

**BOSNIA'S INCOMPLETE TRANSITION:
BETWEEN DAYTON AND EUROPE**

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BOSNIA'S INCOMPLETE TRANSITION: BETWEEN DAYTON AND EUROPE

EXECUTIVE SUMMARY AND RECOMMENDATIONS

While Bosnia and Herzegovina's time as an international protectorate is ending, which is in itself most welcome, now is the wrong time to rush the transition. The state put together by the 1995 Dayton Peace Agreement after a long war will never be secure and able to take its place in the European Union (EU) until it is responsible for the consequences of its own decisions. But tensions are currently high and stability is deteriorating, as Bosniaks and Serbs play a zero-sum game to upset the Dayton settlement. Progress toward EU membership is stalled, and requirements set in 2008 for ending the protectorate have not been met.

The international community should decide, at the important meeting on 26-27 March of the Peace Implementation Council (PIC), the international body that oversees Dayton, not to end the mandate of the High Representative and his office (OHR) by 30 June 2009, as has been foreshadowed. Rather, it should appoint a new High Representative and resolve to maintain the office until all seven of the 2008 requirements – five “objectives” and two “conditions” – are met, both to retain its own credibility and to keep in place powers that would help resolve immediate problems. Once the protectorate does end, hopefully by the end of 2009, a strong EU mission will be needed to continue encouraging Bosnia toward European integration. Brussels and member states should begin now to focus on the specific powers their Special Representative (EUSR) requires and resolve to serve as guarantors of the Dayton agreement.

The OHR is no longer the motor driving Bosnia forward, and it is too late for it to resume that role in any open-ended way. The PIC announced already in 2006 that it wanted to close the OHR and rely henceforth on the EU. The PIC hoped this would spur Bosnia to qualify faster for EU membership, but the opposite has happened: left largely to themselves, Bosnian leaders have become locked in a standstill, and some reforms have begun to unravel. Some argue that the shock therapy of an end to the OHR would have a salutary effect on politicians who have grown accustomed to being protected against the worst effects of their irre-

sponsible behaviour. There are four arguments, however, against an immediate end to the OHR's role.

First, international credibility took a big hit in 2007 when the EU signed a Stabilisation and Association Agreement (SAA) with Bosnia – a major step in the accession process – even though specific police legislation it had strenuously insisted was a precondition had not been adopted, and the High Representative was engaged in a related confrontation with the leader of the Republika Srpska (RS), the Serb entity. The closing of the OHR while two objectives (resolving the status of the Brčko District and dealing with state property) and one condition (full compliance with the Dayton agreement) identified by the PIC in 2008 as requirements remain unmet would risk crippling the EU's ability to apply firm policies toward Bosnia long after the protectorate itself has ended. It would also weaken EU credibility throughout the region, notably in Kosovo.

Secondly, there are some positive political signs whose development may be partly dependent on not prematurely closing the OHR. Since November 2008, leaders of the Bosniak, Serb and Croat communities have been making tentative efforts toward a workable compromise, including on the PIC requirements and constitutional reform. They are under attack from their own hardliners, none more so than the Bosniaks. Serb leaders are being conciliatory because they want the OHR to close; the Bosniaks and Croats are more interested in constitutional reform and are leveraging the prospect of that closure to overcome Serb reluctance. Doing away with OHR now could kill the initiative by removing perhaps the main incentive for compromise.

Thirdly, OHR can make some short-term contributions by judicious use of the High Representative's special (Bonn) powers. Bosnian leaders still fear sanctions, including dismissal from office, that can be imposed for egregious Dayton violations. OHR can also act in less disruptive but equally important ways, as shown by a recent salary freeze that spurred Brčko municipal councillors into rapid action. The High Representative

should hold his or her major powers in reserve but act creatively to unblock deliberate obstruction.

Finally, the EU can and should take advantage of a brief OHR respite to prepare better for the fuller responsibilities it will soon inherit. Enlargement is the traditional tool it has been using, mostly to excellent effect, to build peace and security in Europe's eastern reaches, including the Western Balkans. But Bosnia is unlike the other accession countries. Its recent war still has political, social and economic effects. Uniquely in Europe, its political system stems from a wartime compromise between hostile factions. If the EU approaches Bosnia like any other accession country, it will fail.

Local decision-makers place different values on European integration and the steps they must take to reach it. They deploy those differences against each other, blocking progress towards the ultimate membership goal in the process. Hardliners on all sides recognise that advancing toward Europe means giving up their ideal solutions: the Serbs know that as Bosnia draws closer to Brussels, it will be harder for them to break away; the Bosniaks fear that reducing RS autonomy will be impossible. This gives both a reason to hold back, and both secretly hope to win the EU and U.S. to their side by remaining intransigent.

Brussels needs to reassess what Bosnia's unique environment requires, first formulating a member-state consensus on the security stakes and making a corresponding political commitment to see the task through, including by guaranteeing Dayton. This will help ensure that its post-OHR mission in Sarajevo is not hobbled by weak political support as the OHR itself too often has been. It should give its Special Representative a mandate to facilitate efforts by Bosnian actors to compromise, but also to control the flow of pre-accession funds; monitor Dayton compliance and progress toward membership; make tough recommendations on targeted diplomatic, political and economic sanctions, if necessary; and keep all actors, including the UN Security Council, abreast of developments so they can react quickly to any dangers. The Obama administration should recommit to helping Bosnia in the interest of wider stability in the historically explosive and still somewhat fragile region that was Yugoslavia. It can do that best by working with and supporting the EU, which has greater resources to lead on this job.

RECOMMENDATIONS

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

1. Use the 26-27 March 2009 meeting to:

- a) appoint a new High Representative and affirm that his or her executive (Bonn) powers remain available to deal with serious threats or violations of the Dayton Peace Agreement and to act in place of the national government if it is temporarily prevented from acting;
- b) affirm that the OHR will remain until Bosnia has fully met the two remaining PIC objectives (adoption by the Parliamentary Assembly of a law regulating the disposition of state, including defence, property and a constitutional amendment regulating the status of the Brčko District) and the one remaining PIC condition (full compliance with the Dayton agreement); and
- c) indicate that once Bosnia satisfies those requirements, such that no serious challenges to the Dayton agreement remain, the OHR will close without delay.

To the Office of the High Representative (OHR):

2. Announce that the High Representative will not henceforth use the Bonn Powers except to:
 - a) prevent serious threats to and violations of the Dayton Peace Agreement, including attempts to abolish or reduce the entities unilaterally or to violate the sovereignty of the state;
 - b) act in place of the Bosnian state executive if it is temporarily unwilling or unable to fulfil its duties, including in matters of appointments, dismissals, salaries and benefits; and
 - c) extend the mandate of international legal staff for up to two years if the Parliamentary Assembly has not done so.
3. Work with the legislatures of Bosnia and Herzegovina and of the entities to fill any legal or regulatory gaps that depend on OHR action.
4. Offer to facilitate the Bosnian political process, assist in resolving deadlocks and mediate discussions on constitutional reform and advancing European integration.

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

5. Authorise the EU presidency to negotiate an agreement with Bosnia and Herzegovina guaranteeing the Dayton Peace Agreement, pursuant to which the EU would specifically pledge that it will not recognise or accept:
 - a) any solution to the state's problems imposed on one or more of its constituent nations without consent;

- b) abolition of one or both entities or deprivation of their rights without consent; and
 - c) an entity's unilateral withdrawal from the state or its institutions.
6. Establish, upon closure of the OHR, an EU mission headed by a senior official double-hatted as EU Special Representative and Head of the Delegation of the European Commission, whose mandate should be, in particular, to:
- a) maintain close contact with and offer advice and facilitation to the government of Bosnia and Herzegovina, its entities and other political actors;
 - b) monitor, report and advise on compliance with the Dayton Peace Agreement and the country's progress in the Stabilisation and Association Process;
 - c) monitor, report on and assist in the process of bringing Bosnia's legislation into compliance with the EU's *acquis communautaire* and strengthening the capacity of Bosnian institutions to implement and enforce this legislation;
 - d) disburse or restrict Instrument for Pre-accession Assistance funds – which should be significantly increased – as deemed appropriate to encourage progress toward European integration; and
 - e) make recommendations, as may be required, regarding visa bans, asset freezes and suspension of the Stabilisation and Association Agreement (SAA).

7. Maintain Operation ALTHEA (EUFOR) and use it to contribute to training the Bosnian military, including through joint exercises, at least for the duration of the OHR. Thereafter, conclude an agreement on the use of military facilities for such joint exercises and for training European forces to conduct European Security and Defence Policy (ESDP) missions. Do not, however, renew the European Union Police Mission (EUPM) when its mandate expires in December 2009.

To the Members of the UN Security Council:

8. Welcome by resolution, once the OHR closes, the EU's support for the maintenance of peace and stability in Bosnia and Herzegovina and invite the EUSR to report regularly to the Council and other interested parties, including the signatories of the Dayton Peace Agreement.

To the U.S. Government:

9. Continue to support the OHR, and especially after closure of that office, cooperate closely with the EUSR, including through the U.S. embassy in Sarajevo and by seconding expert and technical staff to the EU mission.

To the North Atlantic Council:

10. Increase NATO's presence in Bosnia and Herzegovina by concluding agreements on the use of military facilities for NATO training operations and by scheduling more frequent joint exercises.

Sarajevo/Brussels, 9 March 2009

BOSNIA'S INCOMPLETE TRANSITION: BETWEEN DAYTON AND EUROPE

I. INTRODUCTION

Tensions are high in Bosnia and Herzegovina (BiH),¹ and national leaders are challenging the Dayton Peace Agreement (DPA) more openly than ever before. Frustrated by the lack of progress, the international community is considering ending its proconsular role through the Office of the High Representative (OHR) in July 2009 and henceforth relying primarily on the EU to encourage forward movement with its soft power and the attraction of eventual membership. In this increasingly precarious atmosphere, the Peace Implementation Council (PIC), which oversees implementation of the DPA for the international community, will on 26-27 March consider again whether to end its High Representative's mandate and hand over to a Special Representative of the European Union (EUSR), or to keep the OHR open.² In 2006, when the PIC first began planning OHR closure,³ it did so because the domestic situation seemed stable enough to end international supervision. This time a decision is being considered while the DPA is arguably under the greatest threat since the war ended in 1995.

¹ In this report, "Bosnia" and "BiH" are used interchangeably with "Bosnia and Herzegovina" for the sake of brevity.

² The PIC consists of 55 countries and agencies and last met at the ministerial level in May 2000; its executive authority rests in a Steering Board whose members are Canada, France, Germany, Italy, Japan, Russia, the United Kingdom, the United States, the presidency of the European Union, the European Commission, and the Organisation of the Islamic Conference (OIC), which is represented by Turkey. In this report, "PIC" normally refers to the Steering Board, which meets three to four times annually at the political director level and more often at the ambassadorial level.

³ At its June 2006 meeting, the PIC endorsed this, deciding "that it was in the interest of all of BiH to take full responsibility for its own affairs. To this end, the Office of the High Representative will immediately begin preparations to close on 30 June 2007". "Towards Ownership: From Peace Implementation to Euro-Atlantic Integration", PIC Steering Board Communiqué, 23 June 2006 (on OHR website). Crisis Group endorsed this decision while calling for an extension to December 2007 coupled with a strong EU follow-on mission; Crisis Group Report N°180, *Ensuring Bosnia's Future: A New International Engagement Strategy*, 15 February 2007.

The outgoing High Representative, Miroslav Lajčák, improved on the performance of his predecessor, Christian Schwarz-Schilling, and had been widely seen as the last occupant of the post until his surprise appointment as Slovakia's foreign minister in January 2009.⁴ The PIC is likely to appoint another HR in March, after EU member states propose a new EUSR.⁵ Every High Representative since Paddy Ashdown (May 2002-January 2006) has sought to be the last, but postponement of OHR closure would be nothing new. Closure planned for June 2007 was put off at the last minute due to "severe deterioration in the political atmosphere".⁶

Since then the political atmosphere has continued to sour, and in February 2008, the PIC abandoned a specific timeline, deciding the OHR would remain open until BiH had achieved five objectives and fulfilled two conditions.⁷ As Bosnia's leaders scramble to meet the PIC's conditions, they have veered from compromise to confrontation, raising tensions and obstructing other reform in the process. Two of the main political leaders, Milorad Dodik, the prime minister of Republika

⁴ Lajčák became foreign minister of the Republic of Slovakia on 26 January 2009, though he formally retains the title and powers of the High Representative in BiH until the PIC names a successor; the day-to-day operations of OHR are managed by Principal Deputy High Representative Raffi Gregorian.

⁵ Since 2002, the High Representative has been double-hatted as EUSR; the latter position is currently vacant, because EU rules prohibit a member of government, as Lajčák now is, from serving as EUSR.

⁶ Communiqué of the PIC Steering Board, 19 June 2007.

⁷ The five objectives were: "Acceptable and Sustainable Resolution of the Issue of Apportionment of Property between State and other levels of government; Acceptable and Sustainable Resolution of Defence Property; Completion of the Brcko Final Award; Fiscal Sustainability (promoted through an Agreement on a Permanent Indirect Taxation Authority Co-efficient methodology and establishment of a National Fiscal Council); Entrenchment of the Rule of Law (demonstrated through Adoption of National War Crimes Strategy, passage of Law on Aliens and Asylum, and adoption of National Justice Sector Reform Strategy)". The PIC added two conditions: "Signing of the SAA and a positive assessment of the situation in BiH by the PIC Steering Board based on full compliance with the Dayton Peace Agreement". "Declaration by the Steering Board of the Peace Implementation Council", 27 February 2008.

Srpska (RS) and leader of the Alliance of Independent Social Democrats (Savez Nezavisnih Socijaldemokrata, SNSD), and Haris Silajdžić, the Bosniak member of the state presidency and head of the Party for Bosnia and Herzegovina (Stranka za Bosnu i Hercegovinu, SBiH), are both challenging the DPA. Dodik calls for the OHR to close immediately and demands the right to a referendum on RS independence; Silajdžić wants the international protectorate to continue and insists on abolition of RS and creation of a centralised state.

These goals are the twin poles of radical DPA revision. Neither is currently achievable: as a seasoned diplomat put it, “the probability of Republika Srpska becoming independent is the same as the probability of Bosnia and Herzegovina becoming a centralised state, and both are zero”.⁸ But they persist as policy goals that incline each side to avoid compromise. An RS bid for independence would only have a chance of success as a last resort against a real threat to the entity's autonomy, while only RS secession would allow the rump state left behind to make constitutional revisions that are currently impossible.

Radical revisionism is the real danger the EU faces in Bosnia, as it prepares to take on the larger responsibility that will eventually be its lot regardless of the immediate decision on the OHR. Each step on the road to EU membership is a step away from the revisionists' favoured solutions in a country where the European perspective involves sacrifice of deeply felt nationalist hopes, be they for a separate Serb republic or a unitary state without entities or ethnic privileges. While more moderate leaders seek common ground in order to move Bosnia toward European integration, others push in the opposite direction, both convinced they articulate their nations' true interests.

Since the 2006 elections, in which Dodik and Silajdžić and their parties defeated more moderate competitors,⁹ Bosnian parties have been increasingly hostile to each other.¹⁰ The High Representative says Bosnia is mired

in “complete political stagnation”.¹¹ There is no agreement on the future, and elite mistrust reflects a genuine absence of social trust.¹² Even well-intentioned proposals are treated as ploys. Consensus attained through painstaking negotiations breaks down quickly over trivial matters. Purely technical issues assume a nationalistic valence; indeed, an observer noted that in the current atmosphere, “there are no technical matters”.¹³ National and international observers alike described the mood as the worst since at least the immediate post-war period.¹⁴

This should not obscure the genuine progress Bosnia has made in some areas.¹⁵ Before the current standstill, it was moving in fits and starts toward EU membership. On 1 January 2008 a facilitation and readmission agreement helped launch a visa liberalisation dialogue that should eventually lead to visa-free travel to the EU for Bosnian citizens. Signing the Stabilisation and Association Agreement (SAA) on 16 June 2008 was important: the SAA is the first legal agreement between Bosnia and EU member states on the road to membership. An Interim Agreement on Trade came soon after. But Bosnia has been slow to meet its obligations under these agreements and has made virtually no other progress on the European agenda.

Domestically, three opposing armies – Bosniak, Serb and Croatian – are gone, replaced by a single, multi-national and professional force. The police that once terrorised returnees and harboured war criminals now earns the praise of international prosecutors and is among the most trusted institutions nationwide. A state

⁸ Crisis Group interview, European diplomat, Sarajevo, 15 December 2008.

⁹ Haris Silajdžić won the Bosniak seat on the presidency with 63 per cent of the vote; Milorad Dodik's party, the SNSD, won 43 per cent of the vote in Republika Srpska, enough for 41 seats in the National Assembly, far more than its nearest competitors. Results taken from the Central Electoral Commission website www.izbori.ba.

¹⁰ Several leading members of the BiH Parliamentary Assembly described the results of the 2006 elections as a sure recipe for paralysis and “four lost years”, Crisis Group interviews, 15 December 2008, 14 January 2009.

¹¹ OHR document made available to Crisis Group, January 2009.

¹² A survey by Oxford Research International for the United Nations Development Programme (UNDP) found that “with only around one in 14 respondents (7.2%) saying you can trust other people, there appears to be a virtual breakdown in social trust”. “The Silent Majority Speaks”, Oxford Research International, p. 14.

¹³ Dr Florian Bieber, lecturer, University of Kent, comment at conference “Beyond Statebuilding: NATO and EU Conditionality in Bosnia and Herzegovina”, Sarajevo, 19 December 2008. For example, a law regulating genetically modified food was supported by all parties but failed due to inability to agree on the ethnic composition of a (powerless) advisory board. Crisis Group interview, member of Parliamentary Assembly, Sarajevo, 18 December 2008.

¹⁴ Crisis Group interviews, leading Bosnian politician, Banja Luka, 17 October 2008, European Commission official, 2 December 2008. Many national and international officials agreed in Crisis Group interviews, October 2008–January 2009.

¹⁵ Crisis Group interviews, adviser to RS prime minister, Brussels, February 2009; national and international judicial sector staff, late October and 11 December 2008; NATO official, 22 January 2009.

justice system functions smoothly, without nationalist strife. Common institutions collect and distribute revenues, guard the borders and search for missing persons. Refugees from Srebrenica, site of the worst massacre of the 1992-1995 war, were given the right to vote in the municipality, even if they no longer reside there. There has been no breakdown in government services or increase in inter-ethnic violence or separation, even after Kosovo independence and the arrest of Radovan Karadzic, the wartime Serb leader.

But several independent events could still throw Bosnia into a severe crisis in 2009. In February the State Investigation and Protection Agency (SIPA) filed a report allegedly implicating Milorad Dodik and other leading RS figures in fraud and embezzlement of 145 million convertible marks (KM) (€74 million).¹⁶ International prosecutors, whose mandate expires in December 2009, are in charge of these inquiries, which have already produced some of the sharpest confrontations between RS and the state.¹⁷ In response, Dodik said his government was considering "Plan B", pulling its representatives out of state institutions, thus paralyzing them. He accused those behind the case of having "created a trigger which, if it is pulled, will lead to the definitive disintegration of this country",¹⁸ and escalated calls for RS independence, demanding a right to opt out of BiH after three years and suggesting the

country follow Czechoslovakia's model of a peaceful break-up.¹⁹

Bosnia and Herzegovina also faces the global economic downturn with no demonstrated ability to respond effectively.²⁰ Diaspora remittances are anticipated to fall drastically; demand for Bosnian export goods is already dropping, driving up unemployment.²¹ Many banks are foreign-owned, and repercussions from the European banking crisis could collapse the credit and real estate market.²²

BiH is the only country in Europe, other than Kosovo to a residual extent, in which the international community holds executive powers. Some Bosnian leaders wish the international protectorate to continue; others are adamant that it should end. In February 2007 Crisis Group recommended that, by the end of 2007, the PIC close an OHR that had largely lost its credibility and apparently become toothless, and simultaneously transition to a robust EUSR with a new mandate and policy tools. At the same time, it cautioned that for this policy to succeed, the EU had to increase its financial and political commitment. The current report discusses the policy implications of Bosnia's failure as yet to satisfy the terms the PIC set in 2007 for the end of the international community's proconsular role – though key Bosnian politicians are engaged in negotiations that could change this before the end of the year – and recommends a revised course.

¹⁶ "Bosnia fraud probe triggers political clashes", *Balkan Insight*, 20 February 2009 (online); "Posebna sjednica Vlade Republike Srpske" ["Special session of the RS Government"], RS government press release, 20 February 2009. Bosnians refer to SIPA by its English acronym rather than its Bosnian name, Državna agencija za istrage i zaštitu.

¹⁷ In September 2008 the RS government ordered entity institutions not to comply with a Court of Bosnia and Herzegovina subpoena: "Anti-European Move by the RS government", press release, OHR, 24 September 2008. Several weeks later, the RS premier threatened to use force against state investigators, warning that that "they will not enter [RS government premises] without resistance from the RS police". "Prete mi jer volim Srpsku" ["They threaten me because I love Srpska"], *Večernje novosti*, 3 October 2008 (online). A senior Bosnian government official told Crisis Group these threats were merely a display of the premier's "bombastic" personality and should not be taken literally, but they are still cause for concern. Interview, Sarajevo, October 2008. In mid-November 2008, another attempt to search the RS government building ended with a reported bomb threat, after which the building was evacuated, surrounded by RS special police, and a large quantity of documents was allegedly removed. Crisis Group interviews, Western ambassador, Sarajevo, 7 January 2009, OHR official, Sarajevo, 15 January 2009.

¹⁸ Boro Marić, "Neću pobjeći s megdana" ["I will not flee the battlefield"], interview with Milorad Dodik, *Politika*, 22 February 2009.

¹⁹ Jurica Gudelj, "Dodik: Teritorija RS ne smije biti upitna" ["Dodik: RS territory must not be open to question"], *Nezavisne novine*, 21 February 2009 (online); "Bosnian Serb softens breakaway talk", *Balkan Insight*, 4 March 2009 (online).

²⁰ The European Bank for Reconstruction and Development estimates that Bosnia will be "the hardest hit" in the region, with growth declining from an annual 4.5 per cent to 1.5 per cent. "EBRD sees glum forecast for Balkans", *Balkan Insight*, 28 January 2009 (online).

²¹ "Bosnia recession brings mass job losses", *Balkan Insight*, 3 February 2009 (online).

²² Real estate prices fell 20 to 40 percent by January 2009, and the number of transactions fell by half between November 2008 and January 2009. "Bosnia real estate seen entering slump", *Balkan Insight*, 30 January 2009 (online).

II. THE ELEMENTS OF STALEMATE

A. THE PRUD PROCESS

On 8 November 2008, the leaders of Bosnia's top three political parties, each representing one of the state's constituent nations – Dodik; Sulejman Tihić, the head of Bosnia's oldest and largest party, the Party of Democratic Action (Stranka demokratske akcije, SDA); and Dragan Čović, president of the Croatian Democratic Union of BiH (Hrvatska demokratska zajednica BiH, HDZ) – announced they had reached what they called an historic compromise. This announcement, which took almost everyone by surprise, became known as the "Prud agreement".²³ Since their initial meeting, Čović, Dodik and Tihić have met three more times (on 22 December 2008, 26 January and 21 February 2009), on each occasion refining the original terms and adding or amending elements that had been left unspecified. The process has become a lengthy negotiation that is set to continue throughout 2009. It represents by far the most serious and hopeful attempt to break out of the country's paralysis since the failed attempt to reform the constitution in the spring of 2006.

The Prud process deals with two sets of issues: proposing solutions to the outstanding PIC conditions and tackling constitutional reforms aimed at making the state more efficient and capable of joining the EU.²⁴ It has, however, a double problem. The Bosniak political parties may be too divided to support any of it, and the Serb parties may be interested only in the minimum necessary to close the OHR. While it seems a genuine effort to break the deadlock, the process is also clearly timed to influence the international community.²⁵ Its success is far from guaranteed. Dodik walked out of the 21 February session after news of the SIPA report broke.

²³ Named after the small village in Odžak municipality in northern Bosnia where it was concluded.

²⁴ See "Declaration by the Steering Board of the Peace Implementation Council", 27 February 2008. The party leaders' agreement addressed in some detail two incomplete conditions: "Acceptable and Sustainable Resolution of the Issue of Apportionment of Property between State and other levels of government" and "Completion of the Brčko Final Award"; the objective on defence property was subsumed under state property.

²⁵ Crisis Group interview, member of BiH Parliamentary Assembly, 17 December 2008.

The components that comprise the Prud agreement are as follows:²⁶

- State Property. A dispute over the ownership of state property, including that falling to Bosnia and Herzegovina from the former Yugoslavia, has required the OHR to issue repeated prohibitions on its sale or other disposition. The PIC made resolution of the property controversy one of its conditions for closing the OHR. In November 2008, the parties appeared to agree to divide the property, with the state retaining title to whatever it required to operate its institutions and the remainder being distributed among the entities, cantons and municipalities. As with the other components, this apparently clear understanding immediately fell apart, with the participants expressing incompatible views on procedure. RS authorities argue that property should be registered first at the entity rather than the state level.²⁷ The division of state property is also an issue that attracts intense SBiH opposition.²⁸ The law on state property will require a greater spirit of compromise to pass.²⁹
- Brčko District. After much haggling, the parties agreed to endorse an amendment to the constitution echoing the language of the Arbitral Tribunal, whose Final Award defined the status of the district

²⁶ "Zajednička izjava [Joint Declaration] predsjednika HDZ Dragana Čovića, SNSD Milorada Dodika i SDA Sulejmana Tihića", 8 November 2008.

²⁷ Crisis Group interview, adviser to RS prime minister, Brussels, 12 February 2009.

²⁸ "Osvrt na zajedničku izjavu Čović-Tihić-Dodik", press release, SBiH, 13 November 2008. Silajdžić recently explained that "BiH will never renounce its property. If we have a situation where the state transfers its property, then the entities become states, which I can never accept". "Silajdžić samo za državnu imovinu" ["Silajdžić only for state property"], *Nezavisne novine*, 24 January 2009 (online). A source close to the SBiH leadership explained that in its view, division of state property in this fashion "would mean the end of the state" and expressed confidence the SDA would suffer defections from its delegation if it came to a vote. Crisis Group interview, Sarajevo, 12 January 2009.

²⁹ Zvonimir Kutleša, head of the State Property Commission, has prepared a draft law on state property that would simultaneously assign property to the BiH state, remove it from the state, and reassign it to its new owners (the state, the entities and the municipalities), thus resolving an arcane dispute about procedure that has stalled the issue since November 2008. There is no word on whether Dodik, Tihić and Čović accept this, and if they do, whether they can persuade enough smaller parties to muster even a simple majority in the Parliamentary Assembly. "Kutleša traži podršku od 'trojke'" ["Kutleša wants the support of the 'troika'"], *Dnevni Avaz*, 24 February 2009 (online).

and granted the Constitutional Court jurisdiction to hear cases involving disputes between it and the entities.³⁰ The draft amendment contains a national veto, acceptable to Brčko's international supervisor, requiring that at least one-fifth of the delegates of each nation in the municipal assembly vote in favour of any Constitutional Court case. SBiH leader Haris Silajdžić opposes this solution, but the Council of Ministers has approved the amendment and forwarded it to the Parliamentary Assembly, where it may pass by mid-April.³¹

- Population Census. The controversy has to do with whether the census of 2011 will include national or confessional identity, which would presumably show how segregated the country remains nearly a generation after the war. It might also show that Bosniaks have become an outright majority, which would reinforce Serb and Croat fears of being outvoted and stimulate independence efforts. The parties agreed to include such information, in exchange for deferring the application of census data in apportionment until 2014, and to fund refugee return programs at an increased rate before the census. On 26 January 2009, they agreed to seek a 500 million KM (€256 million) loan to be devoted to refugee return and disbursed in proportion to population.
- Constitutional Reform. This is the most important and controversial issue, and the party leaders have been sparing with details.³² The original communiqué noted only that they had agreed to amend the constitution and had discussed four areas: compli-

ance with the European Convention on Human Rights, state competencies, improving the effectiveness of state institutions and "territorial organisation – the middle level of government". On 26 January 2009 they added several "basic principles": BiH is a sovereign state; it is a democratic, social and secular state founded on the rule of law and with legislative, executive and judicial powers; and it is a decentralised state, with three levels of government, each of which exercises legislative, executive and judicial authority. They added that the middle level should consist of four units – which would eliminate the cantons in the Federation of Bosnia and Herzegovina (FBiH) – but they gave contradictory explanations of how this would be done.

Dodik immediately insisted the RS was one of the four entities, and he did not care what the others did with the remaining territory, while Čović and Tihić said four new entities would cut across existing lines. Čović added that the actual drawing of borders would be the last step of the constitutional process.³³ Some Prud language is taken from the Kreševo Declaration, a 2007 pan-Croat proposal for constitutional reform that was widely seen as a way to obtain a Croat-dominated entity.³⁴ Before walking out on 21 February, Dodik conditioned further constitutional reform talks on agreement the RS has the right to secede after a three-year waiting period.³⁵

- Budget. The parties agreed to support the budget proposed by the Fiscal Council, and on 28 January 2009 the Parliamentary Assembly did indeed pass it.³⁶

³⁰ "Gregorian welcomes Council of Ministers' proposal on Brčko", OHR press release, 12 February 2009. Raffi Gregorian is the international supervisor of the Brčko District and also the Principal Deputy High Representative. The Arbitral Tribunal was charged with determining the status of Brčko after the parties could not agree on it at Dayton.

³¹ SBiH delegates voted for the amendment on its first reading but signalled they would demand removal of the ethnic veto: Mirza Čubro, "Podrška amandmanu o Brčkom" ["Support for the Brčko amendment"], *Nezavisne novine*, 4 March 2009 (online). The SBiH had previously rejected a similar proposal, and Silajdžić and the party leadership continue to reject it, but the party's delegates to the Brčko Assembly all voted in favour of the amendment. "Gregorian welcomes progress on Brčko", OHR press release, 6 February 2009; Nataša Krsman, "Protiv uspostave novih entiteta" ["Against the establishment of new entities"], *Nezavisne Novine*, 8 February 2009 (online); the SBiH previously rejected a similar proposal: Crisis Group interview, senior OHR official, 21 October 2008.

³² Several senior Serb officials told Crisis Group they did not believe more than the minimal constitutional reform necessary to comply with the European Convention on Human Rights could pass before the 2010 elections. Interviews, Banja Luka, Sarajevo, 20 October 2008, 14 January 2009.

B. THE BOSNIAKS

The Bosniaks have consistently sought an efficient, centralised Bosnian state.³⁷ Their leaders are not

³³ Rade Šegrt and Mirza Čubro, "Nije bilo riječi o granicama regija" ["There was no talk about the borders of the regions"], *Nezavisne novine*, 27 January 2009 (online); "RS neće moći ostati netaknuta" ["RS will not emerge untouched"], interview with Sulejman Tihić, *Dnevni Avaz*, 28 January 2009 (online); "Čović: Nove teritorijalne jedinice u BiH moraju prelaziti entitetske granice" ["Čović: the new territorial units in BiH must cross entity borders"], HDZ BiH (www.hdzbih.org).

³⁴ This was the interpretation on the HDZ BiH's website: "The Croats would gain the most; they would obtain a federal unit [in which they are] dominant". "Povijesni sporazum u BiH: četiri teritorijalne jedinice" ["Historic compromise in BiH: four territorial units"], www.hdzbih.org. The declaration is available on the website.

³⁵ Gudelj, "Dodik: Teritorija RS ne smije biti upitna", op. cit.

³⁶ Mirza Čubro, "Budžet BiH konačno usvojen" ["BiH budget finally adopted"], *Nezavisne Novine*, 29 January 2009 (online).

really interested in the Federation of Bosnia and Herzegovina (FBiH), which they see as “a temporary system, hardly worthy of their attention”.³⁸ But Serb vetoes have kept the state from working as Bosniaks desire.³⁹ Since the war, the Bosniaks have consistently appealed for international support as the conflict's greatest victims.⁴⁰

Tihić has recently broken with this consensus, accepting that the RS is a permanent part of BiH, giving up the tactic of appealing to internationals and calling for an end to “the philosophy of victimhood and self-pity”.⁴¹ His chief rival, Silajdžić, remains true to the hard line: the RS is fundamentally illegitimate; Bosnia needs a new, modern and unitary constitution to replace Dayton; the international community has a duty to help Bosnia achieve this.

The Bosniak community is evenly and bitterly divided over these issues.⁴² Relations between Tihić and Silajdžić

and between their supporters are extremely tense. The SBiH accuses Tihić of betraying his nation and the state.⁴³ Two powerful non-party figures moderate this conflict: Mustafa efendi Cerić, the *raisu-l-ulama* (supreme authority of the Islamic community of Bosnia), and Fahrudin Radončić, a wealthy businessman and owner of Bosnia's largest-circulation daily, *Dnevni Avaz*. For now, both back Tihić, giving him a considerable advantage.

This divided constituency weakens the Bosniak position. Whatever concessions Tihić makes in the Prud process expose his party to nationalist attack from within his own community and decrease his ability to deliver enough Bosniak votes to pass agreed measures. The SBiH works to exploit internal SDA divisions, targeting a party faction aligned with Bakir Izetbegović, son of the late Bosnian president and party founder, Alija Izetbegović.⁴⁴

If the SDA has recast itself as the party of historic compromise, the SBiH remains the party of radical revision, calling for abolition of the entities and establishment of a centralised state with no role for nationality.⁴⁵ The party was largely responsible for defeating the last serious attempt to amend the constitution, in 2006, on the grounds that it did not go far enough toward

³⁷ Some Bosniak leaders argue the state must be sufficiently strong to protect their nation against a repeat of the crimes, which they consider genocidal, committed by RS forces. Crisis Group interview, senior Bosniak leader, Sarajevo, 18 December 2008.

³⁸ Marsaili Fraser et al., “Governance Structures in BiH: Capacity, Ownership, EU Integration, Functioning State”, Foreign Policy Initiative, 2007, p. 26.

³⁹ Veto powers exercised by representatives of the two entities, the three constituent peoples, or both, are built into executive, legislative and some judicial decision-making by the constitution. A senior adviser to the Bosniak member of the presidency has argued that it is “absurd” that “the Republika Srpska parliament has the ability to confirm a veto” only because it contains very few non-Serb delegates, which “is precisely because genocide was committed by Republika Srpska”. Damir Arnaut, “Implications of the ICJ Verdict”, statement to the World Federalist Movement, 22 May 2007.

⁴⁰ Crisis Group interview, non-governmental organisation (NGO) representative, Banja Luka, 19 January 2009.

⁴¹ In October 2008 Tihić assured the RS National Assembly that no one could dissolve the entity without its consent. On 8 November 2008, he signed an ambitious platform of reform proposals with the Serb leader, Milorad Dodik, and his Croat counterpart, Dragan Čović. In December Tihić, the only major party leader who was personally a victim of serious war crimes, called on his people to abandon “the philosophy of victimhood and self-pity”. Sulejman Tihić, press conference, SDA, Sarajevo, 26 December 2008. See also “OHR Welcomes Forward Looking Speech”, press release, OHR, 28 December 2008.

⁴² In the 2006 elections, Silajdžić defeated Tihić for the post of Bosniak member of the state presidency, and his party narrowly lost to the SDA, gaining eight seats in the parliament's House of Representatives to the SDA's nine; Zlatko Lagumdžija's Social Democratic Party (SDP, Socijaldemokratska partija) won five. In the 2008 local elections, the SDA crushed the SBiH, though some analysts believe that recent contro-

versies over the Prud agreement have swung Bosniak opinion partly back toward Silajdžić. Crisis Group interviews, member of BiH Parliamentary Assembly, 18 December 2008; OHR official, 8 January 2009; Western ambassador, Sarajevo, 16 January 2009.

⁴³ SBiH press releases 9 November, 26 December 2008, 20 January, 26 January 2009.

⁴⁴ For example, the SBiH issued a press release attacking Tihić's negotiations on the Prud agreement and noting the similarity between their own positions and those Bakir Izetbegović took in a recent interview: “SBiH povodom oprečnih stavova rukovodstva SDA u vezi Prudskog sporazuma” [“The SBiH on the issue of contradictory statements by the SDA leadership on the Prud agreement”], press release, Sarajevo, 20 January 2009. The SDA has taken care to present a united front in public: “Glavni odbor SDA jednoglasno podržao sporazum iz Pruda” [“The SDA Main Board has unanimously supported the Prud agreement”], press release, Sarajevo, 24 December 2008.

⁴⁵ The electoral platform calls for a state in which “full sovereignty will belong to all the citizens of Bosnia and Herzegovina as an indissoluble whole, and that sovereignty cannot be divided and transferred to any partial collective entities, whether they be formed on ethnic or confessional basis... In this state, political organisations will not be able to act in the name of collective entities, but only and exclusively in the name of citizens as sovereign individuals”. It does permit “regional autonomy”, but only on the basis of “geographic, economic, traffic and cultural criteria”. See also the SBiH draft constitution at www.zabih.ba.

weakening the RS.⁴⁶ Similarly, it rejected the High Representative's platform on police reform, because it would not entirely eliminate the RS police.⁴⁷ The SBiH is strenuously trying to foil the Prud process⁴⁸ but has yet to advance alternative solutions capable of attracting support outside the Bosniak community.

The SBiH placed great hopes in Bosnia's case against Serbia at the International Court of Justice (ICJ), expecting a ruling that the RS was the product of genocide and that the international community would then be compelled to abolish it.⁴⁹ Legalism pervades the SBiH's arguments. It opposes Prud's proposed agreement on state property, for example, claiming that the state already has legal title to all its property and thus no need to share with the entities.⁵⁰ This

ignores the entire history of the state-property debate as it has actually transpired.⁵¹

The SBiH seems untroubled by the lack of Serbian support for its major positions and uninterested in seeking common ground. Though Serb votes are required for constitutional or institutional reform, this is not the party's primary concern.⁵² A sympathetic observer believes Silajdžić is holding out until the international community, led by the Obama administration, realises Bosnia is in crisis and intervenes to replace the Dayton order with a new constitution without entities.⁵³ Another suspects the hard line is a negotiating ploy to wring greater Serb and Croat concessions.⁵⁴ It is no small irony that a party staking its hopes on international intervention attracts broad condemnation from foreign officials.⁵⁵ Indeed, a seasoned diplomat commented that Silajdžić's party "was living in a make-believe world".⁵⁶ Most disturbingly, sources close to Silajdžić seem aware of the dangerous consequences of their position, claiming "maybe things will have to get worse before they get better".⁵⁷

C. THE SERBS

Of the three peoples, the Bosnian Serbs would most like to be independent, but understand this is presently impractical, because they would not receive sufficient international recognition. Yet, they are also the most content with their current position in Bosnia.⁵⁸ RS Premier Dodik called on 14 February 2009 for BiH to

⁴⁶ Crisis Group Report, *Ensuring Bosnia's Future*, op. cit.

⁴⁷ "Silajdžić refused to agree to anything that would recognise the existence or legitimacy of the RS, despite it being a feature of Dayton. For his part, Dodik did not want to 'give up' the RS police because he believed it would weaken his position in any future talks on a new constitution. Second, it now seems clear that neither man wanted to give up the control of police they currently exercise through their parties' participation in government". Crisis Group interview, Principal Deputy High Representative Raffi Gregorian, September 2007.

⁴⁸ Crisis Group interview, Bosnian official, Sarajevo, 12 January 2009.

⁴⁹ For example, in his address to the UN General Assembly on 24 September 2008, Silajdžić recalled a (non-binding) General Assembly resolution asserting that "no State shall recognise as lawful a situation created by" genocide or crimes against humanity, "nor render aid or assistance in maintaining that situation". He asked, "if these principles had been applied, would the institutions identified by the ICJ as perpetrators of genocide still exist?" His legal adviser has argued that "[t]here are potentially legal obligations to revisit the entire issue of Dayton, of the Republika Srpska existence, and at the very least, of the presence of Srebrenica in Republika Srpska, since the Court held that Srebrenica was taken over through an act of genocide... Dayton basically just ratified that situation created on the ground by genocide". Damir Arnaut, "Implications of the ICJ Verdict", op. cit. The ICJ ruled that Serbia had violated the Genocide Convention by failing to do all that was necessary to prevent and punish genocide, though only in Srebrenica. But it concluded that Serbia had not itself committed, and was not complicit in, genocide. Further, it required Belgrade to transfer persons indicted for genocide to the ICTY and dismissed claims for reparations. The judgment has had no noticeable effect on Bosnia's internal politics or its relations with Serbia.

⁵⁰ Haris Silajdžić, "Open letter and analysis regarding key issues in Bosnia and Herzegovina, e.g. state property and census", 18 November 2008, available on the presidency website (www.predsjednistvobih.ba).

⁵¹ The PIC Steering Board "called on the BiH authorities to provide a lasting solution to this issue by regulating the issue of State property" at its 24 September 2004 session.

⁵² An official close to Silajdžić told Crisis Group he believed there was no chance of agreeing with Serb leaders on constitutional reform and rejected the very idea of seeking middle ground with the SNSD. Crisis Group interview, Sarajevo, 12 January 2009.

⁵³ Crisis Group interview, senior OHR official, Sarajevo, 8 January 2009.

⁵⁴ Crisis Group interview, senior Bosniak political leader, Sarajevo, 18 December 2008. This observer recalled that Silajdžić had tried the same policy during the failed effort to reform Bosnia's police: "he rejected 51 per cent because he thought he could get everything; then he panicked and accepted 5 per cent".

⁵⁵ Crisis Group interviews with all members of the PIC Steering Board, numerous EU, U.S. and senior OHR officials.

⁵⁶ Crisis Group interview, Western diplomat, 16 January 2009.

⁵⁷ Crisis Group interview, Bosnian official, Sarajevo, 12 January 2009.

⁵⁸ Crisis Group interviews, senior Serb politician, Banja Luka, 20 October 2008; PIC Steering Board ambassador, Sarajevo, 30 October 2008.

be reconfigured as a “union of federal states”⁵⁹ and later demanded the right to secession. The Serbs are building the institutions they would need for independence, although they are also useful within Bosnia.⁶⁰ RS leaders may still not know if a strong RS inside Bosnia or an independent RS is their best option.⁶¹ Their decision will be based largely on actions of the international community and the Bosniak leadership.

Bosnian Serb politics revolve around Dodik, who has unprecedented power as unchallenged leader of the SNSD, the party that dominates the RS, holding 41 of 83 seats in the RS National Assembly (the next largest has only fifteen) and controlling the majority of municipal governments. Dodik has great influence over the Bosnian state,⁶² no law can pass and no important government or diplomatic post be filled without his consent.

There is some evidence, though party leaders deny it, that the SNSD uses its influence to obstruct the operation of the state, with the aim of making it appear hopelessly dysfunctional in contrast with a modern and efficient RS. SNSD representatives at the state level have opposed or frustrated institutions required for European integration, while establishing analogous ones in RS.⁶³ Over time, they may hope this can build international support for RS independence.⁶⁴ SNSD leaders claim their actions are compelled by Bosniak obstruction or power grabs.⁶⁵

The upper reaches of the party show an impressive level of message discipline and loyalty to Dodik, occasional rumours of irritation with his prominence notwithstanding.⁶⁶ Dodik is pressing for even greater control,

proposing, for example, to change the law to provide for appointed, instead of elected, municipal mayors in 2008.⁶⁷

Despite their many advantages, senior Bosnian Serb leaders often demonstrate a keen sense of vulnerability. The prevailing Bosnian Serb view of post-war history is one of steady loss of autonomy to a growing central state, advanced by the OHR in collaboration with Bosniak politicians.⁶⁸ For years, international policy has been to strengthen the state at the expense of the entities, and numerous reforms were imposed by the High Representative or passed by national institutions under his strong pressure. This has been necessary for Bosnia to become capable of functioning without international assistance, but it has been done without much apparent understanding or sympathy for Serb views and has left an abiding suspicion of even the most trivial moves to grant additional powers to the state.⁶⁹ Bosnian Serbs and Croats are especially sensitive to the threat of being outvoted by the Bosniaks.⁷⁰ The fear of losing some of the barriers to this contributed heavily to the Serb response to the High Representative's use of his special Bonn powers in October 2007.⁷¹

The Bosnian Serb leadership believes the time for transferring authority from the entities to the state has ended.⁷² In his public statements, Dodik rules out any additional transfers and calls for the “return” of authority to the entity level. Privately, senior SNSD figures support a trade, with some competences transferred from state to entity and others from entity to state.⁷³ Serb leaders also give different reasons for their moves to reclaim

⁵⁹“Dodik wants Bosnia as ‘union of states’”, Balkan Insight, 16 February 2009 (online).

⁶⁰ Crisis Group interviews, PIC Steering Board ambassador, Sarajevo, 3 November 2008; senior OHR official, Sarajevo, 9 January 2009.

⁶¹ Crisis Group interview, senior Western diplomat, Sarajevo, 5 November 2008.

⁶² A senior OHR official described Dodik as “in full control” of BiH, Crisis Group interview, Sarajevo, 7 January 2009.

⁶³ Crisis Group interview, Bosnian official, Sarajevo, 8 January 2009.

⁶⁴ Crisis Group interviews, senior Western diplomat, 5 November 2008; OHR official, 17 December 2008; senior OHR official, 7 January 2009; senior Bosnian official, 8 January 2009.

⁶⁵ Crisis Group interviews, senior SNSD leader and members of RS government, Banja Luka, 12 November, 16 December 2008, 21 January 2009.

⁶⁶ Crisis Group interviews, members of the RS government and senior SNSD leaders, Banja Luka and Sarajevo, October 2008-January 2009, gave this consistent impression. But several senior diplomats and national observers told Crisis Group some SNSD members were unhappy with Dodik and

would not be sorry to see him go. Crisis Group interviews, senior Western diplomat, Sarajevo, 18 December 2008, PIC Steering Board ambassador, Sarajevo, 13 January 2009.

⁶⁷ The proposal was only abandoned under strong international pressure. Crisis Group interview, EU member-state diplomats, 19 November 2008.

⁶⁸ The view can become conspiratorial: in Dodik's words, international policy had been “Let's pull the Serbs into the Dayton agreement, and then we will take away the right of Republika Srpska to exist, by talking about correcting Dayton”. Boro Marić, “Neću pobjeći s megdana”, op. cit.

⁶⁹ Crisis Group interview, PIC Steering Board ambassador, Sarajevo, 30 October 2008; Bieber, comment, op. cit.

⁷⁰ In his speech to the National Assembly of Republika Srpska on 29 October 2007, Dodik presented a hypothetical scenario in which under certain circumstances, the rules of procedure demanded by the High Representative would allow Bosniak delegates to pass a law without any Serb or Croat votes.

⁷¹ See below, Section II.F.

⁷² Crisis Group interviews, members of RS government, Banja Luka, 12 November, 16 December 2008.

⁷³ Crisis Group interview, senior SNSD member, Banja Luka, 21 January 2009.

authorities from the state, with Dodik arguing they were wrongly transferred and others stressing that certain state institutions do not function well. There is some validity to the latter point: the RS government is more efficient than the FBiH's, consumes a much smaller percentage of GDP and is implementing reforms more quickly. RS has also privatised many more state enterprises, an area where the FBiH lags.⁷⁴

At moments of political tension since the 2006 election campaign, RS leaders have repeatedly asserted a right to independence.⁷⁵ Even moderate Bosniak leaders say this would lead to war.⁷⁶ On 26 January 2008, the SNSD adopted a set of conclusions, one of which claimed the right to self-determination up to and including secession.⁷⁷ After Kosovo declared its independence on 17 February 2008, the RS National Assembly proclaimed, "it has the right to determine a position on its legal status through ... a referendum".⁷⁸ It repeated this on 15 October.⁷⁹ In private, senior RS figures dis-

miss concerns about an independence referendum as "pure stupidity" and call referendum talk a reaction to Bosniak rhetoric about abolition of RS.⁸⁰ But Bosniak and Croat leaders take the matter seriously.⁸¹

RS leaders also remain ambivalent about the status of Brčko District, which separates the two halves of their entity. The Arbitral Tribunal ruled on 5 March 1999 that it is a "condominium" shared by RS and the Federation (FBiH) and enjoying self-government separate from both entities.⁸² The RS National Assembly rejected the tribunal's Final Award in 1999, and since then, leaders of the RS and SNSD have occasionally claimed the district should be "returned" to RS.⁸³ Dodik has said, "we haven't even got our 49 percent of the territory [of BiH] to which we are entitled under Dayton. We will demand our land back".⁸⁴ He has agreed to the proposed constitutional amendment that would regulate the district's status, however, and SNSD support for the amendment may indicate a recent change in position.⁸⁵

The RS has occasionally challenged the state overtly. On 11 September 2008, for example, it sought to withdraw unilaterally from the state electricity transmission company, Elektroprenos BH, an important component of the reformed energy sector.⁸⁶ Confronted by an unusually stern PIC ultimatum,⁸⁷ it backed down temporarily

⁷⁴ "Country Report", International Monetary Fund, no. 08/327, October 2008, pp. 4, 18; Crisis Group interview, member of RS government, Banja Luka, 12 November 2008.

⁷⁵ Crisis Group Report, *Ensuring Bosnia's Future*, op. cit.

⁷⁶ The RS National Assembly declared that it had this right in February and October 2008, and no senior Serb politician has forsworn it. A senior Bosniak politician and member of the Parliamentary Assembly told Crisis Group that if RS tried to break away, "we would certainly – certainly – defend Bosnia". Crisis Group interview, Sarajevo, 18 December 2008.

⁷⁷ "Thirty-third report of the High Representative for Bosnia and Herzegovina", UNSC S/2008/300, 7 May 2008.

⁷⁸ "Rezolucija o nepriznavanju jednostrano proglašene nezavisnosti Kosova i Metohije i opredjeljenjima Republike Srpske", ["Resolution on non-recognition of the unilaterally declared independence of Kosovo and Metohija and the stance of Republika Srpska"], 22 February 2008.

⁷⁹ The assembly adopted a document prepared by the President of Republika Srpska on 30 September 2008, "Informacija o ukupnim odnosima u Bosni i Hercegovini povodom novonastale političke situacije nakon neovlaštenog govora predsjedavajućeg predsjedništva Bosne i Hercegovine pred generalnom skupštinom organizacije ujedinjenih naroda i parlamentarnom skupštinom cavjeta evrope" ["Information on general relations in Bosnia and Herzegovina on the occasion of the new political situation after the unauthorized speech of the President of the Presidency of Bosnia and Herzegovina before the General Assembly of the Organisation of the United Nations and the Parliamentary Assembly of the Council of Europe"]. It stated, inter alia, that the Assembly would consider "any demands of the authorities of Bosnia and Herzegovina or the international community to drastically reduce the competencies of Republika Srpska, to devalue or disrespect Republika Srpska, as an act threatening [its] sovereignty and constitutional position" and would react to this using "all legal and political means, including the right to a referendum of citizens of Republika Srpska". Conclusion 01-1592/08, 15 October 2008.

⁸⁰ Crisis Group interview, member of RS government, Banja Luka, 16 December 2008.

⁸¹ Crisis Group interviews, members of BiH Parliamentary Assembly, 17, 18 December 2008. A prominent Bosnian official believed RS would attempt to leave Bosnia "within three months" of the departure of the OHR. Crisis Group interview, Sarajevo, 12 January 2009.

⁸² For details on the Brčko District and the Arbitral Tribunal Final Award, see Crisis Group Balkans Report N°144, *Bosnia's Brčko: Getting In, Getting On and Getting Out*, 2 June 2003.

⁸³ Crisis Group interview, OHR official, Sarajevo, 20 October 2008.

⁸⁴ Interview, *Večernje Novosti*, 8 January 2009 (online).

⁸⁵ Crisis Group email correspondence, OHR official, 19 February 2009.

⁸⁶ This decision was not entirely political: the company was barely functional, had no business plan for 2008, and its board had not met for six months. "Bosnia and Herzegovina Country Report", Economist Intelligence Unit, October 2008, p. 8; Crisis Group interview, senior Bosnian political leader, Banja Luka, 20 October 2008.

⁸⁷ The PIC said, "any move to implement this conclusion by the RS authorities would be addressed as set out in the October 2007 PIC Steering Board Declaration", in which it had warned that "[a]ny BiH political leaders or institutions that challenge the High Representative and the PIC Steering Board will be subject to appropriate measures". Statement by the ambassadors, 12 September 2008 and Declaration by the

but has since resumed efforts to shut the enterprise.⁸⁸ The PIC action depended on the legal authority of the OHR and would not be available to a reinforced EUSR as currently conceived.

D. THE CROATS

The smallest of Bosnia and Herzegovina's constituent nations, the Croats quietly support compromise and avoid talk of their longstanding goal of a third territorial entity all their own.⁸⁹ But their political leadership remains committed to some form of territorial autonomy, a position that has in the past attracted strong international and Bosniak resistance.⁹⁰ Croat issues, not currently a priority in Bosnian controversies, could easily regain prominence and imperil a constitutional settlement, by either depriving it of necessary support or alienating others.

The Croat political leadership is neither as united as the Serb nor as divided as the Bosniak elite. In 2006 the Croat vote split largely between two Bosnian factions of the Croatian Democratic Union (HDZ, Hrvatska demokratska zajednica), the breakaway HDZ 1990 and the rump HDZ BiH. In 2008 municipal elections, the HDZ BiH captured the large majority of those votes. Čović, the HDZ BiH president, alone among major party leaders, holds no government position. The Croat representative on the state Presidency, Željko Komšić, is a member of the Bosniak-dominated Socijalnodemokratska partija (SDP, Social Democratic Party) and widely seen to have been elected largely by Bosniak votes; he is not a major factor in Croat politics.⁹¹

If the Croat parties cause no turbulence at the state level, they share in a simmering tension at the entity and cantonal levels. There are many frictions and frequent clashes over their attempts to secure separate institutions, such as a Croatian television channel. In

December 2008 an abortive (and by all accounts unseemingly) attempt to join three Croat-dominated cantons into a larger unit set off serious tensions.⁹² Croats, however, complain of not having fair representation: in Mostar, for example, they say electoral districts are artificially drawn to deny them a local majority;⁹³ they also frequently complain of being outvoted in the FBiH Parliament and accuse Bosniak politicians of funneling resources disproportionately to their kin.⁹⁴ But it has been years since Croat-Bosniak differences threatened open conflict, and there are no signs of such danger now.

The vast majority of Bosnian Croats have dual citizenship with Croatia and hold Croatian passports that permit them visa-free travel to the EU. Especially in the border regions of Posavina and western Herzegovina, many live with "one foot in Bosnia and the other in Croatia", crossing frequently to work, socialise and receive medical care and other benefits.⁹⁵ Large numbers attend university in Croatia instead of in their home country.⁹⁶ Economic conditions are much better in Croatia, where the average income is almost three times as high as in Bosnia and Herzegovina, and the average unemployment benefit compares favourably with the typical Bosnian salary.⁹⁷

All this contributes to a steady decline through emigration in the Croat population. This began before the war and accelerated during it. In the 2008 election, Croat parties lost control of two municipal governments in central Bosnia (Busovača and Novi Travnik). No one seems to expect this trend to change. The census of 2011 will probably show a Croat population far below the 1991 level of just over 17 per cent.

Steering Board of the Peace Implementation Council, 31 October 2008.

⁸⁸ Statement by the ambassadors of the Peace Implementation Council Steering Board, 12 September 2008; Crisis Group interviews, senior Western diplomat, Sarajevo, 5 November 2008, senior OHR staff, Sarajevo, 15 January 2009.

⁸⁹ A senior HDZ BiH official flatly ruled out a third entity – while recalling the party's support for four entities in the Kreševo Declaration, a pan-Croat proposal of 21 September 2007 for constitutional reform; Crisis Group interview, Sarajevo, 21 October 2008.

⁹⁰ Crisis Group interview, PIC Steering Board ambassador, 30 October 2008.

⁹¹ Crisis Group interview, Croat member of BiH Parliamentary Assembly, 18 December 2008.

⁹² Crisis Group interview, member of BiH Parliamentary Assembly, Sarajevo, 15 December 2008.

⁹³ Crisis Group interview, prominent Bosnian Croat politician, Sarajevo, 21 October 2009. The two Croat parties did need to attract more votes to elect a delegate (2,281) than the two largest Bosniak parties (1,321), though the nominally multinational parties needed even more (3,076). The six Mostar electoral districts, each with three delegates, vary greatly in population; the largest, District 5, is heavily Croat. Data drawn from the website of the Central Electoral Commission (www.izbori.ba).

⁹⁴ Crisis Group interview, European diplomat, Sarajevo, 15 December 2008.

⁹⁵ Ibid.

⁹⁶ Crisis Group interview, member of BiH Parliamentary Assembly, Sarajevo, 18 December 2008. This source related encouraging his child to enrol at Sarajevo University, which his child refused to do, since "all his friends" were going to Zagreb instead.

⁹⁷ In 2007 per capita GNI was \$10,460 in Croatia, \$3,790 in Bosnia and Herzegovina, World Bank information. Crisis Group interview, European diplomat, Sarajevo, 15 December 2008.

E. THE POLICE REFORM IMPASSE

The roots of the international community's problems in Bosnia and Herzegovina go back many years, but the direct antecedents of the current situation lie in the failure of the police reform process in the fall of 2007 and the High Representative's abortive use of his Bonn Powers in response. The international community overreached in its demands on police reform, overreacted to its failure and was unprepared for the consequences.

The controversy dates to February 2005, when the European Commission informed Bosnia that to conclude a Stabilisation and Association Agreement (SAA) – a major step toward the start of membership candidacy talks – it would have to reform its police in line with three criteria:⁹⁸ all budgetary and legislative decisions on police matters to be reserved for the state level; police districts to be drawn on technical, not political grounds; and policing to be free of political interference. The first two criteria appeared discriminatory to many Bosnians, because they went beyond the practice of many EU member states,⁹⁹ but they also entailed a serious erosion of RS autonomy. Strong pressure applied to RS for two years failed, and police reform languished through the end of Paddy Ashdown's term as High Representative and the entire tenure of his successor, Christian Schwarz-Schilling.

If Bosnia made no progress on the EU's specific police reform criteria, however, it made extensive progress on nearly all the underlying issues, notably police quality. Even in the RS, cooperation with the International Criminal Tribunal for former Yugoslavia (ICTY, the Hague Tribunal) was vastly improved, and cooperation with national war crime prosecutors was good.¹⁰⁰ Surveys showed that Bosnians had come to trust the police far more than most national, and all international, institutions.¹⁰¹ International observers now consider that

the police generally function at a relatively high level and do not require reform along the EU criteria.¹⁰² But in July 2007, when Miroslav Lajčák became High Representative, police reform was still the main roadblock between Bosnia and the EU, and he made it his first and highest priority.¹⁰³

Lajčák took office with a tacit mandate to energise an institution weakened and demoralised by his predecessor.¹⁰⁴ The parties had made little progress in line with the EU criteria as the 30 September 2007 deadline approached.¹⁰⁵ Lajčák responded by increasing the pressure: on 6 September, he addressed the Parliamentary Assembly, emphasising the obligatory nature of the issue and making a veiled threat to act against leaders who obstructed reform.¹⁰⁶ The SDA and the two largest Croat parties accepted an OHR draft protocol on

survey found 60 per cent trust the police "some" or "a lot", making the police the second most trusted institution in the country, after religious institutions. By comparison, EU institutions are trusted by only 40 per cent and the UN by 38 per cent. Gallup Balkan Monitor, "2008 Analytical Report", p. 27.

¹⁰² Crisis Group interviews, senior EUPM officials, Sarajevo, 14, 23 January 2009.

¹⁰³ Miroslav Lajčák, "Integration or Isolation", speech to BiH Parliamentary Assembly, 6 September 2007, as reproduced on OHR website; a survey found that only 3.4 percent of respondents who were aware of constitutional reform efforts named police reform as something they wanted; "The Silent Majority Speaks", op. cit., p. 37.

¹⁰⁴ Crisis Group Report, *Ensuring Bosnia's Future*, op. cit. Ambassadors of several PIC countries told Crisis Group the new High Representative would have to use the Bonn powers far more aggressively than his predecessor Christian Schwarz-Schilling had. Crisis Group interviews, November 2006-February 2007.

¹⁰⁵ "Lajčák and Rehn call for quick return to EU agenda", press release, OHR, 27 November 2007. See also Crisis Group Report, *Bosnia's Stalled Police Reform*, op. cit. The deadline reflected the closing date for the European Commission delegation's annual progress report on BiH; without a positive assessment on police reform, Bosnia's road to a Stabilisation and Association Agreement would be blocked for at least a year. With a month to go, the two largest Bosniak parties (SDA and SBiH) rejected the High Representative's police reform draft. "Leaders should think about the whole of BiH", press release, OHR, 30 August 2007.

¹⁰⁶ "Such behaviour could not pass without consequences. It would be politically naive to think that the international community could afford not to react adequately to such irresponsibility and to such a challenge". Miroslav Lajčák, "Integration or Isolation", speech to Parliamentary Assembly of Bosnia and Herzegovina, Sarajevo, 6 September 2007. The OHR pointed out that this was the position of the whole EU. "European Commission interprets principles", press release, OHR, 18 September 2007.

⁹⁸ This step was a response to concerns over serious problems in the RS, including harbouring of war criminals, obstruction of refugee return and challenges to the Dayton framework. See Crisis Group Europe Report N°164, *Bosnia's Stalled Police Reform: No Progress, No EU*, 6 September 2005.

⁹⁹ Crisis Group interview, European Union Police Mission (EUPM) official, 23 January 2007.

¹⁰⁰ On the eve of the police reform crisis, ICTY Prosecutor Carla Del Ponte noted "clear indications that progress was made and that co-ordination between the State and entity levels in targeting the fugitives' support network is improving. I also welcome Bosnia and Herzegovina's and in particular the Republika Srpska's important role in facilitating the arrest and transfer of Zdravko Tolimir to The Hague recently". Statement to the UN Security Council, 18 June 2007.

¹⁰¹ "The Silent Majority Speaks", op. cit., pp. 35-37: "Respondents trust the police before any other institution". Another

police reform,¹⁰⁷ and on the same day Silajdžić and Dodik met and agreed on a police reform protocol of their own.¹⁰⁸

While the deadline had passed without agreement, a deal seemed tantalisingly close, with competing proposals in play. Lajčák gave the Bosnians “a few more days – but only a few days”, warning that the consequences of failure would be “self-imposed isolation”.¹⁰⁹ The Dodik-Silajdžić proposal quickly collapsed.¹¹⁰ Another extension (to 15 October), a new round of talks, another proposal by the Croat parties and a final set of meetings between Lajčák and the parties (“hoping for a miracle”) all failed. By the middle of October 2007, police reform – and with it, Bosnia’s hopes for an SAA – was dead.¹¹¹

F. THE “STEP-CHANGE”: USE AND ABUSE OF THE BONN POWERS

The High Representative’s response was swift. On 18 October 2007, his office announced that “it has become quite certain that BiH politicians have chosen isolation instead of integration, and that they have rejected [the] European perspective of the country. That is a devastating fact for this state”.¹¹² The next day, Lajčák issued the first of what was meant to be a series of far-reaching edicts, on a more or less regular basis, until such time as Bosnian political leaders showed a willingness to work together and in line with their European commitments.¹¹³ It was conceived as a campaign

that a senior OHR official said would “shock and awe”¹¹⁴ Bosnian politicians, re-assert the authority of the OHR and progressively dismantle the roadblocks that afflicted the political system.¹¹⁵

The High Representative explained that his aim was to “work to produce a step-change in the domestic political dynamic – a step-change that would facilitate not only an SAA, but also constitutional reform and the consolidation of BiH as a peaceable, law-abiding, functional, and contented polity”.¹¹⁶ But it achieved the opposite.

The first edict (or “decision”), on 19 October 2007, was meant to make it more difficult for one party or entity to block the operation of the Council of Ministers and the Parliamentary Assembly, including by boycott.¹¹⁷ Inter alia, it “instructed” the legislative chambers to amend their rules of procedure by 1 December or face further Bonn powers impositions.¹¹⁸

¹⁰⁷ “HR/EUSR welcomes SDA’s commitment to a European future”, press release, OHR, 28 September 2007.

¹⁰⁸ “Statement: OHR/EUSR comment on Silajdzic-Dodik Protocol”, OHR press release, 28 September 2007.

¹⁰⁹ Miroslav Lajčák, press conference, 1 October 2007.

¹¹⁰ Lajčák announced that “one of the parties has not clarified the contents” of the Dodik-Silajdžić proposal, thereby raising “questions about the seriousness of their approach”. “Lajčák to meet political leaders next week”, press release, OHR, 4 October 2007. At the 1 October press conference, he mentioned receiving supplemental information from the SBiH, which indicated the holdout was Dodik’s SNSD.

¹¹¹ Press conference, Miroslav Lajčák and NGO representatives, 8 October 2007; “Statement by OHR/EUSR Director of Communications Frane Maroević”, press release, OHR, 10 October 2007; Crisis Group interviews, OHR officials, October–November 2007.

¹¹² International Agencies’ joint press conference, Banja Luka, 18 October 2007.

¹¹³ At the press conference announcing his decision, he explained that Bosnia’s leaders have “showed definitely and clearly that they ... would not or could not go towards Europe.... This is certainly a devastating fact for this country. As representatives of the citizens of this country and all its entities, cantons, municipalities and local communities, they

have chosen isolation instead of integration. [The c]onsequences of this decision are not yet felt in Bosnia and Herzegovina, but it is only a question of time”. He warned this was only the “first set of measures”; the next steps, not excluding removals from office, would depend on national leaders’ response; the OHR had already prepared a range of further measures.

¹¹⁴ Crisis Group interviews, senior OHR staff member, Sarajevo, 9 December 2008.

¹¹⁵ Crisis Group interviews, senior OHR staff member, Sarajevo, 9 December 2008, member of Parliamentary Assembly of Bosnia and Herzegovina, 18 December 2009.

¹¹⁶ Miroslav Lajčák, speech to the Permanent Council of the Organisation for Security and Cooperation in Europe, Vienna, 25 October 2007, as published on OHR website.

¹¹⁷ “Decision Enacting the Law on Changes and Amendments to the Law on the Council of Ministers of Bosnia and Herzegovina”, 19 October 2007; see also Miroslav Lajčák, “Explanatory Note on the High Representative’s Decision of 19 October”, 24 October 2007.

¹¹⁸ The Bonn powers, making the High Representative the highest legal authority in Bosnia, were originally given to that official in 1997. See “Political Declaration”, from the ministerial meeting of the PIC Steering Board, 30 May 1997; also PIC Bonn Conclusions, 10 December 1997, which “welcome[d] the High Representative’s intention to use his final authority in theatre regarding interpretation” of the DPA, to make “binding decisions” on “interim measures to take effect when parties are unable to reach agreement” and “other measures to ensure implementation” of the DPA and “the smooth running of the common institutions”, including “actions against persons ... who are found by the High Representative to be in violation of” the DPA. 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

Dodik immediately threatened to pull all SNSD members out of the state government, which would have deprived the Council of Ministers of its chairman and prevented the Parliamentary Assembly from passing legislation. With PIC support, Lajčák initially took a hard line toward him,¹¹⁹ but the standoff with the RS intensified. On 30 October, the RS National Assembly accused Lajčák of acting outside his authority, contrary to the constitution and the Dayton agreement, and claimed his decision posed a threat to RS and its representatives at the state level.¹²⁰ Two days later, Nikola Špirić, chair of the Council of Ministers, resigned, after which the government did not meet again until December.¹²¹ Several days later the RS National Assembly warned that any attempt by state institutions to outvote one of the peoples or entities would have “unavoidable” consequences, and it would use “all legal and democratic means” to protect national interests.¹²²

The High Representative’s “step-change” had produced a seemingly impassable deadlock instead of opening the way to reform and Bosnia’s European future. RS resistance did not force Lajčák to back down. As time passed, however, international determination wavered. PIC support softened by the end of November, and crucially his policy lost the backing of Javier Solana, the EU’s Common Foreign and Security Policy (CFSP) chief and secretary general of the Council of the EU. Fearful of the effect on the region of Kosovo’s expected independence, the PIC urged him to buy time by concentrating instead on quieting Bosnia,¹²³ and he obliged.

and others from public office or position. For more on their past use see Crisis Group Report, *Ensuring Bosnia’s Future*, op. cit., pp. 4-5.

¹¹⁹“All of you must know that I will stand by my decisions. I will fulfil my mandate and uphold the Dayton Peace Agreement. Anyone challenging the authority of the High Representative, the Peace Implementation Council and the Dayton Peace Agreement is playing with fire”. Miroslav Lajčák, speech to the Permanent Council, op. cit.; Crisis Group interviews, senior OHR official, 7 January 2009, PIC Steering Board ambassadors, 7, 22 January 2009.

¹²⁰“Deklaracija povodom najnovijih mjera i zahtjeva Visokog predstavnika u Bosni i Hercegovini” [“Declaration on the latest decisions and demands of the High Representative in Bosnia and Herzegovina”], National Assembly of Republika Srpska 01-1707/07, 30 October 2007.

¹²¹“Thirty-third report of the High Representative”, op. cit.; Miroslav Lajčák, “Too Little Too Late for Too Long”, speech to Foreign Affairs Committee of the European Parliament, 27 November 2007.

¹²²Conclusion of the National Assembly of Republika Srpska 01-1720/07, 5 November 2007. “All legal and democratic means” is an allusion to a referendum on independence.

¹²³Crisis Group interviews, OHR official, 9 December 2008; Bosnian justice sector official, Sarajevo, 12 December 2008;

The resolution to the immediate crisis had already been initiated, ironically, by the issue that provoked it: police reform. The six parties in the governing coalition signed a declaration on the topic in Mostar on 28 October, deferring all substantive decisions until far in the future but establishing a number of interim state-level agencies with modest powers. This was plainly inadequate by the standards the EU had set,¹²⁴ but it offered a faintly plausible rationale for initialling the SAA, which by then appeared to many the only way out of an impasse that seemed increasingly dangerous.

What remained was to find a face-saving way around Lajčák’s edict. OHR lawyers had begun quiet talks with RS counterparts in late October.¹²⁵ These produced the “Authentic Interpretation” of the High Representative’s decision, promulgated on 3 December 2007, the day before Bosnia initialled the SAA. Many observers felt it was a capitulation to Dodik,¹²⁶ although it was in fact only a minor modification of the original edict.¹²⁷ It allowed a boycott by all ministers from an entity to block the council, but only for up to a week; slightly limited the authority of the deputy chair of that body; and specified that the decisions needing one vote from each nation had to include the votes of the chair and the two deputies.¹²⁸ Likewise, the High Representative allowed the Parliamentary Assembly to drop a relatively minor change he had required.¹²⁹ All the other changes

senior OHR official and PIC Steering Board ambassador, Sarajevo, 7 January 2009; senior OHR official, 3 March 2009.

¹²⁴Crisis Group interview, OHR official, 9 December 2008.

¹²⁵International agencies’ joint press conference, OHR, 30 October 2007; “RS Proposal: No Basis for Further Discussion”, OHR, press release, 9 November 2007. These talks began on or around 26 October 2008, a week after the impugned decision: “RS Proposal: No Basis for Further Discussion”, press release, OHR, 9 November 2007. The RS initially rejected OHR’s offer; international agencies’ joint press conference, 30 October 2007.

¹²⁶A Dodik adviser claimed the Authentic Interpretation in effect made the original decision “meaningless” and guaranteed that “no decision can be made without us”. Crisis Group interview, Brussels, 12 February 2009.

¹²⁷Lajčák had admitted that he “offered to adjust the legal opinion reflecting talks between” the OHR and RS attorneys, address to UN Security Council, 15 November 2007.

¹²⁸“Decision Enacting the Authentic Interpretation of the Law on Changes and Amendments to the Law on the Council of Ministers of Bosnia and Herzegovina Enacted by the Decision of the High Representative of 19 October 2007”.

¹²⁹OHR had proposed that laws require at least one third of the votes of those actually present and voting from each entity, or, failing that, a simple majority unless vetoed by two thirds of the full delegation of either entity. The adopted rules left out this last measure. Its relevance is confined to cases when an entity expresses disapproval by partial or total boycott, but even OHR’s rules would have allowed entities to

to the rules of procedure of the Council of Ministers and the chambers of the Parliamentary Assembly remained in effect.

The “step-change” strategy failed for four principal reasons. It sought to compel Bosnia’s leaders to adopt policies on policing that were unnecessary and aroused deep and genuine fears. The chosen tool was the most dubious of the High Representative’s Bonn powers and the one with the thinnest political support, namely the power to legislate.¹³⁰ Lajčák acted at a moment when anxiety over Serb reactions to Kosovo independence dominated international policy toward the Balkans.¹³¹ And Russia (a PIC member) had become readier to oppose Western policies it saw as inimical to its interests.¹³² The first two were matters of poor political judgment, the third was transitory, and the fourth was not necessarily immutable.

In February 2007, Crisis Group argued that the Bonn powers had been hollowed out due to the sharp decrease in the former OHR’s political credibility and in the strength of the international military presence. Crisis Group warned that “Bosnian officials are now more likely to defy a Bonn powers imposition” if the OHR tried to force them to make political decisions they felt were against their basic national interests.¹³³ This is what happened in October 2007. If the High Representative wanted to use his powers to impose controversial political changes, he needed determination to stay the course and a firm political commitment, particularly from the Europeans, to stand by the decision. The absence of this support drained the political authority from Lajčák’s OHR and contributed to the international community’s increasingly desperate search for a different instrument with which to act in Bosnia.

block by veto. Even this required many meetings between OHR lawyers and the Assembly. “Zapisnik 17. Sjednice Predstavničkog doma Parlamentarne skupštine Bosne i Hercegovine” [“Transcript of the 17th session of the House of Representatives of the Parliamentary Assembly of Bosnia and Herzegovina”], 30 November 2007, p. 3; “Lajčák welcomes adoption of new Rules of Procedure for BiH Parliament”, OHR, press release, 30 November 2007.

¹³⁰ The Bonn PIC made no reference to an authority to legislate; PIC Bonn conclusions, 10 December 1997.

¹³¹ Crisis Group interviews, Bosnian political leader, Sarajevo, 17 December 2008; PIC Steering Board senior diplomat, 18 December 2008; senior OHR official, 7 January 2009; PIC Steering Board ambassador, 22 January 2009.

¹³² Crisis Group interview, senior OHR officials, 20 October 2008, 7 January 2009.

¹³³ Crisis Group Report, *Ensuring Bosnia’s Future*, op. cit., p. i.

III. BEFORE THE TRANSITION

The 2007 events helped convince several EU member states that once Kosovo’s first year of independence had passed peacefully, the OHR should close. But Bosnia remains in serious trouble and urgently needs robust international assistance. Russia and several EU member states are now keen on finalising OHR closure at the 26-27 March 2009 PIC meeting. The EU has pledged to replace the OHR, once it is closed, with a “reinforced” EU Special Representative (EUSR).¹³⁴ The hope is that transition from OHR to EUSR will unfreeze Bosnia’s political stasis and restart progress toward EU accession. But the EUSR will not have the High Representative’s legal power and perhaps not the office’s one-time political power, and the international community’s influence is likely to diminish.¹³⁵

To retain influence in Bosnia and Herzegovina, the international community must face up to three challenges. It must ensure the High Representative can do his job throughout his tenure, however long that may last; choose the right circumstances for the transition from OHR to EUSR; and formulate – and strongly support – the correct mandate for the EU mission that will follow. Bosnia’s stability, and the viability of the EU’s common foreign and security policy, depend on managing these tasks, which can be accomplished only if EU member states commit to a firm, unified and unwavering Bosnia policy.

A. WHY THE RUSH TO CLOSE OHR?

The main proponents of rapid OHR-EUSR transition argue Bosnian politicians’ dependence on international decision-makers must end if the country is to escape chronic political stalemate.¹³⁶ A leading Bosnian

¹³⁴ Since 2002, the High Representative has been double-hatted as the EU Special Representative, but in practice the HR role has overshadowed the EUSR role.

¹³⁵ The High Representative’s considerable powers stem from Annex 10 of the Dayton Peace Agreement and the Bonn Conclusions of the Peace Implementation Council of 10 December 1997, which were welcomed and supported by the UN Security Council in Resolution 1144 (19 December 1997).

¹³⁶ International observers and leaders of each of the national communities in Bosnia agree that dependence is a serious and complex problem. Crisis Group interviews, PIC Steering Board ambassador, 8 January 2009, NGO representative, Banja Luka, 19 January 2009. Political leaders often defer or avoid action in the hope that the High Representative will make hard or unpopular choices on their behalf. On occasion, the parties agree on a high-profile measure when international attention focuses on it, creating an impression of progress that dissolves

parliamentarian noted that many leaders prefer lobbying the OHR to working on compromises with their peers.¹³⁷ The OHR insulates national leaders from the worst consequences of their behaviour and can have the paradoxical effect of making disruptive actions politically safer and thus more tempting. Arguably, without the OHR's safety net, leaders would be compelled to behave more responsibly.¹³⁸

A second argument is the OHR's growing ineffectiveness due to its loss of credibility. The office is not the unquestioned authority it once was; it no longer functions as Bosnia's supreme executive, legislative and judicial power.¹³⁹ Based on this argument, there is no reason to maintain an OHR which can no longer employ Bonn powers to force decisions through. But this only applies to imposition of controversial decisions on unwilling Bosnian leaders. However, Bonn powers are still in use, as recently as February 2009, to prevent obstruction of necessary cooperation with the Hague Tribunal, among other things.¹⁴⁰ They can also deter violations of Dayton.

Other proponents of rapid change believe that Bosnia needs a form of "shock therapy".¹⁴¹ The OHR has not worked, so it is now time to move to the new EUSR, who will promote the prospect of EU accession as the impetus to reform, rather than focus on DPA implementation thirteen years after the war. This view is partly born of frustration: "We have to do something", because

once that attention fades. The hope that the High Representative, or other international actors, will intervene on their behalf makes some leaders resistant to negotiation and compromise. Other parties rely on demagogic attacks on the OHR or the international community to mobilise support, especially but not only at election time. Finally, and most perversely, leaders are tempted to push the country into crisis, expecting this will provoke the international community into approving steps it currently rules out, such as abolition of entities or the break-up of the country.

¹³⁷ Crisis Group interview, Sarajevo, 15 December 2008.

¹³⁸ Several Bosnian officials, Bosniak and Serb, take this argument one step further and assert that the OHR can be closed because, in their view, domestic institutions are now strong enough to protect both Dayton and the BiH constitution. Crisis Group interviews, senior Bosnian officials, February 2009.

¹³⁹ For a review of the High Representative's powers at their zenith, see "Opinion on the Constitutional Situation in Bosnia and Herzegovina and the Powers of the High Representative", Venice Commission, CDL-AD (2005) 004, pp. 20-24.

¹⁴⁰ "Decision enacting the law on amendments to the criminal procedure code of Bosnia and Herzegovina", "Decision enacting the law on amendments to the law on the execution of criminal sanctions in the Federation of Bosnia and Herzegovina", 20 February 2009.

¹⁴¹ Crisis Group interview, senior European diplomat, 12-13 January 2009.

with the OHR, nothing will change.¹⁴² Doing nothing means "helplessly witnessing" as Bosnia slides toward more confrontation and crisis and possibly even violent conflict.¹⁴³

Other reasons for prompt action are less substantial. Some argue that if the office does not close in 2009, it must remain open through the end of 2010, because that is an election year in Bosnia.¹⁴⁴ And as a October 2008 policy paper by Solana and Olli Rehn, European Commissioner for Enlargement, put it, "if the OHR is still around in 2010, then the High Representative, his role, and that of the IC [international community] presence could once again become central campaign themes in the 2010 general elections".¹⁴⁵ But there is no evidence the current political tensions are related to elections; they have in fact worsened since the October 2008 polls, suggesting they reflect genuine policy disagreements, not nationalistic electioneering.¹⁴⁶ For others, the reluctance to pay for the OHR after its current budget expires on 30 June 2009 is clearly a factor.¹⁴⁷

Some arguments for closure depend on false alternatives. In Lajčák's first press conference as Slovakia's foreign minister, the retiring High Representative said the international community had two options: to use the High Representative's full governing powers, or to close the OHR and turn over responsibility to the EU.¹⁴⁸ This ignored a third option: a High Representative who refrains from using his most intrusive powers but retains them for the contingency of a deep crisis, while acting more modestly to prod Bosnian leaders to do their jobs.

¹⁴² Crisis Group interview, EU official, Brussels, 1 December 2008.

¹⁴³ Crisis Group interview, senior OHR official, Sarajevo, 7 January 2009.

¹⁴⁴ Crisis Group interview, PIC Steering Board ambassador, Sarajevo, 13 January 2009; see also Judy Batt, "Bosnia and Herzegovina: the International Mission at a Turning Point", Fundación para las relaciones internacionales y el diálogo exterior, Policy Brief, February 2009, p. 5: "Realistically, a new mandate for the OHR beyond June 2009 must mean at least two more years, because 2010 will be a major election year for BiH – a wholly unsuitable time for closing the OHR".

¹⁴⁵ Javier Solana and Olli Rehn, "EU's policy in Bosnia and Herzegovina: the way ahead", unpublished report dated 31 October 2008 and made available to Crisis Group.

¹⁴⁶ Bieber, comment, op. cit. The situation also deteriorated after the October 2006 elections, leading the PIC to defer closure.

¹⁴⁷ Crisis Group interview, senior OHR official, Sarajevo, 15 January 2009. This official noted that an annual budget need not be spent in full, and any funds left over after transition would be returned to the donor states.

¹⁴⁸ "Lajcak calls for new EU approach to Bosnia", Balkan Insight, 11 February 2009 (online); Crisis Group interview, senior OHR official, Sarajevo, 7 January 2009.

Lajčák also called the OHR incompatible with the European integration process:

If somebody is your partner, you cannot be his protectors. If somebody is not able to manage himself, then let's forget the European integration....As long as there is a High Representative in Bosnia, the European idea will be on a side track and that country will not effectively move towards the EU.¹⁴⁹

There is some truth in that general observation, but the presence of the OHR has not generally been considered an obstacle since 2002, from which date the High Representative has been simultaneously the EU's Special Representative. Senior EUSR officials told Crisis Group the continued existence of the OHR would not be an obstacle to Bosnia's accession until the last stages of that process, which are still fairly distant.¹⁵⁰

B. TIMING THE TRANSITION

Since February 2008, when the PIC agreed upon new requirements for OHR closure, Bosnia has met two of the five objectives, fiscal sustainability and entrenchment of the rule of law; and completed one of the two conditions, signature of the SAA.¹⁵¹ Inability to agree on the remaining relatively modest issues bespeaks ongoing disagreement about Bosnia's fundamental identity and future and is cause for concern about its stability. But if the relevant legislation and constitutional amendment are adopted to implement the Prud agreement on state property (including defence property) and Brčko, only the condition of receiving "a positive assessment of the situation in BiH by the PIC Steering Board based on full compliance with the Dayton Peace Agreement" would remain. If the pace since the first Prud meeting in November 2008 continues, Bosnia might satisfy the PIC requirements by mid- to late-2009, enabling the OHR to be closed in conformity with the 2008 PIC decision by the end of the year.

Some EU member states argue that if the five PIC objectives are met, Bosnia will automatically be in "full compliance with the Dayton Peace Agreement" and

thus be entitled to the positive assessment that is required to remove the second condition.¹⁵² That highly subjective and vague condition was included to provide the PIC with the flexibility to decide OHR closure based on a political rather than a technical assessment. If one or several of the local political actors parties is planning actions that seriously threaten the DPA, such as an independence referendum, assembly of armed groups, or legislation to abolish the RS, it is highly unlikely that the PIC would close the OHR even if the five objectives have been met. But if the situation is relatively stable, and there is no immediate threat to Bosnian sovereignty, the second condition should be considered fulfilled once the five objectives have been satisfied.

Recently several EU member states have begun to question the five-plus-two formula, arguing that the PIC should accept partial resolution of the outstanding objectives as sufficient to close the OHR by 30 June 2009.¹⁵³ What the proponents of this position miss is that closure in those circumstances would be perceived in Bosnia as another international community retreat. This would further undermine its credibility and directly affect the EU's ability to use conditionality effectively when a reinforced EUSR is in place. The consequences would not be limited to Bosnia; other regional states will take note.

Five-plus-two is a reasonable test. The international community should avoid implying there is some other way and in the meantime strongly support the High Representative. Constant debates over the future of the OHR, in which Bosnian leaders participate, distort politics. Those leaders are sensitive to the nuances of what their interlocutors want to hear.¹⁵⁴ The RS and others have a history of agreeing to terms, including those required for European integration, but pulling out later, either explicitly or in practice (for example, by not sending representatives to common institutions). The rhythm of the Prud process is an example; it would be no surprise to hear of another "breakthrough" on the eve of the March PIC meeting.¹⁵⁵

¹⁴⁹ "Lajcak calls for new EU approach to Bosnia", op. cit.

¹⁵⁰ Crisis Group interview, senior EUSR adviser, Sarajevo, 9 January 2009.

¹⁵¹ "OHR/EUSR statement following the adoption of the 'national war crimes strategy' by the council of ministers of BiH on 29 December 2008", press release, OHR, 29 December 2008; communiqué, Steering Board of the Peace Implementation Council, 20 November 2008. The defence property issue is resolved in theory but is not working in practice and is subsumed under the state property issue in the Prud agreement.

¹⁵² Crisis Group interview, PIC Steering Board ambassador, Sarajevo, 7 January 2009. A Western diplomat in Sarajevo described this argument to Crisis Group as "not entirely circular".

¹⁵³ Crisis Group interviews, PIC Steering Board ambassadors, Sarajevo, 13, 14 January 2009. Crisis Group interview, Council of the European Union Working Group for the Western Balkans (COWEB) representative, Brussels, January 2009.

¹⁵⁴ Crisis Group interview, European diplomat, 16 January 2009.

¹⁵⁵ Crisis Group interview, PIC Steering Board ambassador, Sarajevo, 14 January 2009.

C. GETTING THE MOST OUT OF OHR

PIC members should use the weeks leading to the March session to reassess past failures and decide what role the OHR can still effectively play. The High Representative is an actor within the constitutional structure of Bosnia and Herzegovina. As with that of other constitutional actors, the role has evolved and at times has been challenged.¹⁵⁶ Fundamentally, it is to oversee the Dayton agreement. However atrophied the OHR may be, the High Representative retains the legal power to act in defence of Dayton, including – if there is sufficient political will in the PIC – to remove anyone acting thoroughly against the spirit of that agreement.¹⁵⁷

The consequences of the removal of a senior official are difficult to predict in the abstract. Dodik has said, “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”.¹⁵⁸ But at the same time, no Bosnian politician currently wants to travel this confrontational road, at least against a unified international community. Consequently, the High Representative’s powers may still deter leaders from taking otherwise tempting but dangerous steps and thus restrict challenges to the established order to a manageable and peaceful scale.¹⁵⁹ The denials by RS officials that they fear dismissal often sound like bravado and come with such unprovoked frequency as to suggest they mask genuine concern.¹⁶⁰

Can the OHR accomplish more in what should be the final year of its mandate? The answer depends on a reappraisal of the Bonn powers, the High Representative’s main (and most controversial) tool. Apart from their use to remove officials who violate the DPA, they were originally meant, as Dodik has correctly pointed out, to allow the High Representative to “take steps within the jurisdiction of the presidency of BiH and the Council of Ministers, but not [to pass] laws which are under the jurisdiction of the parliament”.¹⁶¹ They

were not designed, in other words, for the international community to make fundamental changes in the Bosnian constitutional order or to enact lasting institutional reforms. In any event, there is a broad, if not universal, consensus that the time for such extraordinary interventions has ended.¹⁶² But the powers can still be used as they were originally intended: to take “interim measures ... when the parties are unable to reach agreement” and to “ensure ... the smooth running of the common institutions”.¹⁶³

For example, the High Representative could limit the privileges (e.g., official car, travel abroad, salary) of state officials who fail in egregious ways to perform their duties. Using similar powers, the Supervisor of Brčko District froze the salaries of the municipal assembly in early February 2009, for failure to appoint a mayor and two assembly officials; five days later, the assembly appointed all three.¹⁶⁴ Actions of this type leave the ultimate decision in Bosnian hands. In other cases, the High Representative could resort to appointing persons himself.

The High Representative can also still issue some important technical decisions. For example, thirteen years after Dayton’s signature, the parties still have no authorised translation of that agreement, which contains Bosnia and Herzegovina’s constitution and exists officially only in English. The political parties blame this on a dispute about whether the translation must be rendered in all three official languages, or only in Bosnian; in fact, this is obstruction by Bosniak parties that do not wish to accept Dayton’s legitimation of the RS.¹⁶⁵ The OHR should impose a translation; Bosnians could then change it if desired but could no longer pretend their founding document does not exist.¹⁶⁶

¹⁵⁶ Milorad Dodik, speech to the RS National Assembly, Banja Luka, 29 October 2007, on the SNSD website (www.snsd.org).

¹⁵⁷ Crisis Group interview, PIC Steering Board ambassadors, 3 November 2008, 7, 22 January 2009, and senior OHR officials, 7 January and 3 March 2009.

¹⁵⁸ “Predsjednik vlade Republike Srpske” [“The Prime Minister of Republika Srpska”], *Globus*, 17 January 2007.

¹⁵⁹ Crisis Group interview, Bosnian justice sector official, 12 December 2008.

¹⁶⁰ Crisis Group interview, PIC Steering Board ambassador, 22 January 2009.

¹⁶¹ Milorad Dodik, speech to the RS National Assembly, 29 October 2007. Crisis Group does not imply that the use of the Bonn Powers to legislate was or is unlawful, merely that it was not anticipated explicitly in the Bonn PIC communiqué.

¹⁶² Crisis Group Report, *Ensuring Bosnia's Future*, op. cit. Russia’s UN ambassador said, “any formula to improve the Dayton Agreement through the use of the Bonn Powers [is] unacceptable and doomed to failure”, UN Security Council 6033rd meeting (PM), 5 December 2008.

¹⁶³ PIC Bonn Conclusions, 10 December 1997.

¹⁶⁴ “Supervisory order on temporarily suspending payment of salaries and remunerations to the councillors of the assembly of Brčko District”, 6 February 2009; “Brčko supervisor welcomes formation of authority”, press release, OHR, 11 February 2009; the Supervisor of Brčko District enjoys powers within the district equivalent to those of the High Representative’s Bonn powers, following the Supplemental Award of the Brčko Tribunal of 15 March 1998.

¹⁶⁵ The Croats, who are opposed to the two-entity structure of the DPA, could also obstruct translation; Crisis Group email correspondence, OHR official, February 2009.

¹⁶⁶ Crisis Group interview, OHR official, Sarajevo, 8 January 2009.

IV. A NEW EUROPEAN MANDATE

The EU's main strategy for stabilising the countries of the Western Balkans has been integration through enlargement. The approach has mostly worked well but has recently shown its vulnerability and limitations.¹⁶⁷ In Bosnia it is necessary – but insufficient – to ensure stability. Before taking over the lead international role there, the EU will need several strong tools independent of the Stabilisation and Association Process (SAP) and the membership goal which is intended as its final stage. The new, reinforced EUSR and head of the European Union Mission should be equipped with powers that will allow him or her to react effectively to slow-downs in reforms and threats to stability.

To secure regional peace and stability, EU member states should continue to support enlargement to the Western Balkans. Several EU member states have warned there will be no further enlargement until the EU carries out its own fundamental reforms, in particular ratification and implementation of the Lisbon Treaty,¹⁶⁸ and the electorates in many are increasingly reluctant to accept any extension of membership.¹⁶⁹ Yet, Balkan enlargement remains vital for the EU's own security as the most effective means for Brussels to maintain leverage in a region that has traditionally been a source of conflict on the continent.¹⁷⁰ This is especially true with respect to Bosnia, where Europe's worst conflict in more than a half-century was fought less than a gen-

¹⁶⁷ For example, Greece's dispute with Macedonia over the latter's name "risks derailing the main strategy of both NATO and the EU for stabilising Macedonia and the region through enlargement and integration". Crisis Group Europe Briefing N°52, *Macedonia's Name: Breaking the Deadlock*, 12 January 2009.

¹⁶⁸ "Sarkozy: 'No Lisbon treaty, no enlargement'", Reuters, 20 June 2008; "Sarkozy and Merkel rule out enlargement without Lisbon", *euointelligence.com*, 20 June 2008. The Treaty of Lisbon, signed on 13 December 2007, would substantially change the workings of the EU by amending the Treaty on European Union (TEU, Maastricht). However, it requires ratification by all member states and was rejected by Ireland in a June 2008 referendum. Consultations are under way at a high level in the EU with a view to finding a way to save the treaty, or at least its most important features.

¹⁶⁹ A survey found 40 per cent of EU citizens favoured and 44 per cent opposed eventual Bosnian membership; 48 per cent thought enlargement would stabilise the Western Balkans and 39 per cent that it would not. "Eurobarometer 69", November 2008, pp. 28, 35.

¹⁷⁰ "[E]nlargement continues to be a powerful driver of stability, peace and reform". "Report on the Implementation of the European Security Strategy: Providing Security in a Changing World", Council of the European Union S407/08, 11 December 2008.

eration ago. If the EU puts the brakes on Bosnia's accession for its own internal reasons, it will risk destabilising the country. The opposite is also true: Bosnia cannot make progress toward Brussels as long as it remains unstable.

The link between security and integration can create perverse incentives, however. For example, some Bosnians interpret EU policy toward Serbia as rewarding instability and obstreperous behaviour.¹⁷¹ Doubting that they can make progress the normal way, because enacting the necessary reforms entails political choices that are too painful, some think they can do it instead by "becoming a bomb" and so inducing Brussels into granting them unearned progress simply to keep them from blowing up.¹⁷² This logic was encouraged by the EU's disregard for the conditions it had set the Bosnians for signing a SAA.

If the EU is to take over from the wider international community, deploy a reinforced EUSR to replace the High Representative and meet one of its most challenging common foreign and security policy commitments, it must rally considerable political will. Unity and strategic vision are key if the EUSR is not to be paralysed as the OHR has been. Engagement with Bosnia is a long-term proposition that will not go entirely as planned. Brussels must be prepared to back and act upon the advice of its Special Representative in a crisis, and eschew micromanagement. It will have to be prepared to act, if necessary, contrary to the wishes of other regional players, including neighbouring states and Russia; to make Bosnia a regional priority; and to stop formulating Bosnia policy in terms of other interests.¹⁷³

The EU needs a properly coordinated regional approach for the Western Balkans, to complement existing country-specific policies. Just promising a membership perspective is not enough, and should be done with a consideration of the effect on regional stability. For some member states, for example, securing Serbia's candidacy overrides Bosnian considerations. Solana has said that if 2008 was the EU's year of Kosovo, 2009

¹⁷¹ The EU signed an SAA with Serbia in April 2008 even though Belgrade was strongly opposing EU's policies in Kosovo, especially the deployment of its rule of law mission (EULEX), and the condition of full cooperation with the ICTY had not yet been met.

¹⁷² Crisis Group interview, PIC Steering Board ambassador, 23 January 2009.

¹⁷³ In many European capitals since 2004, Kosovo has increasingly counted as a higher Balkans priority than Bosnia. Crisis Group interview, EU member state diplomat, Sarajevo, 18 December 2008. Serbia is also generally considered a higher regional priority.

will be the year of Serbia.¹⁷⁴ Under its previous government, Serbia often undermined BiH's stability; the government in office since July 2008 has been more supportive.¹⁷⁵ But Belgrade's membership progress should at least be linked to its active support of Bosnia's territorial integrity and cooperation with EU policy in Bosnia.¹⁷⁶

A. THE NEED FOR REALISM

In accordance with the international community's desire to prepare for ending its protectorate, the High Representative announced in January 2006 that he would "step back" to allow Bosnian leaders to be fully "responsible for negotiating the terms and speed" of their country's progress toward Europe.¹⁷⁷ Among other things, this meant that the conditionality the EU regularly uses to encourage candidates to do the necessary to qualify for membership¹⁷⁸ would also become the central instrument for stimulating Bosnia's development. Conditionality has worked well in many instances, but since then, reform has slowed and in some areas reversed in BiH. There are several reasons why conditionality will not work there in the same way it has elsewhere.

The most important is the country's divided nature. The EU imposes conditionality on the state of Bosnia and Herzegovina and interacts with it one-on-one. But the Bosnian state acts only on consensus of both entities and all three constituent nations, any of which can veto or otherwise obstruct state action. There are four players, not two, and the Bosnians do not each place the same value on the rewards offered by Europe or on the costs they must bear. For conditionality to work, all parties must believe that they are net winners at

each stage of the process; if not, they will block their more eager partners. Worse, a party that values a particular EU reward less can use a veto threat to extract unrelated concessions from the others.¹⁷⁹

The political players and their constituents all desire EU membership but not to the same extent. Bosniaks are much more eager than Croats, and Serbs are most sceptical.¹⁸⁰ Dodik recently told his cabinet that the EU has nothing to offer that the RS cannot do for itself, and there is no reason to rush the accession process because delay costs nothing.¹⁸¹ On the other hand, the Serbs place the highest cost on many state-building reforms sought by the EU, while Bosniak parties desire those same reforms independently. In other words, to advance toward Europe, Serb leaders must trade what they value most for what they value least, relative to their Bosniak counterparts, who by contrast sacrifice nothing. These differences multiply the opportunity for misunderstanding and mistrust and increase the chance of paralysis. In such circumstances, "conditionality can empower spoilers and disempower reformers".¹⁸²

The visa issue is a clear case in which a Bosniak interest is not shared to anything like the same degree, since many Bosnian Serbs have Serbian passports and Bosnian Croats Croatian ones. If the EU handles visa facilitation and liberalisation badly, and Bosnia is left behind its neighbours, the Bosniaks would be the only constituency to suffer from delay, while their Serb and Croat counterparts would acquire significant negotiat-

¹⁷⁴ Crisis Group interview, senior OHR official, 7 January 2009.

¹⁷⁵ Members of former Prime Minister Vojislav Koštunica's government supported RS's claimed right to independence during the buildup to Kosovo's declaration of independence in February 2008. See Crisis Group Report, *Ensuring Bosnia's Future*, op. cit. The government of Prime Minister Milan Cvetković (in office since July 2008), who is from President Boris Tadić's party, has avoided such statements.

¹⁷⁶ Lord (Paddy) Ashdown, "BiH and the Balkans: What Next?", unpublished paper made available to Crisis Group, February 2009.

¹⁷⁷ Christian Schwarz-Schilling, televised address to the citizens of Bosnia and Herzegovina, 31 January 2006, as reproduced on OHR website.

¹⁷⁸ European Commission and European Council officials described the policy as "strong" or "reinforced" conditionality; Crisis Group interviews, Brussels, 1-2 December 2008. Essentially, what is meant is that the EU establishes certain policy requirements that the candidate state must fulfil in order to achieve the next step in the accession process.

¹⁷⁹ For example, visa liberalisation is exceptionally important to Bosniaks and Serbs, but irrelevant to Croats who can already travel freely with Croatian passports. Croat parties can thus hold back consent to steps required for visa liberalisation in order to extract concessions from their partners. If Serbia receives visa liberalisation and issues passports to many Bosnian Serbs, only the Bosniaks will remain interested in liberalisation and will be in a weak negotiating position.

¹⁸⁰ The oft-cited figure of 70 to 80 per cent support for EU membership is true, but misleading. 72 per cent of respondents in Bosniak majority areas "strongly" support membership, with another 16 per cent "somewhat" supportive; in Croat majority areas the corresponding figures are 46 and 19 per cent, while only 29 per cent in Serb areas "strongly" support accession, and 35 per cent are "somewhat" favourable. "Third Quarterly Report – September 2008", UNDP, Early Warning System Table 8, annex p. 5. Another survey found 61 per cent of respondents in the Federation of Bosnia and Herzegovina thought membership in the EU would be a good thing, compared to only 35 per cent of RS residents. "2008 Analytical Report", Gallup Balkan Monitor, pp. 36-37.

¹⁸¹ Crisis Group interview, European diplomat, 16 January 2009.

¹⁸² Bieber, comment, op. cit.

ing leverage.¹⁸³ The Bosnian political process and the state itself could thus be undermined. When Brussels improves visa procedures for Serbia as it is considering, therefore, it should do the same for Bosnia. If there is any doubt about the latter's readiness, the EU might include a proviso that the measure would be revoked if all EU requirements were not satisfied over the next twelve months.

The EU, moreover, has a poor record of sticking to its conditions in Bosnia, having relaxed them when further progress toward accession has appeared needed to ensure political stability. The clearest example was the decision to forego specific police reform in December 2007. As described above, EU leaders insisted in the strongest terms for more than two years that passage of a detailed law was a non-negotiable condition for signing the SAA only to sacrifice the condition when faced with the possibility of a serious crisis and bereft of other options. The decision was probably the correct one, not least because much of the substance of improved police performance had been achieved by other means. But Bosnian politicians are likely to discount tough talk from Brussels in future because they anticipate similar retreats.¹⁸⁴ Indeed, the wider international community has given the Bosnians the impression they can negotiate (or threaten) their way out of almost anything.¹⁸⁵

The Stabilisation and Association Process gives the EU an excellent opportunity to use hard conditionality.¹⁸⁶ The recently signed SAA that is at its heart is a highly technical agreement focusing on issues such as promoting free movement of goods; creating efficient institutions; developing a market economy; reducing crime

and corruption; and advancing democracy, human rights and an independent media. It requires BiH to accede to several conventions such as those on protection of "intellectual, industrial and commercial property rights".¹⁸⁷ All these, together with a state-level capacity to implement the conventions, should be hard, no exception conditions, since they are imposed on all candidates, and their substance involves standards that every member state is likewise required to meet. The EUSR should assist Bosnia to satisfy them by establishing clear, short-term targets and submitting monthly progress reports to member states and the European Commission headquarters that point out shortcomings as necessary.

In dealing with Bosnia as a potential EU member, one of Brussels' most important levers is the insistence that the government "speak with one voice".¹⁸⁸ But the EU should itself speak with greater unity, clarity and force, specifying both the areas of state policy on which it requires a single national partner and the extent to which the corresponding state agency must be able to exert control vis-à-vis the entities and municipalities.¹⁸⁹ For example, the SAA requires that Bosnia create by 2010 a single, independent agency with regulatory authority over state aid to firms and responsible for preventing aid that distorts competition.¹⁹⁰ The RS, however, is now considering a law that would create an entity-level state-aid agency. If that agency were to signal RS determination not to accept a national agency's jurisdiction, it would amount to a direct violation of the SAA and require a firm response.

The constitutional reform process will also receive a big boost if the EU can convince Bosnia's political actors that drastic, unilateral alterations to Dayton are ruled out.¹⁹¹ The EU should point out clearly that BiH

¹⁸³ Crisis Group interviews, senior officials, 9 January 2009, European Commission, Sarajevo, 15 January 2009.

¹⁸⁴ Crisis Group interview, Bosnian political leader, 11 November 2008.

¹⁸⁵ Crisis Group interview, PIC Steering Board ambassador, Sarajevo, 14 January 2009.

¹⁸⁶ Conditionality is a powerful but limited tool. It needs to be carefully understood and applied, with a delicate mixture of flexibility and firmness, because it can easily misfire, damaging both user and object. It can be hard or soft. The opposite fates of police reform and defence reform illustrate the limits of conditionality. While the former failed, at least in the format the EU had insisted upon, at some considerable cost to Bosnia and to the EU's regional reputation, the latter succeeded beyond initial expectations. Bosnian political actors understood from the outset what they were asked to do – surrender entity control over the armed forces and transform them into a small, professional force – and the EU maintained its position until they did it. The military monopoly is now one of the few state prerogatives unchallenged by the RS. Crisis Group interview, senior RS political leader, Banja Luka, 21 January 2009.

¹⁸⁷ SAA, article 73 (4).

¹⁸⁸ "Bosnia and Herzegovina 2008 Progress Report", European Commission, p. 5; Solana-Rehn paper, op. cit.

¹⁸⁹ "The EU will want to have a single interlocutor and definitely not be willing to negotiate with the two Entities separately. BiH will need the necessary legislative powers to create the conditions for the conclusion of such an agreement and to implement it. And, not least, BiH will be expected to ensure the effective implementation of such an agreement within both Entities. At present, the State level is not able to effectively ensure compliance with the commitments of the country with respect to the Council of Europe and the international community in general. With respect to the EU it is unthinkable that BiH can make real progress with the present constitutional arrangements". "Opinion", Venice Commission, op. cit., p. 8.

¹⁹⁰ SAA, article 71 (3).

¹⁹¹ The PIC and the EU have consistently affirmed this, Crisis Group interviews, European Commission enlargement official,

will eventually have to change its constitution beyond what is strictly necessary to integrate the *acquis communautaire* (the extensive EU body of law), since the burdens of EU membership require a state substantially more capable and agile than BiH is today. The constitution is unlikely to be comprehensively redrafted at any time in the near future, as was attempted in 2006, but it could be amended, perhaps with the assistance of the Prud process. The EUSR should facilitate and, if invited by the parties, mediate that reform effort.¹⁹² Part of this would involve helping the parties reach agreement; another part would be to ensure solutions consistent with the *acquis*. The assistance must be broad and focus on the one thing Bosnia really needs for its European integration process: a functional political system.¹⁹³

If the EUSR limits his engagement to narrow issues technically related to accession and avoids addressing Bosnia's systemic paralysis, however, the mission will fail. Adoption of the *acquis communautaire* is not a purely technical matter and will leave much space for political disagreement on power sharing and national representation.¹⁹⁴ The Commission delegation can be successful only insofar as it acknowledges the political nature of the harmonisation challenge. But excessive publicity is likely to be harmful. The EUSR should stay in the background, allowing national leaders to address the public and take responsibility for driving reform.

Some progress has already been achieved without international involvement. Prud, for example, shows that leaders of the three constituent nations can make painful and politically risky overtures and arrive at workable, mutually satisfactory compromises. The speed with which agreements break down, however, shows how little the political actors trust one another, how much they fear existential challenges to their national self-interest and how eager some are to portray compromise

as national betrayal. The EU must not be seen as the protector of a partisan position on a contentious issue.

Part of the EU's hopes for success rest on an expectation that it will be able to highlight Bosnian politicians' failures to deliver European progress and that this will produce irresistible pressure from the voters.¹⁹⁵ This has not happened thus far: the BiH electorate supports accession but continues to vote for politicians who are nationalists and obstruct the reforms necessary for European integration. That is unlikely to change soon. Few politicians offer a genuine alternative to the dominant political discourse, and there is no visible next generation waiting to offer a more hopeful program.¹⁹⁶ Further, Bosnians generally distrust their leaders and have extensively disengaged from political life.¹⁹⁷ There is also a history of voters responding to issues based on perceptions of national dignity and safety at the expense of material gain. Finally, there are multiple paths to reform, and legitimate differences on which to choose can lead to paralysis.¹⁹⁸

B. THE EUSR TOOLBOX AND MANDATE

To establish a credible and influential mission in Bosnia to replace the OHR, the EU should ensure that it has the strongest possible legal basis for its presence. The SAA goes a long way toward this and to committing the organisation and its member states to uphold regional peace and stability with respect to Bosnia.¹⁹⁹ But in the present unstable environment, member states should take the further step of authorising the EU presidency to sign an agreement with BiH in which both sides explicitly guarantee the Dayton Peace Agree-

Brussels, 2 December 2008; PIC Steering Board ambassadors, Sarajevo, 3 November 2008, 7 January 2009.

¹⁹² The existing mandate already instructs the EUSR to "provide political advice and facilitation in the process of constitutional reform"; perhaps unwittingly, this is among the last of the eighteen assigned tasks. "Joint Action", EU Council, 2008/130/CFSP, Article 3 (q). The Prud agreement, 8 November 2008, also states that "the parties agree ... to make use of the professional assistance of international institutions" in the constitutional reform process.

¹⁹³ Christopher Bennett, NATO official, comment at conference "Beyond Statebuilding: NATO and EU Conditionality in Bosnia and Herzegovina", Sarajevo, 19 December 2008.

¹⁹⁴ Crisis Group interview, European Commission official, Brussels, 2 December 2008.

¹⁹⁵ Crisis Group interviews, EU member state ambassador, 3 November 2008, EU official, Brussels, 1 December 2008. This view also underlies the 2008 Solana-Rehn strategy paper: "The vast majority of the population supports future EU membership. Their leaders, meanwhile, are mired in the nationalist logic and talk of the past." Solana and Rehn, "EU's policy in Bosnia and Herzegovina", op. cit.

¹⁹⁶ Crisis Group interview, OHR official, Sarajevo, 17 December 2008.

¹⁹⁷ "The Silent Majority Speaks", op. cit., pp. 45-46: "BiH outperforms all other [World Values Survey] transformation countries in terms of 'no interest at all'....at the cognitive level most young people are outside the political process". Likewise, 79 per cent of Bosnians feel that none of the political parties represent their interest. "2008 Analytical Report", Gallup Balkan Monitor, p. 23.

¹⁹⁸ Crisis Group interview, OHR official, 17 December 2008.

¹⁹⁹ There is only a vague reference to the DPA in the SAA preamble (pp. 2-3). For the full SAA text, see [http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SPLIT_COM:2008:0182\(02\):FIN:EN:PDF](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SPLIT_COM:2008:0182(02):FIN:EN:PDF).

ment.²⁰⁰ Any main political actor – entity, political party or state government itself – in breach of the DPA would thus automatically severely damage its relations with the EU. A formal EU commitment to the DPA would discourage RS secession by making it less likely any member state would recognise it. Similarly, it would make more certain the imposition of heavy costs, such as SAA suspension, travel bans and other sanctions, on any Bosniak attempt to reduce RS autonomy without its consent.

The EU should grant its EUSR authority to find a party in breach of the DPA if necessary. In the event of such a finding, Brussels and the member states would then be obliged to eschew any contacts or actions with the guilty party that would encourage it in its breach and to work through the EUSR to persuade it to return to the fold. Entrusting such a power independent of the accession process to the EUSR would make it harder for radical revisionists in any camp to achieve their goals. Some member states may be reluctant to entrust so much authority to the EUSR, but their history of indecision at times of Bosnian crises makes it necessary if the EU is to react quickly and effectively to fundamental threats to the DPA.

The EUSR should not be expected to act alone in the event of a serious crisis. He or she will be well placed to inform and advise not only member state foreign ministers and heads of government but also the UN Security Council, and there should be no hesitancy to do so rapidly and forcefully. Indeed, the Security Council should welcome the new EU responsibilities and EUSR authorities at such time as the OHR closes. Russia might minimally accept a Council request that the EUSR report regularly on the situation in Bosnia and Herzegovina to it, and possibly to the Dayton signatories and other interested governments and organisations.²⁰¹ There should be a further provision for an extraordinary report in the event the EUSR fears pending conflict.

To give the EU a unified voice and presence in Bosnia, the EUSR should be double-hatted as head of the delegation of the European Commission and oversee an integrated mission.²⁰² He or she should convene an advisory council that some or all members of the PIC

Steering Board could join²⁰³ and that should meet frequently at ambassador level and several times a year at political director level to exchange views, provide advice and coordinate action. It would in effect take up the coordinating but not the executive functions of the PIC, which should be dissolved once OHR closes.²⁰⁴ The EU mission would be much smaller than the OHR but should compensate by hosting frequent working-level meetings with international and national partners.²⁰⁵

A strong EUSR will need recourse to different tools to have an impact on policy areas, such as the ability to withhold funds and to recommend to member states with strong presumption of acceptance visa bans, the freezing of assets and in extreme situations, suspension of the SAA. Foremost should be full control over disbursement of the Instrument of Pre-Accession Assistance (IPA) funds, which should be substantially increased so that they constitute useful leverage.²⁰⁶ Currently Bosnia receives substantially less funding per capita than its Balkan neighbours.²⁰⁷ It will return to its 2001 level only in 2010.²⁰⁸ The EUSR will need the authority to work directly with aid recipients, without the mediation of state or entity organs, and the ability to shut off funds without delay on a project-by-project basis, or if need be, within cantons or entities. The exercise of such authority is not a normal Commission procedure, so it must be built into the EUSR mandate.

On the local level, control over funds can produce good results.²⁰⁹ Still, this and the other recommended measures, while important, will not be enough to change the Bosnian political players' fundamental policy considerations. Even if reasonably increased, IPA funds would be

²⁰⁰ The French presidency, for example, agreed on 8 September 2008 on behalf of the EU to guarantee security in the zones around South Ossetia and Abkhazia in connection with the Georgia-Russia ceasefire agreement.

²⁰¹ Dayton Peace Agreement, Annex 10, Article II (1) (f).

²⁰² Some Commission delegation departments overlap with those planned for the EUSR office; Crisis Group interview, European Commission delegation, Sarajevo, 10 November 2008.

²⁰³ An advisory council could also benefit from non-PIC states, such as the Netherlands and Norway; as well as the UN, World Bank and European Bank for Reconstruction and Development.

²⁰⁴ Crisis Group interview, PIC Steering Board ambassador, 3 March 2009.

²⁰⁵ OHR had 223 staff in January 2009; plans for the EUSR office envisage a "maximum of 80", including the "double-hatted EUSR/HoD leadership of the office". "Non-paper 1 on the mandate of the future EUSR and his office following the closure of the Office of the High Representative (OHR)", EU Council.

²⁰⁶ The EU has budgeted €89.1 million for 2009, rising to €106 million in 2010 and €108.1 million in 2011. European Commission (EC) decision C(2007) 2255, 1 June 2007, EC communication to the European Council – IPA multi-annual indicative financial framework for 2009-11, COM/2007/0689 final.

²⁰⁷ In 2009 BiH will receive €19.41 per person, Albania €22.43, Serbia €26.39, Kosovo €31.08 and Montenegro €49.10.

²⁰⁸ Crisis Group Report, *Ensuring Bosnia's Future*, op. cit., p. 23.

²⁰⁹ Crisis Group interview, senior OHR official, Sarajevo, 15 January 2009.

much smaller than other resources available to leaders in Bosnia and Herzegovina and would not carry much weight when the stakes are of real importance.²¹⁰ An acute observer noted that the BiH leaders are “willing to pay a price the international community cannot really fathom if they believe it is necessary to achieve their ultimate goals”.²¹¹ Another noted that their calculations of cost and benefit extend “for 50 years”, indicative of a willingness to sacrifice short-term gains.²¹²

The EUSR will also have to take over several residual functions from the Dayton Peace Agreement, as well as some additional components. Thus the job's present mandate²¹³ should also be amended in the following ways:

- the existing coordination role, presently limited to EU actors, should expand to embrace all international agencies and donor organisations,²¹⁴
- the EUSR should chair frequent regular meetings of international representatives, including the ambassadorial-level advisory council, for the purpose of sharing information and coordinating diplomatic action and meet separately and regularly with neighbouring state ambassadors and the heads of the European Commission delegations in other states of the Western Balkans;
- the requirement to maintain close contact with and provide guidance to the commander of EUFOR and the EUPM commissioner should be emphasised and continue as long as those missions remain in Bosnia;
- the EUSR should monitor the legislative process in all accession-related matters and inform the parties if their proposals fail to meet the requirements of the *acquis communautaire*; and
- the EUSR should coordinate research and analysis with the United Nations Development Programme (UNDP) Early Warning System, gathering relevant information from member state and other embassies and organisations and emphasising timely analysis of possible indicators of conflict.

²¹⁰ Crisis Group interviews, European diplomats, 12-13, 16 January 2009.

²¹¹ Crisis Group interview, Western ambassador, Sarajevo, 16 January 2009

²¹² Crisis Group interview, Bosnian official, 12 January 2009.

²¹³ Council of the European Union Joint Action 2008/130/CFSP. The mandate consists of eighteen areas ranging from “offer[ing] the EU's advice and facilitation in the political process” to being “consulted on priorities for the Instrument of Pre-Accession Assistance”.

²¹⁴ European Union Joint Action 2008/130/CFSP, Article 3 (b); Dayton Peace Agreement, Annex 10, Article II (1) (c) and (e).

Several components of the overstuffed current mandate should be deleted.²¹⁵ Bosnian state and entity law enforcement organs, working with member states, Euro-pol and Interpol, can coordinate on criminal justice and rule of law.²¹⁶ The EUSR is also unlikely to have a role in the now deferred and unambitious police restructuring.²¹⁷

There is a clear need to reinforce European Commission/EUSR staff with experienced personnel familiar with the region's political, legal and institutional culture. The constitutional reform process will require staff experienced in power sharing, mediation, and constitutional law. The office should take advantage of highly qualified staff who are not EU nationals.²¹⁸ It should also collaborate effectively with the Council of Europe's Commission for Democracy through Law (Venice Commission), which has provided detailed advice to Bosnia in the past.²¹⁹

The U.S. should play a key role, supporting the new EUSR by seconding highly qualified staff to the mission and closely coordinating policies and messages with the EU. Several observers recommend that the new administration appoint a special Balkans envoy to strengthen the U.S. presence in the region and complement the work of existing country-specific EUSRs.²²⁰ However, this could undermine the EUSR in Bosnia by unintentionally signalling a lack of confidence in the EU's role in the Balkans, while tending to dilute the influence of the strong embassies and capable ambassadors Washington has in each country, as well as that

²¹⁵ An extensive mandate can lead to dispersal of attention and resources, create confusion and hamper action; adding tasks does not guarantee they can be achieved. Crisis Group interview, senior European Commission official, Brussels, 2 December 2008. If the EUSR also heads the European Commission delegation, and the OHR has been closed, the sections of the mandate addressing them would no longer be required. For example, Article 3 (m) and (n) of EU Joint Action 2008/130/CFSP, on the Instrument of Pre-Accession Assistance and the transition from OHR respectively, could be deleted.

²¹⁶ European Union Joint Action 2008/130/CFSP, article 3 (c) and (g) should be deleted.

²¹⁷ This would permit Article 3 (c), (g), (i), (j) and possibly (l) to be deleted. See also below, on EUPM.

²¹⁸ Including, for example, nationals of neighbouring states and of the U.S., Canada, Norway, Russia and Turkey.

²¹⁹ See e.g. “Opinion”, Venice Commission, op. cit.; “Opinion on the draft amendments to the constitution of Republika Srpska”, CDL-AD(2008)016, 16 June 2008.

²²⁰ Lord (Paddy) Ashdown, “BiH and the Balkans: What Next?”, unpublished paper made available to Crisis Group, February 2009. James Lyon, “Halting the Downward Spiral,” *International Herald Tribune*, 25 February 2009. In addition to BiH, there are currently EUSRs in Macedonia and Kosovo.

of the Assistant Secretary of State for European and Eurasian Affairs.

As the Bosnian case demonstrates, the region's important political issues and challenges are country-specific and should be addressed as such. The assistant secretary should make an early visit to BiH a priority, to reinforce embassy and ambassadorial credibility. The Obama administration's message should be the same as the EU's: commitment to the country's territorial integrity (no unilateral secession), no solutions without consent of the three constituent peoples, no reduction of the two entities without their consent, and support for BiH progress to Euro-Atlantic integration. In Bosnia, it is the EU that should lead and the U.S. that should back up its ally.

C. TRAINING AND EQUIPPING: SECURITY AND JUSTICE

Bosnia is not ready for a NATO membership action plan (MAP). It still has unfulfilled obligations under the Individual Partnership Action Plan (IPAP), many of which are political and overlap with the SAA.²²¹ The same arguments against prematurely advancing Bosnia along the European integration path in the absence of solid performance apply to military integration. NATO would do Bosnia no favours by integrating it before it is prepared.

But if Bosnia is not ready for NATO, NATO and the EU can be ready for Bosnia. The alliance should expand its presence immediately and to mutual advantage. Bosnia no longer needs peacekeeping, but it does need confidence building, training and stabilisation. NATO can help provide all these while reaping genuine benefits. For example, the alliance might lease one of several extensive former military ranges in western Bosnia for live-fire exercises it cannot easily conduct elsewhere in Europe. Areas in that region are well suited for tank manoeuvres and mountain training (the latter useful for troops deploying to Afghanistan), sparsely populated and connected to Adriatic transport hubs.²²² NATO should run more frequent joint exercises like "Joint Effort 2009", planned for September.

Prudence demands ongoing contingency planning for a serious crisis, including – however unlikely – violent crisis. NATO's force in Kosovo is larger than required locally, even on a psychological and symbolic level,

and troops could be redeployed to Bosnia if needed.²²³ The alliance should ensure that its logistical plans for such an intervention are up to date; the North Atlantic Council should be ready to approve deployment with minimal delay.

There is no purely military reason to retain EUFOR's remaining 2,098 troops.²²⁴ Its combat capabilities are quite modest, mainly useful to secure bridgeheads for the arrival of additional forces in time of crisis.²²⁵ The largely psychological benefits it provides are expensive: common costs, not including for personnel, total €27 million.²²⁶ This does not mean, however, that EUFOR should withdraw or transition immediately to a training role. It retains symbolic value and can usefully buttress stability. Lajčák suggested retaining EUFOR combat forces for about six months after the OHR closes, but the exact time should depend on conditions on the ground.²²⁷

Nevertheless, completion of its original peacekeeping mandate²²⁸ leaves EUFOR as "a mission in search of a job".²²⁹ If the EU elects to retain a small force in Bosnia, it should not compete on defence reform with existing bilateral and NATO-based arrangements, as long as Bosnia aspires to NATO membership and must integrate alliance doctrine. The European Security and Defence Policy (ESDP) agenda is separate and complementary. EUFOR can, however, offer training, including through joint exercises, at staff levels not addressed by NATO, especially the brigade and battalion command and non-commissioned officer levels and in areas where it has already handed responsibility to the Bosnian military. If closely coordinated, NATO and EUFOR can deliver a comprehensive training pack-

²²³ Crisis Group interviews, senior NATO official, Brussels/Mons, 2 December 2009, PIC Steering Board ambassador, Sarajevo, 13 January 2009.

²²⁴ See www.euforbih.org/eufor/index.php?option=com_content&task=view&id=145&Itemid=62.

²²⁵ In the event of a serious crisis, EUFOR could be reinforced by troops from NATO's Kosovo force (KFOR) and up to four battalions from France, Germany, Italy and the United Kingdom. "EUFOR mission" (www.euforbih.org).

²²⁶ "EU military operation in Bosnia and Herzegovina (Operation EUFOR ALTHEA)", European Union ESDP press release, December 2008.

²²⁷ Crisis Group interviews, European diplomat, 12-13 January 2009, NATO official, Sarajevo, 22 January 2009.

²²⁸ The purpose of EUFOR (Operation ALTHEA) was "to provide a military presence in order to contribute to the safe and secure environment, deny conditions for a resumption of violence, manage any residual aspect of the General Framework Agreement for Peace and thereby allow all EU and international community actors to carry out their responsibilities." See more at www.euforbih.org.

²²⁹ Crisis Group interview, NATO official, Sarajevo, 22 January 2009.

²²¹ Crisis Group interview, NATO official, Sarajevo, 22 January 2009.

²²² Ashdown, "BiH and the Balkans", op. cit.

age, and like the alliance, the EU should make arrangements to use military facilities in Bosnia it may need for these purposes or other ESDP-related exercises.²³⁰

EUFOR's slender contribution to Bosnian stability nevertheless dwarfs that of its ESDP partner, the European Police Mission (EUPM). The efforts of an energetic new commissioner notwithstanding, EUPM adds little, and its mandate should not be renewed when it expires in December 2009.²³¹ It has long been limited to monitoring and training and is not equipped for the fight against organised crime.²³² Having missed several opportunities to reassure the public, notably in a recent highly publicised mosque-fire investigation, it does not contribute to the perception of security.²³³ For the last months of its mandate, EUPM should continue working to improve relations between the RS internal affairs ministry and its state-level colleagues in the security ministry and other institutions. These are very poor, due to reciprocal and near-total political resistance.²³⁴ As long as its state security institutions cannot communicate, let alone collaborate with, entity colleagues, Bosnia will not be ready for European integration.

The resources devoted to EUPM could better be deployed in bilateral and multilateral cooperation between EU member states and institutions and their Bosnian state and entity colleagues. Secondment of a small number of officers would allow hands-on collaboration in actual cases and provide useful training in the technical fields where Bosnian officers are weak. Even a handful of skilled officers, perhaps 30 (compared to the nearly 200 in EUPM), could make a real contribution if they are versed in Bosnian criminal procedure and stay two years or more.²³⁵

A model for police secondment exists in the state-level justice sector. International attorneys serve as judges, prosecutors and legal officers in the Special Departments for Organised Crime (SDOC) and War Crime

(SDWC). Special provisions allow foreigners to fill these positions for a limited time, and they operate fully within the national system with no additional powers or privileges. Their mandate runs through 14 December 2009 and should be extended. A recent study found strong support, including from the president of the court (a Bosniak) and the chief prosecutor (a Serb), for this.²³⁶ The state justice sector is one of Bosnia's notable successes – one of the few areas in which it has surpassed its neighbours – but its achievements are still fragile.

²³⁰ Ibid.

²³¹ None of Crisis Group's Bosnian and international interlocutors expressed a desire to retain EUPM past 2009, a view shared in some interviews with EUPM staff.

²³² Crisis Group interviews, officials, European Council, Brussels, 1 December 2008; Bosnian justice sector, Sarajevo, 12 December 2008; EUPM official, Sarajevo, January 2009.

²³³ Crisis Group interviews, PIC Steering Board ambassador, 7 January 2009; Bosnian justice sector official, Sarajevo, 12 December 2008.

²³⁴ Crisis Group interviews, member of RS government, Banja Luka, 16 December 2008, senior EUPM officials, Sarajevo, 23 January 2009.

²³⁵ Crisis Group interviews, Bosnian justice sector official, Sarajevo, 12 December 2008, member RS government, Banja Luka, 16 December 2008.

²³⁶ David Tolbert and Aleksandar Kontić, "Report of the International Criminal Law Services (ICLS) Experts on the Sustainable Transition of the Registry and International Donor Support to the Court of Bosnia and Herzegovina and the Prosecutor's Office of Bosnia and Herzegovina in 2009", International Criminal Law Services Foundation, 15 December 2008.

V. CONCLUSION

Bosnia and Herzegovina's progress toward EU membership has stalled, and the OHR can no longer drive it forward. The country's leaders are still too hostile and divided to take full responsibility. It is too late for the OHR to resume the role it once played, but too soon to abandon it entirely, since it can and does provide Bosnia some protection from centrifugal forces that have recently strengthened.

The lead international role in Bosnia should soon pass to the EU, however. While the OHR is open, it eclipses the influence of the EU, the institution in which the country's ultimate prospect for stability and prosperity resides. Brussels' reluctance to step up its engagement before taking over formally has increased the pressure to shut down the OHR, regardless of the incomplete state of implementation of the objectives and conditions the international community set in 2008 (the five-plus-two). Nevertheless, even advocates of quick OHR closure call that step a "big gamble"²³⁷ that could put in question Bosnia's relative stability and the progress its people have made outside the political sphere. Bosnia could yet tip into a serious crisis against which the High Representative's legal powers would still be needed, since domestic institutions remain too weak to protect the constitutional order. Consequently, the PIC should confirm at its March meeting that the OHR will continue until Bosnia has satisfied the five-plus-two, including full compliance with the Dayton Peace Agreement.

The expectation is that this will come by the end of the year. But the EU should not wait for the OHR to close before stepping up its engagement. It should use this hopefully brief period to strengthen its soft power tools, many of which, like diplomacy and IPA funds, can be effectively deployed even while the OHR remains as a guarantor of overall stability. Brussels should also employ this period to work out in detail the conditions Bosnia must meet to continue progress toward EU membership, with special attention to how it can help strengthen the structure of the highly decentralised Bosnian state. The European Commission delegation should be reinforced at once in preparation for the new mission, and the presidency (currently the Czech Republic) should seek authority from the member states to negotiate an agreement with Bosnia committing both sides to guaranteeing the Dayton Peace Agreement.

None of this will be easy. Many Bosnians doubt the EU wants them to join and know it will take a long time to be ready.²³⁸ The benefits of membership appear remote to them, while the hard political choices needed for accession must be made now. Bosnia's leaders will only make those choices if they see advantages, not just for their country but also for each of their national communities. The most reluctant, the Serbs, fear that state-building reforms are an excuse to weaken and eventually eliminate their RS entity. Without their consent, no reform – and no progress toward the EU – is possible. The EU can only help Bosnia advance if it can assure the Serbs that their right to govern themselves is inviolable but also that their only path to Europe is as part of Bosnia and Herzegovina.

The Prud process shows that some Bosnian leaders are exploring the contours of a compromise but also how slender the common ground is and vulnerable to nationalist attack. The EU should be ready to help facilitate this process on request of the parties. But its most valuable contribution – together just a little longer with the OHR – will be to provide a safe environment in which Bosnian leaders can find their own solutions.

Sarajevo/Brussels, 9 March 2009

²³⁷ Crisis Group interview, senior OHR official, Sarajevo, 9 January 2009.

²³⁸ 43 per cent of Bosnians said they believed the EU wants them to join, the lowest percentage in the Balkans. Only one in four believed Bosnia would join by 2015, with another twenty per cent expecting membership by 2020; one in six believed Bosnia would never join. "2008 Analytical Report", Gallup Balkan Monitor, pp. 39, 45.

APPENDIX A

MAP OF BOSNIA AND HERZEGOVINA



APPENDIX B

GLOSSARY OF ABBREVIATIONS AND ACRONYMS

| | |
|----------|---|
| BiH | Bosnia and Herzegovina |
| EC | European Commission |
| ESDP | European Security and Defence Policy |
| 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 BiH | Croatian Democratic Union of Bosnia and Herzegovina |
| 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 |
| IPA | Instrument for Pre-Accession Assistance |
| NATO | North Atlantic Treaty Organisation |
| OHR | Office of the High Representative |
| PIC | Peace Implementation Council |
| RS | Republika Srpska |
| SAA | Stabilisation and Association Agreement |
| SBiH | Party for Bosnia and Herzegovina, led by Haris Silajdžić |
| SDA | Party of Democratic Action, led by Sulejman Tihić |
| SDP | Social Democratic Party, led by Zlatko Lagumdžija |
| SIPA | State Investigation and Protection Agency |
| SNSD | League of Independent Social Democrats, led by Milorad Dodik |
| UN | United Nations |