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Making Bosnia Work: *Why EU Accession is Not Enough*

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More than twelve years after the Dayton Agreement ended the war in Bosnia-Herzegovina, the stagnant, divided country is about to enter a potentially transformative process. On June 16, Bosnia will sign a Stabilization and Association Agreement (SAA) with the European Union, cementing the country's relationship and identifying it as a prospective EU member. The SAA not only launches a process of sweeping institutional reform, but also makes Bosnia eligible for new categories of financial assistance and imposes new responsibilities on Bosnia's leaders. Advocates believe that the "sink or swim" approach of the European Commission (EC, the EU entity that traditionally leads SAA implementation) will finally wean Bosnia from dependence on international authority toward genuine cross-ethnic cooperation over a shared goal.

The SAA signing ceremony in Luxembourg is sure to emphasize this point. European leaders will no doubt insist that, "It is now up to you Bosnian leaders to show that you are capable of working together."

In turn, Bosnia's leaders, including the country's Prime Minister-equivalent Nikola Spiric, a Serb who will sign the document on behalf of all parties, can be counted on to reciprocate the rhetoric of their international hosts. Much will be said in Luxembourg about the need to "turn away from the divisions of the past and look to the future of cooperation and prosperity." Long weary of the headache of overseeing Bosnia's querulous politicians, Brussels and especially Washington may well seize on the SAA signing as the excuse to scale back political engagement. What was seen from the outset of conflict in Bosnia in 1992 as a "European problem" will now, at last, have a putative "European solution".

Or will it? On the one hand, it is true that other than fear of renewed conflict, the prospect of EU membership is the only overarching point of cohesion in a country still very much polarized by the legacy of war.¹ On the other hand, as this paper explains, the SAA alone is no cure-all for the structural problems that keep Bosnia divided, physically and politically, in a sometimes hostile, zero-sum relationship dubbed "war by other means."

The SAA is necessary to break the country's deadlock, but alone it is quite insufficient to achieve that goal. Fulfilling the potential of the EU accession process for Bosnia requires three additional components:

- *An active, empowered European Union Special Representative (EUSR—as opposed to the passive SAA role traditionally played by the EC), along with continued intensive international engagement from the U.S. and key allies:* The EUSR in Bosnia must be expressly mandated to catalyze the SAA process, setting specific benchmarks and engaging the parties to meet them. In addition to his required reporting to Brussels, the EUSR must be specifically charged with publicly identifying which actors are responsible for obstructing progress and recommending corrective steps, up to their removal from office.² Where the parties are unable to break deadlocks (so often the case in Bosnia), the EUSR should be able to proffer draft legislation, not as a first resort, but as a better alternative than simply letting the parties wallow in recrimination.
- *Strict compliance with the five objectives and conditions set out by the international governing board for Bosnia, the Peace Implementation Council (PIC):* If Bosnia fails to meet—in full— all the objectives for shutting down the Office of the High Representative (OHR), then the PIC must agree to fully fund and keep intact the office. Only when these conditions are met in full can OHR be morphed into the residual EUSR, which must still work with other international actors to oversee peace and security issues.
- *A viable constitutional reform process conducted under EC auspices, applying principles identified by the Venice Commission (the Council of Europe’s body of legal experts) and a wider, indigenous Constitutional Commission comprising respected Bosnian figures from all communities:* With these three components, and with a renewed commitment from Bosnia’s leaders to cooperate (which cannot be taken for granted), Bosnia *can* make steady progress towards EU membership. But failure to learn from experiments in international passivity in Bosnia, or failure to grasp both the underlying causes for Bosnia’s stagnation and the severe limitations of the SAA process in addressing them will lead to disappointment, frustration and tensions. It would be irresponsible to exclude the possibility of inter-ethnic violence, even after the SAA process is underway. The weak European peacekeeping force (EUFOR), backed up by NATO, must remain in place. And the search for those indicted for war crimes must continue.³

What Ails Bosnia

Speaking last month at Johns Hopkins School of Advanced International Studies, the High Representative in Bosnia-Herzegovina, Ambassador Miroslav Lajcak, offered a remarkably frank assessment of Bosnia’s condition. Lajcak pointed to twin, mutually-reinforcing ills:

- *The unwieldy, redundant Constitutional structure established under the Dayton Agreement that achieved its goal of ending the fighting but left Bosnia saddled with a dysfunctional, costly mess:* “Two entities [for] three constituent peoples; five presidents, four vice presidents, 13 prime ministers, 14 parliaments, 147 ministers and 700 members of Parliament, all of whom serve a population of just under four million people,” Lajcak remarked.
- *The persistent virus of nationalism:* “A decade and a half after the war, the vast majority of BiH politicians continue to view almost every issue through a nationalist prism,” he said.⁴

In other words, the legacy of the Dayton Agreement (and its predecessor, the Washington Agreement, which established the Bosniak-Croat Federation) is a cold, cumbersome peace. Bosnia’s peoples are clumped in nearly homogenous units (cantons or municipalities in the

Federation, nearly all of the Serb-dominated entity). While there is freedom of movement, units have a distinctly majoritarian character. Administration and politics reflect this, with election after election producing nationalist governments elected to fill ethnic quotas and advance the communal interest. The notion that after the signing of the SAA, Bosnia's citizens will suddenly demand that their politicians put away ethnic differences and come to terms over their disputes flies in the face of reality. To the contrary, the electoral system and constitution reinforce entrenched differences; politicians are likely to be punished, not rewarded, at the polls if they are perceived to put national (state) interests over communal ones.

Redundant administrative structures (particularly in the Federation) impose costs (such as red tape and unresponsive governance). At the state level, government competencies are limited while consensus to strengthen them is absent. Indeed, Council of Ministers Chairman Spiric, the Serb who is nominally the country's Prime Minister, resigned in fall 2007 after the high representative sought to impose changes designed to make the state-level government function.⁵ According to Lajcak, Serb loyalty to the state of Bosnia-Herzegovina is "conditional" (upon the acceptance by Bosniaks and Croats of the legitimacy and permanence of the Serb entity). "The Bosnian Serbs regularly seek to undermine state institutions, or question the state itself," Lajcak stated. Kosovo's disputed independence and Russia's renewed activism in the region have given the Serbs both a ready grievance to press their case in Bosnia, and the political encouragement to do so.⁶

For many Bosniaks, the existence of Republika Srpska (RS, the Serb entity) is anathema. Bosniak Member of the Presidency Haris Silajdzic has provoked Serb anger with suggestions of doing away with entities, and instead re-shaping Bosnia into a "citizen's state," not based on ethnicity. Bosniaks were massively expelled and killed on the territory of the wartime RS and the narrative of recovery and return from wartime loss is still powerful to Bosniaks, while smacking of would-be domination to Serbs. Srebrenica remains a particularly sensitive area. In a rare sign of progress, a deal was recently struck for the upcoming October municipal elections preserving the electoral roll from the pre-war census in Srebrenica, prior to the massacres of 1995. Yet the deal was also a reminder of the continuing importance of international actors, including the U.S., which played in a crucial role in brokering the deal.

Many Croats, who fought their own, shorter breakaway conflict with Bosniaks as well as fighting with Serbs are a depleted minority (in numbers) and seek firm protection of their status as a full constituent people *vis a vis* their two more numerous neighbors. Croats, who had earlier vocally demanded a "third entity" now insist that any reform of the Federation be linked to the country's overall constitutional structure and their ability to be present throughout the territory of Bosnia-Herzegovina, including Republika Srpska. They demand an overall structure of at least four units, one of which must have a Croat majority, while Sarajevo should become a federal district and/or a fourth unit.

Clearly, the polarization of the war has been preserved in the country's peacetime politics. From a Serb perspective, anything that strengthens the central, "Muslim-dominated" state necessarily comes at the expense of the Serb entity – and subjects the Serbs to feared "Muslim domination." From a Bosniak perspective, it is the intransigence of the Serbs that keeps the Bosnian state mired in limbo and preserves immoral territorial gains of the war. From a Croat perspective, the agenda of either the Bosniaks or Serbs can become an existential threat. All three parties

champion EU accession, yet all three, as Lajcak has explained, also hold contradictory visions for the country.

In this sense, the one shared aspiration—EU accession—is not fully neutral; rather, by encouraging more concentration of power at the center, it inherently favors the Bosniak interest (sometimes shared by Croats) to make the central state operational. Axiomatically, this facet of the EU accession process also threatens the stated Serb interest of preserving maximal autonomy of their entity. Certainly, the carrot of EU membership is an incentive for Serb cooperation, but not a decisive one. In both words and deeds, Serb leaders have made it clear that “when the choice is between Brussels and Republika Srpska, we choose Republika Srpska.”

No doubt the EC/EUSR strategy for the SAA will be to postpone those centralizing changes most neuralgic to the Serbs, in the hopes that real-world improvements will improve the overall climate for cooperation. But given the experience in the region (for example, in Croatia and Macedonia), practical improvements in people’s lives from SAA implementation are slow to emerge, even with broad government consensus on the accession process.

The Overlooked Limitations of the SAA

Those who believe that the magnetic “soft power” of EU accession alone is adequate to overcome Bosnia’s divisiveness tend to both understate the depth of the country’s divisions and overstate the power of the SAA process. The EU’s *acquis communautaire*” (the body of laws that must be adopted and harmonized to become an EU member) is an unparalleled spur to democratic reform. However, these reforms do not directly address minority rights or provide human rights protections, much less resolve simmering conflicts that routinely erupt into veiled threats of civil unrest that Bosnia has seen over the past year. (Prime Minister Dodik’s repeated suggestions to hold to a referendum on RS secession from Bosnia always produce a visceral reaction in the Federation. Holding such a referendum would be an invitation to resume the conflict.) In the euphoria over the signing of the SAA, it is easy to overlook these core limitations.

The SAA was not designed to resolve ethnic conflict and it is ill-suited to addressing Bosnia’s yawning constitutional issues. Those who see the SAA and EU accession process as a cure-all for Bosnia fail to see that the EU has never had an aspiring candidate country like post-war, continued-conflict Bosnia. Cyprus is the closest model, but Nicosia joined the EU in 2004 without resolving or even ameliorating the relationship with the Turks in the North of the divided island. In the years since, even full EU membership and associated investment and development has not resolved the standoff between Greek and Turkish Cypriots (though there have been some positive developments of late).

Cyprus is a cautionary example for those who believe that the SAA process will transform Bosnia’s contentious relationships. With full EU membership for Bosnia easily a decade or so away, there is no reason to believe that the EU accession process alone will be more than a partial salve for the country’s tripartite standoff. Moreover, one of the most important “carrots” that the EU has to induce cooperation on sensitive issues—a liberalized visa regime—will be provided to Bosnia early on, as soon as it meets the basic administrative requirements (for example, producing a biometric passport).

The EU must walk a careful line and avoid the perception that it is so anxious for Bosnia to begin the accession process that Brussels applies *easier* terms than for earlier EU applicants. It must be equally careful not to impose *stricter* terms on Bosnia than it does on neighboring Serbia, which has recently signed a conditional SAA with Brussels. Miscalculating in either direction would have serious repercussions.

The Glaring Need for Constitutional Reform

Another deficiency of the SAA process is that it does not require Bosnia to overhaul its obsolete and dysfunctional constitutional structure. While the SAA will compel some transfer of powers from the entities to the center, it will not directly affect the range of anomalies left in place by the Dayton Agreement, which was a successful war-ending vehicle, not a blueprint for a smoothly functioning state.

In March 2005, the Venice Commission set out the range of constitutional reforms needed to make Bosnia compatible with European standards *prior* to launching an SAA. These included:

- Transfer of competencies from the entities to the state;
- Reform of inefficient state legislative and executive structures;
- Elimination of “prerogatives for ethnic or group rights”;
- Strengthening citizens’ rights;
- Clarification of the entities’ future relationship to the state.

The commission concluded that neither the current state nor entity constitutions, “provide a sound basis for the future. It is desirable for the citizens at some state to decide to have an entirely new constitution based on their own wishes...”⁷

Despite intensive efforts by outside mediators and diplomats, attaining even initial reform of Bosnia’s constitution has proven elusive. In March 2006, the leaders of five of the then-six major political parties agreed on a compromise set of constitutional amendments later known as the April Package. However, the constitutional reform legislation failed to achieve the necessary two-thirds majority in the state parliament.⁸ Harsh recriminations in the wake of the failure of the April Package have diminished the appetite to deal with the subject. Unfortunately, Bosnia cannot function as a normal state without both a rationalization of state power between the entities and the center, a top-to-bottom restructuring of federal and cantonal authorities in the Bosniak-Croat entity, and reform within the Serb entity.

In addition to addressing structural inconsistencies and administrative redundancy, Bosnia’s constitution desperately needs to arrive at a framework that provides for equal treatment of all its citizens, including equal rights to stand for office regardless of ethnic origin. Achieving this goal means opening up the delicate ethnic quota system that was a carry-over from former Yugoslavia and a subject of fierce bargaining at Dayton. The SAA process addresses few of these imperatives.

After OHR: Ownership or Stalemate?

The signature feature of the EU accession process is that it puts the onus on the aspiring candidate country to come up with its own solutions, not to depend on an outside actor like the

EC. Many observers believe that this is the primary benefit of the SAA, finally forcing Bosnians to “take ownership” over their affairs, while eliminating debilitating dependency on the international community, especially the OHR. EU advocates point out that the SAA not only produces reform, but also develops vital institutional bargaining skills. Over time, the Eastern Bloc transition countries that joined the EU developed confidence in the ability of their political systems to produce compromise.

Unlike Bosnia, however, virtually all of those new EU members had already achieved the critical consensus that EU accession was *the* overarching national priority. This view narrowed dramatically the gap between competing political parties, permitting crucial bargaining to take place. In Bosnia, these yawning gaps concern far more than the pace or nature of reform; rather, they touch on existential concepts about the nature of the state. EU accession is a shared goal, but it remains secondary to the aim of preserving or even advancing the relative power of one’s own group.

The vast majority of progress in Bosnia has been as a result of international prodding.⁹ Experiments with “local ownership”, most notably during the regime of High Representative Christian Schwarz-Schilling, resulted in severe gridlock and left the international community’s credibility in tatters. In the wake of the ownership debacle under Schwarz-Schilling, the PIC was forced to postpone attempts to close the OHR. Schwarz-Schilling’s successor, Lajcak, moved quickly to restore some authority to his office and its “Bonn Powers.” He succeeded only in part. A fall 2007 showdown with Republika Srpska Premier Milorad Dodik revealed that the high representative no longer had the political backing in Brussels for full-scale confrontation with a major political figure in Bosnia.

There are no plans for the successor EUSR to retain the plenipotentiary “Bonn Powers” of the high representative that have been the international community’s primary tool to overcome obstruction. However, recent history suggests that it is expecting far too much of the Bosnian parties to operate together as a typical aspirant country, negotiate the terms for each EC “chapter” (set of reforms) and report back periodically to the EC/EUSR on progress. Macedonia’s ethnic Albanians and Macedonians have made substantial progress in this vein, but they see eye to eye on their country’s fundamental construct. (Constitutional issues in Macedonia were long ago addressed to their satisfaction as part of the peace agreement.) Expecting the Bosnians to “fend for themselves” is a recipe for more stagnation—or worse. An empowered EUSR will still be needed at the helm to steer the parties toward agreement and overcoming the inevitable recalcitrant party or parties.

Toward a Bosnia-Appropriate SAA Process

A viable model for Bosnia’s EUSR is not only the predecessor OHR, but also the successful Brčko Supervisory regime.¹⁰ Brčko has been the exceptional success story in the country due in part to the knowledge that an empowered outside actor could step in to avoid and break deadlocks. Most useful in gaining cooperation of the Serbs prior to the Brčko Award was the requirement that the supervisor make periodic formal reports about compliance to the Brčko Arbitrator who would eventually rule on the parties’ dispute over the strategic area. In his reporting to Brussels, the EUSR should emulate this success, and be specifically required to report on party compliance with the SAA and other obligations. The EUSR should be expressly required to state which party or parties have been responsible for failure to achieve progress and

to make recommendations about corrective action, including removal from power or blacklisting them from traveling within the EU (or to the U.S.).

The international community will also need a clear plan of action in the event that the series of conditions set by the PIC in February 2008 for closing OHR are not met.¹¹ Ordinarily, failure to meet such conditions would simply result in the continuation of OHR. However, there is no identified funding for OHR beyond June 2009. Given adamant Russian insistence on closing OHR (on behalf of their clients, the Serbs, who have been the primary opponent of high representative authority) and given growing fatigue with the Bosnia endeavor in Brussels and Washington, it is possible that OHR will cease to exist even if all the conditions are not met. This would be a serious mistake, however, and would further imperil the chances for the successor EUSR to be effective.

Finally, it is an illusion to think that the SAA means that Bosnia can simply dance around the need to confront its constitutional inefficiencies and inequities. Indeed, the PIC's requirement that the Brčko Award be completed will almost certainly require changing the constitution, thereby opening up that dreaded Pandora's Box.¹² Waiting for a future when "the environment is right" to attempt constitutional reform carries its own risks. Not only will bedrock national issues be left to fester, but even non-ethnic issues like improving the business climate will become a casualty, with yet more frustration and despondency the result. Brussels and Washington need to overcome their reticence and develop a pro-active strategy to address constitutional reform, both at the state and entity level, *in tandem with* the SAA process.

Drawing from the lessons of the failed April Package, the key components for a successful constitutional process are:

- *A clear statement by the PIC, EU and individual EU member states that a sustainable constitutional reform process is a sine qua non for the closure of the OHR, the transfer of full sovereignty to Bosnian authorities and the implementation of the SAA.*
- *The creation of a Bosnian Constitutional Reform Commission, with avenue for public input.* Constitutional reform must engage not only the main political parties in the government and parliament, but also civil society. This can be achieved best through a legislated commission of respected Bosnian leaders, required to draw from widespread citizen input
- *A dedicated team of EU member states and U.S. specialists to work with the Constitutional Reform Commission:* As much as Bosnian political leaders would prefer to undertake constitutional reform without international involvement, there is insufficient trust and too large a gap in the positions of all sides to do so. International community engagement remains essential

If not a Shared Vision, Then Shared Principles

The fundamental impediment to successful constitutional reform, as Lajcak has made clear, is "the widely different visions of the country's history, current status and future constitutional structure" held by Serbs, Croats and Bosniaks."¹³ Given this hard reality, emphasis should not immediately be directed to arriving at a shared end-state vision for Bosnia, but on a set of shared *constitutional principles* that transcend or substitute for the zero-sum ideologies of Serb, Croat and Bosniak nationalism. Such principles should include:

- Commitment to democracy, pluralism and fundamental human rights and freedoms;
- Affirmation of Bosnia as an independent, inalienable and indivisible, sovereign state derived from and vested in the citizens of Bosnia;
- Equal entitlement of all citizens of Bosnia to the rights, privileges, and benefits of citizenship and equally subject to the duties and responsibilities of citizenship;
- Affirmation that the Constitution of Bosnia shall be the supreme law.

It would be naïve, however, to expect that the adoption of a principles-based approach would, alone, guarantee the success of constitutional reform. The other ingredient is a firm commitment by Brussels and Washington to sustain support for constitutional reform negotiations until agreement is reached. The Track II mediation effort on constitutional reform in 2005 achieved early success through this approach. In addition, the EU and U.S. should encourage all sides in Bosnia to consider trust- and confidence-building measures to complement the negotiations.

Constitutional reform negotiations should be launched by no later than January 2009 with a view to completion within one year. This timeframe would provide sufficient time for any constitutional reform legislation arising from the negotiations to be debated and voted upon in advance of the 2010 nationwide elections, while still in the earliest stages of the SAA process.

Conclusion

If Bosnia is to become a “normal country” in Europe, and not a permanently dysfunctional state comprising Serb, Bosniak and Croat nationalist enclaves, its citizens and political leaders—and the EU and U.S.—must grasp the promise of the EU, and commit themselves, once and for all, to a Bosnia defined by shared constitutional principles. There is no viable alternative to a unified, democratic Bosnia inside Europe. But the EU and the U.S. must recognize that Bosnia cannot make this journey to the future by itself. It needs continued direct help and clear, firm guidance, not distant encouragement and passive conditionality. As Bosnia signs the “historic” SAA, it is the occasion to temper euphoria with hard-won knowledge.

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¹ NATO membership is also a spur to reform, but holds less attractiveness for the country's Serbs.

² Because of feeble political will, there will be scant support for retention by the EUSR of Bonn Powers. A less desirable alternative is for the Peace Implementation Council (PIC) to retain them. Bosnia's political culture and electoral system simply fails to induce restraint among political leaders. It remains imperative that the international community set – and have the power to enforce – red lines.

³ On June 11, Serbia arrested Bosnian Serb security chief Stojan Zupljanin, one of four suspects including Ratko Mladic and Radovan Karadzic sought by the Hague Tribunal. The person arrested as Zupljanin claims mistaken identity. Diplomats routinely overlook that arresting war-crimes figures is more than a moral obligation—it has an impact on democracy. Croatia and Serbia demonstrate vividly the difference between when war crimes indictees are arrested and when they and the structures that hide them are left in place.

⁴ High Representative Miroslav Lajcak speech at Johns Hopkins School of Advanced International Studies, Washington, DC, May 21, 2008.

⁵ The OHR-imposed changes limited the Serb ability to frustrate reform simply by not showing up for meetings of the Council of Ministers. Spiric claimed that he was not consulted in advance before the OHR made the changes.

⁶ Though Republika Srpska Prime Minister Milorad Dodik has repeatedly invoked the threat to hold a highly provocative referendum on RS secession from Bosnia, he has backed off from expressly linking the fate of the RS with Kosovo, including most notably at a major rally in Belgrade in the immediate aftermath of the Kosovo declaration of independence.

⁷ See [http://www.venice.coe.int/docs/2005/CDL-AD\(2005\)004-e.asp](http://www.venice.coe.int/docs/2005/CDL-AD(2005)004-e.asp). “Opinion on the Constitutional Situation in Bosnia and Herzegovina and the Powers of the High Representative,” March 11-12, 2005.

The Venice Commission has since then issued a number of opinions related to constitutional reform, all of which are supportive of the process. See http://www.venice.coe.int/site/dynamics/N_Country_ef.asp?C=50&L=E

⁸ Haris Silajdzic, now the Bosniak member of the presidency, argued strenuously that the April Package would have been a setback for the country, enhancing the ability of the Serbs to frustrate the functioning of state organs. His Party for Bosnia-Herzegovina led the opposition to the April Package.

⁹ Optimists believe that progress such as in the RS town of Dobož portends the prospect for cooperation, once the international community scales back its presence. Others believe Dobož is an unrepresentative example.

¹⁰ The successful Brčko District could also be a model to transform the country's capital, Sarajevo, and in so doing diminishing the need for entities. See “Stitching Up Bosnia”, Morton Abramowitz and Edward P. Joseph, *The Wall Street Journal*, December 12, 2007, <http://www.tcf.org/list.asp?type=NC&pubid=1751>

¹¹ The five objectives for eliminating OHR are:

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1. Acceptable and sustainable resolution on state property
 2. Acceptable and sustainable resolution of defense property
 3. Completion of the Brčko Final Award
 4. Fiscal Sustainability
 5. Entrenchment of the Rule of Law

In addition, the PIC imposed two conditions: signing of the SAA (imminent) and a "positive assessment" of the situation in Bosnia-Herzegovina by the PIC Steering Board.

¹² The other nearly insurmountable objective is the law on state property giving BiH institutions both use and ownership of the real estate they need. Both the Republika Srpska and Brčko oppose this, the latter citing the terms of the Brčko Final Arbitration Award.

¹³ Speech by High Representative/EU Special Representative Miroslav Lajcak to the OSCE Permanent Council, June 5, 2008.