

# Overcoming Ethnic Politics in Bosnia?

## Achievements and Obstacles to European Integration

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### 1. Introduction

21 November 2005 marks the tenth anniversary of the Dayton Peace Accords (DPA), also known as the General Framework Agreement for Peace in Bosnia and Herzegovina (GFAP). Since that time there have been both progress and failures, and even though the war ended ten years ago, portions of the DPA are still unimplemented, and will probably remain so. Troublingly, at Dayton's tenth anniversary, one neighbouring state – Serbia and Montenegro – still maintains territorial aspirations against Bosnia's territory and is working actively to undermine Bosnian sovereignty in preparation for an annexation attempt. As late as September 2005, Bosnia-Herzegovina seemed to have reached the limits of its ability to move forward on European integration without significant changes in the way the international community approached the country and in the way the country's institutions function. Nonetheless, as of this writing, Bosnia seems to have finally taken steps that could enable it – provided its politicians move rapidly and constructively – to move forward on European integration. Should they not move rapidly, Bosnia could remain stuck and prove unable to move forward for at least the next two years. To understand why this is so, we must first examine briefly the Dayton Peace Accords, their goals and their implementation (section 2). We must then examine the obstacles that prevent Bosnia from moving forward within the context of the Dayton framework and its weaknesses (section 3), in order to draw conclusions and outline challenges for the future (section 4).


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## 2. The Goals of the Dayton Peace Accords

The DPA was rather unusual in the annals of peace treaties. A traditional peace treaty or cessation of hostilities would have consisted of ceasefire, arms reduction, and boundary demarcation agreements, the essence of Annexes 1-A, 1-B, and 2. The November 1995 GFAP went far beyond these simple goals: it was a document designed to create a new country, the unified state of Bosnia-Herzegovina, comprised of two multiethnic entities. The goals were ambitious. This unified Bosnian state was to have a functioning central government, hold democratic elections under international auspices, “adopt and adhere to normal international human rights standards”, and allow freedom of movement. The state’s human rights commission would enforce international human rights obligations, displaced persons were to be allowed to return to their homes, or to be compensated for their loss in cases where return wasn’t possible, joint public corporations were to be established, as was a commission for the protection of national monuments. Indicted war criminals were to be arrested and turned over to The Hague, and all foreign fighters and soldiers were to leave the country. In short, Dayton’s aim was not only to stop the fighting, but also to reverse ethnic cleansing, and create a new, unified country.

Of the three ethnic groups that signed the DPA, only the Bosniaks were truly committed to its enforcement and ideals. The other two groups – the Serbs and Croats – continued to harbour their own separatist aspirations and have only reluctantly cooperated with DAP implementation when faced with significant pressure from the international community. As a result, to date some parts of Dayton have been fulfilled, while others have not.

The sad reality is that today’s Bosnia-Herzegovina still consists of three de facto monoethnic entities, three separate armies, three separate police forces, three education systems and a national government that exists mostly on paper and operates at the mercy of the entities. Many ethnic leaders – particularly in Republika Srpska (RS) – continue to support the results of ethnic cleansing and the subsequent system of ethnic apartheid. Indicted war criminals remain at large. The criteria for voter registration in 1996, written by and large by the international community, directly contradict the GFAP. As a result, nationalist political parties, including many of the ethnic cleansers who were responsible for the war in the first place, remain securely in power throughout much of the country. Nationalist extremists – often encouraged, organised and funded by the ruling political parties – still attack the homes of returning refugees in certain areas. Corrupt police often side with nationalist elements in their respective enclaves and sometimes openly support their activities. All this prevented



refugees from returning to their pre-war homes, which cements the wartime ethnic cleansing and monoethnic political frameworks. This was not what DPA intended.

In addition to the failures, there have been some significant successes under DPA: the Central Bank, a common currency, common license plates, state symbols, the CAFAO-led Customs reforms, the State Border Service, the State Protection Agency, the unification (on paper) of Bosnia's three armies. So too, the international community's peacekeeping forces (IFOR, SFOR, EUFOR) have managed to keep the peace for ten years. But the one common factor among these successes is that all were forcibly imposed by the international community.

Outside of the DPA framework, the efforts of the World Bank, UNHCR, USAID, the EU, and numerous individual donor nations succeeded in reconstructing much of Bosnia's war-damaged public infrastructure. Since 1995 Bosnia-Herzegovina has benefited from the construction and repair of roads, schools, hospitals, bridges, houses, and power lines, and in Sarajevo and Mostar, much of the wartime damage has been repaired.

However, in the process of reconstruction Bosnia failed to attract the foreign investment many had hoped for. Little private investment – foreign or domestic – has occurred in manufacturing. The overall investment climate appears far from hospitable, suffering from strangling bureaucracy, excessively high taxes, corruption, and an often inefficient legal system. Politicians appear more interested in staying in power than in making the needed structural changes in the economy that will attract private investment, and as a result the economy suffers and social discontent rises.

Today Bosnia faces a dwindling international presence and support, even though the primary task of Dayton – making Bosnia a self-sustainable, fully functional country – has not been met. Nonetheless, recent movement by the Republika Srpska National Assembly (see section 4.1) may have paved the way for Bosnia to move forward.

## **2.1. Implementation Annex by Annex**

When examined annex by annex, the Dayton Peace Accords present a sobering picture of non-compliance and non-implementation. The major success under DPA has been the cessation of hostilities and boundary demarcation. While a worthy and admirable goal, it was the promise of implementation of certain key principles and the creation of a unified state that persuaded the Bosniaks in particular to sign the peace. Unlike the Serbs and Croats, they expected full implementation of all the DPA annexes throughout all three ethnic areas.

**Annex 1-A – *the ceasefire*** – is without a doubt the most successful of all the annexes to date. Peace has been maintained for ten years. The only problematic issue is the continuing freedom of Hague-indictee Radovan Karadzic.

**Annex 1-B – *regional and sub-regional arms control*** – has provided a framework for reducing armed forces in the region, and Croatia, Serbia and Bosnia have all reduced their armed forces significantly. Military and confidence building measures between the former warring factions have increased significantly and resulted in the formation of a joint military structure at Bosnia's state level that gives the impression that Bosnia has a unified army.

**Annex 2 – *dealing with inter-entity boundaries and Brcko*** – has been implemented for the most part. Today the inter-entity boundaries are settled largely beyond doubt. Brcko implementation is ongoing and often appears to be a model for the rest of Bosnia.

**Annex 3 – *democratic elections*** – was implemented clumsily, haphazardly, and in one crucially important area – voter registration – in contradiction of the DPA text. Implementation was characterised by international appeasement of the ethnic cleansers, which resulted in their cementing their power via the ballot box and with international approval. The results are felt to this day in settlement patterns and politics.

**Annex 4 – *the constitution of Bosnia-Herzegovina*** – is unwieldy, clumsy and unworkable without continued international supervision and intervention and the central government institutions are only as powerful as the entities allow them to be. The concept of “constitutionality of nationalities” permits legalised discrimination on the basis of ethnic background, and *prima facie* contradicts principles of the Council of Europe. Indeed, the entire constitution enshrines ethnic discrimination as a principle of law. The constitution and the present entity structure will prevent Bosnia-Herzegovina from joining the European Union without significant modification.

**Annex 5 – *inter-entity arbitration*** – is largely unimplemented.

**Annex 6 – *human rights*** – often goes unimplemented, as systematic discrimination continues throughout the country, particularly against minority populations.

**Annex 7 – *refugee return*** – the crucial centrepiece of DPA, which permits all refugees and displaced persons to return to their pre-war place of residence, remains a tremendous disappointment. The majority of cities in Bosnia today now has one dominant ethnic group making up nearly 90 percent of the city's

population.<sup>1</sup> Minority refugee returns to Republika Srpska and the Croat majority areas have been extremely disappointing, in large part due to opposition from the leading ethnic political parties in those areas. Minority return to Bosniak-controlled areas, while substantially better than for their Serb or Croat opposites, also remains disappointingly low.

*Annex 8 – the Commission to Preserve National Monuments* – has achieved little.

*Annex 9 – joint corporations* – is implemented only partially.

*Annex 10 – civilian implementation* – created the Office of the High Representative (OHR). Given sweeping “protectorate”-style powers at several Peace Implementation Council meetings (Sintra and Bonn), the High Representatives have used this power more aggressively since 1999, imposing, amending and striking down laws, removing politicians and police officials from office, and seizing assets of organisations and individuals suspected of working against DPA. The OHR has proven the chief stabilising factor in Bosnia’s post-Dayton mix.

*Annex 11 – the International Police Task Force (IPTF)* – created a UN organisation tasked with training and supervising the police and the judiciary. Although plagued with problems during its first several years, it eventually achieved significant successes in creating police standards and undertaking a preliminary vetting process for police officers. It was replaced at the beginning of 2003 by an EU-led mission (European Union Police Mission, EUPM) which has failed in nearly all aspects of its security responsibilities.

A thorough examination of the Dayton Peace Accords, annex by annex, indicates that in spite of its many successes, ten years after the signing, Bosnia remains ethnically divided. State-level governing structures are fragile, dependent on the good will of the entities and support from the international community. Were the international community to withdraw, these structures would quickly collapse. This is reflected clearly in the current political deadlock over moving forward on European integration. The words of the Madrid Peace Implementation Council meeting of 16 December 1998 are as appropriate today as they were then: “Bosnia and Herzegovina’s structure remains fragile. Without the scaffolding of international support, it would collapse.”

<sup>1</sup> The Helsinki Commission analysis states that pre-war Bosnia was so ethnically mixed that in about 80 percent of municipalities no single ethnic group had an absolute majority. Today Tuzla is the only municipality where the majority population does not reach 90 percent of the total population. See Report on the Status of Human Rights in Bosnia and Herzegovina, Analysis for January–December 2004, available at the Helsinki Committee website [www.bh-hchr.org](http://www.bh-hchr.org).

## 2.2. A Flawed Document

Since Dayton the international community has struggled to implement the civilian aspects of DPA and to change the underlying structures and problems that contributed to the war. Programmes to restructure the financial system, payments bureaus, judiciary, media, police, armed forces, customs, tax policies, investment laws, electoral system, to privatise state-owned assets and assist refugee return have all been undertaken and all met with determined and well-organised resistance from obstructionist local authorities.

There are several reasons DPA was never implemented in its entirety, some of which are due in part to structural problems inherent in the treaty itself. One of DPA's flaws is its failure to address one of the primary causes of the wars of Yugoslav dissolution (1991–present), which was the inability of Yugoslavia's economic and political structures to provide economic growth, prosperity, and free political expression. This politico-economic system, notorious for capital destruction, proved unable to create a self-sustaining economy in resource-rich Yugoslavia. The resulting problems created fertile ground for nationalist extremists – such as Slobodan Milosevic – to exploit. The Titoist economic, political and legal system, which placed all economic, political and legal power in the hands of one ruling political party, remains in place, relatively unchanged. Little actual economic reform has occurred since 1992, and three one-party political systems with their attendant patronage networks still predominate, frequently turning elections into nothing more than an ethnic census.

A second flaw was the hope that the three warring Bosnian factions would put aside their differences, cooperate, and live together in peace and harmony in a unified state. The Bosnians were expected to move beyond the wartime atrocities, large scale economic plunder and organised crime from which so many in the nationalist ruling parties benefited. Since Dayton there has been disappointingly little ethnic reconciliation, and at least one of the three factions continues to pursue its wartime goals. The Serb nationalist goal, often supported openly by Belgrade, is eventual union with Serbia, and Republika Srpska has shown no willingness to move forward on achieving the preconditions for Stability and Association Agreement (SAA) negotiations, as it feels this would jeopardise its ability to eventually join Serbia.

The third and most significant flaw relates to enforcement. The US – fearing American casualties – refused to allow NATO troops to fulfil their mandate under Annex 1A, Article VI:2,3 and robustly enforce civilian aspects of the DPA. This was left up to the hopelessly corrupt and politically compromised ethnic police forces. Lacking an enforcement mechanism, the agency responsible for implementing the civilian aspects of DPA – the Office of

the High Representative – spent the first two years of its existence handicapped. The OHR, along with the UN, OSCE and the donors, has been forced to rely largely on the good will of Bosnia’s ruling ethnically-based political parties to voluntarily comply with DPA. This has led to an international community policy of pleading, cajoling, and begging in order to achieve DPA implementation. Local Bosnian politicians will typically cooperate only when it is in the direct interest of their political party. In order for Bosnia to continue to function, the OHR has frequently been forced to impose, amend or strike down laws as well as remove recalcitrant politicians and police officials.

A fourth problem also arose from the lack of an enforcement mechanism: international appeasement of local officials. Lacking an enforcement mechanism, and anxious to achieve anything that could be categorised as progress, officials in many organisations often follow the path of least resistance. Rather than enforce DPA, they reinterpret it to fit the political distortions that they lack the political will to change, particularly the refusal of local officials to cooperate with DPA implementation.

### 3. The Challenge to Bosnia’s European Future

The failure to fully implement the DPA resulted in a situation where Bosnia had come to a standstill in its progress towards European integration. In November 2003 the European Commission’s feasibility study on Bosnia’s readiness to move toward eventual EU membership cited the rule of law and the police among sixteen priority areas in need of improvement. Bosnia’s government has now whittled down the list until only one remains: police reform.<sup>2</sup> A separate report, commissioned by the EC and based on a detailed audit of the BiH police agencies, listed numerous police deficiencies, including complex structures, cost, lack of central databases, and use of different information systems by different agencies, and concluded that all these hampered crime fighting. It praised the establishment of some state-level police institutions, such as the State Border Service and State Investigation and Protection Agency, but concluded that if Bosnia was to attack crime effectively, “further reform and enhanced state-level enforcement capacity are needed”.<sup>3</sup>

<sup>2</sup> Report from the Commission to the Council on the Preparedness of Bosnia and Herzegovina to Negotiate a Stabilisation and Association Agreement with the European Union, COM (2003) 692, 18 November 2003.

<sup>3</sup> Financial, Organisational and Administrative Assessment of the BiH Police Forces and the State Border Service: Final Assessment Report, 2004.

At the end of 2003 OHR announced that reform of Bosnia's security structures would be one of its priorities in the next year, and the European Commission hired consultants to prepare a review of the police. This review, which was published in June 2004, focused primarily on professional and technical aspects and failed to consider the political side.<sup>4</sup> Nonetheless, it found gross deficiencies in organisation and concluded that the police were overstuffed, under-equipped and fragmented along ethnic lines.<sup>5</sup>

Ethnopolitical organisation of the police has given rise to some clearly illogical situations. For example, each of the smaller units (whether public security centres in RS or cantons in the Federation) have control rooms but they are under-used in some less populated areas. Thus, the control room in Gorazde canton (in the eastern Federation) handles only 1.6 interventions per day, while the one in Tuzla (northeastern Federation) has approximately 80 interventions per day.<sup>6</sup> The report argued convincingly that the system was unsustainable, and Bosnia's police should be organised in accordance with professional and technical, rather than ethnic, criteria.

In order to avoid confusion as to what was required to begin SAA negotiations, the EU gave explicit instructions that police reforms should adhere to three principles. These principles were laid out clearly during the course of 2004 and early 2005 in letters by Christopher Patten, Javier Solana and Olli Rehn to the Bosnian authorities, as well as in subsequent meetings with the Police Reform Commission. They also reiterated these principles publicly in interviews given to the Bosnian media. The three criteria were: 1) exclusive competence (including legislative and budgetary) for all police matters at the state level; 2) no political interference in policing; and 3) Local Police Areas (regions) designed on the basis of technical, policing considerations, rather than politics.

In late June 2004, NATO rejected Bosnia as a candidate member of Partnership for Peace (PfP), largely because the RS had yet to arrest any Hague-indictees. This was in part a reflection of the RS' refusal to cooperate with any efforts it viewed as undoing the wartime legacy of ethnic cleansing. It was also in part due to Bosnia's unreformed police forces. Due to obstruction by the RS, all efforts to rationalise Bosnia's police had met with failure. This became

<sup>4</sup> The study's avoidance of politics led to some awkward gaps in its conclusions. For example, a table was included that showed the gender and ethnic breakdowns of police forces throughout BiH; the figures demonstrated both the under-representation of women and the ethnic imbalance but the comment next to the table noted only that "most forces need to improve the inclusion of female officers". Functional Review of the BiH Police Forces, Final Report, July 2004, p. 63. [www.mpr.gov.ba/docs/bih\\_police\\_en.pdf](http://www.mpr.gov.ba/docs/bih_police_en.pdf).

<sup>5</sup> *Ibid.*

<sup>6</sup> *Ibid.*

particularly crucial when the European Commission set police reform as one of the preconditions for Bosnia to begin negotiations for an SAA.

Paddy Ashdown, the High Representative, took measures against the RS political leadership, in his words “cleaning the rotten wood” that prevents Bosnia from fulfilling its international obligations and moving toward a European future.<sup>7</sup> He also announced creation of a Police Restructuring Commission (PRC), tasked with proposing a new organisation for the police in BiH that would substantially strengthen state structures. “Nothing will be ruled in, and nothing ruled out”, he said.<sup>8</sup> The decision establishing the PRC listed numerous earlier calls by the international community’s Peace Implementation Council (PIC) for voluntary changes that Bosnia’s politicians – primarily in the RS – had ignored.<sup>9</sup>

The international community’s powers of intervention are extensive but not infinite. While Ashdown and his predecessors have sacked elected officials, imposed legislation, and amended the constitutions of entities and cantons, the High Representative does not have the right to change the constitution established at Dayton – indeed his duty is to uphold it. The necessary changes to bring about a reformed police include amending the constitution, which can only be done by a resolution of the BiH parliament, with a two-thirds majority in the lower house. In addition, the European Commission insists that the Bosnian state, rather than its international guardians, take responsibility for reforming the police in order to demonstrate that the country’s political structures are sufficiently mature and functional to engage in the European integration process.

The main task given to the PRC was to propose “a single structure of policing” for the whole of BiH, which would be “under the overall political oversight of a ministry or ministries in the Council of Ministers”.<sup>10</sup> It was to review the police and prepare necessary legislation, including, if required, “amendments to constitutions”. The OHR set twelve guiding principles, most importantly that Bosnia’s central government must have authority over the police in a manner similar to other EU states and that its police should reflect the country’s ethnic structure. These two principles meant, in effect, that the PRC should propose a truly multiethnic police under central government oversight.

7 Press conference of High Representative Paddy Ashdown, 30 June 2004, Sarajevo.

8 Ibid.

9 Establishment of multiethnic police was called for by the Peace Implementation Council Ministerial on 9 June 1998 and repeated by the PIC on 16 December 1998. Similar calls for reforming the police to include an appropriate ethnic balance had been made at most PIC ministerial-level meetings over the previous three years, including Petersberg (1996) and Luxembourg (1997).

10 Decision Establishing the Police Restructuring Commission, 5 July 2004, www.ohr.int.

### 3.1. The Work of the Police Restructuring Commission

The High Representative formally established the PRC on 2 July 2004, with Wilfried Martens, former Prime Minister of Belgium, as chair<sup>11</sup> and David Blakey, a former UK Inspector of Police, as his deputy. There were also ten regular<sup>12</sup> and seven associate<sup>13</sup> members. Although the OHR appointed most PRC members, local authorities were asked to name several. OHR provided a secretariat with twenty staff members, including representatives of the EUPM and the European Commission Delegation. Although it was clear that the PRC was designed to remove entity control of the police, politicians and Commission members from the RS nonetheless participated in its work; at the time, the RS was under increasing international pressure over war crimes indictees, and it did not wish to be seen as obstructing the reform process. However, it was certain that anything the PRC recommended would require passage in BiH's several parliaments, giving Bosnian Serb leaders opportunities to obstruct, if need be, at a later stage.

The PRC held seven meetings over six months.<sup>14</sup> Although its inaugural session was encouragingly business-like, it soon became evident that it would not be an impartial gathering of professionals, free from political influence. The RS members questioned whether the PRC had the authority to propose constitutional changes.<sup>15</sup> They reminded participants that under the constitution authority over police and all other competencies belonged to the entity governments unless explicitly granted to the central government.<sup>16</sup> The RS did present a proposal that

<sup>11</sup> The Martens appointment was considered particularly appropriate in light of Belgium's own recent experience with major police reorganisation.

<sup>12</sup> The Minister of Security of Bosnia, Minister of Interior of RS, Minister of Interior of the Federation, two ministers from cantons in the Federation, one mayor from a city in the Federation and a mayor from a city in RS, the Mayor of the Brcko district, a representative of the Chairman of the Council of Ministers, and the EUPM Commissioner.

<sup>13</sup> The Chief Prosecutor of BiH, the Director of the State Investigation and Protection Agency, the Director of the State Border Service, the Director of the Office for Co-operation with Interpol, the Director of the Federation Administration of Police, the Director of Police in RS, and a cantonal police commissioner.

<sup>14</sup> These were in Sarajevo on 22 July 2004; Banja Luka on 31 August; Mostar on 24 September; Sarajevo on 13 October; Brussels on 25 October; Brcko on 17 November; and Sarajevo on 13 December.

<sup>15</sup> There was, however, a noticeable difference of opinion among the Serb members of the Commission. Those representing RS government structures (primarily the Minister of Interior and his police director) were firmer in opposing any significant changes; those representing the Brcko District or state-level institutions were more amenable to discussions on improving structures. Interview with a member of the Commission, 26 November 2004, Sarajevo.

<sup>16</sup> Article 3 a of the Constitution of BiH reads: "All governmental functions and powers not expressly assigned in this Constitution to the institutions of Bosnia and Herzegovina shall be those of the Entities." Other articles, however, provide the possibility for competencies to be transferred from the entities. Article 5 a, for example, calls for establishment of such competencies at state level if they are "necessary to preserve the sovereignty, territorial integrity, political independence, and international personality" of Bosnia.

would have placed a thin, state-level umbrella over current policing structures but was not in keeping with the PRC's mandate to come up with a single structure or the EU requirement that the state enjoy exclusive competence over police matters.

Bosniak members publicly encouraged the Commission to propose constitutional changes and spoke ambitiously about this as a means for unifying the country's police forces.<sup>17</sup> Bosnian Croat members were cautiously supportive of the mandate but made clear they would not sacrifice the cantonal police – particularly in Croat majority cantons – unless entity forces were also reformed.

The EU brought pressure to bear. In October 2004, its foreign policy chief, Javier Solana, declared, “you must be guided by what is needed for effective law enforcement, not by politics – in the modern world we cannot afford anything less”.<sup>18</sup> The then European Commissioner for External Relations, Chris Patten, reminded the authorities in an open letter that if Bosnia was unable to combat crime effectively, there would be serious consequences for integration. Bosnia, he said, needed to have police at the state level, including laws and funding, similar to those in other European countries. He invited the PRC to propose “fundamental, systemic reforms ... guided by what makes most sense for effective policing, not by political considerations”.<sup>19</sup>

As the PRC's work neared an end, Solana delivered an even more explicit message:

“The job of the PRC is not to hide behind the current constitution, but to establish a functional model of police for the BiH. If that means changes in constitutions or changes in the competence that the constitution assigns, then the task of the Commission is to propose such measures. I know that your constitution does not exclude such a possibility. It actually provides foundations for such activities.”<sup>20</sup>

### 3.2. The Proposals for Police Reform

Before the PRC began its work, the European Union Police Mission developed a reform proposal that envisioned establishment of the position of Police Director, to be supervised by a state-level Ministry of Security, and creation of five police regions based on the following criteria: 1) the number

<sup>17</sup> This was contrary to an internal agreement among Commission members to refrain from public statements.

<sup>18</sup> Remarks by Javier Solana, EU High Representative for Common Foreign and Security Policy, at the session of the Police Restructuring Commission in Brussels, 28 October 2004.

<sup>19</sup> Patten's letter to BiH authorities, 16 November 2004, in possession of the author.

<sup>20</sup> Solana, cited in “Nuzne su radikalne reforme u policiji”, *Dnevni Avaz*, 27 November 2004.

of people in the region; 2) its geographical size; 3) the intensity of crime; 4) traffic and economic patterns; and 5) the ability to cooperate with other law enforcement partners. The EUPM concept, which served as the starting point for discussion in the PRC, explicitly stated that creating too few regions – two or three – would result in regions too big for effective police control, while too many regions – ten or more – would cause coordination difficulties. It proposed Banja Luka, Sarajevo, Mostar, Tuzla and Zenica for the five regional centres. The five regions would cross entity and cantonal boundary lines.

PRC members from the Federation supported this proposal with slight modifications of regional borders. They offered, as a concession to the RS, that centres be located in Doboj in the RS and Brcko, a multiethnic district with a Serbian majority shared by the Federation and RS, instead of the Bosniak-majority cities of Zenica and Tuzla.<sup>21</sup> Brcko representatives offered their own proposal of eight regions<sup>22</sup> that also respected the EUPM criteria for crossing entity and cantonal boundary lines.

The RS representatives were not prepared to countenance the disbandment of entity police forces or the creation of police regions that crossed entity boundaries. Nor were they willing to agree to the transfer of police competencies to the state level. At most they agreed to delegate some minor entity competencies to state-level institutions, permitting them overall political supervision, while the budget and day-to-day police work would remain at the entity level. Toward the end of its work, the PRC received additional proposals on the number of police regions but failed to reach a consensus. A source close to the talks said that:

“Everyone in the police restructuring commission, including professionals from Republika Srpska – with the exception of the Minister of the Interior of RS – acknowledged that they thought ... this [proposed reform] represented a more effective system of policing, and they supported it from a professional standpoint. But they couldn’t come out and say this, as they were bound by the conclusions of the Assembly of Republika Srpska.”<sup>23</sup>

The chairman, Martens, noted that there had been “professional consensus” on both police regions and state competencies but that “political restrictions placed by the Republika Srpska National Assembly on the PRC participants from the Republika Srpska prevented the full endorsement of the main recommendations”.<sup>24</sup> Since the Commission as a whole – due to the RS position –

<sup>21</sup> This would have put two police centres in the RS, two in the Federation and one in the Brcko District.

<sup>22</sup> With centres in Sarajevo, Banja Luka, Mostar, Brcko, Tuzla, Travnik (or Zenica), Doboj and Prijedor.

<sup>23</sup> Interview with international official.

<sup>24</sup> Chair’s Report of the PRC, [www.ohr.org](http://www.ohr.org).

was unable to sign on to the proposals, he published the report under his own authority, including three options – the original EUPM plan with five local police regions, one with ten, and another with eleven – leaving the High Representative, Ashdown, to decide.

In January 2005 he came out in favour of the ten-region option<sup>25</sup> and, in accordance with the PRC’s final report, recommended that state institutions be vested with exclusive competence for all police matters, including legislation and the budget, while a state-level Ministry of Security supervised the unified structure, including a State Investigation and Protection Agency (SIPA), a State Border Service (SBS), and Local Police Services. The latter would operate in areas in which local police commissioners would be appointed. The size, shape and location of the ten regions identified by Ashdown (or “nine plus one” as it was conveniently termed<sup>26</sup>) were determined entirely on the basis of technical police criteria and ignored boundary lines between existing entities, cantons and districts.

The OHR’s choice itself, however, involved a considerable concession to politics, to the point where it may not fulfil the criteria set by the European Commission. The ten-region option was chosen almost entirely for political reasons. As noted, the original EUPM study, based solely on technical criteria, had stated that too many regions – “ten or more” – would be hard to coordinate and inefficient. Not only did the OHR proposal envision more police regions than practical, but the multiethnic character of its proposed regions was significantly diluted, thereby defeating much of the original purpose.

### 3.3. Banja Luka’s Response

In response to increased international pressure over war crimes and police reform, a number of senior Bosnian Serb politicians resigned from office: RS Prime Minister Dragan Mikerevic and his government, followed by the Minister of Foreign Affairs of Bosnia, Mladen Ivanic, and the Communication and Transportation Minister, Branko Dokic. The remaining two Serb ministers in the state’s Council of Ministers announced but did not tender their resignations.

All significant Serb political parties in the RS declared the proposed police reforms unacceptable. Even the least significant were portrayed as threats to Serb national interests and the existence of the RS. Echoing the tone once adopted by the entity’s founder, Karadzic, President Dragan Cavic warned the High Representative that “the RS is a result of a four-year fight of the Serb

<sup>25</sup> “OHR: Press Conference on Police Restructuring”, Federal News Agency (FENA), 31 January 2005.

<sup>26</sup> The “plus one” refers to the multiethnic, non-entity Brcko District.

people ... not a gift of the international community” and threatened that it might organise a referendum on its status within Bosnia.<sup>27</sup>

RS leaders received strong backing from Serbia, whose Prime Minister, Vojislav Kostunica, deliberately misinterpreted Ashdown’s proposal as tantamount to abolishing the RS and warned that “abolishing entities abolishes the Dayton agreement”, thus destabilising the region.<sup>28</sup> In a joint press statement, Kostunica, President Boris Tadic, and Parliament Speaker Predrag Markovic said that Ashdown “does not have the authority to dismiss officials, let alone to change the institutional framework defined by the Dayton Agreement”.<sup>29</sup> Leaders of the Serbian Orthodox Church also condemned Ashdown’s measures, warning that they might force people in the RS “to lose every trust in democratic processes in [Bosnia]”.<sup>30</sup>

These pronouncements reflected a broadly held belief among much of Serbia’s political and clerical elite that the RS will likely be annexed, following a decision on Kosovo’s final status (which, most in Belgrade tacitly admit, will be some form of independence). Belgrade, therefore, often encourages RS politicians to be uncooperative. Most of Serbia’s leading politicians, including Kostunica, have at one time or another said publicly that the RS should be joined to Serbia, most recently in June 2005, when Foreign Minister Vuk Draskovic provoked a sharp rebuke from Ashdown by linking the fates of Kosovo and RS.<sup>31</sup>

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Unexpectedly, Russia – a member of the Peace Implementation Council that oversees the OHR – joined in condemning Ashdown’s actions. In a communication that hinted he had damaged the peace process in Bosnia and possibly overstepped his mandate, the Russian Ministry of Foreign Affairs demanded he “work in full awareness of his responsibility in accordance with the mandate that was entrusted to him by the UN Security Council and the Peace Implementation Council”.<sup>32</sup> Other governments and institutions, including the US, UK, EU and NATO, supported Ashdown.<sup>33</sup>

Following some deft political arm-twisting by the OHR and a satisfactory-to-all declaration from the PIC in Brussels on 3 February 2005, the crisis seemed

<sup>27</sup> “Cavic: Attempts to abolish RS will lead to referendum”, FENA, 19 December 2004.

<sup>28</sup> “Kostunica: Ashdown causing Instability in RS and all Bosnia”, V. I. P. Daily News Report, 21 December 2004.

<sup>29</sup> “Serbian leadership urges Ashdown to respect Dayton agreement”, FENA, 23 December 2004.

<sup>30</sup> “SPC synod, RS and FBiH Bishops condemn Ashdown’s decisions”, FENA, 24 December 2004.

<sup>31</sup> “Nezavisnost KiM opasna”, B92, 19 June 2005; OHR press release, 27 June 2005.

<sup>32</sup> “Russian federation declares that Ashdown’s measures are damaging to the peace process”, FENA, 22 December 2004.

<sup>33</sup> Several senior Bosnian politicians spread rumours in the media that France believed police districts should not cross entity lines. The French ambassador to BiH denied this.

to have subsided. The Serb ministers withdrew their resignations from the Council of Ministers, and the RS formed a new government. But Banja Luka's position on police reform remained unchanged.

Banja Luka's response highlights the fundamental failure of the RS, and the Serbian Democratic party, SDS, in particular, to understand the switch from peace implementation-led reform to the language and dynamics of EU integration. This has been evident from the very beginning, with the RS ignoring or dismissing letters from the current and previous Enlargement Commissioners. They seem to think that because the High Representative will not impose the reforms, they can sit back and let it blow over. This represents a fundamental inability to recognise the consequences of ignoring the EU. Many countries have had to alter their constitutions in order to join the EU, and given the nature of Bosnia's Dayton Constitution, this will certainly be required. At some point Banja Luka will have to wake and accept the reality that it cannot dictate its own EU entry criteria. This raises the question as to whether the SDS is competent or capable of moving out of the framework of wartime politics and understanding the EU accession dynamic.

### 3.4. The Clock Runs Out

Even before the presentation of the PRC's final report it was obvious that more negotiations with Bosnia's leading political parties would be necessary in order to overcome RS resistance. At its 7 April 2005 Steering Board Meeting, the PIC "reiterated that the three principles set out in Commissioner Rehn's letter of 21 February must be met if reform of the police is to be successful and if BiH is to have an effective single structure of police in line with European best practice". It demanded that the reforms be agreed by the end of May.<sup>34</sup> In an attempt to reassure the RS, the Steering Board stated that "police restructuring is about giving the people of BiH efficient and effective crime fighting police. It is not a surreptitious attempt to abolish the Entities. The existence of the Entities is guaranteed under Dayton and is not in question".

The OHR organised a new round of talks with the leaders of eleven political parties at Mt. Vlasica in late April 2005, with the PRC report as the starting point. The Bosniaks, Croats and Serbs in state-level institutions supported the "concept paper", which was chapter three of the PRC report minus the maps, but RS officials continued to oppose it. That opposition stemmed in part from the 21 April session of the entity's National Assembly (RSNA), which Ashdown had addressed and at which a significant number of speakers had

<sup>34</sup> Communiqué of PIC Steering Board, 7 April 2005.

voiced disapproval of police reform. The RSNA accepted the RS government's report on the talks and asked it to prepare a further report, on a final concept for police reform. Although no vote was taken on police reform *per se*, it was clear that the RSNA did not favour police districts that crossed entity boundaries and removal of police power from the entities.

The parties discussed and reached provisional agreement at Mt. Vlasic on a police board that would secure entity and cantonal participation in policy making at the state level, as well as measures to ensure that community oversight councils would include entity representation. The Director of Local Police would have two deputies to provide cooperation and command local police commissioners for cross-district operations. This would essentially place a third layer of bureaucracy over the police by ensuring a significant "consultative" role for entity police representatives with both the national-level police board and community oversight councils, as well as with the local police commissioners and directors of local police.<sup>35</sup> All these were significant concessions to the RS.

When the RSNA met on 30 May, Michael Humphries, the European Commission's Ambassador to Bosnia, addressed it to urge approval of the police reforms in order to fulfil the EC criteria. Cavic, however, reneged on his promise to support them,<sup>36</sup> and the RSNA resolved that "any kind of model of organisation of police in BiH whose local police regions cross entity boundary lines is unacceptable".<sup>37</sup> The EC refused, therefore, to start negotiations with Bosnia on the Stabilisation and Association Agreement (SAA).

By now the OHR had lost patience with the RS though it still hoped diplomatic pressure, rather than the threat of sanctions, might be sufficient to restart talks.<sup>38</sup> Pressure continued to come from other quarters. In its 24 June communiqué, the PIC blamed failure to reform the police on "the decision by the RS authorities, led by the SDS-led RS Government, to block police restructuring" and said that "if the RS continues to choose isolation over integration, the consequences of this will be grave. Bosnia and Herzegovina's road to Europe would remain blocked. This would result in BiH falling behind the other countries in the region."<sup>39</sup> When there was no RS response, the European Commission reiterated on 1 July that police reform was the single remaining obstacle to beginning negotiations on an SAA. Follow-up talks

<sup>35</sup> OHR Power Point document "Collective Political Oversight", 26 April 2005.

<sup>36</sup> Interviews with OHR officials.

<sup>37</sup> Conclusions of the RSNA, 30 May 2005.

<sup>38</sup> Interviews with OHR officials.

<sup>39</sup> Communiqué of PIC Steering Board, 24 June 2005.

continued throughout the summer and early fall, right up until 15 September, at which point the RSNA once again refused to authorise cross-Inter Entity Boundary Line police regions.

Yet all was not lost. Following strong international pressure on Cavic and Dodik, on 5 October 2005 the RSNA voted to accept the three principles required by the EC for the reorganisation and restructuring of the police force. It agreed to form a special Directorate to carry out the police reforms and work out the technical details, and it agreed for police budgetary competencies to be placed on the state level. This action was met with broad approval from the international community, and it accompanied a simultaneous action by the Bosnia-Herzegovina House of Peoples, in which it adopted a state-level Defence Law and the Law on Service in the BiH Armed Forces.

## 4. Conclusions and Further Perspectives

### 4.1. Finally Moving Toward Europe?

The adoption of the two Defence Laws by the House of Peoples means that the road is now clear for Bosnian accession into NATO's Partnership for Peace and eventual full membership in NATO. The acceptance by the RSNA of the EC's police reform principles means that the final obstacles to Bosnia beginning SAA negotiations may now have been removed. It is now possible that if the work of the Directorate succeeds, the EU will give Bosnia a green light for negotiations to start.

On the other hand, all obstacles have not yet been removed. The RSNA vote merely cleared an existing political roadblock that had prevented Bosnia's Serb politicians from agreeing to the details of police reform. Whether or not the Directorate proposed by the RSNA will actually prove any more able to agree on reform than any of the predecessor negotiations is not yet clear. In any event, there remain significant doubts as to how this will function in reality, and as to whether or not Bosnia's Serb politicians will agree to cross-entity police regions. Should the work of the Directorate fail to come up with a proposal that satisfies EC criteria, or should it meet with further RS obstruction, then police reform could throw into question future international community policy towards Bosnia, which until now has been based almost entirely on the carrot of European integration.

Nonetheless, a significant disaster may have been averted. Had the RSNA not moved forward at this time, it is probable that Bosnia's politicians – especially in the RS – would not have taken any constructive action on this

issue prior to 2007.<sup>40</sup> As of this writing, optimism is prevalent and everyone is watching the Directorate with keen anticipation.

Bosnia's flawed Dayton structures have so far frequently prevented it from creating a reform consensus within the country. This is due not to the OHR holding excessive powers, but rather to the half-hearted implementation of the DPA by the international community, which has left Bosnia with an unreformed economy, unreformed politics and a "Frankenstein" political structure. In some respects, the international community and the OHR have served a similar function to training wheels on a bicycle. Although some would argue that the training wheels should come off sooner rather than later, it is obvious that without the training wheels, at this stage the bicycle would simply fall over.

What is less obvious is that the structural distortions caused by the DPA constitution, as well as by the lack of full implementation, means that the bicycle is structurally flawed. To continue the analogy, it is as though the bicycle has square tyres and no chain. Yet the international community expects the Bosnians to ride the bicycle they are sitting on without fixing it. In order for the bicycle to move forward, the international community will need to remain engaged in Bosnia for some time to come, making the square wheels round and putting in place a chain to turn the wheels.

At present Bosnia should be able to begin to move forward towards Europe. Nevertheless, the flaws of the DPA constitutional design have emerged all too clearly, and the hazards inherent in a premature withdrawal are all too clear: border changes and renewed conflict. The unfulfilled territorial ambitions of neighbouring Serbia towards Republika Srpska also mean that Bosnia's future is uncertain. The international community will have no choice but to stay the course and maintain its administrative presence in Bosnia for the foreseeable future. But at least for now Bosnia has an unprecedented window of opportunity that would permit it to move forward.

<sup>40</sup> There are several reasons for this. First, it would have been highly unlikely that the EU would have revisited the issue of Bosnia's readiness to begin SAA negotiations prior to 2006. Second, 2006 is an election year in Bosnia, and for all intents and purposes, politicians are now judging their actions based entirely on considerations of an impending election campaign. As a result it is unlikely that any RS politicians would have taken the perceived political risk of agreeing to the necessary police reforms. Third, it is quite probable that the international community will make concrete pronouncements about Kosovo's final status sometime in 2006 and lay out a road map towards conditional independence. Authorities in Belgrade wish to link the fate of Kosovo to that of Republika Srpska, and are encouraging RS politicians in every action that will preserve the ability of the RS security structures to act independently in the event a partition or secession attempt should become a reality. Finally, if past practice is any indication of future Bosnian politics, even though the elections will be held in October 2006, it is highly unlikely that governing coalitions will be up and running prior to the beginning of 2007. Once these coalitions are up and running, it would take additional time for the leading political parties to reach consensus on cross-IEBL police regions, assuming consensus is possible.

## 4.2. Prospects for Peacebuilding and Civil Society

While Bosnia is hopefully starting to move forward on European integration, the international community must seek new partners in the country – as well as in the broader region – that would enable it to place pressure on recalcitrant parties and individuals. One potential partner would be the non-governmental sector, particularly those organisations devoted to building civil society.

At present this sector is quite weak – not only in Bosnia, but also in the other successor states of the former Yugoslavia – and it faces a number of difficult challenges to its work. First and foremost is the deeply-rooted suspicion from local politicians and citizens, many of whom were brought up under communism to accept unquestioningly the actions of government. Second, due to local suspicions, local poverty, and the lack of a tradition of donating to civil society, many of these organisations are dependent almost entirely on foreign donors to finance their activities. As such, this legacy means that citizens are often sceptical of the work of organisations engaged in civil society building and often view them as traitors, troublemakers or spies. Third, local politicians feel that these organisations threaten their power, and therefore attempt to marginalise or discredit them, both through the media and government policy. Fourth, the lasting legacy of the ethnic divide makes it difficult for civil society organisations from Bosnia's three ethnic groups to coalesce around initiatives that might see Bosnia's state-level institutions function more effectively, particularly in the field of human rights, judiciary and policing.

There can be no question that Bosnia needs an active civil society sector that is supported by local donors and activists, and that such a sector could exert significant influence on local politicians to further push Bosnia along a path of European integration. However, due to a lack of local funding and ingrained cultural prejudices, at present the civil society sector is often overshadowed by larger international organisations, both governmental and non-governmental. Although civil society development and growth is both essential and desirable, its ability to maintain itself without foreign support is doubtful. In addition, Bosnia lacks many of the essential prerequisites necessary for civil society building. Even though a flourishing civil society sector is necessary to transform Bosnia, donor dependency remains a key problem, and the society itself has not yet demonstrated that it is ready for the open society associated with modern western liberal polities. This will no doubt plague international efforts and internal Bosnian reform efforts for years to come.

## Literature

- International Crisis Group 2002a. *The “Constituent Peoples” Decision in Bosnia & Herzegovina*. Europe Report No. 128. Sarajevo/Brussels, 16 April 2002.
- International Crisis Group 2002b. *The Continuing Challenge of Refugee Return in Bosnia & Herzegovina*. Balkans Report No. 137. Sarajevo/Brussels, 13 December 2002.
- International Crisis Group 2003. *Bosnia’s Nationalist Governments: Paddy Ashdown and the Paradoxes of State Building*. Balkans Report No. 146. Sarajevo/Brussels, 22 July 2003.
- International Crisis Group 2005. *Bosnia’s Stalled Police Reform: No progress, No EU*. Europe Report No. 164. Sarajevo/Brussels, 6 September 2005.