



Dayton Project: Bosnia-Herzegovina Study Group

“One Last Chance in Bosnia”

Preface

Over the past two years, progress on political and institutional reform in Bosnia and Herzegovina (hereafter, Bosnia) has slowed noticeably. While this needs to be seen against the larger background of the unfortunate legacy of communism, nationalism, and the conflicting political realities created by the Dayton Accords, the main obstacles to reform are to be found in the deep political fissures and institutional incapacities that continue to plague the country almost 12 years after the war. Paradoxically, the recent slow-down is the product of policies designed to enhance democratic decision-making, promote institutional transparency and accountability. These policies—which include constitutional reform, SAA negotiations, the 2006 elections, and the decision by the new High Representative not to deploy the Bonn powers—were all measures designed to strengthen the body politics of Bosnia. But they all fell short of their intended outcomes, compelling the international community in February 2007 to reverse its decision made less than a year earlier to close the Office of the High Representative and instead to extend its mandate for at least another year.

The international community is now faced with a tough challenge: how to secure and democratize Bosnia sufficiently to allow the Dayton mission to be terminated and the process of Euro-Atlantic integration successfully launched and sustained—all of this within just one year—at a time when all the indicators suggest that Bosnia is further from achieving these goals than it was two years ago.

This challenge is made all the more difficult because the international community suffers from both engagement fatigue with respect to Bosnia and the need to direct energy and resources to much more serious global issues. This has emboldened some politicians in Bosnia to pursue parochial ethnic over national interests. Any course corrections in international community policy toward Bosnia must work within these realities.

Acknowledging this reality does not mean, however, that there is no space for fresh thinking on the challenges facing the international community’s mission in Bosnia. In fact, the opposite is true: fresh thinking is sorely needed if we are to confront these challenges. This paper is a contribution to that end. Specifically, it offers (1) a set of modest, short-term recommendations on the policy priorities of the international community, and in particular the High Representative/European Union Special Representative in Bosnia; (2) options for the successful execution of those priorities; and (3) a further set of

recommendations on how the international mission might enhance its ability to carry out these priorities efficiently. It is our hope that these recommendations will be found useful.

Policy Priorities

A one-year extension of the HR/EUSR does not allow for a long list of policy mandates. The primary goal of the international mission in Bosnia should therefore be to bring the Dayton mission of the HR to an end and set Bosnia firmly on the road to full sovereignty and Euro-Atlantic integration. This can be achieved by the signing of an SAA and a re-launch of the constitutional reform process. The following recommendations offer a justification and possible strategic approaches to the realization of these two priorities.

1. Recommendation: Do everything possible to keep Bosnia on track to sign a Security and Association Agreement (SAA).

EU membership offers the best chance for Bosnia to leave behind its tortured past. If Bosnia does not get into the EU in a reasonable time period, it could become a black hole that breeds instability and criminality with the broader framework of the EU. But for this process to truly work, Bosnia must make the required reforms in order to progress to the next level of association. Therefore, the sooner an SAA can be passed the better. However, lowering standards just to meet a deadline will completely undermine the process and affect all future attempts by the EU to compel Bosnia to adopt reforms through conditionality. It cannot be forgotten, after all, that the SAA process will introduce hundreds of new requirements that Bosnia will need to meet in order to inch towards EU membership. This process would be helped if all Bosnian parties knew that they will all be held accountable for any failure. This means no wavering by the international community on the requirements currently in place or trying out new processes at the eleventh hour.

To enhance the chances of passing an SAA, there must be greater policy coordination between the emissaries of the Council of the European Union and the European Commission in Sarajevo working on enlargement and foreign and security policy, and more clarity and unanimity in communications on these policies with the Bosnian authorities. The European Council has made the enlargement project the basis for its foreign and security policy with Bosnia, which means that the Council's Special Representative in Bosnia (EUSR) must work with Commission's Delegation in Bosnia, which manages all of the financial instruments associated with the enlargement process. The EUSR should therefore be clear that the goals and timelines set by the Commission are its own and that there is no deviation in matters of timing, approach, or conditionality with respect to the reforms required under the SAA. Such unanimity does not undercut the EU's interest in respecting the sovereignty of a country in choosing its own democratic path to European integration, as it is clear that Bosnia's current international status under Dayton and current political environment still requires a hands-on approach to reforms. (This fundamental reality is clearly reflected in the bonding of the Offices of the EUSR and the HR.) Hence, the EUSR

and the Commission Delegation in Sarajevo must work in greater unison both in terms of message and process to push the Bosnian authorities to pass the necessary legislation needed for the SAA.

The division of labor is clear: the Commission evaluates progress on the enlargement process, with the EUSR/HR serving chiefly as a firm political backstop (with the strong support of the US) against any backsliding by the Bosnian authorities on SAA-mandated reforms. Such backstopping includes unalloyed reassurances that enlargement is still the Council's primary foreign policy goal for the Balkans and Bosnia in particular. This message must come from a senior official in Brussels. It is also recommended that that individual demonstrate a keen interest in Bosnia's EU candidacy and a willingness to work closely with the country to achieve its integration into the European Union.

2. Recommendation: Revitalize and Institutionalize Constitutional Reform and Establish a Linkage with the SAA

Once the SAA is signed, the next priority for the Commission, again with the strong support of the US and HR/EUSR, should be to require constitutional reforms to improve the democratic decision-making process at the state level in Bosnia. This means making the Democracy and Human Rights accession criteria a priority over other spheres: after all, effective state-level institutions are necessary in order to achieve reforms in all other sectors.

A vocal campaign by the international community to compel Bosnian leaders to move forward on constitutional reform would be useful. This issue needs to be addressed in capitals of the countries belonging to the Peace Implementation Council, at a minimum in Brussels and Washington, in order to show international unity on this point. One option to consider is for the EC and US to meet in Brussels with the leaders of the State, the entities, and representatives of Mostar, Tuzla, Sarajevo, and Banja Luka to discuss this issue and indicate that, although completely abandoning the Dayton institutions may not be necessary, nevertheless without significant change in the constitution and the way in which Bosnian governmental entities function, there will be little if any chance for Bosnia to obtain EU membership.

This meeting should be followed up with a sustained lobbying effort in Parliament by the Commission, US, and HR/EUSR to pass the current package of constitutional reforms. Once this legislation is passed, the international community should support legislation put forward by the Parliament with the support of the Presidency and the Council of Ministers to create an independent Bosnian constitutional commission with a one-year mandate. The commission would be comprised of representatives from the parliament, the state, the entities, cantons, municipalities, and key interest groups from around the country. The commission would be tasked with drafting a set of proposals for legal, regulatory, and constitutional reform that would enable Bosnia to meet the conditions established in the SAA and harmonize the constitution with EU principles. Technical and legal support to the commission could be provided by the Venice Commission and the US. The proposals would ultimately be reviewed

by the Government and the Parliamentary committee and by the entities, cantons, and municipalities, and then voted on in Parliament.

Structural Improvements in the International Mission

There is general consensus that the vision, strategy, and tactics pursued by the HR/EUSR over the last year (with the support of the international community) have failed to sustain the reform process in Bosnia. Under less pressing circumstances, a full and thorough review of the international mission would be in order. But since that is not possible, we offer four recommendations that we believe will improve the prospects for achieving the policy priorities outlined above.

3. Recommendation: Revitalize the Office and Responsibilities of the OHR/EUSR

The HR/EUSR has to be an active player on the domestic political scene who should push for or build consensus without imposing it whenever possible, particularly when a policy or decision modifies Dayton. The HR/EUSR has to be ready to let local politicians take credit for what he/she has brokered, and must show local politicians respect, but not defer to any of them. At the same time, the HR/EUSR should not hesitate to take strong measures to punish the political failure of the major political parties and/or their leaders. This includes the use of the Bonn Powers and possibly EU-wide visa black-listing to those who “obstruct Dayton implementation or progress toward EU accession.” Finally, the HR/EUSR needs to set a short focused agenda, along the lines proposed above, and not talk about shutting down OHR in 2008, which would make the HR a lame duck.

The next HR/EUSR should also demand a point of contact at a high level in Brussels, Washington, and other key capitals and the right to pick up the phone and raise issues with these individuals. Working with Ambassadors on the ground makes sense on a day-to-day basis. For key issues, however, HR/EUSR needs direct access in national capitals.

4. Recommendation: Re-empower and Streamline the Peace Implementation Council (PIC)

The revitalization of the HR/EUSR requires that the PIC once again play a significant role in formulating an international policy and strategy on Bosnia, something it has not done in several years. Re-empowerment of the PIC would serve as an important signal to Bosnian politicians of the importance the international community attaches to completing the reform process. To this end, consideration should be given to raising the level of participation of member states at least to the level of the assistant secretary with key issues thoroughly vetted in member capitals before meetings. Elevating the level of the participants to the assistant ministerial level would require a reduction in the number of meetings to twice a year, once in Brussels and once in Bosnia. The meeting in

Brussels should be hosted by the PIC with presentations made by the Bosnian government. The PIC meeting in Sarajevo should likewise be hosted by the Bosnian government with presentations by the PIC for comment and engagement by Bosnian government officials. The PIC should also require from the HR/EUSR a quarterly written progress report. Finally, the PIC should remain actively engaged in shaping international policy toward Bosnia until the country is fully integrated into Euro-Atlantic institutions.

5. Recommendation: Strengthen the Steering Board (SB)

The Steering Board must speak with one voice under the strong leadership of the HR/EUSR and must support the latter in the execution of his/her responsibilities under Dayton even when full consensus within the SB is not achievable. The SB must also act in unison when promoting initiatives at all levels of government in Bosnia. This will prevent Bosnian political leaders from exploiting policy divisions within the international community.

6. Recommendation: The United States should continue to play an important and visible role in Bosnia

The United States still carries enormous credibility within Bosnia: it is expected to take a leadership position and is criticized when it does not. The declining US interest in Bosnia since 2001 has not been helpful in completing the international mission, a task that still requires a certain level of engagement by Washington. In meeting this need, the US has to be fully engaged with the HR/EUSR and strongly encourage him to act and intervene where necessary. A close relationship with the incoming HR/EUSR will be essential. The US Embassy should also continue to play a central role in brokering political agreements as it sought to do with the constitutional reforms.

Respectfully Submitted,

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