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What to do about Bosnia and Herzegovina?: The Case for Accelerated NATO Membership and OSCE Coordination of Constitutional Reform

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INTRODUCTION

This is the second of three papers USIP will publish on Bosnia and Herzegovina, each with a different analytical perspective on what is happening in Bosnia and what needs to be done there to prevent a return to violence. We hope that these papers will generate a debate on options that might be pursued by the U.S. government (USG), Europe and Bosnians.

SUMMARY

The policy choice in Bosnia revolves around one question: how much time does the country have?

If one believes that the country is reasonably stable, that another election will produce more cooperative leaders, and that Bosnia's "EU future" is assured, then the way forward is clear: cede international leadership in Bosnia from the U.S. to the European Union. Under this benign assessment, incremental work towards EU membership will address the country's outstanding issues, including eventual reform of the country's constitution.

This paper argues that, in fact, time is rapidly working against Bosnia. Elections are unlikely to transform the political landscape. Next year's poll will be the country's tenth. Few true moderates have attained elective office. Even if the parties never pick up arms again, Bosnia risks permanent stagnation, a plausible scenario that puts the substantial American investment – and continuing American interests – in Bosnia at risk. In the words of a former senior Bosnian official, without swift reform the country is doomed to become an "economic colony" of its neighbors, supplying cheap labor from its chronically underperforming economy. Instead of an inevitable EU member, Bosnia is more likely to remain an unwelcome, dysfunctional and divided country, with an aggrieved Bosniak (Muslim) plurality, a frustrated, increasingly defensive Serb entity, and an anxious, existentially threatened Croat population.

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The standard prescription of gradual EU membership as the salve for Bosnia's ills vastly overstates the power of the EU accession model, and understates the need – and difficulty -- of overhauling the country's constitution. It is the constitution that encapsulates the power relationship between the Serb entity and the central state. It is this unresolved relationship that helped bring the country into war – and keeps it mired in polarization and acrimony. Only by changing key provisions of the constitution can the parties attain equilibrium and render the country functional. EU accession is too slow and ineffective a tool to reverse the dominant, downward trends.

This paper offers a clear alternative: accelerated NATO membership for Bosnia. The U.S. should galvanize a sharp evolution in Alliance policy, moving from the current, passive “open door” approach to an express, U.S.-backed offer of membership by the next summit, end-2010. To be sure, membership (and its precursor, a Membership Action Plan) will not be offered for free. Bosnians will have to come to terms on the constitution and remaining defense-related requirements to enter the Alliance. By putting membership “on the table” – with a U.S.-backed target date -- NATO will change the zero-sum dynamic that has thwarted well-intentioned efforts at reform and supply the crucial leverage to produce fundamental compromise.

How this approach would work

Unlike EU accession, NATO membership is plausible in the near-term – and it directly addresses each party's core security concerns. Traditionally, as in the Baltics, NATO offers the ultimate protection against external threats; in divided Balkan states like Bosnia (and Macedonia), NATO represents an implied guarantee of internal cohesion. This is as important for Serbs, whose over-riding objective is to preserve their entity, Republika Srpska (RS), as it is for Bosniaks, whose over-riding objective, shared by many Croats, is to preserve the integrity of the state. In short, NATO membership at once protects Republika Srpska and prevents it from seceding.

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Instead of “holding out for the next round” (of negotiation or confrontation), the parties will proceed from a platform of permanence. In the words of the leader of a prominent Bosnian party, “NATO membership takes fear out of the equation.” By doing so, according to this leader, the prospects for reaching a compromise on difficult constitutional issues would be dramatically improved.

NATO membership has been the way-station to Brussels for every Eastern European member of the EU. Accelerating accession to NATO will boost Bosnia’s EU prospects, spurring Brussels to energize its approach. And once Bosnia -- with Republika Srpska intact -- joins NATO, the nascent debate in Serbia on joining the Alliance will be transformed. No longer will virulent nationalists in Belgrade be able to sustain the argument that NATO membership and Serb security are incompatible. And as Serbia moves closer to both NATO and the EU, rapprochement with Kosovo is inevitable.

The main obstacle to embracing a NATO-centered policy for Bosnia is skepticism. Many observers simply assume that the Bosnian Serbs have no interest in joining NATO because the Alliance bombed Republika Srpska in 1995 and Serbia in 1999, culminating in Kosovo’s independence last year. Recent meetings with four leading Serb figures in Banja Luka, including RS Prime Minister Milorad Dodik, suggest otherwise. Indeed, these leaders proffered their own reasons why NATO served RS interests.

Skeptics cite Dodik’s recent call for Serb troops to pull out from Bosnia’s participation in NATO exercises in Georgia as proof that Banja Luka has no serious interest in joining the Alliance. Not so. Dodik’s ploy was a grave blow – against the authority of the state of Bosnia much more than against NATO. Other political figures in the RS derided the move, pointing out its inconsistency with the stated RS position to join NATO. The Serb member of the Presidency Nebojsa Radmanovic, a senior member of Dodik’s party, did not defend his position on the Georgia exercise. Speaking to the

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author in Banja Luka on 22 May, Dodik insisted that he told Vice President Biden directly that he would be ready to sign up for NATO membership “today.”

More than anything, the flap over the Georgia exercises is a reminder of how inadequate is the incremental approach to Bosnia. Rather than expect EU supervision and the possibility of eventual EU membership to produce evolution in attitudes, it is imperative to present the parties with a serious choice now: NATO membership and a secure, normal country headed towards the EU – or permanent dysfunction and insecurity. Should Dodik reject the offer, which the author believes is unlikely, it will at least elicit clarity about the true intentions of the Serb leader.

This paper explains why accelerated NATO membership for Bosnia is plausible and does not challenge NATO standards, intra-Alliance relations, or relations with Russia. It is more likely that Moscow will refrain from playing a negative role if it is afforded its requisite “seat at the table.” Giving the OSCE Mission to Bosnia the job of coordinating the crucial talks on constitutional reform – a suggested condition for NATO membership -- will ensure that the Russian voice is at the locus of decision-making. A Russian diplomat already serves as the deputy head of Mission.

More importantly, President Medvedev has expressed an interest in a “new security architecture” for Europe. Given the fact that Russia has no strategic interest in Bosnia, cooperating under OSCE auspices to help Serbs reach a fundamental compromise with their neighbors would be a low-cost way for Moscow to show its interest in a wider dialogue that includes far more important security matters.

In sum, Bosnia needs a game-changer – not threats nor the distant promise of EU membership, but a tangible, transformational reward to incentivize its three parties to finally resolve their most fundamental differences. NATO membership is that game-changer. A concrete offer of membership, with a U.S.-backed target date for entry, can be the catalyst for reform. In turn, accelerated NATO membership will advance Bosnia’s eventual accession to the European Union. Only the U.S. can galvanize the

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Alliance into making this offer concrete and viable, ideally by the June ministerial. What follows is the support for this proposition.

HOW BAD IS THE SITUATION IN BOSNIA? THE DISTRACTING BATTLE OVER THE OFFICE OF THE HIGH REPRESENTATIVE

Even the relatively neutral question of whether Bosnia is in serious trouble has, itself, become a bone of contention. A report submitted by the Republika Srpska to Permanent Representatives of the UN Security Council claims that Bosnia “is not on the brink of crisis or conflict as those who would like to continue the use of peremptory powers falsely claim.”ⁱ There is a good reason why Banja Luka wants to rebut the charge of impending crisis. RS authorities are worried that alarmism by “interventionists” will “prevent a final transition from a High Representative [OHR] to a European Union Special Representative [EUSR.]”ⁱⁱⁱ And it is OHR that retains the “Bonn Powers” that have been used at times to impose legislation or remove intransigent officials from power.

The prospect of criminal charges being filed against Dodik by Bosnia’s state prosecutor has raised the specter of another explosion by the Serb leader, laying the grounds for another potential confrontation with the international community. It is easy to understand why Dodik would much prefer to hasten the transition from OHR and Bonn Powers to presumably weaker EUSR-led supervision. International officials in Sarajevo cite a host of examples of Dodik working to “roll back” competencies that had been transferred from the entities to the state. In a recent interview in *Euroblic* newspaper, Dodik linked the corruption case, the question of state authority and OHR, insisting that the criminal report against him is politically motivated: “Somebody in OHR sat down and said ‘kick him from that side [alleged corruption] to make him busy with the situation so that he gives up and accepts the transfer of authorities [from the entities to the state].”

Banja Luka is not alone in allowing a policy objective – shutting down OHR – to color

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its analysis of the situation in Bosnia. Some outside analysts have been arguing for years that the country's primary problem is not chronic division, but rather a poor international image and an overbearing international presence in order to justify the policy objective of closing OHR.ⁱⁱⁱ This rosy view about Bosnia was shaken last year when tensions rose to the point where citizens in Sarajevo expressed fear that a new conflict would erupt. Even Javier Solana and Olli Rehn, European leaders eager to move to EU-led supervision, were forced to acknowledge the "deterioration of the political situation" last fall.^{iv} Chastened by the experience of former High Representative Christian Schwarz-Schilling, whose passivity helped produce Bosnia's relapse, noticeably absent are the shrill calls for Bosnians to simply "take ownership" of their affairs.

On the other side of the debate, advocates of intervention have repeatedly underscored the imminent threat of war to drive their policy agenda.

The truth is that the real potential for Bosnia to sink back into conflict is very difficult to establish. In the words of a NATO official in Sarajevo, "yes, as EUFOR says the situation is 'calm and secure' – until it isn't." Other international officials worry that if the situation should escalate into violence, the enfeebled EUFOR and the already-limited international presence lack the means to control the outbreak of violence. European officials appear to be indifferent at the prospects for instability. EUFOR participants express weariness with the mission ("we've been here so long" is a common refrain). During the symbolically significant joint visit of Vice President Biden with EU foreign policy chief Javier Solana – precisely the moment for Brussels to show its fortitude in Bosnia -- EUFOR foreign ministers agreed to move ahead with plans for EUFOR's transition from providing a secure environment to "a non-executive capacity-building and training operation."

The trends in Bosnia have not all been negative. A rare reach across the ethnic divide initiated last November by Bosniak leader Sulejman Tihic markedly reduced tensions. Capable, persistent engagement by the U.S. ambassador and the senior American

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official at the Office of the High Representative recently resolved a deadlock on the disputed status of the Brcko district. Although the Tihic-inspired “Prud Process” has faltered after a serious miscalculation by Tihic and Dodik (accepting the suggestion of their Croat counterpart Dragan Covic for a “four territorial units” concept), Serbs have not forgotten its significance. Serb leaders in Banja Luka told the author of their respect for Tihic as a “tough, relentless negotiator for the Bosniak view” who would honor his word on an agreement.

Tihic’s statement at Prud that “it is high time for Bosniaks to give up the philosophy of victimhood” was a remarkable gesture toward true reconciliation.^y Of course, this remark and Tihic’s open embrace by the Serbs is poison in Bosnia’s ethnically-based politics. The SDA President is locked in a battle with Bakir Izetbegovic, son of the late Bosnian President Alija Izetbegovic, for party leadership that will be decided later this month. In his 19 May speech in Sarajevo, the vice president singled out Tihic for his bold gesture of outreach in addressing the Republika Srpska Parliament.

EVEN IF BOSNIA AVOIDS CONFLICT, U.S. INTERESTS ARE AT RISK

Clearly, the possibility of instability in Bosnia should animate policy makers. But given the difficulty of predicting an outbreak of conflict, this possibility should not be the sole impetus for engagement. Nor should the mere avoidance of conflict be taken as a sign of success. What should drive policy development is not only avoiding conflict but avoiding a less dramatic but quite plausible scenario: permanent stagnation. It is entirely possible that Bosnia’s three peoples will never take up arms again, and yet the country could remain permanently crippled by ethnic division and administrative dysfunction.

A former senior Bosnian official, expert in the country’s economic situation, warns of the very real prospect that the country could become a de facto “economic colony” of its neighbors, with a chronically underperforming economy forcing its citizens to seek opportunities elsewhere. Even if Republika Srpska managed to escape this fate, the disparity in income levels between the entities could exacerbate political grievances.

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Unless the core political and administrative dysfunction is addressed frontally, through overhaul of the constitution, the official believes that Bosnia's future is bleak.

Such an outcome would not only imperil the signature nation-building endeavor of the Clinton administration, it would also undermine Serbia's political development, affect regional stability, and complicate U.S. relations with the wider Islamic world. The latter interest, a responsibility towards Bosnia's Muslims that is a legacy of the war and the Dayton Agreement, has grown in importance since 9/11. Failure or even stagnation in Bosnia will hardly sustain the appetite for the far more daunting endeavors in Afghanistan and Iraq. In short, U.S. interests in Bosnia will suffer from continued stagnation, even if there is no violence.

Unfortunately, the debate over closing OHR has clouded the ability of policy makers on both sides of the Atlantic to perceive the risks in Bosnia clearly. In Europe, the momentum to keep the focus on "changing the parameters of the international presence"^{vi} and to close OHR is strong – and could become unstoppable as Stockholm takes over the EU presidency. Even if Washington wrests concessions for a "robust" EUSR/EC, with Bonn Powers or facsimile, a European-led operation is unlikely to overcome intransigence or confront systematic impasse in Bosnia. After all, if the Europeans are reluctant to invoke Bonn Powers when the U.S. is positioned to have a say (at both OHR and the PIC), why will Brussels be any more inclined to show mettle when Washington's role in Bosnia is formally diminished?

Once the EU takes the lead in Bosnia, the U.S. risks either having to stand by and watch as Bosnia languishes or having to again attempt to galvanize intervention, thereby straining its relationship with Brussels and some European capitals. Lending further urgency to the situation is the fact that Bosnia will hold parliamentary elections in fall 2010. Once the country enters the election cycle, compromise – and even rational dialogue -- will be even more difficult to achieve.

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In sum, time is slipping away if the U.S. wishes to shape the outcome in Bosnia. Simply handing over the country to European leadership is no answer. The U.S. retains unique credibility among all three Bosnian peoples, whose leaders are all waiting in anticipation for Washington to express itself (and who personally manifest anxiety lest they be directly fingered as the cause for obstruction.) The U.S. is squandering an opportunity the longer it waits to establish a clear policy. In order to decide what to do, it is imperative first to understand just what it is that keeps Bosnia mired.

ANY POLICY PRESCRIPTION MUST FIRST BEGIN WITH A DIAGNOSIS

One view holds that it is the international presence that holds Bosnia back, preventing the parties from “taking ownership of their affairs.” Solana and Rehn tend to this view, insisting that the international presence will become a central campaign theme in the 2010 elections.^{vii} But the “dependency/ownership” theory does not explain the stunning failure of the passivity experiment conducted by High Representative Schwarz-Schilling in 2006. Nor does it explain why an international community that allegedly has sought to aggrandize its role in Bosnia has done the opposite in Macedonia, steadily scaling down and even closing operations completely, as the parties have made progress.

The prevailing view since 2006 has been that Dodik and, at times, Haris Silajdzic, the Bosniak member of the presidency, have been primarily responsible for Bosnia’s troubles. There is no doubt that “bad political actors” have been a major aggravating factor in Bosnia. However, next year’s parliamentary elections will be the country’s tenth. The record of true moderates emerging as leaders is thin. It is hard to make the case that elections alone, or some other step designed to remove recalcitrant leaders, will introduce a largely positive dynamic in Bosnia.

There is a better explanation. The roots of Bosnia’s stasis are in the territorial arrangement of the Dayton Agreement. As former High Representative Miroslav Lajcak (now foreign minister of Slovakia) has stated frequently, “Bosnia has become

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a prisoner of Dayton.”^{viii} The crux of the peace agreement was a 51 to 49 percent territorial split between the Bosniak-Croat Federation and the Serb entity, Republika Srpska. The RS emerged from the war as a compact unit with substantial autonomy, indeed quasi-state powers. This puts Serb interests in permanent clash with state interests;^{ix} any increase in central state power, axiomatically, comes at the expense of the Serb entity. This doesn’t make the Serbs “bad,” it is simply a fact – one that some Serb leaders readily acknowledge. Removing Dodik from the equation, whatever impact it has on atmospheric, or downsizing the international footprint, will not change this fact.

The sad truth about Bosnia is that even the shared interest in joining the European Union cannot trump the inescapable issue about relative Serb and Bosniak power that, principally, drove the parties into war.^x Lurking beneath the conversation about how to restructure state-entity power is the principal fact of that war: the Serb desire for maximal autonomy from “Muslim domination,” and the Bosniak and Croat claim for full rights in Serb territory from which they were massively and brutally expelled.^{xi} In Lajcak’s words, “Dayton stopped the war ... but the [conflict] continues to be fought.”^{xii} This is why Tihic’s statement about not placing victimhood at the center of Bosniak policy is potentially transformative.

But the statement alone is not enough. Without substantial progress in establishing equilibrium between the Serb entity and state power, the unstable, zero-sum political dynamic is likely to continue – no matter who wins elections in 2010. Equilibrium can be obtained only by substantial reform to the constitution. In short, true constitutional reform is the means to finally end the war and propel Bosnia towards stability, and eventual self-sufficiency.

ACCELERATED NATO MEMBERSHIP IS THE GAME-CHANGER FOR BOSNIA

The problem is that the parties are very far apart on how to even approach the issue of reforming the constitution. Silajdzic, who heads the Party for Bosnia-Herzegovina, and Zlatko Lagumdzia, leader of the opposition SDP party, are adamant that any

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discussion on constitutional reform be ambitious, not cosmetic or incremental. And constitutional reform cannot pass without their votes. In Banja Luka, Dodik's senior colleagues as well as leading opposition figures like Dragan Cavic and Mladen Ivanic believe the opposite: that only modest change to the constitutional is possible. Without a game-changer, it is highly unlikely that any progress will be made on this core issue, certainly before elections and likely thereafter.

Merely trying harder will not bridge the chasm on constitutional reform. EU accession, the default option for Bosnia, is not the solution either. Eventual EU membership is essential for Bosnia. But the country's membership prospects are too remote, the process of EU accession too distant and passive, the "constitutional models" too variegated, and the attitude in Brussels too indifferent to break the country's impasse in time.^{xiii} The year since Bosnia has signed a Stabilization and Association Agreement with Brussels has seen negligible impact on the country's membership prospects or on altering the divisive conversation among the country's leaders and polarized societies.

Nor will the appointment of a U.S. special envoy for Bosnia or the Balkans, alone, lead to consensus on constitutional reform. The deployment of an envoy is a diplomatic mechanism. His or her appointment is secondary to the question of U.S. policy. If that policy is to simply "get Bosnia through" to the 2010 elections without further slippage, the U.S. will still be saddled with the problem of what to do about Bosnia once OHR closes and U.S. influence – special envoy or not – is diminished.

Instead, the U.S. should move to "fix the problem" – the country's centrifugal constitution – by presenting the parties with a game-changer: accelerated NATO membership. Washington should galvanize the Alliance, ideally by the June Ministerial, to advance Bosnia rapidly towards both a Membership Action Plan (MAP) and full membership. The key is evolving from the current "open door" policy to an express target date for membership by the next summit, end-2010.^{xiv} High-level U.S. backing for this approach is crucial to bringing the Allies around and injecting a sense

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of energy and dynamism within Bosnia. To be sure, neither MAP nor membership will be given for free. Bosnia will have to meet its defense-related conditions and one other: reform of the constitution.

Unlike EU membership, NATO accession is plausible in the near term. Defense reform is one of Bosnia's most significant achievements. Bosnia participates in all of the NATO accession programs except MAP (Membership Action Program).^{xv} Bosnian troops serve in Operation Joint Endeavor, the NATO Afghanistan mission. In September, Bosnia will host a major NATO military exercise "Combined Endeavor," the first time the event will be hosted in a non-NATO member country. The recent Strasbourg communiqué affirmed the Alliance's support for Bosnia's MAP and eventual membership.^{xvi} The key obstacles to MAP are political, resolving the defense property dispute, and technical, disposing of ammunition that keeps too much of the Bosnia army guarding static sites. An Alliance offer of accelerated membership could unblock these issues, focusing energy on rapidly meeting defense requirements.

NATO's requirements extend well beyond the defense sphere to include state functionality. Indeed, asked what single step that Bosnia could take to advance its NATO prospects, a NATO official replied "constitutional reform."

WHAT DOES NATO MEMBERSHIP MEAN FOR BOSNIA?

Why is the accelerated offer of NATO membership a game-changer? How does it alter the impasse on the constitution between Serbs and their counterparts? Unlike NATO membership in the Baltics, NATO membership in the Balkans represents a bulwark not against outside aggression, but internal dissolution. This is as true for Bosnia as it is for Macedonia. And it is true for Serbs as it is for Bosniaks and Croats. With Croatia's accession to NATO, Croat interests are increasingly aligned with joining the Alliance. Senior Croat officials have confirmed this. Croatian officials show strong support for accelerated Bosnia entry into NATO as well. For Bosniaks (as for the Albanians of Macedonia and Kosovo), the meaning of joining the U.S.-led NATO

Alliance cannot be overstated. It is existential. Just as NATO membership preserves the RS for the Serbs, it also prevents the RS from seceding.

DO THE SERBS REALLY WANT NATO?

NATO membership would also satisfy the core Serb interest in preserving the integrity of Republika Srpska with the core Bosniak interest in preserving the integrity of the state, i.e. preventing the secession of Republika Srpska. This point was made clear in the author's meetings in April in Banja Luka with four of the most serious figures in Republika Srpska, including Dodik. The Serb leaders expressed their own reasons, in articulate terms, why NATO membership served the RS interests. The Serb interest in joining NATO does not mean that the Serbs will "give away the store," but, as a former RS prime minister stated, putting NATO membership on the table could swiftly transform the political debate over constitutional reform in the RS. Savvy Bosniak leaders agreed, insisting that putting NATO membership into the mix "takes fear out of the equation." A prominent Serb leader in Kosovo, Rada Trajkovic, expressed the same view, advocating that Serbia consider NATO membership as a means of securing both Albanians and Serbs against extremists in Kosovo.^{xvii}

The main obstacle to embracing a NATO-centered policy for Bosnia is skepticism. Many observers simply assume that the Bosnian Serbs have no interest in joining NATO because the Alliance bombed Republika Srpska in 1995 and Serbia in 1999, culminating in Kosovo's independence last year.

Skeptics cite Dodik's recent call for Serb troops to pull out from Bosnia's participation in NATO exercises in Georgia as proof that Banja Luka has no serious interest in joining the Alliance. Not so. Dodik's ploy was a grave blow – against the authority of the state of Bosnia-Herzegovina much more than against NATO. Not only did Federation-based politicians condemn what has been called an invitation to mutiny, but RS opposition parties labeled it a cheap stunt and noted that it was contrary to the shared ambition to join the NATO alliance. Serb Member of the Presidency Nebojsa

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Radmanovic defended the legality of the presidency's longstanding decision that Bosnian troops should participate in this training exercise.

The SDS (Karadzic's party) and other Serb parties may oppose NATO membership, but their populism will force an essential – and salutary – test on the RS: to choose whether it really wants to join the West or not. Indeed, should Dodik reject the offer of accelerated membership, which the author believes is unlikely, it will at least elicit clarity about the true intentions of the Serb leader.^{xviii} The experience in Croatia suggests that it is certainly possible to mobilize support. According to the Croatian official who helped spearhead Zagreb's successful NATO bid, the key factor in building public support for the Alliance is the proximity of membership. It was only when the Croatian public sensed that Alliance membership was “not just some light at the end of a long tunnel, and not a dream, but real,” that public support climbed dramatically. Until that point, NATO's open door for Croatia was mere fodder for “residual fears of a Western plot to leave Croatia permanently in the dark, waiting for a new Yugoslavia.”^{xix} Public opinion data cited by Belgrade newspapers suggests that the RS is not far behind Croatia at comparable points in the membership process.^{xx}

Accelerated NATO accession for Bosnia will contribute to regional stability, building support in Serbia for joining the Alliance. The Serbian Helsinki Committee has recently issued two reports describing a surprising new debate in Serbia about joining NATO, one stimulated by the accession of Croatia and Albania to NATO, amidst concerns about Serbia's isolation. The reports state that “the taboo” on discussing NATO membership has been broken.^{xxi} The pro-Western Serbian President Boris Tadic (and his military establishment which is attracted to the modernization that accession to NATO brings to neighbors like Croatia) may privately express their interest in joining NATO. But few Belgrade politicians, other than former Foreign Minister Vuk Draskovic, dare do so. The entry of Bosnia into NATO – with the Republika Srpska intact – would be a watershed for all Serbs, proving that Serb security and NATO membership are compatible. In turn, progress towards NATO

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membership in Serbia will inevitably stimulate progress in relations with Kosovo, a key to regional stability.

There would be another benefit to accelerated NATO entry for Bosnia. Even a U.S. announcement of a policy to accelerate Bosnia's NATO accession will spur the EU to intensify its own accession process for Bosnia (as well as making the follow-on to OHR, the EUSR office, more serious).

The Allies can be brought along to support accelerated MAP/membership for Bosnia

First, despite the Dodik-created flap over the Georgia exercises, there is no comparison with or nexus to the Ukraine/Georgia issue. Russia has no strategic interest in Bosnia. Russia's latent interest in having a "seat at the table" can be managed by moving constitutional reform to the OSCE, as described below. With no real Russia issue, there should be no corresponding reason (as at Bucharest over Ukraine/Georgia) for Germany or any other state to raise concerns about accelerated Bosnian accession.

The Alliance at Strasbourg reaffirmed its positive stance towards membership for Bosnia. Moreover, the Strasbourg communiqué also reaffirmed the membership commitment for Macedonia (once the name issue is resolved). Adding another Balkan country, Bosnia, to the list of recent "Adriatic Charter" members has no impact on and creates no precedent for either Ukraine or Georgia.^{xxii}

Second, there is no Article 5 concern. NATO already has defense obligations towards Bosnia under the Dayton Agreement and related UN Security Council Resolutions (regardless of the presence of the successor, enfeebled EUFOR presence).

Effectively, the Alliance now has the burden of a defense obligation to Bosnia, with few of the benefits. Why not get something for the present burden by using the realistic offer of membership to induce significant compromise?

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Third, there is no “weakening the Alliance” concern. Bosnia may be a uniquely divided aspirant country, but it remains a very small country whose entry, even in accelerated fashion, would not dilute Alliance readiness. With a sense of urgency, and some increase in resources, Bosnia’s modernization/readiness level can be made to approach (if not match completely) Macedonian or Albanian levels. As for “importing” Bosnia’s political divisions into the Alliance:

- The country has already demonstrated an ability to function in international organizations, despite its ethnic polarization. Indeed, it is entirely possible that Bosnia-Herzegovina will follow Croatia onto the UN Security Council this January.
- The Alliance, and certainly its leader the U.S., are already saddled with the burden of Bosnia’s political divisiveness. Again, since the burden is inescapable, why not exploit the attraction of a serious membership offer to induce fundamental compromise?

Fourth, there is no political divisiveness concern. Croatia and Slovenia, and Turkey and Greece, may still be at odds, but Bosnia’s accelerated entry into NATO will test none of those relationships; to the contrary, all (including Athens) are likely to be enthusiastic. Indications from Croatian officials are highly positive. With no Russia problem, there is no reason for Paris, Berlin, or London to be opposed, and ample reason for them to be supportive.

Fifth, there is no overwhelming resource requirement – either political or material. Yes, the NATO office in Sarajevo will have to be reinforced with a civilian head (as was done in Macedonia), U.S.-NATO will have to ensure that a sense of urgency prevails at NATO HQ/SHAPE, and U.S. defense assistance to Bosnia will need some increase, but none of these requirements stretch capacity beyond reasonable limitations.^{xxiii}

Conditionality for Bosnia would remain in place. But the key to making conditionality work is to put NATO membership “on the table” – with dates. This paper

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recommends a policy of “accelerated membership” not “easy membership.” Indeed, the whole point of introducing NATO membership as a near-term prospect is to goad the parties into satisfying remaining defense issues and reforming the constitution. But simply continuing to offer an “open door” to NATO is not enough. The transformative power comes the moment that a high level announcement is made that Washington and Allies are determined to bring Bosnia into MAP by end-2009 and offer membership into NATO by the next summit, end-2010, if Bosnia can meet its defense-related conditions and achieve significant constitutional reform. The best opportunity for such a statement is the upcoming June ministerial.

Russia’s potential to be spoiler can be overcome by giving OSCE Mission to Bosnia the “coordinating role” for constitutional reform

Russia does not have strategic interests in Bosnia, but it is reflexively averse to NATO expansion and sensitive to having a “seat at the table.” Moscow could, through its patronage of the Serbs, seek to take on a spoiler role, fomenting opposition to NATO entry in the RS and in Serbia, and to Serb concessions on constitutional reform and other matters. The Peace Implementation Council (PIC) provides Moscow with a voice on Bosnia matters, but Russia is only visible in the PIC when it creates a problem.

The solution is to give the OSCE Bosnia Mission a “coordinating role” for constitutional reform. This will provide the Russians, who hold the deputy position in the Mission, with a built-in, visible role. It is also consonant with Medvedev’s “new security architecture” vision which, however cryptically, suggests a Russian interest in revitalizing the Helsinki process and, by implication, OSCE. Bringing the Russians into constitutional reform this way will also make it easier for the Serbs to make concessions.

The utilization of OSCE in this way will be, in some small way, a test of Moscow’s sincerity in appealing for a “new security architecture.” If Russia fails to play a constructive role in a situation in which its interests are marginal, it would put at risk

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its much greater interest in seeking cooperation across the span of Helsinki issues, including arms control.

OSCE missions are highly decentralized, leading the managerial role to the American Head of Mission and his Russian deputy. The OSCE role would be to “coordinate” the process. “Coordinating” would provide auspices for others, including skilled, experienced U.S. experts, the Council of Europe, and OHR, to conduct the actual talks and negotiations on constitutional reform, with input from OSCE, which has legal and institution-building expertise. U.S. diplomats and experts and their European counterparts will retain the ability to conduct quiet, direct diplomacy with the parties, outside the public eye.

Giving OSCE the coordinating role for constitutional reform is feasible. The OSCE Mission to Bosnia has long had a democratization role and needs no mandate change from Vienna. Cooperation with the BiH Parliamentary Commission on Constitutional Reform, which was recently set up, would also be a natural role for OSCE. The mission has available legal support in Bosnia to supplement the legal experts who would be taking the leading role. Few if any additional resources would be necessary.

Giving constitutional reform “a home” in OSCE will lend gravitas to the efforts of dedicated, independent experts. Furthermore, it will lend some transparency to the process – an antidote to ubiquitous conspiracy theories that swirl around the Balkans.

HOW MUCH CONSTITUTIONAL REFORM IS “ENOUGH” TO END THE WAR AND MAKE BOSNIA FUNCTIONAL?

When asked about the fundamental challenge of making the Bosnian state functional, RS Parliament Speaker Igor Radojicic, a member of Dodik’s party, responds with a question: “what precisely is that amount of constitutional reform required to make the state functional?” It’s a fair question. It’s also a reminder that, in the end, constitutional reform is a political, not technical issue. As with the Dayton Agreement that ended the war, the answer to the question “how much reform is enough?”

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ultimately lies in consultations and negotiations that will have to take place among diplomats, technical experts and the parties.

Even in the much better climate of 2005-06 (before the so-called “April package” of reforms was torpedoed by Silajdzic’s SBiH),^{xxiv} the parties remained polarized around competing – in truth, conflicting – visions of the country: the Bosniak vision of a more unitary and citizen-based state, with stronger central powers; and a Serb vision of stronger Federalism (i.e. entity power) with a mix of ethnic- and citizen-based rights. (Croat views were somewhere in between these poles.) In the words of an outside mediator to the process that led to the April package, “the Serb parties were united in their refusal to consider any proposal threatening to the existence and core powers of the RS.”^{xxv}

As noted above, it is clear that the parties are much further apart now than in 2006. Banja Luka wants only minimal changes to the constitution, and this is a non-starter, even for negotiation, for Sarajevo. SDP President Lagumdzia (Federation) demanded that any negotiations begin with the so-called “April (2006) package,” and went further, insisting that any deal begin from “April-plus.”^{xxvi} The formation of a new BiH Parliamentary Commission on Constitutional Reform was dismissed by PDP President Ivanic (RS) as a “maneuver to do nothing.”^{xxvii}

Despite the chasm between the parties, the contours of a sufficient reform package are visible. Agreed criteria are largely accepted, the April package still serves as a useful precedent, and options exist that would render state and entity more functional with the balance between them more equitable. The overarching criterion, conformity with European standards, has been presented in painstaking detail by the Council of Europe’s Venice Commission since March 2005. The Venice Commission identified four over-arching constitutional issues to be addressed to put Bosnia in conformity with EU standards.^{xxviii} A Sarajevo-based NGO, the Foreign Policy Initiative, has reduced these to two core constitutional challenges:

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- The entity/constituent people-based quorum and voting rules (“vital national interest” and entity voting clauses) that undermine the functioning of state institutions and the exercise of exclusive state competencies; and
- The absence of adequate mechanisms to ensure that entities comply with state/joint policy in shared state-entity competencies.^{xxix}

A leading constitutional expert describes the core problem this way: “the current minimalist state structure provides too many discriminatory protections to the three constituent peoples and too few and often vague rights and prerogatives to the entities. This imbalance also contributes to the dysfunctionality and weakness of the state government.” In this expert’s view, the crux of constitutional reform is this deal: affirming the legitimacy of the RS in exchange for its acquiescence in a subordinate relationship to the State, without the right of secession (“which would be contrary to the basic compromise reached in Dayton”).

With respect to the gridlock problem at the state level (through excessive ethnic protections), the constitutional expert believes that the parties could increase direct representation of the entities in the parliament by replacing the existing House of Peoples with an entity-based Upper House. This would preserve entity voting – but focus it crucially in the upper chamber. This innovation could obviate the need for the current, discriminatory entity-based voting for the three members of the presidency. Boosting the power of the Council of Ministers and reducing the power of the presidency would also contribute to a more functional state government.

With respect to the entity-state relationship, according to the expert, the parties have recently been presented with a new list of competencies, which substantially upgrades those spelled out in Article III of the Dayton constitution. The apportionment of competencies between entity and state would follow the models often used by state and sub-state entities among EU members. These would allow both the RS and the

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Federation to retain a high degree of autonomy, while removing the threat of secession and reaffirming the absolute centrality of the state in certain spheres.

Within the Federation, this expert believes the challenge is different. The Federation suffers from too much government and abject inefficiency. Most of the power over the municipalities and over the citizens is held at the cantonal level, leaving the Federation with few real duties. Negotiations, under his view, would focus on reforming and reducing the middle levels of government and strengthening the responsibilities of the Federation by moving some current cantonal responsibilities upward. Bosniaks and Croats should also work towards agreement on reducing taxes, reducing the number of beneficiaries of social benefits and bureaucrats, and simplifying procedures for business start-ups.

These issues may sound arcane, but in fact they go to the core question of relative power that (along with weapons disparities) helped bring the parties into three and a half years of war. Resolving them, with the inducement of accelerated membership in the one organization that increases mutual security, would go a long way to finally ending the war, and putting Bosnia on the path to stability and self-sufficiency.

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ⁱ “Report on the Situation in Bosnia and Herzegovina: How the International Community Can Best Support Continued Progress”, Government of the Republika Srpska, February, 2009, p. iii.

ⁱⁱ *Id.* p. i.

ⁱⁱⁱ See “Worst in Class: How the international protectorate hurts the European future of Bosnia and Herzegovina”, ESI, 8 November, 2007. The report lays virtually all of Bosnia’s problems at the feet of the international community. It cites substantial progress that, say the authors, means that the international community is no longer needed in Bosnia. The report makes no mention of attempts, cited by diplomats, by the Republika Srpska to “roll back” state building measures. Nor does it credit the efforts of the Office of the High Representative in producing the state building measures.

^{iv} “EU’s policy in Bosnia and Herzegovina: the way ahead”, Javier Solana and Olli Rehn, Brussels, 31 October, 2008, p. 1.

^v <http://www.miabalkan.info/Examiner3.asp>

^{vi} “EU’s policy in Bosnia and Herzegovina: the way ahead”, Javier Solana and Olli Rehn, Brussels, 31 October, 2008, p. 2.

^{vii} *Id.*, p. 3.

^{viii} Former High Representative Miroslav Lajcak, speaking at Johns Hopkins School of Advanced International Studies, Washington, DC, 21 May, 2008.

^{ix} As former RS PM and BiH FM Mladen Ivanic, now President of the PDP party, pointed out, occasionally shared interests exist which give the RS an incentive to cede to the development of state institutions. Customs was such an example. The Serb interest, according to Ivanic, derived from the fact that many imports into the RS already came through the Federation, so the Serbs could only share in tariff revenue to the extent that customs rose to full state, not entity, status. But such examples are rare. Author’s meeting with Mladen Ivanic, Banja Luka, 9 April, 2009.

^x A full discussion of the causes of the war in Bosnia is beyond the scope of this paper. Enormous weapons disparities and the policy of the Milosevic regime in Belgrade were obvious significant factors.

^{xi} The other inescapable consequence of the territorial arrangement is to leave Bosnia with a permanent asymmetry of interest: with few exceptions (e.g. Drvar), Serbs have little interest in asserting their rights in the Federation; however, Bosniaks in particular, and Croats have an interest in asserting rights in the totality of the country.

^{xii} Lajcak speaking at Johns Hopkins SAIS, 21 May, 2008.

^{xiii} For an excellent review of the limitations and benefits of EU accession for Bosnia see “Bosnia-Herzegovina and the EU”, Nida Gelazis, Woodrow Wilson International Center for Scholars, 22 February, 2007. At p.2, Gelazis points out that “the EU accession process does little to end inter-ethnic divides, as can be seen in the case of Cyprus. Another shortcoming is the EU’s commitment to minority rights and other human rights protections. This shortcoming is clear when you consider that Estonia and Latvia became EU member states even though there remain large segments of the resident population that are still stateless due to the countries’ ethnocentric policies.”

^{xiv} By the end of 2009 BiH will not yet have completed its first full Individual Partnership Action Plan (IPAP) implementation assessment cycle – that won’t be until about March 2010. Many Allies would insist on concrete progress in IPAP before moving on to MAP, noting the negative points highlighted at the NAC+BiH session on 11 March including defense property, constitutional reform, police reform, justice reform and rule of law. However, there are some indicators that many Allies believe that one complete “IPAP cycle” would be a long enough apprenticeship for BiH before beginning MAP, given that the content of the two programs is essentially the same. Elements within NATO may already be considering MAP status for BiH in spring or summer 2010. A spring/summer 2010 timeline for offering MAP to BiH would allow NATO to claim that it has standards and sticks to them, and it would allow pro-NATO elements in BiH to demonstrate to the electorate that progress brings rewards. Accelerated membership would then be contingent on further progress, perhaps with some “generosity” regarding standards. Even

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if Bosnia fails to meet all requirements for membership by the date of the next summit, the Alliance can still act. At the Bucharest summit in 2008, Macedonia was effectively offered membership – contingent upon it coming to terms with Greece over its name. NATO could do the same, conditioning Bosnia's offer of membership on a certification by the Secretary-General that the country had fulfilled remaining requirements. This would permit the NAC or a NATO ministerial to offer membership, obviating the need for Bosnia to wait until the next summit, and keeping the pledge of accelerated membership alive.

^{xv} Bosnia is a PfP member, participating in IPP, PARP, IPAP and ID. MAP is conditioned on sufficient progress under PARP and IPAP.

^{xvi} At Strasbourg, the Alliance once again “welcomed” Bosnia's “Euro-Atlantic” aspirations and noted “progress” in its cooperation with NATO, including its Intensified Dialogue and IPAP. This statement reflects the “open door” policy that the Alliance maintains for aspiring Balkan countries (other than Macedonia which has been offered membership, pending agreement with Greece over the country's name.) The Strasbourg communiqué also addresses Bosnia's political situation, urging “widest possible consensus” on “fundamental challenges facing the country” and castigating the “irresponsible political rhetoric and actions that continue to hinder...reform.”

^{xvii} President of the Serb National Council in Kosovo Rada Trajkovic put Serbia's accession to NATO in the context of protection of Serbs in Kosovo. “Serbia should ponder its entry into NATO, for that move could help us solve the issue of security of population in Kosovo. Serbia must work on the easing of security of people, for NATO has a respectable military capacity which can assist in a showdown with extremists on both sides.” Cited in “NATO – Yes or No?” (2), Helsinki Bulletin No. 25, May, 2009, p. 5.

^{xviii} Skeptics claim variously that the Serbs have no interest in NATO, and that accelerating Bosnia's accession would be an undeserved “reward” for Dodik. Both claims cannot be true. It cannot be a reward if the putative beneficiary is thought to have no interest.

^{xix} Croatian Deputy Defense Minister Pjer Simunovic speaking at Johns Hopkins School of Advanced International Studies, Washington, DC, 14 May, 2009.

^{xx} According to an 11 April article about Croatia's recent entry into NATO, the Belgrade-based newspaper *Vecernje Novosti* reported surveys indicating that less than 25% of Serbian citizens support NATO membership. But, according to the paper, 35% of Serbs in Bosnia's RS support NATO membership (compared to 89% in the Federation.) As of March, 2007, just a year before Croatia was offered membership, only 43% of Croatians supported NATO membership – only 8% more than now do in the RS. The number of Croatians supporting NATO membership climbed steadily as the prospects for membership became more likely and as a concerted effort to explain the benefits of membership to citizens became available. “Membership Costing 1 Billion Euros”, Mirko Radonjic, *Vecernje Novosti* (Belgrade) website, 11 April, 2009, cited by BBC Monitoring, “Serbian analyst views implications of Albanian, Croatian NATO membership.”

^{xxi} “NATO – Yes or No?”, Helsinki Bulletin No. 24, April, 2009, Helsinki Committee for Human Rights, Belgrade.

^{xxii} On 24 June, 2006, then Russian President Vladimir Putin met Macedonian President Branko Crvenkovski in Zagreb. It is widely stated in the Balkans, Crvenkovski allegedly told Putin that Macedonia was determined to join NATO. Putin allegedly replied: “I don't care if Macedonia joins NATO. I care if Georgia and Ukraine do.” This was reported to the author in Skopje. And repeated to him by a senior Bosnian official in recent Sarajevo meetings.

^{xxiii} Highly informed officials believe that for this proposal to work, NATO can and must substantially solidify its structure in Sarajevo. NATO HQ Sarajevo is not currently configured to handle the enhanced political and politico-military role making it essential to appoint a civilian head or Senior Civilian Representative. This civilian head should replace, not complement, the current military head, and the reporting line should run to Brussels, not Mons/SHAPE. A vigorous, proactive and respected NATO presence in BiH is incompatible with the current command and control set-up (whereby a predominantly political and politico-military mission is executed by the military chain of command, which lacks the mandate and structure to fulfill this mission). The military technical advisory function should remain subordinated to the wider political objective. The legacy of missions helping to pursue war-crimes suspects, providing limited counter-terrorism intelligence support and administrative support for EUFOR can be split off from the main effort and run out of Camp Butmir.

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^{xxiv} The so called “April Package” was a series of constitutional amendments midwifed by the U.S. Embassy, after painstaking mediation by a trio of dedicated, U.S. based mediators. The amendments comprised changes to the election of members of the Presidency; prolonging the mandate of the Chair of the Presidency; reducing the number of decisions requiring joint approval; moving selection of delegates to the House of Peoples from entities to the elected House of Representatives; limiting the House of Peoples scope of review for “Vital National Interest”; a related compromise boosting the number of House of Peoples delegates to 21, seven from each of the three constituent peoples; doubling the size of the House of Representatives to 84, and adding three delegates to represent “minorities,” bringing the total size to 87; expanding the authority of state government by adding two ministries (agriculture and environment), and granting the state authority over defense and security matters, the state court, the state prosecutor, the high judicial and prosecutorial council, intelligence and indirect taxation administration, and most significantly, granting the state all authority necessary to implement EU accession requirements. Don Hays and Jason Crosby, “From Dayton to Brussels: Constitutional Preparations for Bosnia’s EU Accession”, USIP Special Report 175, October 2006, pp. 9–10. Haris Silajdzic, whose SBiH party led opposition to the April package, argued then (and now) that it would have enhanced the ability of the Serbs to frustrate the functioning of state organs.

^{xxv} Don Hays and Jason Crosby, “From Dayton to Brussels: Constitutional Preparations for Bosnia’s EU Accession”, USIP Special Report 175, October 2006, p.7.

^{xxvi} For a thorough review of the process that led to the April package, see “From Dayton to Brussels: the story behind the Constitutional and government reform process in Bosnia-Herzegovina”, R. Bruce Hitchner, *The Fletcher Forum of World Affairs*, Vol. 30:1, Winter 2006.

^{xxvii} Meeting with Ivanic in Banja Luka on 9 April, 2009, and with Lagumdzia in Sarajevo on 11 April, 2009.

^{xxviii} The Venice Commission (formally, the European Commission for Democracy through Law, an entity created by the Council of Europe) identified four key Constitutional issues related to Bosnia’s EU membership prospects: weakness of state government and state capacity vis-à-vis the entities; defining and restricting the circumstances in which the parties could invoke the “vital national interest” veto; ethnically linked entity structures that prevented formation of a national identity; and the composition and method of election of the Presidency and House of Peoples. Don Hays and Jason Crosby, “From Dayton to Brussels: Constitutional Preparations for Bosnia’s EU Accession”, USIP Special Report 175, October 2006, pp. 3-4.

^{xxix} Foreign Policy Initiative BH, “Governance structures in BiH: Capacity, ownership, EU integration, functioning state”, undated, p. 20.