should be no change in the international presence?

No. More of the same is not a viable option. Such progress as there has been has come almost solely as the result of international pressure, most of it applied through the OHR and the threat or use of the Bonn powers, which made it the ultimate authority. However, the movement toward Europe was arguably already too slow, with promised payoffs too far in the future, when Schwarz-Schilling succeeded Ashdown a year ago. The present HR's calculated hands-off approach not only failed to stimulate Bosnian politicians to take responsibility for speeding up the process and giving it deeper roots; it also put at risk the credibility of the mechanism, probably beyond repair.

Even Ashdown operated as much on the basis of memory of the powerful political and military intervention that put an end to the fighting in 1995 as he did on the basis of physical power at his disposal. A year of inactivity and missteps at OHR has shown that the emperor is no longer richly clothed. It is unrealistic to believe the international community

would be willing to provide the consistent high-level political energy and major troop reinforcement of a threadbare EUFOR that might be able to turn the clock back.

It is best to acknowledge the changed situation and draw the necessary operational conclusions. When the PIC convenes in late February, it should announce that OHR is to be closed by the end of 2007. Any successor to Schwarz-Schilling should have as his or her main task to accomplish this expeditiously.

How should the new international engagement be structured?

It is time for the European Union to step front and centre. There is some reluctance in Brussels for taking up such responsibilities, especially if it means deployment of the largest ever EUSR office, and increased EC funding.¹⁹⁶ Yet integration with Western institutions, in particular the EU, has always been the core of the international prescription for Bosnia's long-term stability and prosperity. Since Ashdown's time the HR and the EU special representative have been one and the same. But the EU has been relatively passive, anticipating that the attraction of membership, however distant in time, would be strong enough to stimulate political courage among Bosnia's leaders and otherwise treating the badly fractured country much the way it treats other applicants. This approach is not working.

With the OHR on its way out, the international community needs the EU to directly take on the major job of bringing Bosnia to where it can stand on its own feet. That requires Brussels to appoint a new, dynamic EUSR with a strong personality – the personal element counts heavily in Balkans politics – and give him or her powerful resources to deploy.

The EUSR office should be mandated by Security Council resolution and through the PIC, as has been the OHR, to monitor and advance implementation of all aspects of the Dayton Peace Accords.¹⁹⁷

The EUSR will already have EUFOR and EUPM to work in close cooperation with. In addition, based on a General Affairs and External Relations Council (GAERC) decision, his office should be given a budget at least equal to the OHR with a similar staff of approximately 50 internationals and up to 200 national contractors.¹⁹⁸ Some of OHR's best and most experienced personnel should be employed in the EUSR office. As in the past, member states will have to contribute significant funds and capabilities to support the EUSR, EUPM, EUFOR and any other European Security and Defence Policy (ESDP) missions established in Bosnia.

An EUSR, who is "double hatted" as head of the European Commission delegation to Bosnia, should have at his disposal IPA funding but this should be doubled to reach by early 2008 at least the €106 million per annum planned for 2010. He should also encourage member states and international financial bodies (EBRD, EIB, WB) to provide more direct bilateral funding to Bosnian institutions, especially in support of local courts, infrastructure and economic development.

It would be desirable to maintain the full PIC as a symbol of continuing broad international commitment. The Steering Board and Quint should be at least as active as they have been. The new, more muscular EUSR should report regularly on progress and problems to these groups and be able to call particularly on the Steering Board and Quint for political support as needed.

What about the Bonn powers?

They have been invaluable in the past. With the regional uncertainty that is likely to prevail in 2007 in connection with efforts to resolve Kosovo's status definitively, a case can be made for retaining them, at least formally, both to avoid introducing new uncertainties and to retain a familiar framework within which to act in an emergency. On balance, however, Crisis Group believes it would be a mistake

¹⁹⁶ Crisis Group interviews, Brussels, February 2007.

¹⁹⁷ The EU currently has nine special representatives, in the Middle East, Afghanistan, Central Asia, Great Lakes, Moldova and the Caucasus, as well as elsewhere in the Balkans. EU Special Representatives support the work of High Representative Solana in the regions concerned. They play an important role in the development of a stronger and more effective EU common foreign and security policy (CFSP) and in the EU's efforts to consolidate peace, stability and the rule of law. The EUSR office in Bosnia

must be a far more robust and interventionist operation than those currently operating. More on EUSRs at http://www.consilium.europa.eu/cms3_fo/showPage.asp?id=263&lang=EN

¹⁹⁸ Since January 2007, the OHR employs 46 internationals (19 seconded staff and 27 contractors) and 204 national contractors. The OHR is funded by the PIC. Its budget in 2007 is €6,6 million. Contributions to the OHR budget break down as follows: EU 53 %, USA 22%, Japan 10%, Russia 4%, Canada 3.03 %, OIC 2.5%, others 5.47%. See OHR website http://www.ohr.int/ohr-info/gen-info/default.asp?content_id=38608

and a miscalculation of priorities to expend political energy and capital on keeping them alive via the OHR or transferring them, via the Security Council and the PIC, to the EUSR,¹⁹⁹ and seeking to convince Bosnia's politicians to take them seriously again.

Paddy Ashdown, their most vigorous and creative proponent during much of his three and half years as HR, made much less use of them to impose legislation by the end of his tenure because he believed they were increasingly inconsistent with what either Sarajevo or Western capitals were willing to accept and support, and because he considered that the EU needed to take over as the primary stimulator for forward movement in Bosnia. Given the steady erosion of EUFOR's backup, hard enforcement authority and the loss of prestige and influence experienced in the last year by OHR, it would be extremely difficult to reverse the trend.²⁰⁰

Keeping the Bonn powers on the books without certainty that the international community would have the political will or military muscle to back them up in a crisis could tempt Bosnian authorities, especially in the RS, to embark on a dangerous game of testing, which may already be beginning on the state level over rehabilitations. The consequences of such a challenge would be all the more uncertain because the EU is unused to exercising the command authority implicit in the Bonn powers and uncomfortable with a concept so foreign to its customary integration strategy.

The surest way to maintain the international community's ability to implement the Dayton Accords and to keep Bosnia moving toward Europe,

¹⁹⁹ The competencies of two Dayton annexes were transferred, via the Security Council and the PIC, to successor organisations: the Annex 1-A mandate of IFOR to SFOR and eventually EUFOR, and the Annex 11 mandate of the IPTF to the EUPM.

²⁰⁰ The raw figures for use of Bonn powers available on the OHR website at <http://www.ohr.int/decisions/archive.asp> are somewhat misleading, not least because the same decision often is counted multiple times to reflect Bosnia's multiple jurisdictions. Ashdown's figures appear relatively high because of the special requirements earlier in his tenure to deal with the large number of especially NATO-induced removals in 2004 and rehabilitations as well as appointments of foreign judges, prosecutors and others to Bosnian courts in 2005. Nevertheless, his use of the powers showed a significant decline over time, from 71 impositions and amendments of laws and of constitutional amendments in his first half year, 2002, for example, to 45 in 2003, 38 in 2004, fifteen in his last full year, 2005 – by far the lowest figure of any HR since 1998, when Carlos Westendorp imposed nine laws – and one in his final brief year, 2006.

therefore, is to make a clean break when the OHR is closed down. However, the EUSR will need to make up for lack of Bonn powers by using much more assertively the real powers of the purse with which Brussels should equip the office. This means dispensing financial and technical assistance generously to persuade politicians and constituencies that the EU is today's strong and close reality – not a distant dream of membership that is surely at least a decade if not a generation away, but a source of tangible financial and related support that makes an immediate difference in daily lives.

A former diplomat with long Balkan experience identified the other half of the equation when he told Crisis Group that “the EU has lacked backbone in insisting that its standards be met”.²⁰¹ That needs to change. Penalties, including the withholding of specific assistance, should be imposed when inducements do not work. If the Bonn powers made Bosnia an international protectorate, the EU-centric international effort should be considered a transition to intensively guided Bosnian ownership of the national enterprise, not abandonment.

What about the U.S.?

Many Bosnians, Bosniaks in particular, have much more faith in Washington than Brussels due to their war-time experiences. It is essential that the U.S. remain strongly engaged both to assist the EU and to reassure those in the country who would not otherwise trust the new international arrangements. The U.S. should maintain a strong, activist embassy prepared to work closely with, and complement, the efforts of the EUSR. It also should continue important assistance programs, play a leading role in the development of Bosnia's ties with NATO, and remain a powerful voice in the PIC and Steering Group.

How long will Bosnia need special support?

The answer to this question will not be popular in Western capitals eager to be free of a burden. The length and nature of the international engagement in Bosnia need to be predicated on creating the necessary prerequisites for functional liberal democracy to take hold. This requires different but not less international engagement for a protracted period until Bosnia's institutions become functional and solidly established. Since 1996 and the premature elections that cemented the ethnic war-time parties in power, the international

²⁰¹ Crisis Group interview, former Western diplomat, January 2007.

community, driven in large part by Washington, has attempted to rush democracy without asking whether or not the foundations exist for it genuinely to take hold. The country now has the outward trappings without the substance.

The international community will know it is time to step back when Bosnian leaders and institutions begin to take tough decisions on their own initiative to implement Dayton fully and move along the path of the Stabilisation and Association Process to a viable EU membership candidacy. In the meantime, the concentration needs to be on helping them meet the already indicated benchmarks of constitutional, educational, economic, judicial, police and media reform.

Does it all still matter?

The answer is again an unequivocal “yes”. There is no stasis in the Balkans: Bosnia will either move forward or it will move backwards. International disengagement would only cause forward movement to cease, leaving Bosnia vulnerable to eventual state dissolution. And that could again shatter Europe's peace.

Sarajevo/Brussels, 15 February 2007

APPENDIX A

MAP OF BOSNIA



APPENDIX B

GLOSSARY OF ABBREVIATIONS AND ACRONYMS

BiH	Bosnia and Herzegovina
CARDS	Community Assistance for Reconstruction, Development and Stabilisation
CoE	Council of Europe
DRC	Defence Reform Commission
EC	European Commission
ESDP	European Security and Defence Policy
ESI	European Stability Institute
EU	European Union
EUFOR	European Union Force in Bosnia and Herzegovina
EUPM	EU Police Mission
EUSR	EU Special Representative
GAERC	General Affairs and External Relations Council of the EU
HDZ 1990	Croatian Democratic Union 1990 (split from HDZ in April 2006)
ICJ	International Court of Justice
ICTY	International Criminal Tribunal for the Former Yugoslavia
IFOR	(NATO-led) Implementation Force
IMF	The International Monetary Fund
IPA	Instrument of Pre-Accession
IPTF	International Police Task Force
ISPA	Instrument for Structural Policies for Pre-Accession
JSAP	Judicial System Assessment Program
NATO	North Atlantic Treaty Organisation
OBNOVA	Integrated Return programme to Bosnia and Herzegovina
OHR	Office of the High Representative
OIC	Organisation of the Islamic Conference
OSCE	Organisation on Security and Cooperation in Europe
PHARE	<i>Pologne Hongarie Assistance à la Reconstruction des Economies</i>
PfP	NATO's Partnership for Peace
PIC	Peace Implementation Council
PIFWC	Person(s) Indicted for War Crimes
RS	Republika Srpska
SAA	Stabilisation and Association Agreement
SAPARD	Special Accession Program for Agriculture and Rural Development
SBiH	Party for Bosnia and Herzegovina, led by Haris Silajdzic
SDA	Party of Democratic Action, led by Sulejman Tihic
SDP	Social Democratic Party, led by Zlatko Lagumdzija
SDS	Serbian Democratic Party, led by Mladen Bosic (originally led by Radovan Karadzic)
SIPA	State Investigation and Protection Agency
SFOR	(NATO-led) Stabilisation Force
SNSD	Party of Independent Social Democrats, led by Milorad Dodik
USIP	U.S. Institute of Peace
UN	United Nations
VRS	Army of Republika Srpska