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**Bosnia and Herzegovina:  
The Challenge of Legitimacy**

FAST Country Risk Profile Bosnia and Herzegovina

T. K. Vogel

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October 2006

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# Table of Contents

<b>Abstract/Zusammenfassung/Résumé</b>	<b>1</b>
<b>1 Introduction</b>	<b>2</b>
<b>2 A short history of peace implementation</b>	<b>5</b>
2.1 Peacekeeping	5
2.2 The Bonn powers: peace implementation	6
2.3 Refugee return	7
2.4 State-building	9
2.5 The limits of imposition	10
<b>3 2006: A watershed year</b>	<b>12</b>
3.1 Crisis brewing	13
3.2 The constitutional debate	15
3.3 Another election for Bosnia	17
3.4 The war crimes questions	18
3.5 Regional instability and calls for a referendum	20
3.6 European integration and the fate of police reform	23
3.7 The OHR phase-out	25
<b>4 Conclusions</b>	<b>27</b>
4.1 Bosnia: a 'self-sustaining' state?	27
4.2 Outlook for 2006/2007	29
<b>Analytical Framework</b>	<b>31</b>
<b>Bibliography</b>	<b>32</b>



## Abstract/Zusammenfassung/Résumé

The domination of Bosnia's politics by nationalist parties representing the country's three constituent peoples is unlikely to come to an end in the October 1 general election. The marked deterioration of political discourse in the run-up to the poll highlights the enduring power of zero-sum politics, which feed off continuing deep divisions among Bosnia's citizens. While large-scale violence is highly unlikely, destabilizing factors in the region - especially the likely independence of Kosovo - are certain to be exploited by ethnic entrepreneurs and will find some resonance within their constituencies. Constitutional and police reform will be required for closer ties with the EU at precisely the time (first half of 2007) when the Office of the High Representative, the main international agency for peace implementation, is phasing out. Whether the pull of Brussels is a sufficient substitute for robust international action on the ground remains an open question.

Die Wahlen vom 1. Oktober werden die Dominanz der nationalistischen Parteien, welche die drei konstituierenden Volksgruppen vertreten, wohl kaum in Frage stellen. Die greifbare Verschlechterung des politischen Klimas im Vorfeld der Wahlen macht jedoch klar, in welchem Ausmass die bosnische Politik immer noch vom Nullsummendenden geprägt ist, welches sich aus der anhaltenden Spaltung der Bevölkerung speist. Auch wenn organisierte Gewalt weiterhin äusserst unwahrscheinlich erscheint, werden gewisse politische Akteure die destabilisierenden Einflüsse - hier insbesondere die bald zu erwartende Unabhängigkeit des Kosovo - zu ihren Gunsten auszunützen versuchen, womit sie innerhalb ihrer Volksgruppe auch Erfolg haben dürften. Verfassungs- und Polizeireform, die für die vertragliche Anbindung an die EU notwendig sind, werden genau in der Periode fällig (in der ersten Hälfte des kommenden Jahres), in der sich der Hohe Repräsentant - die Hauptinstanz der Staatengemeinschaft im Lande - aus Bosnien zurückzieht. Ob die Anziehungskraft Brüssels einen genügenden Ersatz für robuste internationale Einflussnahme darstellen wird, wird sich zeigen müssen.

Les élections du 1er octobre ne risquent guère de remettre en cause la suprématie des partis nationalistes bosniens, représentants des trois groupes ethniques majoritaires. Au cours de la campagne électorale, la détérioration marquée du discours politique a toutefois clairement démontré à quel point la politique bosnienne reste marquée par une pensée à somme nulle, qui est alimentée par les tensions persistantes au sein de la population. Même si la violence organisée semble pour l'heure peu probable, certains acteurs politiques sauront délibérément utiliser en leur faveur les facteurs déstabilisants dans la région - en particulier l'indépendance presque acquise du Kosovo - et connaîtront sans nul doute un succès inégalé auprès de leurs constituants. Pour développer des liens plus étroits avec l'UE, les réformes constitutionnelle et policière sont indispensables et devront être engagées dans la première partie de 2007, ce qui coïncide avec la fin de mandat du Bureau du Haut Représentant, principale instance en charge du processus de paix dans le pays. Reste à démontrer si l'attrait exercé par Bruxelles est un substitut suffisant pour une action internationale soutenue.

### A note on terminology

For reasons of convenience, 'Bosnia' will be used throughout this report to refer to the entirety of Bosnia and Herzegovina (not to be confused with the Federation of Bosnia and Herzegovina, one of the two entities into which the country is divided). In the Bosnian context, 'state' tends to designate the central-level institutions rather than government in the generic sense. Citizens of Bosnia are 'Bosnians' regardless of their ethnicity, while 'Bosniaks' are Bosnian Muslims.

This report makes reference to the 'international community.' There is, of course, no such thing in any meaningful sense. Rather, the term is used as shorthand for the bewildering array of outside players - not including Bosnia's neighbors - whose interests and concerns are engaged in the process of making peace and building a state in Bosnia.

# 1 Introduction

In state-building as in other human endeavors, success tends to be seen as resulting from rare coincidences of highly specific factors and failure as the product of broad structural pressures. Germany and Japan show up as the big exceptions in the annals of state-building while Cambodia, East Timor, Congo, Afghanistan, and Kosovo are the depressing rule. To this list of failures, near-failures, or impending failures we might soon have to add Bosnia.

State-building, however, is not the same as peace implementation, which has gone rather well in Bosnia, and failure in any case is more nuanced than it might appear. The fundamentals (unstable neighborhoods, recalcitrant warlords, irreconcilable agendas, weak economies) are key elements in any peace settlement, but they are not immutable. The changes in Bosnia's neighborhood - the demise of the Tudjman and Milosevic regimes and the subsequent democratization in Croatia and Serbia - are a crucial stabilizing factor that could not have been anticipated at the time the General Framework Agreement for Peace in Bosnia and Herzegovina (GFAP) was negotiated in Dayton, Ohio, in November 1995. In an even more predatory neighborhood Bosnia might not have survived.

But if Bosnia has survived, it has also spent all its energies in the process. There is little political capital left to confront the critical challenges that are now, in mid-2006, coming together. The peace implementation struggle of the last ten years has used up the domestic and severely depleted the external resources that are needed for the struggle of state-building, which might take another ten years (roughly the time needed for Bosnia to become a credible candidate for membership in the European Union). In the meantime, new pressures have accumulated and are waiting to be relieved. If the neighborhood turned for the better around the year 2000, it turned for the worse in 2006 as the last vestiges of the old Yugoslavia - a fiction of international diplomacy since at least 1999 - are being dismantled and both Montenegro and Kosovo are going their own ways, with direct implications for the continued viability of the Bosnian state.

What does this state look like today? Dayton created what is probably the most extreme example of ethno-federalism in the contemporary world. Not only was Bosnia internally divided into two entities, the Serb-dominated 'Republika Srpska' (RS) and the predominantly Bosniak (Muslim) and Croat 'Federation of Bosnia and Herzegovina' (plus the District of Brcko), it was also saddled with numerous ethnic veto points and quotas that virtually guaranteed the continued control of the apparatus of government by the three main ethnic parties. The GFAP thereby not only created an extremely cumbersome policy process that would frequently result in deadlock, it also left unresolved the conflicts that had come to the fore in the 1992-1995 war and enshrined the ethno-nationalist principle as the foundation of public life.

At the same time, the Dayton agreement included numerous provisions that would in due course strengthen the state. Its human rights provisions were among the most sweeping ever to be included in a peace agreement. The GFAP went far beyond previous practice by guaranteeing the right of the displaced to return not just to their country of origin but to their actual pre-war homes. And, perhaps most importantly, it created the space for a robust and invasive international mission to implement the agreement. Over the years, implementation has mitigated some of the GFAP's shortcomings through concerted action, for example by strengthening the central government far beyond anything foreseen in Dayton.

However, these undertakings - often a reaction to shifting circumstances or specific challenges - never became part of a unified strategy to confront the nationalist powerbrokers and build up the legitimacy of the atrophied structures at the central level. In addition to the lack of an overarching vision concerning the end state of state-building in Bosnia, the peace mission, led by the Office of the High Representative (OHR) and the commanders of the 60,000 NATO peacekeepers deployed at the end of December 1995, also lacked operational focus for its first 18 months. Even after corrective action was taken in mid-1997 and implementation accelerated along several axes, no comprehensive peace implementation strategy, let alone a more forward-looking state-building strategy, was forthcoming, a fact that has decisively impaired international action in Bosnia.



Within the parameters of peace implementation, then, the international community in Bosnia has done quite well, but it has failed to put in place the foundations of a proper state, though building blocks do exist (a credible judiciary at the state level, for example). The forward-looking provisions of the GFAP have only haltingly been activated, and their transformative potential was never put at the service of a unified end-state vision.

Many of the problems identified in the first part of this report may reflect specificities of the Bosnian situation, but they are also manifestations of the challenges inherent in any state-building project that is primarily driven by external actors. The nature of these problems, and the theoretical underpinnings of state-building more generally, remain ill-understood despite a recent surge in analytical attention in the wake of such missions. This analytical gap is especially acute when it comes to political legitimacy, a precondition for affective state-building that can only derive from an adequate vision of the nature of the state that is to be built. If today's external state-builders are skilled at establishing and strengthening the formal institutions of the state, they are largely helpless faced with the challenge of building the state as a vehicle for the realization of a social contract. While the state as a service station can be reconstructed through specific technical interventions, this will not provide sufficient glue for societies that have just gone through traumatic events that often eroded the foundations of political community.

Peace implementation in Bosnia unfolded largely along the lines of this narrative. But diagnosing the failure of state-building with reference only to its external protagonists misses an entire part of the story. The main responsibility for the current state falls on Bosnia's own post-war elites and their manipulation of the political process to suit their own goals. The numerous veto points and ethnic quotas built into the country's constitutional set-up, plus the extreme devolution of power down to mostly mono-ethnic municipalities, cantons, or entities ensured that they were largely unchecked in pursuing their separatist agendas. This, of course, was a direct result of the 1992-1995 war and the way it had ended.

The war had been fought over the very make-up of the polity, its geographic and demographic boundaries. An independent, sovereign Bosnia and Herzegovina ran counter to the designs for a Greater Serbia and a Greater Croatia; Belgrade and Zagreb enlisted the Bosnian Serbs and the Bosnian Croats in their fight against the idea and the reality of an integrated, ethnically mixed Bosnia. This conflict remained fundamentally unresolved in the GFAP, which in consequence included both integrative and partitionist provisions that in turn fed into the lack of vision on the part of the international community. Over the last ten years, the lack of vision about the fundamental character of the Bosnian state has given rise to simulated state-building, creating a virtual state. Large segments of the Bosnian population continue to regard the central government as either irrelevant or illegitimate.

At the most fundamental level, Bosnia is not yet generating demand for 'stateness' sufficient to sustain the formal institutions of government with a steady supply of legitimacy. That void is currently filled by the intrusive presence of the international community - a presence that is no longer sustainable as donors and political backers are getting restless. In recent years, the expression 'from Dayton to Brussels' - referring to a shift in emphasis away from peace implementation towards European integration - has gained currency, suggesting that the *deus ex machina* of the OHR may be replaced by that of Brussels. But as of mid-2006, Bosnia remains firmly stuck in the Dayton phase: the goal of the international peace mission - "to make peace in BiH truly self-sustaining, and to put the country irreversibly on to the road to statehood within the European

Union," according to the OHR's Mission Implementation Plan<sup>1</sup> - has clearly not yet been achieved: the country has not been able to conclude a Stabilization and Association Agreement (SAA) with the EU, or to decisively move towards police reform (a precondition for the SAA). Previous compromises between central and entity government, for example over the distribution of tax revenue, are being questioned. Bosnia's unstable neighborhood is once again having a detrimental effect on its politics, prompting Bosnian Serb calls for an independence referendum. An important factor in the endgame equation of the international community is Bosnia's constitution (Annex 4 of the GFAP): at the same time an expression of Bosnia's divisions and their multiplier, its backward-looking provisions will need to be amended if its forward-looking elements are to be fully activated for the purpose of building the Bosnian state. But in April, a constitutional reform package was defeated by a coalition of Croats for whom the amendments went too far and Bosniaks for whom they didn't go far enough. There is little prospect that it will be passed any time soon.

Important aspects of peace implementation in Bosnia are not discussed in any depth in this report, above all economic development, about which the GFAP is almost completely silent, or the role of education both in building a durable peace and in preparing the country for the demands of European integration. Instead, the report focuses on those aspects that are most directly linked to international action in support of the GFAP and their implications for Bosnia's domestic politics.

The first chapter of the report provides an overview of peace implementation in Bosnia and the ambiguous but paramount role of the international community and especially the OHR, whose presence constituted considerably more than a classic peacekeeping mission but rather less than a proper protectorate. The second chapter discusses the factors that make 2006 a pivotal year in which it should become clear whether Bosnia will manage the transition from mere peace implementation to proper state-building.

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<sup>1</sup> OHR, Mission Implementation Plan (January 2003), available at <[http://www.ohr.int/print/?content\\_id=29145](http://www.ohr.int/print/?content_id=29145)>.

## 2 A short history of peace implementation

Two basic narratives have emerged about the ten years of peace implementation in Bosnia and the reason why this period has produced mixed and perhaps disappointing results. The first maintains that the GFAP was essentially a good agreement that suffered from bad implementation, especially in the first two years.<sup>2</sup> The second narrative traces implementation problems back to the very text of the GFAP, with its unresolved tension between integrationist and partitionist elements, and between strong declarations of principle and weak provisions for enforcement. These commentators tend to see the GFAP as the “pursuit of war by other means”<sup>3</sup> rather than as a blueprint for a lasting peace. In fact, peace implementation must be considered in its totality, which includes the GFAP as well as the various policies pursued by the international peace implementers in the postwar period, which were in turn shaped by the identities, interests, and preferences of actors on the ground.

Bosnia has experienced slow but steady progress since Dayton as incremental improvements have added up to a dramatic transformation of the situation in Bosnia. This development was by no means preordained. Bosnia was a devastated country when 60,000 NATO peacekeepers entered it at the very end of 1995 on a one-year mandate, in line with the official U.S. position that “if a year doesn’t work, two, three, or five years won’t do either”.<sup>4</sup> The conflict had left over 100,000 people dead<sup>5</sup> and uprooted over 2 million out of a pre-war population of just under 4.4 million; Bosnia’s infrastructure and housing stock had suffered extensive damage in three and a half years of hostilities; large areas were scarred by what had come to be known as “ethnic cleansing.” The country was divided into two antagonistic para-states, or ‘entities,’ the Serb Republic (RS) and the largely Bosniak-Croat Federation, that maintained barely any relations, while the central government was almost invisible for the first post-war years.

### 2.1 Peacekeeping

At the time, there were widespread fears that the peace agreement would not hold and that hostilities might resume, leading to casualties among peacekeepers. There were also well-founded concerns that the mandate of the main civilian agency for peace implementation, the Office of the High Representative (OHR), was too weak.

While NATO did not sustain any casualties from violence, it managed to squander the political capital generated at Dayton through its passive posture during the immediate post-war period, especially during the unification of Sarajevo, when it stood by as armed Serb gangs forced ethnic Serbs to evacuate (and often torch) their flats.<sup>6</sup> IFOR’s outright refusal to arrest persons indicted for war crimes, including Bosnian Serb president Radovan Karadzic and military commander General Ratko Mladic, who both came in contact with the peacekeepers, sent a chilling signal to would-be returnees; emboldened ethno-nationalists in their obstruction of GFAP implementation; and left the organized-crime networks in place that would stunt Bosnia’s economic and political development

<sup>2</sup> General Framework Agreement for Peace in Bosnia-Herzegovina (GFAP), *International Legal Materials* 35:1 (January 1996), pp.75-169, also available at <[www.ohr.int](http://www.ohr.int)>.

<sup>3</sup> Carl Dahlman and Gearóid Ó Tuathail, “The Legacy of Ethnic Cleansing: The International Community and the Returns Process in Post-Dayton Bosnia-Herzegovina,” *Political Geography*, 24 (2005), pp.569–599 at 581, where the expression refers to the implementation of Dayton.

<sup>4</sup> U.S. envoy Richard Holbrooke, quoted in Gideon Rose, “The Exit Strategy Delusion,” *Foreign Affairs*, January-February 1998, p.65. Holbrooke, according to his memoirs, harbored private misgiving about the policy.

<sup>5</sup> According to the most recent research available from the Sarajevo-based Research and Documentation Center ([www.idc.org.ba](http://www.idc.org.ba)). See also Vesna Peric Zimonjic, “Five Years On, Milosevic is Still in the Dock,” *The Independent*, February 13, 2006.

<sup>6</sup> See Julian Borger, “Serb Exodus Exposes Nato’s Failure,” *The Guardian*, March 20, 1996.

while also reportedly financing the flight of indicted war criminals.<sup>7</sup> Each one of these issues subsequently required corrective action from the international community, often through institutional arrangements and policy shifts that consumed human, political, and financial resources much needed in other areas.

Today, international peacekeepers are still present in Bosnia, but they are now under EU command (EUFOR) and barely visible. The stability achieved over the past years has allowed them to draw down to some 7,000, and further reductions are under consideration for 2007. The OHR has just announced its plan to close by end of June 2007, effectively declaring its mission to have been accomplished.<sup>8</sup> While the decision to transform the OHR into an office of the European Union Special Representative (EUSR) with fewer powers is not without problems, it is nonetheless an indication of how far Bosnia has come over the last decade.

## 2.2 The Bonn powers: peace implementation

The preconditions for the current situation were created by a shift during 1997-1998 in the way the international community projected its power in Bosnia. Throughout 1997, the pressure for a more robust approach to peace implementation had been growing, prompted in part by the recognition that the process was heading towards meltdown, partly by a change of guard that brought in decision-makers with a tougher posture, above all Madeleine Albright (who became U.S. Secretary of State in January 1997) and Tony Blair (who was elected U.K. Prime Minister in May).

This resulted in a more aggressive military posture by SFOR, including the first arrests of persons indicted for war crimes. On the civilian side, the first High Representative, Carl Bildt, managed to convince the body he reported to, the Peace Implementation Council (PIC), that he needed more powers.<sup>9</sup> These included the right for the OHR "to curtail or suspend any media network or program whose output is in persistent and blatant contravention of either the spirit or letter of the Peace Agreement," as stated by the PIC at a meeting in Sintra in May 1997.<sup>10</sup> At its next meeting in Bonn in December, the PIC handed the OHR a whole series of even more intrusive instruments, the so-called Bonn powers, which were subsequently used by the OHR as a basis to:

- enact or revoke legislation (e.g., property laws) and pass binding decisions (e.g., on uniform license plates or state symbols);
- create public institutions deemed necessary for the functioning of the government (e.g., a State Court, a State Border Service, and a Defense Reform Commission);
- dismiss public officials and bar them from holding public office in the future (e.g., the president of RS and the Croat member of the state presidency);
- vet candidates for public office (e.g., cabinet ministers);
- fine or ban political parties and bar individuals from party functions.

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<sup>7</sup> Elizabeth Neuffer, "Arrest Warrants for Karadzic, Mladic: A Test for Clinton," *Boston Globe*, July 14, 1996.

<sup>8</sup> Agence France Presse, "Bosnia To Be Left without Powerful International Supervisor Next Year," June 23, 2006.

<sup>9</sup> The PIC is a consortium of 55 interested parties, mostly governments but also international organizations, that was established in order to avoid handing oversight over the OHR to the UN.

<sup>10</sup> Political Declaration from Ministerial Meeting of the Steering Board of the Peace Implementation Council, May 30, 1997, available at <[www.ohr.int](http://www.ohr.int)>.

These powers were initially used to put in place the core elements of state identity such as a citizenship law, a national flag and anthem, a currency, and uniform license plates to facilitate freedom of movement, as well as to remove officials who were openly working against these steps or key provisions of the GFAP. In a second phase under HR Petritsch, the powers were primarily

applied to create key state-level institutions (e.g. the State Border Service) and reform Bosnia's creaking economy in the areas of taxation, privatization, and payment systems. Under HR Ashdown, the focus shifted from the creation of a legal framework towards application of that framework by domestic authorities, resulting in fewer impositions of laws but more removals of officials.

The Bonn powers were the single most important element in the transformation of a limited, ad-hoc peacekeeping mission into a sustained exercise in state-building. They have without any doubt helped move Bosnia along a path it eventually needed to take for the sake of a functioning polity and in pursuit of European integration, a goal that is shared by overwhelming majorities among all communities. At the same time, the powers have stunted Bosnia's political development and encouraged local politicians to feel accountable vis-à-vis the OHR rather than their constituents.

## 2.3 Refugee return

Among the pivotal GFAP provisions whose sluggish implementation forced the PIC to draw up the Bonn powers was the restitution of pre-war property to rightful owners and the effective return of refugees and internally displaced persons (IDPs) to their homes. Return had been a cornerstone of the Dayton settlement from the very beginning. By partially undoing the process that had defined the war - the violent unmixing of populations - return would help to defeat the separatist agendas of Bosnia's Serbs and Croats (supported by Belgrade and Zagreb) that still threatened the Bosnian state. The GFAP's return provisions largely retained the language that had already been codified in the Bosniak-Croat Washington Agreement of March 1994, reflecting the paramount importance of the return issue for the Bosniaks and the Bosnian government. It also reflected anxiety on the part of Western governments that had given temporary asylum to hundreds of thousands of Bosnian refugees and wanted them to return as quickly as possible.

In consequence, the GFAP declared, "All refugees and displaced persons have the right freely to return to their homes of origin. They shall have the right to have restored to them property of which they were deprived in the course of hostilities since 1991 and to be compensated for any property that cannot be restored to them".<sup>11</sup> The GFAP clearly intended this right to go beyond the merely declaratory by underpinning it with robust implementation instruments that focused on actual return rather than mere restitution of property. For that reason, the compensation mechanisms outlined in the GFAP were never implemented.<sup>12</sup>

Despite the recognition that actual return was paramount to Bosnia's reconstruction as a viable state, it took the international community roughly two years to agree on return as a strategic priority, to properly assess the main obstacles to return, and to articulate a plan for dealing with them. This time of strategic readjustment was largely lost for 'minority' return (return to areas where returnees were a post-war minority, though frequently a pre-war majority) but saw a peak in majority return. Of the 430,000 returnees in 1996-1997, just ten percent were members of a post-war minority. It was only in 2001-2002 that minority returns peaked at around 100,000 returns in each year.

<sup>11</sup> GFAP, Annex 7, Article I.1.

<sup>12</sup> See Rhodri C. Williams, "Post-conflict Property Restitution and Refugee Return in Bosnia and Herzegovina: Implications for International Standard-Setting and Practice," *New York University Journal of International Law and Politics*, 37 (Spring 2005), pp. 441-553 at 454.

But if international policy-makers understood the power of return, so did the domestic forces opposed to reintegration. They obstructed return wherever they could, forcing a readjustment of the policy instruments utilized by the UNHCR (the agency in charge of return) and the OHR (the agency with the required power of persuasion or coercion). In 1997, the OHR set up an interagency Return and Reconstruction Task Force (RRTF) to support the return process and prevent freelancing by implementing agencies, complemented by a comprehensive plan for the restitution of property, the Property Law

Implementation Plan (PLIP). The PLIP "succeeded in turning what was formerly a highly politicized issue into a simple question of adherence to the law".<sup>13</sup> The complex issue of return, with its manifold implications for the balance of power at all levels, was broken down into its components, which allowed the international community to zoom in on the one issue that provoked the least resistance and had the most unambiguous force of the law behind it. The PLIP became a demonstration of what the focused application of inter-agency power in pursuit of a clear strategic objective could achieve.

Any assessment of return policy ultimately hinges on numbers. According to the UN High Commissioner for Refugees (UNHCR), a total of 1,011,278 individuals, or roughly half of the number of people who were forcibly displaced during the war, returned to their pre-war homes between January 1, 1996 and October 31, 2005; of these, 453,986 were minority returnees.<sup>14</sup> Retrospective claims that higher numbers of refugees and IDPs should have returned to their pre-war residences misjudge the pull - mostly economic, but also social and cultural - of the places, often cities or larger towns, to which Bosnians were displaced during the war. In many cases, forced migration occurred from locations that had seen considerable out-migration even before the war, and whose economies, especially given the devastation caused by the war, simply would not have been able to sustain large-scale return. It is not surprising that mainly the elderly have returned to such places. Given these structural factors, which were exacerbated by the war but not caused by it, the numbers of returnees are quite impressive.

Perhaps more ambiguous was the effect of return on politics in Bosnia.<sup>15</sup> The expectation was that a substantial amount of re-mixing would force political actors at all levels to operate in a less exclusionary manner and to reach across the communal divide. Return did, in fact, force an adjustment to the fundamental Dayton principle of lodging power in the overarching unit with the least ethnic diversity, the cantons in the Federation and the entity in RS. At neither level were there provisions for including non-dominant constituent peoples of Bosnia in decision-making (the exception being the two highly mixed cantons in the Federation), a situation that inhibited minority return and became untenable once a critical mass of minority returnees had taken up residence in these locations. In the year 2000, Bosnia's Constitutional Court issued a series of rulings that came to be known as the 'constituent peoples decision.' It ruled that the provisions of the entity constitutions which declared Serbs to be constituent in RS and Bosniaks and Croats in the Federation were unconstitutional, prompting wide-ranging changes to entity and cantonal constitutions that extended Bosnia's power-sharing arrangements to all levels of government and provided for equitable representation of the three constituent peoples in public administration.<sup>16</sup> This latter provision was drafted with reference to the census of 1991 until such time as refugee return has been completed, which means that Croats and Serbs will be over-represented in the institutions of the RS until either substantial additional return has taken place or the Annex 7 process has

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<sup>13</sup> International Crisis Group, *Bosnia's Refugee Logjam Breaks: Is the International Community Ready?* ICG Balkans Report No.95 (May 30, 2000), p.6.

<sup>14</sup> Bosnia and Herzegovina Ministry for Human Rights and Refugees, *Comparative Analysis on Access to Rights of Refugees and Displaced Persons* (December 2005), p. 209.

<sup>15</sup> The following section draws from Florian Bieber, "Towards Better Governance with More Complexity?" in Christophe Solioz and T.K. Vogel (eds.), *Dayton and Beyond: Perspectives on the Future of Bosnia and Herzegovina* (Baden-Baden: Nomos, 2004), pp. 74-87.

<sup>16</sup> See International Crisis Group, *Implementing Equality: The 'Constituent Peoples' Decision in Bosnia & Herzegovina*, Europe Report No.128 (April 16, 2002).

been declared completed. As of mid-2006, however, it is probably safe to say that at most a few tens of thousands are actively pursuing return.

## 2.4 State-building

The Bonn powers also facilitated the strengthening of existing and the establishment of new institutions at the state level. In line with the severely limited competencies of the state level outlined in the constitution (i.e., Annex 4 GFAP), Bosnia's first Council of Ministers included just three ministries in a complicated set-up that virtually ensured policy paralysis, for example through the required consensus in decision-making. Through a series of rulings by Bosnia's Constitutional Court and new laws - some of them imposed by the OHR - the Council of Ministers was restructured and the number of ministries increased to nine; a draft law to add two more portfolios (for agriculture, food, and rural development and for science, technology, and the environment) was submitted to parliamentary procedure in 2006 but is currently stalled. The Council of Ministers' weakness was a reflection of the division of wartime Bosnia into three para-states, reduced by the Washington Agreement of March 1994 to the two 'entities' that would subsequently be recognized at Dayton, the predominantly Bosniak-Croat Federation of Bosnia and Herzegovina and the Serb-dominated Republika Srpska. The entities were given all the competencies that were not explicitly assigned to the central government, and the functioning of the joint institutions was further impeded by extensive checks and balances.<sup>17</sup>

Such power-sharing mechanisms have been built into Bosnia's system of governance at all levels, often producing policy paralysis and inefficiencies. Bosnia's bicameral parliament consists of the House of Representatives and the House of Peoples, where the Federation is represented with two thirds of deputies and the RS with one third. Laws require a majority of overall deputies that also includes at least one-third of the members representing each entity, the so-called 'entity voting.' While bicameral systems are typical for federal states around the world, Bosnia's set-up is unusual since in both chambers, two thirds of the deputies represent the Federation and one third the RS. (The only difference is that the House of Peoples only includes Bosniaks and Croats from the Federation and Serbs from the RS, selected by the parliaments of the respective entity, which has also raised questions as to its compatibility with the European Convention on Human Rights, ECHR, which has precedence over Bosnia's domestic legislation.)

Bosnia's collective presidency, with its largely ceremonial role and rotating chair, consists of one member from each of the constituent peoples; the Serb member is elected by voters in RS, the Bosniak and Croat members by voters in the Federation (a provision that has frequently been criticized as violating the ECHR).

Representatives of the constitutionally recognized group of 'Others' - Bosnian citizens who for whatever reason do not identify as belonging to any of the three constituent peoples, perhaps because they are members of a minority group (Jews, Roma), are of mixed background, or reject the notion of ethnic affiliation as such - cannot be elected either to the Bosnian Presidency or to the House of Peoples.

The gradual assumption by the central government of additional competencies was accompanied by an extension of the complex power-sharing mechanisms down to the entity level, creating what

<sup>17</sup> For an outline of Bosnia's system of power-sharing and its consociational features, see Florian Bieber, *Ethnic Structure, Inequality and Governance of the Public Sector: Bosnia-Herzegovina* (London: Palgrave, 2006), ch.4(b).

Bieber has called “cascades of power-sharing”.<sup>18</sup> This far-reaching change in 2000-2002 came about as a result of the constituent peoples decision, which held that Bosnia’s three main communities were constituent across its territory and should therefore be equitably represented in entity-level institutions as well. Since the entity constitutions had not been changed at Dayton, they still contained language that made the RS the entity of Bosnia’s Serbs and the Federation the entity of Bosnia’s Croats and Bosniaks. This was part of the great bargain at Dayton, which preserved the state of Bosnia but only at the cost of extreme devolution to the entities.

As O’Brien points out, key elements for a vigorous state-building program were in fact contained in the GFAP; they made possible the subsequent process of strengthening the central government without the need for a constitutional overhaul. But in the absence of a clear strategy on the part of

the international community - an absence that also included a reluctance to systematically confront obstructionist parties in the initial phase of peace implementation - such a program was not undertaken.<sup>19</sup> Peace implementation instead was marked by shifting priorities, inter-agency rivalries, and bad planning. Before the OHR’s Mission Implementation Plan (MIP) of 2003, the international community never articulated what the end state of state-building in Bosnia should be. By extension, the GFAP bodies lacked a standard against which to measure progress. What would a ‘mission accomplished’ for peace implementation look like? It was the realization that such a standard was a conceptual prerequisite for any disengagement that prompted the formulation of the MIP.

Regardless of the concrete elements of such an end-state vision, however, it was clear that the international project of building a functional central state in Bosnia could only be realized in a piecemeal fashion. The powers of the central government were expanded across policy areas one by one, and it proved very difficult for entity-based elites to resist change that was couched in terms of functional requirements rather than as part of a political transformation. This approach was less conceptually coherent than the wholesale revision of the GFAP and the entity system would have been; but given the international community’s lacking appetite for confronting the nationalist parties and the impossibility of a wholesale renegotiation of the GFAP, it was the only option on the table.

The GFAP’s internal contradictions emerged as a reflection of the incompatible state-building projects pursued by the parties to the conflict and their outside sponsors. The Bosnian Serb leadership, once its bid for union with Serbia had been defeated, would not settle for anything less than an ethnic para-state inside Bosnia with as many attributes of statehood as possible, above all a name that implied sovereignty. The Bosniak leadership, which was in charge of Bosnia’s central institutions and now in an uneasy alliance with the Bosnian Croats, insisted on provisions that would in principle allow the reintegration of the country. By internalizing these opposing agendas, the constitution set the stage for the post-war conflicts to unfold.

## 2.5 The limits of imposition

The gradualist approach was quite successful within its parameters, but there has always been a natural limit to how far it could progress. That limit now appears to have been reached. As of September 2006, it has proven impossible, among other things, to extend the approach of negotiating or imposing technocratic solutions to political problems into the domain of policing. Police reform, which by its very nature targets the nerve center of nationalist power in Bosnia and is therefore inescapably political, has stalled with little prospect of movement any time soon. It may well be that the price to be paid for agreement is the complete hollowing-out of the core provision

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<sup>18</sup> Bieber, “Towards Better Governance,” p. 76.

<sup>19</sup> James C. O’Brien, personal communication to author, July 12, 2006.



of the reform - the removal of the police from political control by the entities. Whether such a reform is worth having is a question the international community has so far answered with a clear no. But the stark choice before the international community may now be to either abandon the goal of police regions that cut across the Inter-Entity Boundary Line (thereby giving up the core principle of the reform) or to impose a solution. The first option would leave a key building block for a fully sovereign, unified Bosnia unfinished, while the second would run counter to the entire current model of exercising international power, which maintains that no decision of such far-reaching importance should be imposed from outside.

In addition to showing up the limits of international power in Bosnia, failed police reform would also prevent the government from signing a Stabilization and Association Agreement (SAA) with the EU, a critical first step on the way to eventual membership. This may yet salvage the deal, however, as

decision-makers determine that the loss in popularity over a failed SAA would outweigh the gain from failed police reform.

That the international community's state-building approach has inherent limits was pointed out by the Venice Commission, an advisory body on constitutional matters of the Council of Europe, in a 2005 report.<sup>20</sup> The report noted that the Constitution's human rights provisions had in the past been used to justify additional responsibilities for the central government, as were Article I.4 (on free movement of goods, services, capital, and persons), Article III.4 (on the Presidency facilitating inter-entity cooperation) and Article III.5, which stipulates that the state level "shall assume responsibility for such other matters... as are necessary to preserve the sovereignty, territorial integrity, political independence, and international personality of Bosnia and Herzegovina," providing for additional institutions to carry out such responsibilities. The report points out that the "extensive interpretation of state responsibilities has clear limits" and underlines that in all cases where these provisions were used to support the assumption of additional responsibilities by the state, the OHR "played a decisive role".<sup>21</sup> This was true for defense and intelligence reform, the indirect taxation authority, and the empowerment of state-level judiciary institutions.

This analysis leads inexorably to the conclusion outlined by the Venice Commission. Since Bosnia will be unable to progress towards European integration with its current, weak institutions; since the consent of the entities, especially the RS, to measures required by the process of Euro-Atlantic integration is doubtful; and since the OHR's paramount role in ensuring reform and compliance is about to be phased out, the Venice Commission "considers a revision of the State Constitution to strengthen the responsibilities of the State to be indispensable".<sup>22</sup> Tentative steps towards such an overhaul were undertaken in 2006, but the results were hardly encouraging.

<sup>20</sup> European Commission for Democracy through Law (Venice Commission), Opinion on the Constitutional Situation in Bosnia and Herzegovina and the Powers of the High Representative (Venice: Council of Europe, March 11-12, 2005).

<sup>21</sup> Venice Commission, Opinion, 22-23.

<sup>22</sup> Venice Commission, Opinion, ¶126-28.

### 3 2006: A watershed year

Against the considerable achievements of peace implementation in Bosnia and the more modest results of state-building discussed in the previous chapter, the year 2006 has brought a marked deterioration of the political climate. This development can in part be attributed to the general election to be held on October 1 and the fact that any new government will eventually operate without the constraints of the OHR's presence. But the greater part reflects Bosnia's wartime divisions as they are mediated through the peace settlement and its implementation, and contingent factors that have arisen over the last few years both inside Bosnia and in the broader neighborhood, notably the question of independence for Kosovo, an issue likely to be decided towards the end of 2006. Indeed, an extraordinary number of these factors are coming together this year, producing perhaps the greatest challenge to peace implementation and state-building Bosnia has encountered since the war.

A glance at the June 30 cover of Sarajevo's leading newsweekly *Dani* will support the proposition that many of Bosnia's wartime divisions are very much alive. Under the headline "BiH without the OHR" - the magazine was reporting on the announcement by the PIC that the OHR would close down at the end of June 2007 - it pictured RS Prime Minister Milorad Dodik and Haris Silajdzic, a leading Bosniak politician, both in combat fatigues, Dodik brandishing a light machine gun and Silajdzic clutching an assault rifle. The implication is clear: the two frontrunners in the October 1 general election will use whatever means necessary to achieve their goals once the OHR's power of coercion has been replaced with the EUSR's power of persuasion. But what are their goals?

Dodik and Silajdzic are the leaders of the RS-based Alliance of Independent Social Democrats (SNSD) and the Bosniak Party for Bosnia and Herzegovina (SBIH), respectively - the two parties that have most successfully challenged the predominance of the Serb Democratic Party (SDS) and the Party of Democratic Action (SDA) as the 'natural' ethno-nationalist ruling party of Serbs and Bosniaks. Neither party is non-nationalist; both of them primarily, if not exclusively, cater to their ethnic community. Whether this is out of ideology or opportunism is ultimately of little import. Both Dodik and Silajdzic are pursuing the main strategies that politicians from their ethnic group have been pursuing since Dayton: the Bosnian Serbs' primary strategy to keep power and protect the integrity of their community has been to preserve a strong RS, with only grudging transfers of responsibility to the central government, while the Bosniaks' primary strategy has been to build an effective central state at the expense of entity power. These are not just political strategies pursued by ruthless elites; they reflect perceptions and preferences that are quite widespread among ordinary citizens. In an opinion poll conducted in November 2005, 41.5% of interviewed Bosnian Serbs - a plurality - agreed that "Dayton has generally been positive and should not be altered" while 63.2% of interviewed Bosniaks agreed that "Dayton was necessary to end the war, but now BiH needs a new constitution to prepare for the EU".<sup>23</sup>

Such views put Serbs and Bosniaks at opposite ends of the continuum that leads from peace implementation to state-building or from the GFAP's cease-fire measures to its provisions for a lasting settlement. The Bosnian Serbs have evolved from harsh critics of the GFAP (because it denied them independent statehood and prevented their union with Serbia) to its most avid defenders (because it protects the existence of the RS within a weak Bosnia). The Bosniaks, by contrast, continue to be the main champions of a strong central government and a system of governance that would include only a minimum of federal or consociational features. As the only one of Bosnia's three constituent peoples without an external kin state, Bosniaks have a natural interest in recreating a unified Bosnia. As the main victims of 'ethnic cleansing,' they also have an interest in

<sup>23</sup> Prism Research, NSF project survey, reported in Gearóid ó Tuathail, John O'Loughlin, and Dino Djipa, "Bosnia-Herzegovina Ten Years after Dayton: Constitutional Change and Public Opinion," *Eurasian Geography and Economics* 47:1 (2006), pp. 61-75 at 72.

reducing the power of those levels of government that can make life difficult for recent or prospective returnees, or indeed for any sort of (post-war) minority. And as Bosnia's single largest community, Bosniaks have an interest in replacing the group-rights provisions of the GFAP with a focus on individual rights.

The Dani cover therefore symbolizes a state-building project usurped by nationalist Bosniaks (though supported by a great number of non-nationalists on all sides as well) on the one hand and a literal-minded, narrow interpretation of the GFAP's entity provisions advanced by the Bosnian Serbs on the other. Neither position offers much by way of a forward-looking settlement; both protagonists are still fighting the war with other means.

Silajdzic is the favorite for the Bosniak seat in the Bosnian Presidency in the October poll, while Dodik intends to continue as RS Prime Minister or perhaps to assume the chairmanship of the state-level Council of Ministers. The SNSD is now Bosnia's most popular party, according to opinion polls,<sup>24</sup> and has been in power in the RS since late February, after a first spell in office between 1998 and 2001. It represents a mixture of technical competence, especially in relation to economic matters (Dodik is a successful businessman), and strong nationalist elements that has proven irresistible to RS voters. The SBiH has also seen remarkable growth in popularity in the first half of 2006, mostly propelled by its staunch opposition to the constitutional reform package and the renewed visibility of Silajdzic, a charismatic figure who has been slipping in and out of everyday politics ever since the war. (The support by Bosnia's largest daily, *Dnevni avaz*, and the leader of the Islamic Community will not have hurt, either.) Only one major party, the Social Democrats (SDP), has been able to overcome the tight nexus of ethno-politics and party organization, but it has failed - for complex reasons that include bad leadership - to mount a vigorous challenge to the prevailing model of attaining and keeping political power in Bosnia. Indeed, the Dani cover also points to the continuing division of Bosnian politics into ethno-national camps and the firm identification of individual politicians and parties with specific ethnic groups.

### 3.1 Crisis brewing

The challenges of the year 2006 emerge against this background of the enduring appeal of ethno-nationalism, underpinned by the provisions and interpretations of the GFAP. This is at heart a political rather than a constitutional problem. Constitutional tinkering, while necessary and desirable, will not resolve the conflicts that prevent a unified Bosnia.

The watershed year 2006 has already produced what Silajdzic called "the most serious political crisis since the signing of the Dayton peace accords".<sup>25</sup> Police reform has stalled; RS politicians are questioning the previously-agreed key for the distribution of revenue from the value-added tax, introduced in January 2006 and collected by the central government through its Indirect Taxation Authority (ITA);<sup>26</sup> there are rumblings from the RS leadership about a possible referendum on independence or union with Serbia; political discourse has dramatically deteriorated in the run-up to the general election; constitutional amendments aimed to strengthen the central government failed

<sup>24</sup> See Anes Alic, "Bosnia faces Another, Predictable Poll," ISN Security Watch, July 28, 2006, available at <[www.isn.ethz.ch/](http://www.isn.ethz.ch/)>. The latest polling data publicly available put the SNSD far ahead of the SDS in the RS, with 35 against 15 percent. See "Poll on popularity of Bosnian parties, politicians on eve of elections published," HINA news agency report carried by BBC Monitoring, September 6, 2006.

<sup>25</sup> Edina Sarac, "Stranci za BiH su potrebni saveznici," *Dnevni avaz*, July 31, 2006.

<sup>26</sup> In late July, a temporary compromise was hammered out for July and August, prompting the threat of a lawsuit from the District of Brcko. See "Bosnian indirect tax agency agrees on temporary solution to fund distribution," Onasa news agency, report carried by BBC Monitoring, July 26, 2006, and "Bosnia's Brcko District disappointed, angry over tax funds shareout," Onasa report carried by BBC Monitoring, July 26, 2006.

to garner the necessary two-thirds majority in Bosnia's parliament in late April; and the announcement by the OHR that it intends to close shop by the end of June next year provides incentives for obstructionist politicians to sit it out.

All this is taking place in a highly unstable regional context, with Serbia feeling under pressure from many sides. Montenegro has left the state union; Kosovo is likely to get some sort of independence, perhaps before the year is over, against the will of the Serbian government and large parts of its population; and Belgrade's SAA will remain suspended until the government can convince the EU that it is serious about apprehending and transferring war crimes fugitives, above all Ratko Mladic.

In the early summer of 2006, indications began to emerge of an orchestrated campaign by Bosnian Serbs to obstruct the operations of key central government institutions. On July 22, it was reported that the Bosnian Serb representatives on the governing board of the ITA refused to take over the rotating presidency, which would have been theirs according to schedule.<sup>27</sup> The week before, the Bosnian Serb members of the Police Reform Commission had done the same.<sup>28</sup> This came at a time when the leadership in Belgrade intensified its rhetoric on the 'regional implications' of Kosovo's status, seen by many Bosnian observers as little short of a threat that RS would secede if Kosovo became independent. In a high-profile opinion piece published in the *Washington Post* on July 12, Serbian Prime Minister Vojislav Kostunica wrote, "Viewed strategically, and not just with regard to preserving stability in the Balkans, the arguments against an independent Kosovo are equally strong: Independence for Kosovo would surely be viewed as a precedent, setting off similar demands elsewhere." This is a barely disguised reference to the RS. Just to make sure that everyone understood the thrust of the argument, the piece continued, "Those who argue otherwise are, quite simply, closing their eyes to the hard facts. Resolving the problems of national minorities through self-determination (especially in the case of nationalities that already have their own countries nearby) inevitably leads to border changes and all the dangerous complications that this entails".<sup>29</sup> There is no sense in the piece that the "hard facts" do not simply emerge in a vacuum, and that the Prime Minister of the largest and most powerful country of former Yugoslavia might have a role in shaping them. That such a position met with sharp protests from non-nationalist Bosnian politicians working towards the preservation of their country is not surprising.<sup>30</sup>

Against this backdrop of diplomacy and high politics, the everyday lives of Bosnia's citizens continue to reflect the pathologies of the country's political sphere. At the same time, as long as division persists on the ground, there is little incentive for Bosnia's political elite to engage in compromise and accommodation. According to the UNDP's latest quarterly report in its Early Warning System series, 82% of interviewees in Bosniak majority areas are very proud to be citizens of Bosnia; in Serb majority areas, the share is 20%.<sup>31</sup> School curricula (and in some cases, actual school buildings) are still divided between the ethnic communities, while education overall continues to fail both students and the economy by turning out too many graduates with the wrong skills. Highly-skilled individuals

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<sup>27</sup> BHTV, main evening news, 22 July 2006.

<sup>28</sup> "Serb Members of Bosnian Police Directorate Refuse to Assume Rotating Leadership," *Oslobodjenje*, July 18, 2006, carried by BBC Monitoring, July 19, 2006.

<sup>29</sup> Vojislav Kostunica, "Justice for Serbia: Kosovo Independence Imperils Our Democracy," *Washington Post*, July 12, 2006. Kostunica reiterated the linkage Kosovo-RS several times. See, e.g., "Serbian Premier Says Bosnia's Dayton Accord Must Be Respected," *SRNA* news agency, July 28, 2006, carried by BBC Monitoring.

<sup>30</sup> "Serbian President Accused of Meddling in Bosnia's Internal Affairs," *FENA* news agency, July 20, 2006, carried by BBC Monitoring.

<sup>31</sup> EWS, First Quarterly Report 2006, p.40, available at <[www.undp.ba](http://www.undp.ba)>.

continue to seek their fortunes abroad, possibly in quite substantial numbers.<sup>32</sup> Economic activity is still shackled by politics, as is most obvious from the process of privatization. Workers in offices, shop floors, and construction sites are mostly among their own. Indeed, it would be difficult to think of any sphere of public life in Bosnia where ethnic affiliation did not play an important role; this even applies to its cultural and artistic life. Little surprise, then, that ethnic mobilization is the Bosnian politicians' favorite tool.

### 3.2 The constitutional debate

In April, a set of constitutional amendments, drafted largely by U.S. experts in close consultation with Bosnia's main parties and designed to streamline the cumbersome policy process,<sup>33</sup> failed to garner the required two-thirds majority in Bosnia's state parliament.<sup>34</sup> This means that the government to be formed after the elections will initially have to operate under the GFAP Constitution, which has in the eyes of large majorities among Bosnians of all ethnic backgrounds outlived its usefulness. (According to a September 2005 poll, 72.6% of all Bosnians agreed with the proposition that the current constitution "does not work," with solid majorities among all three groups.<sup>35</sup>) There is a widespread recognition that the Dayton Constitution presents an obstacle on Bosnia's path to eventual EU membership, a strategic goal shared by large majorities of all ethnic groups and virtually the entire political establishment. The defeat of the constitutional package, however, also underlines the fact that it is not Bosnia's constitution that is the source of current problems but the posture of Bosnia's ethno-nationalist communities and their representatives. This also means that constitutional amendments will not deliver the sudden relief from ethno-nationalist politics many domestic commentators seem to expect. It is important to recognize that the oddities of Bosnia's constitutional system do not produce obstructionist policies; rather, it takes obstructionist policies to make the group-rights and federal provisions into an obstacle to effective governance.<sup>36</sup>

The amendments, despite being quite modest in scope and ambition, were defeated by opposition from Silajdzic's SBiH and the Croatian Democratic Union 1990 (HDZ 1990), which had split from the HDZ and effectively assumed its succession earlier in 2006. The HDZ 1990 raised fears - not entirely unreasonable - that Croats could be more easily outvoted, while the SBiH rejected what it saw as a consolidation of the entity system. This is ironic since the continued existence of the entities and the continued application of the entity voting system in Bosnia's state parliament were preconditions set by the RS parties for their participation in the constitutional consultations. Without these two provisions, the Serb parties would not have agreed to the amendments (or indeed the process that led to them), but their inclusion made the amendments unacceptable to a sufficient number of Bosniak and Croat representatives for the package to be defeated. RS leaders understood correctly that a certain anxiety on the part of international mediators for a process of constitutional talks to begin could be utilized strategically to extract concessions for participation while still appearing to be constructive; it is unlikely they would have realized at the time that these concessions would lead

<sup>32</sup> According to the UN Population Fund's 2006 report, remittances contribute 0.5 percent to the total GDP of all of Europe; in Moldova, that figure is 27.1 percent, in Bosnia 23.1 percent, and in Serbia-Montenegro 18 percent. UNFPA, Migration in Brief: Europe (2006), available at <[www.unfpa.org/swp/2006/presskit/index.htm](http://www.unfpa.org/swp/2006/presskit/index.htm)>.

<sup>33</sup> See R. Bruce Hitchner, "From Dayton to Brussels: The Story Behind the Constitutional and Governmental Reform Process in Bosnia and Herzegovina," Fletcher Forum of World Affairs 30:1 (Winter 2006), pp.125-135.

<sup>34</sup> See Mirna Zkrbic and T.K. Vogel, "Bosnia: Constitutional Reform Falter," Transitions Online, April 27, 2006, and TOL, "Constitutional Reform: Streamlining Bosnia," Transitions Online, April 24, 2006.

<sup>35</sup> Reported in ó Tuathail et.al., "Bosnia-Herzegovina Ten Years after Dayton," p. 67.

<sup>36</sup> This judgment does not apply to those provisions that are clearly discriminatory and have been singled out by the Venice Commission.

to a defeat of the entire package in parliament (the final vote was extremely close) but the outcome cannot have been entirely unwelcome to them.

The window for constitutional reform has now closed and will probably remain shut for the remainder of the year: the months after October 1 will be taken up by potentially lengthy and complex coalition talks at state and entity levels. The new government, however, will find the issue high on its agenda - yet the conditions remain unpromising. That the April amendments failed to garner a majority is worrying since the package dealt with questions that are considerably less divisive than those that will ultimately need to be tackled, above all the question of the country's territorial organization.

To Bosnia's Serbs, the continued existence of the RS is non-negotiable. This is in principle a reasonable position as long as the existence of the RS does not impede the effectiveness of governance at the state level, especially with regards to decisions that need to be taken in pursuit of Euro-Atlantic integration (including police reform). In other words, how reasonable the RS stance is hinges on the extent to which the RS conceives of governance reform as a zero-sum game where any gain in effectiveness of the central government translates into a loss in power for the authorities in Banja Luka.

Bosniaks tend to oppose the RS because in their minds, it embodies ethno-national exclusion and 'ethnic cleansing' while Croats oppose the fact that Bosnia's Serbs have their own entity while the same is denied to them. (They instead have to make do with the cantons they dominate.)

In many ways, the deadlock produced by Bosnia's political forces in the framework of its constitution is a replica of the problems that afflicted the model of governance that prevailed in Yugoslavia, especially under the 1974 constitution. A different comparison, but making much the same point, was made by a prominent international lawyer, Zoran Pajic, on the eve of the war. "What we have here in Bosnia is an exact model of the Lebanese situation," he told the *Washington Post* in 1991. "Three nationalist parties thought they could share power in a very simplistic way, but what happens in reality is they block each other, they don't trust each other".<sup>37</sup> This depressing diagnosis still applies today. But the fact also remains that such constitutions are the result, not the cause, of disagreement and conflict.

Bosnia's constitution is an extreme example of ethno-federalism, with the group-rights provisions typical of consociational regimes and the territorial provisions typical of federal arrangements. According to Caplan, these provisions, "whose chief and perhaps only virtue is to deny political control to any one national group," have "entrenched the fissures of the war and have thus inhibited BiH from functioning as an effective state".<sup>38</sup> But it is also true that without them, Bosnia's continued existence as a single, independent country would have been all but impossible. Bosnia's constitution is a snapshot of the balance of power between the incompatible state-building projects for a Greater Serbia, a Greater Croatia, and an independent, unified Bosnia prevailing at the time of the Dayton talks, and also between local actors and the international community. It is what O'Brien calls a backward-looking cease-fire rather than a forward-looking settlement. Its greatest weakness in practical terms lies in the unwieldy government structures it created: longer-term demands of good governance were subordinated to the need to get agreement of the parties to the conflict. "The Dayton Agreement included forward-looking provisions for democracy and individual rights,"

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<sup>37</sup> A.D. Horne, "Ethnic Tensions Splitting Central Yugoslav Republic; Troubles Dividing Other Areas of Country Spill Over Into Tolerant Bosnia-Herzegovina," *Washington Post*, June 11, 1991.

<sup>38</sup> Caplan, *International Governance*, p. 112.

O'Brien writes. "The machinery of government, however, made it hard to root out nationalists".<sup>39</sup> In addition, the international community lacked the resolve and a strategy to confront the nationalists in the immediate post-war period by making use of the constitution's innovative provisions as a sort of Trojan horse.<sup>40</sup>

Over the years, the constitution itself has become a problem by burdening the country with largely unworkable governance structures that are overbearing and ineffective at the same time. (Yet, it is necessary to stress again that more cooperative politicians could have made these mechanisms work.) Above all, the constitution enshrined the horizontal division of Bosnia into two entities (plus what would become the District of Brcko) and its vertical division into state, entity, and municipal government, with one of the entities structured as a centralized unit and the other a federal state consisting of ten cantons. The strategy of the international community to let the entities wither away by transferring additional responsibilities to the central government is now coming to its natural limit, especially given the impending disengagement of the OHR. This makes it very difficult indeed to envisage a way out of the constitutional impasse.

### 3.3 Another election for Bosnia

On October 1, Bosnia's voters will choose deputies to entity and state parliaments as well as the Bosnian and RS Presidencies. Almost everything that has happened in the political arena this year has to be seen in this context. As has been the case in the four previous polls since the end of the war, this general election has provided incentives for ethnic mobilization and provoked small-scale incidents.<sup>41</sup>

This incentive is strong in both entities due to the realignment of parties taking place in each of the three communities, where the national-conservative big-tent parties of each group are in the process of being replaced. In the Federation, the SDA is fighting a strong challenge by the SBiH while the HDZ is in danger of being pushed aside by the HDZ 1990. Both the SBiH and the HDZ 1990 strongly opposed the April constitutional amendments, and prominent HDZ 1990 leaders have in the meantime begun calling for a third entity for the Bosnian Croats.<sup>42</sup> In the RS, Prime Minister Dodik's SNSD has been replacing the Serbian Democratic Party (SDS) as the broad-based mainstream party of the Bosnian Serbs. The SNSD, while considered moderate by many observers, needs to play up its nationalist credentials and has already done so through its calls for an independence referendum. These realignments demonstrate that the supposed nationalism of individual politicians and parties strongly responds to political opportunity; it would therefore be highly inaccurate to describe any specific party except for the multi-ethnic SDP (and a few marginal parties) as either inherently nationalist or inherently anti-nationalist.

The incentives for ethno-national mobilization are especially strong since the new government will be the first to govern without the corrective influence of the OHR. This clearly heightens the stakes at a time of increasing uncertainty about reform.

<sup>39</sup> James C. O'Brien, "The Dayton Agreement in Bosnia: Durable Cease-Fire, Permanent Negotiation," in William Zartman, ed., *Peace vs. Justice: Negotiating Forward- and Backward-Looking Outcomes* (Lanham, Md.: Rowman & Littlefield, 2004), pp. 101-127 at 120.

<sup>40</sup> James C. O'Brien, personal communication to author, July 12, 2006. The argument is developed in O'Brien, "The Dayton Agreement."

<sup>41</sup> Gordana Katana, "Non-Serbs Targeted in Bosnian Serb Campaign: Spate of Incidents in July blamed on Divisive Pre-Election Campaign," *Balkan Insight*, July 28, 2006. See also Associated Press, "Grave of Bosnian Muslim President Damaged by Explosion," August 11, 2006.

<sup>42</sup> "Opponents of proposed constitutional reforms openly seek third entity," *Slobodna Bosna*, August 10, 2006, carried by BBC Monitoring.

As in previous elections, bread-and-butter issues are not at the forefront of the campaign and tend to be discussed in ethnic terms. There is little to nothing in terms of principled positions that would distinguish the parties with regards to, say, privatization (an issue that is currently topical due to the privatization of Bosnia's three ethnic-based telecom operators). The SDP is the only one among the main parties with a sharper ideological profile that does not simply revolve around the national question.

Polls put the SNSD far ahead of the SDS in the RS. The dominant parties in the Federation are the SDA, the SDP, and the SBiH.<sup>43</sup> The anticipated low turnout (expected to be below 50 percent) and the high number of undecideds make polling numbers highly problematic, though they still suggest that the process of forming a solid government coalition will be difficult. The task is made even more complex by the tendency of most parties to keep all their options open with regards to possible post-election coalition partners and by the need to engage in coalition talks at the state as well as the entity level, where the balance of power may be very different. The delays incurred by these consultations make it imperative that the PIC honestly assess the situation early next year before deciding on a final pullout date.

The new government will need to draw up and put in practice key reforms, including some that will be painful for its own constituencies. There is little doubt that even in case he becomes Prime Minister of Bosnia rather than the RS, Dodik will find it difficult to resist the pull of EU integration; since that objective is so popular, it would not make much political sense to be blamed for the failure to achieve it.

Near the top of any government's agenda will also be economic development, a topic on which most parties are virtually silent. Bosnia's economy is still very much subject to political influence, not least through direct state control of key companies and a privatization process that is still heavily politicized (and has overall been disappointing). However, overall growth has been good, though from a very low level, and exports have increased, while macro-economic stability is satisfactory. The IMF fears, however, that budgetary discipline may be decreasing, especially in light of the elections. The smooth introduction of VAT and the newly-established ITA, the first state-level office to take over the administration of indirect taxes from entity bodies, are positive developments. It is, however, worrying that no permanent agreement on the distribution of VAT proceeds has been worked out, and that this important policy area is still essentially governed by the ups and downs of party politics. Infrastructure needs have only been addressed very slowly, which will hamper economic development for a long time to come; the general business climate, meanwhile, is improving but at a slow pace. Prospects for education reform in line with the demands of a modern economy and EU integration are uncertain, especially as a higher-education law has still not been passed. The incoming administration will need to resolutely tackle these issues while also trying to pull off much-needed compromises on police reform and constitutional amendments.

### 3.4 The war crimes questions

It is no coincidence that the need to arrest all persons indicted for war crimes was a key element of the GFAP: without justice there could be no lasting peace. Likewise, it is no coincidence that IFOR/SFOR was a reluctant implementer of the relevant provisions, at least initially: after all, if the overriding objectives of the deployment were the avoidance of casualties and the preservation of stability at the cost of almost anything else, not arresting indicted individuals made good sense. But it is also likely that many of the protagonists at Dayton will have dismissed, at least privately, the ICTY (and with it, the very notion of justice and accountability) as a fig leaf for international inaction. Little did they know that the Hague tribunal would mature into one of the most powerful political actors in the region. Croatia saw its membership talks with the EU postponed twice over fugitive Ante Gotovina; only a positive assessment by

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<sup>43</sup> Polling data can be found in the quarterly Early Warning System reports published by UNDP, available at <[www.undp.ba](http://www.undp.ba)>. See also International Institute for Middle-East and Balkan Studies (IFIMES), Council of Europe 'Warns' BiH, July 14, 2006, available at <[www.ifimes.org](http://www.ifimes.org)>



Chief Prosecutor Carla Del Ponte made the opening of talks in early October 2005 possible. Gotovina was arrested in Tenerife two months later and transferred to The Hague.<sup>44</sup> Similarly, Serbia's talks on an SAA are currently on hold due to the lack of concrete evidence that the authorities are actively pursuing Bosnian Serb General Ratko Mladic.

Mladic's arrest or surrender, should it indeed take place, may stimulate the domestic debate about transitional justice, which has in recent weeks been picked up - though mostly in an adversarial, ill-tempered manner - after the ICTY sentenced the Bosniak wartime commander of Srebrenica, Naser Oric, to just two years in prison for crimes against Serbs. At the time of this writing, video footage of operations by the Fifth Corps of the Bosnian Army is also coming to light (or more likely, being selectively leaked to the media), showing Bosniak commander Atif Dudakovic ordering the torching of Serb villages in Bosnia. The same footage also appears to show the killing of unarmed men.<sup>45</sup> The reaction to the new videotapes underlines the need for mechanisms of transitional justice to mediate between the incompatible narratives the three communities hold about the war and its origins - something that is precisely outside the remit of the ICTY.

Indeed, the footage allowed all three sides to roll out their respective myths about the war. The Bosnian Serbs say that they defended themselves against an Islamic fundamentalist government in Sarajevo while Bosnia was engulfed in a nasty civil war in which all sides committed crimes. The Dudakovic tapes are most useful to that argument since they appear to show Bosniak soldiers murdering unarmed men, possibly civilians, in cold blood. Croats are pointing the finger at the Bosniaks with which they were allied at the time the pictures were taken. They maintain that all the crimes shown on the tapes were committed by the Bosniaks, notably a special unit reportedly made up and commanded by foreign jihadists but attached to Dudakovic's army. The Bosniaks are playing down what the pictures seem to show, insist on the virtue of their cause, and turn the war-crimes argument around to demand the abolition of RS.

The mutual recriminations soon descended into farce. After RS President Cavic and Prime Minister Dodik pressed charges against Dudakovic (which was entirely unnecessary since Bosnia's State Court was already investigating), Bosniak Presidency member Sulejman Tihic gave a statement saying that the RS could not remain as a political category since it was based on genocide, war crimes, and 'ethnic cleansing.' Dodik seized the opportunity to reiterate his call for an independence referendum.<sup>46</sup> Tihic also framed the issue not in terms of individual responsibility but of the general virtue of the Bosnian defense against Serb forces.

In principle, these two dimensions of war crimes - individual responsibility and state action - are distinguished also by the way they are prosecuted: the ICTY rules over individuals while the International Court of Justice (ICJ) is responsible for crimes committed by one state against another, for example the alleged genocide for which the Bosnian government (in practice, Bosniak politicians) is currently seeking compensation from the Serbian government before the ICJ.<sup>47</sup> In practice, the distinction is not always so neat - indeed, for many Bosnians, it hardly seems to exist. In defense of a just cause, the reasoning goes, no crimes will have been committed. Often, this is where the analysis ends.

<sup>44</sup> Ian Traynor and Giles Tremlett, "Capture of war crimes suspect paves Croatia's way to EU entry: Tribunal coup as fugitive general arrested in Spain: Accused of killing 150 and expelling 150,000 Serbs," *The Guardian*, December 9, 2005.

<sup>45</sup> See Bernhard Küppers, "Video zeigt Kriegsverbrechen an Serben," *Süddeutsche Zeitung*, August 8, 2006; Andrej Ivanji, "Festgenommen und sofort hingerichtet: Video über Kriegsverbrechen von Kroaten und Bosniaken an Serben 1995 löst in Serbien heftige Reaktionen aus," *Die Tageszeitung*, August 10, 2006; and Merdijana Sadovic, "War, Crimes and Videotapes," *IWPR Tribunal Update*, August 11, 2006, available at <[www.iwpr.net](http://www.iwpr.net)>.

<sup>46</sup> RTV B92 News (Belgrade), "Politics before Justice," August 11, 2006, available at <[www.b92.net](http://www.b92.net)>.

<sup>47</sup> See TOL, "Looking for A Culprit," *Transitions Online*, February 7, 2006.

The diagnosis that many of Bosnia's current-day problems stem from unreconciled narratives about the conflict and their exploitation by politicians trying to capitalize on the prevailing zero-sum politics applies most directly to questions surrounding war crimes, notably to what extent such crimes were part of a strategy to drive out 'enemy' populations in order to create 'pure' territories for inclusion in Greater Serbia or Greater Croatia - a strategy that by necessity involved the widespread commission of war crimes.<sup>48</sup> In this sense, the nationalists are right: beyond individual responsibility there is the broader issue of what was at stake during the war, and the war's very nature: was it a civil war, as most Serbs and Croats allege, or an international aggression, as most Bosniaks believe?

At present, the eyes of those who maintain an interest in justice are firmly trained on The Hague. Indeed, for most of the post-war period, justice for war crimes was essentially international justice, with all the problems associated with it. These have been summarized best in a recent paper by John Allcock, whose conclusion is clear: "International justice, in the form of the ICTY, has been characterized by attention to its legitimacy at the international level, both in terms of its sound footing in a body of international law and the professionalism of its conduct. The cost of this has been a sacrifice of effectiveness, because it has been incapable of meeting more than a fraction of the total demands placed on it, and of legitimacy, both because it has been incapable of addressing some questions of justice which are central to the inhabitants of the region, and because it is perceived as distant and unresponsive in its conduct".<sup>49</sup>

It is only in recent years that Bosnia's State Court with its special war crimes chamber has begun its work, including on cases that were directly transferred from the ICTY, and the ICTY is no longer opening new prosecutions as it is scheduled to close down in a few years' time. (All cases before the State Court need to be approved by the ICTY to prevent political trials.) This was made possible by robust international action in reforming Bosnia's judiciary. But if the positive developments in the Bosnian judiciary came about as a result of international action, it is also true that the phase-out of international criminal justice at The Hague and the transfer of cases to domestic courts is primarily driven by international rather than domestic agendas.

While the State Court is widely credited with professionalism, the war crimes question continues to provide opportunities for perpetuating zero-sum politics and ethno-national mobilization. The difficulties Bosnia is experiencing with transitional justice are a manifestation of the difficulty of state-building in a society that continues to be divided with regards to the basic vision of an end state as well as to the historical truth about its recent past.<sup>50</sup>

### 3.5 Regional instability and calls for a referendum

The year 2006 brought the liquidation of the last vestiges of the old Yugoslavia. In June, following a referendum in May, Montenegro left the dysfunctional State Union of Serbia and Montenegro, which had replaced the Federal Republic of Yugoslavia in March 2003 (largely at the insistence of the EU, loath to deal with yet another state in the Balkans), and it is widely expected that the international community will impose a final status for Kosovo - nominally still a Serbian province though since 1999 de facto a NATO protectorate administered by the UN - on a recalcitrant Serbia. Both developments are already being instrumentalized by forces that expect to gain from instability, especially those that never accepted the existence of an independent, fully sovereign Bosnian state in the first place. While there is little doubt that Bosnia's existence is not in danger, the fact that politicians are willing and able to exploit separatist

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<sup>48</sup> For a strong argument along these lines, see James Gow, *The Serbian Project and Its Adversaries: A Strategy of War Crimes* (London: Hurst, 2003).

<sup>49</sup> John B. Allcock, "International Justice -- Local Justice: The Hague Tribunal and Bosnia and Herzegovina," unpublished manuscript (October 2005) on file with author.

<sup>50</sup> For a general overview of the issues raised by transitional justice, see Judy Barsalou, *Trauma and Transitional Justice in Divided Societies* (Washington, D.C.: United States Institute of Peace, USIP Special Report 135, April 2005), available at <[www.usip.org](http://www.usip.org)>.

sentiment in RS, as well as within the Croat community, is worrying indeed since it highlights the fragile domestic legitimacy of the Bosnian state.

RS Prime Minister Dodik was the first mainstream politician to instrumentalize Montenegro's independence referendum by calling for a similar exercise in the RS, which would "give people the opportunity to decide what they think and want of Bosnia-Herzegovina".<sup>51</sup> He later downgraded his demand to a "theoretical consideration of (...) a theoretical possibility",<sup>52</sup> but neither excited Serbs nor worried Bosniaks took this at face value, and Dodik subsequently reiterated his position that 99 percent of Serbs in RS would vote for independence and that a referendum was inevitable if Kosovo became independent, or Bosnia came under the influence of "radical Islamic politics," or non-Serb politicians tried to reduce the autonomy of the RS.<sup>53</sup>

Dodik's referendum idea was, as if on cue, taken up by party officials in Serbia. A spokesperson for Prime Minister Kostunica's Democratic Party of Serbia (DSS) told the Serbian daily *Dnevnik* when asked about Dodik's statements, "If one nation in one part of a country is granted a certain right, we see no reason why this right to a referendum is denied to someone else".<sup>54</sup> With that, the connection between Montenegro, the RS, and Kosovo had been publicly, and officially, established. Kostunica's opinion piece in the *Washington Post* of July 12 fit right into that line of argument.

The implications for Bosnia of the determination of Kosovo's final status are only too clear, and they don't depend in any major way on whether the final status is determined through negotiation between the parties (which appears highly unlikely) or through some sort of imposition by the international community. They also won't depend on whatever conditionality may be imposed on Kosovo since few observers doubt that the outcome will eventually be full independence. With those two qualifications in mind, there are only two scenarios that need analyzing here. Neither is good news for Bosnia.

In the first scenario, the entire Serbian province of Kosovo would gain independence (conditional or otherwise), probably with very strong provisions for the protection of ethnic minorities. This would be the first instance of a territory that never had the status of a republic under any of Yugoslavia's constitutions gaining independence; all previous new states in former Yugoslavia were full republics under the old system. On the surface, this would seem to create a precedent for the independence of a sub-republican territory such as RS; the analogy in this scenario would be between RS and Kosovo on the one hand and Bosnia and Serbia on the other. This is legal nonsense, however: RS, in contrast to Kosovo, is an entirely artificial entity whose borders with the Federation were never, in any form, in evidence previously, while Kosovo in its present borders was an autonomous province of Serbia with quasi-republican status under the Yugoslav constitution.

In the second scenario, Kosovo would gain independence but its northernmost region north of the divided town of Mitrovica, with its concentration of ethnic Serbs, would remain with Serbia. This would be the first instance of a formerly Yugoslav territory being partitioned along ethnic lines and receiving international recognition. If this were taken as a precedent, the analogy would be between RS and Mitrovica-North on the one hand and Bosnia and Kosovo on the other.

<sup>51</sup> Orijana Vukovic, "Trazicemo referendum za otcjepljenje," *Oslobodjenje*, May 27, 2006.

<sup>52</sup> "Bosnian Serb PM says referendum on Serb secession 'theoretical possibility'," interview in *Nezavisne novine* (May 28) carried by BBC Monitoring, May 30, 2006.

<sup>53</sup> "Bosnian Serb Premier says Independence Referendum is Inevitable," *Radio Free Europe/Radio Liberty Newline*, September 5, 2006.

<sup>54</sup> "Parties in Serbia support call for Bosnian Serb entity independence referendum," report in *Dnevnik* (May 30) carried by BBC Monitoring, May 31, 2006.

While it is to be expected that either scenario will be exploited by the Bosnian Serbs, the power of precedent also needs to be put in perspective. The international community, and especially the EU, has made it abundantly clear that it frowns upon the creation of new states in general. It did so, for example, by imposing stringent conditions on the Montenegrin referendum. It has also made it clear that Kosovo will be a lone exception to the state practice of not recognizing breakaway territories, of which there are a number on the fringes of the old Soviet Union and elsewhere. This may not be terribly consistent but makes perfect political sense. The RS simply lacks the powerful international backer that could promote the idea of independence within the international community, and its independence would run counter to everything the sponsors of Dayton have been striving to achieve in the Balkans.

Furthermore, if the Bosnian war failed to deliver independent statehood to RS, the peace cannot be expected to do so either. What war and 'ethnic cleansing' could not achieve is unlikely to be gained by the less drastic instruments now at the disposal of the power-wielders in Banja Luka - above all, blocking the working of Bosnia's central government. But if actual secession is a very remote prospect, any independence bid, however much it will be bound to fail, still has the potential to generate considerable domestic problems for Bosnia and to consume much political energy needed elsewhere.

From this, two distinct objectives may be imputed to key policymakers in Banja Luka and Belgrade. The first, presumably of greater interest to the Belgrade authorities and part of the diplomatic endgame over Kosovo, is to fend off Kosovo's independence in a rearguard action, a futile operation if ever there's been one (and one whose futility is no doubt understood by the Serbian government). The second, presumably mainly in Banja Luka's interest and firmly rooted in Bosnian domestic politics, would be to hold Bosnia's central government and the more activist parts of the Bosniak political establishment such as Haris Silajdzic at bay and to preempt any reform that can be construed as a move towards the abolition of RS. This second strategy was in fact expressed in a joint statement by Dodik and RS President Dragan Cavic of June 28, in which they warned that attempts by one constituent people to change the Dayton accords without the consent of another constituent people would lead to a domestic and regional crisis that could equally likely lead to the unitarization as to the disintegration of Bosnia.<sup>55</sup>

Since the disruptive potential of the referendum course is considerable even if its eventual defeat is preordained, the international community needs to persist with its demands - that calls for secession from Bosnia stop - since these calls aim not only at the Dayton peace but also at Bosnia's territorial integrity. The question whether by the same token, frequent calls by Bosniak politicians, notably the SBiH, for the abolition of the entity system (i.e., the RS) should also be confronted will, however, require a more nuanced answer. On the one hand, the entity system is at the heart of the GFAP and its abolition would in effect endanger the Dayton system as well. At the same time, it is surely the case that Bosnia's politicians should be allowed to openly discuss the future constitutional set-up of the country, including various arrangements for the restructuring of the entity system. This seems well within the boundaries of acceptable political discourse, while unilaterally changing an internationally recognized border is not.

In such a situation, it is unhelpful for former HR Carl Bildt to suggest that RS had become "as permanent as Scotland".<sup>56</sup> The comparison plays into the hands of the secessionist by stressing the conceptual primacy of the entity over the state, which in the case of Scotland has sources in actual history. But the RS was not a pre-existing unit that was absorbed into a new Bosnian state, the way Croatia and Serbia were in the first Yugoslavia. Bosnia has a considerable degree of historical continuity - though not modern independent statehood - within roughly its present-day borders. RS, by contrast, is an entirely artificial construct whose appeal to its ethnic foundation is in fact highly dubious, given that just over half of the

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<sup>55</sup> "Prijedlog rezolucije Monitoring komiteta SE poguban za stabilnost BiH," press release available at <<http://www.vladars.net/lt/novosti.php?c=novost&id=2670>>.

<sup>56</sup> Neil MacDonald, "After 14 Years, Serb Statelet is Still Bosnian Stumbling Block," Financial Times, July 31, 2006.

pre-war population of today's RS was ethnically Serb. It is ironic that the champions of RS are precisely those who reject Bosnia's right to exist by pointing to its artificial character.

RS politicians have in the past months shown that they are perfectly willing to activate all the blocking mechanisms, formal and informal, that the GFAP put at their disposal, and the referendum issue will not be an exception. Developments in the Police Reform Commission demonstrate that they have no qualms about holding the EU aspirations of all of Bosnia hostage to their particularist agenda. The referendum drive, fueled by the Kosovo status determination, will be defeated, but it will no doubt be used to counter calls for any constitutional restructuring that would diminish the power of the entities.

This has little to do with the 'nationalist' character of any specific party. Dodik's SNSD as well as Bosnian Foreign Minister Mladen Ivanic's Party of Democratic Progress (PDP) are nominally less nationalist than the SDS but have demonstrated time and again that they will use ethno-nationalist arguments in pursuit of their agendas. This is a direct result of the fact that power is lodged at the entity level and voting structured along ethnic lines, which creates strong incentives for politicians to focus on their core constituencies instead of reaching out across the ethnic divide. As long as the entity system and the related provisions of the GFAP are in force, this mechanism will kick in whenever far-reaching decisions have to be taken.

### 3.6 European integration and the fate of police reform

The SAA is a first contractual step on the way towards eventual membership in the EU. It is in essence a trade-related agreement tailored to the specifics of each applicant country. Since Bosnia has de facto enjoyed many of the benefits of the SAA since the EU extended its trade preferences to the entire region in the year 2000, its economic impact is expected to be negligible.<sup>57</sup> However, the conclusion of an SAA would send an important signal that Brussels considers Bosnia to have stabilized sufficiently to undertake the considerable reform still needed to meet the EU's membership criteria. It would also allow Bosnia's central government to continue to press changes required for European integration.

The SAA, however, is not a foregone conclusion, despite the widely recognized professionalism of Bosnia's EU negotiators. Indeed, it is in acute danger - and with it, the centerpiece of the international community's current approach to Bosnia, which, according to the ICG, "consists entirely of preparing the country for eventual European Union membership in the hope that integration processes will overcome ethno-political divides and their intertwined economic and criminal interests".<sup>58</sup>

Talks were formally opened on November 25, 2005, after the European Commission (EC) determined in a progress report that the country had made "significant progress in addressing the sixteen priorities identified in the framework of the 2003 Feasibility Study." The expectation was expressed at the time that the process would last around one year, but few observers expect the SAA to be signed before 2007. The EC also made it clear in its report that three areas remained unsatisfactory and would need the full attention of the Bosnian authorities: cooperation with the ICTY, adoption of a Law on Public Broadcasting Service, and "implementation of the police reform".<sup>59</sup>

This finding, which suggests that the main problem with police reform was its implementation, was only possible because the issue of police reform had been fudged. The report maintained, "the Agreement on Restructuring of Police has been adopted by the parties, in line with the three principles outlined by the

<sup>57</sup> Economist Intelligence Unit, Bosnia and Herzegovina Country Report (EIU, January 2006), p. 14.

<sup>58</sup> International Crisis Group, Bosnia's Stalled Police Reform: No Progress, No EU, ICG Europe Report No.164 (September 6, 2005), executive summary.

<sup>59</sup> Communication from the Commission to the Council, Doc. COM(2005) 529 final, Brussels, October 21, 2005, p.5.

Commission, namely i) all legislative and budgetary competencies for all police matters must be vested at the state level, ii) no political interference with operational policing and iii) functional local police areas must be determined by technically [sic] policing criteria where operational command is exercised at the local level".<sup>60</sup> But what the parties had agreed to was simply a statement of these principles, not an actual agreement on concrete police regions. In fact, the issue had proven so intractable that there were only three options in front of the international community:

- give up on the idea that SAA talks could be opened under current political conditions. This option was politically unpalatable to the international community since it would have put in question the entire notion of replacing the OHR's powers of coercion with the EUSR's power of persuasion, an approach that can only work with the concurrent pull of a tangible EU integration prospect;
- impose the police regions. This option was unacceptable to the European Commission since it would expose a lack of domestic political will to reform, and to the international community at large because it would suggest that the Bonn powers were still needed;
- fudge the issue by focusing on process rather than results.

This last option was implemented through the establishment of an ad-hoc Police Reform Directorate by the Bosnian Council of Ministers in early December. The SDS - still the ruling party in the RS at that time – had accepted the three principles in early October 2005, but only after the SNSD had agreed to it and under heavy pressure from the international community that included financial restrictions on the party and investigations into its financial dealings. As soon as Dodik became Prime Minister, he began questioning the legitimacy of the Directorate and declared that the RS could not agree to have its police force dissolved. In late July, the Serb members refused to assume the rotating chairmanship of the Directorate's Steering Board,<sup>61</sup> and in early August, Dodik told the Sarajevo daily *Dnevni avaz* that he would not allow police reform to happen to the detriment of the RS, "even if it means waiting 10 years to begin new [SAA] negotiations".<sup>62</sup>

In the end, the decision will come down to the question whether the RS wants to prevent giving up authority over the police more than the international community wants the SAA so it can disengage from Bosnia and close down the OHR. (The fact that HR Schwarz-Schilling will stay in Bosnia as EUSR is little solace to those Bosnians who think that the OHR has been indispensable in achieving the modest results of state-building and the more substantial results of peace implementation of the last years.<sup>63</sup>) Faced with the option of either giving up RS control over its own police or being the lone culprit for a blocked way towards the EU, Dodik is more likely to give in; however, the temptation may also exist for the EU to water down its own principles and leave some aspects of policing under RS control.

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<sup>60</sup> Communication, p. 3.

<sup>61</sup> "Serb members of Bosnian Police Directorate refuse to assume rotating leadership," *Oslobodjenje*, July 18, 2006, report carried by BBC Monitoring.

<sup>62</sup> "Bosnian Serb premier reiterates entity's right to self-determination," *Dnevni avaz*, August 4, 2006, carried by BBC Monitoring.

<sup>63</sup> See Admir Malagic, "Medjunarodna zajednica pravi velike grezke u BiH," *Dnevni avaz*, August 6, 2006, reporting the views of Bosnian Prime Minister Adnan Terzic.

### 3.7 The OHR phase-out

In its meeting of June 22-23, 2006, the PIC announced its intention to terminate the OHR on June 30, 2007, subject to confirmation early in 2007.<sup>64</sup> While many observers in Bosnia and abroad were puzzled by what specific developments may have prompted the PIC's decision, the decision as such was no surprise.

The OHR was set up under Annex 10 GFAP (civilian implementation) as a temporary, ad-hoc body "to facilitate the Parties' own efforts and to mobilize and, as appropriate, coordinate the activities of the organizations and agencies involved in the civilian aspects of the peace settlement" (Annex 10, Article I.2). This rather narrow brief was considerably expanded with the Bonn powers and other forms of political empowerment. But the OHR's was throughout these years seen as an anomaly that should be dispensed with as soon as feasible.

Critics were especially troubled by the Bonn powers, which they saw as undemocratic, unnecessary, and subversive of domestic political development.<sup>65</sup> In fact, many supporters of the Bonn powers, including inside the OHR, understood perfectly well that they were essentially undemocratic - not just because there was no appeals procedure or outside scrutiny of individual decisions, but also because many of the actions for which officials were removed were in fact very popular with their constituents. As long as unbridgeable antagonisms characterized the relations between the communities, the Bonn powers would be indispensable as a last resort - especially once the OHR's peace implementation mandate had been supplemented by a state-building agenda in response to the poor results of international action in 1996-97.

The OHR's phase-out began a few years ago. Strengthened central-level structures and progress in several reform areas such as defense, public administration, and taxation made the OHR's role as a quasi-substitute government less critical (though its role as a driver of reform in support of good governance remained vital). Important modifications to the legal framework across a wide issue area also reduced the need for corrective action, while the end of large-scale return movements and the successful completion of property restitution meant that intrusive, municipal-level action, and hence a comprehensive network of field offices, was no longer required. In result of these developments, the OHR's staffing levels declined significantly: in its peak year 2002, the OHR employed 698 staff, of whom 207 were international. This declined to 600 (142 international) in 2004, 457 (107) in 2005, and 324 (72) in 2006.<sup>66</sup>

Throughout this period, the OHR's eventual shutdown was clearly on the horizon but the situation on the ground did not appear to support any final decision as to a firm date. The current HR, Christian Schwarz-Schilling of Germany, came to office on the understanding that he would be the last occupant of the position, though that had also been the assumption when Ashdown took over from Petritsch. (Since Ashdown, the HR has also served as EUSR, and Schwarz-Schilling will stay in Bosnia in that function beyond next June.) For a number of years, successive HRs have been arguing that the OHR's exit strategy would in essence have to be an entry strategy into Europe.

Given the fact that key reforms required for Bosnia's deepening relationship with the EU have not been agreed upon or implemented and in light of the marked deterioration of the political climate in the first half of 2006, many observers were puzzled as to what may have led the PIC to change its previous

<sup>64</sup> PIC Steering Board, *Towards Ownership: From Peace Implementation to Euro-Atlantic Integration*, Sarajevo, June 23, 2006, available at <[www.ohr.int](http://www.ohr.int)>.

<sup>65</sup> Classics are David Chandler, *Bosnia: Faking Democracy After Dayton* (London: Pluto Press, 1999) and Gerald Knaus and Felix Martin, "Travails of the European Raj," *Journal of Democracy*, 14:3 (July 2003), pp.60-74.

<sup>66</sup> OHR Resource Department, personal communication to author, August 8, 2006.

assessment that it would be premature to phase out the OHR. A declining appetite on the part of donors to pay for the OHR's operating costs may have played a role, but the fact that the current SAA talks, while going well at present, will soon hit the obstacle of stalled police reform suggests that the decision may be shortsighted.

The unfinished reform business prompted observers to call on the HR to adopt a more activist stance during the remainder of his mandate.<sup>67</sup> There is no evidence so far that Schwarz-Schilling is heeding the call. Even if he did heed the call, however, the days of imposition are over: for its last year of existence, the OHR will have to concentrate on tying up loose ends rather than engage with difficult questions such as amending the constitution or reforming the police.<sup>68</sup> And regardless of the inclinations of any single officeholder, both the character of the international community's engagement in Bosnia and its institutional set-up are currently undergoing a major transformation that will make it impossible to continue the approach of the past. An era is coming to an end in Bosnia.

This strategic transformation is based partly on the assessment that key provisions of the GFAP (such as Annex 7) have been materially fulfilled and partly on the reluctance to see the OHR's sweeping enforcement powers prolonged any more than strictly necessary, especially not in relation with reform measures that are seen as critical for Bosnia's EU integration. This assessment of material reality on the ground and the non-desirability of imposed reform has prompted a shift in emphasis away from the OHR's enforcement role to the facilitation role to be exercised by the office of the EUSR. With the closure of the OHR, the powers that have so troubled certain observers will now disappear.

Is June 2007 the right moment for the OHR to close shop? Only the coming months will tell. What is certain, however, is that the PIC must take its own words seriously by taking a close interest in all Bosnian matters over the remaining period of the OHR's mandate, especially when it re-assesses the situation early next year to confirm - or postpone - the June date for the shutdown. This should be unambiguously conditioned on police reform, and perhaps also on concrete steps towards constitutional reform; anything else would endanger the OHR's legacy. The closure of the OHR must be driven by objective conditions and not international disengagement agendas.

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<sup>67</sup> See, for example, Center for European Integration Strategies, *How (Not) to End: The OHR's Last Days in Bosnia*, CEIS Policy Brief No. 6 (July 13, 2006), available at <[www.ceis-eu.org](http://www.ceis-eu.org)>.

<sup>68</sup> These loose ends include the lifting, or domestic validation, of OHR decisions such as removals or imposed laws. See, for example, DPA, "Top international envoy lifts bans on 60 Bosnian politicians," July 7, 2006.



## 4 Conclusions

### 4.1 Bosnia: a 'self-sustaining' state?

When the OHR departs, it will hand over to the EUSR. In fact, the handover will consist of a few people leaving, still fewer people arriving, and a change of the sign next to the entrance from 'OHR' to 'EUSR.' The more pressing question is, will Bosnia's domestic institutions be able to conduct the activities of government without the support of the OHR?

At the most obvious level, the answer is "it depends" - above all, on who gets elected in October 2006. It also depends on whether the Bosnian polity will withstand the pressures the year 2007 will bring. But that, in turn, is conditioned by deeper issues that this report has outlined - above all, the challenge of legitimacy.

Bosnia today has institutions of government at all levels that function better across a wider policy spectrum than they did a few years ago. This improvement has been most dramatic at the state level, which has gained massively through the transfer of responsibilities from the entities and various assistance programs that helped public administration become more efficient, responsive, transparent, accountable, and effective. Bosnia's central government now raises and distributes taxes through the Indirect Taxation Authority (ITA); controls the country's borders through the State Border Service (SBS); provides public security through the State Information and Protection Agency (SIPA) and the State Court, and defense through an integrated Defense Ministry and chain of command. Bosnia has an increasingly functional internal market and macroeconomic stability. These output factors are important elements of legitimacy, together with the input factors of democratic procedures (elections, parliamentary representation, and so forth).

The Bosnian state, however, is facing serious challenges in generating legitimacy. These challenges are not simply a function of low capacity or cumbersome procedures or even the paralysis produced by the constitution's consociational features; rather, it is in its essence political. A large share - perhaps a majority - of Bosnian citizens remain to some extent unreconciled with the very fact that they are citizens of Bosnia rather than Croatia or Serbia, or perhaps an independent RS, or indeed Yugoslavia. They may not actively work to destroy Bosnia but they will not defend it either. If their primary attachment is to their entity, they will see any increase in the effectiveness of the central government as a decrease of the autonomous power of their ethno-national community or entity, and because of the inevitable group-rights provisions any legitimate settlement will realistically have to include, they will be in a position to block measures that would contribute to this. As long as this zero-sum posture is maintained, the Bosnian state will be less effective than it could be.

If we conceptualize legitimacy as depending, at least in part, on the effectiveness of government in providing services to citizens, the zero-sum posture will prevent a more robust legitimacy from emerging since governance units other than the central state are in a position to block the latter's production of outputs that enhance its legitimacy. This in turn will reinforce citizens' attachment to entities or cantons, or indeed foreign governments, which are able to provide services as well as intangibles - think of perceptions of ethnic security, for example - that the central government cannot. As long as this mechanism is in place, the Bosnian state will find it exceedingly difficult to generate output legitimacy among Bosnia's Serbs and Croats.

The sources of the legitimacy gap of Bosnia's central state are therefore to be found in the primary attachment of large parts of its citizenry to other political authorities that have been empowered by the GFAP's group-rights provisions, which allow these units of government to block the delivery of services by the central government to citizens and prevent the generation of enhanced legitimacy for the central authorities.

The obvious answer in this situation would be to unblock the political system by removing the group-rights provisions. It is equally obvious, however, that only the most excessive provisions - those that produce paralysis without necessarily advancing any one group's interests - can be scrapped without a

major struggle: the remainder of these blocking mechanisms, which make the zero-sum game between entities and the state possible, are unreformable as long as Bosnia's communities cannot share a view of the central government as the primary locus of political power and legitimacy. Such a development would not mean that citizens may no longer feel primary attachment to entities or other units of government; in many federal or consociational systems, citizens feel closer to the unit from which they draw services (and to which they usually pay taxes) than to the central government, but relations between the two levels are not seen as zero-sum. Indeed, it would be unrealistic to think that the extensive consociational or group-rights features of the Bosnian constitution will no longer be needed once the country has stabilized; hence, these groups will retain in principle the power to prevent any moves that could endanger their national interests. The key is that such blocking mechanisms should only be activated when the genuine national interest of one or the other group is at play rather than during routine policy-making as is often the case now.

This analysis suggests that Bosnia's main problem is political, not constitutional. Bosnia's constitution does allow the Serbs and the Croats (and, in principle, the Bosniaks) to prevent the central government from becoming more effective, thereby impeding its generation of legitimacy. But the key issue is that they still feel this to be necessary.

Even if Bosnia's problems are political in nature they may still have constitutional solutions. Individuals cannot be forced to feel loyalty towards a country whose existence they doubt or reject; but their interests, preferences, and indeed identities are shaped by the institutional environment in which they operate. This was the opening utilized by the international community in its project to build the Bosnian state: it made up for the lack of internal legitimacy by providing 'stateness' from outside. This approach was applied in a literal sense when external actors created the symbols of statehood such as a flag, an anthem, or a currency. It is also visible in the way Bosnian citizenship was codified and a citizen's register and a unified passport introduced. Uniform license plates that no longer showed the place of residence of the owner were another important element of 'stateness' (and a very direct contribution to freedom of movement, and hence, return).

Less tangible markers of stateness provided by external actors include the reality and appearance of permanence, a very important asset after a conflict in which the very existence of the state was contested: the international community has propped up the Bosnian state and thereby stabilized it in the eyes of its citizens, even those who may not care much about it. A critical variable in the equation is the posture of Bosnia's political elites: both the Serb and the Croat separatist agendas have been defeated, though perhaps not irreversibly, and Bosnia's politicians understand this perfectly well. (Even this defeat, of course, had largely external sources - the demise of the Tudjman and Milosevic regimes.) His rhetoric notwithstanding, even RS Prime Minister Dodik is working within the limits set by the GFAP and within the institutions set out there, and his opposition to police reform, while a serious challenge to both the central government and the international community, does not threaten Bosnia's statehood.

Whether such grumbling acceptance of the reality of Bosnian statehood is enough to secure its long-term validity should the international community visibly disengage is an open question. How problematic the OHR's shutdown will be hinges on the mandate and posture of the EUSR, and on whether conditions on the ground will be carefully assessed by the PIC in early 2007 before it confirms its decision to close the office. In a broader sense, however, it primarily depends on the prospects for Bosnia's eventual membership in the EU. The international community is holding out the prospect of membership as an incentive for reform in the hope that the large majorities of Bosnians favoring EU integration will thereby be transformed into an effective domestic constituency for reform. The international community is trying to stimulate domestic demand for stateness since only that can sustain the Bosnian state over time.

But this particular equation contains several variables, and not all of them relate to Bosnia. While there has never been any principled opposition to the inclusion of all countries of the Western Balkans in the EU the way there has been with regards to Turkey, the EU's current identity crisis is making accession appear

a rather distant prospect. This is probably only realistic since even under the best of circumstances, Bosnia's accession is probably still a good ten years off. But after raising Bosnians' hopes, by design or ineptitude, that membership would solve the country's problems and that it was just within grasp if only Bosnia created more effective institutions of government, the wake-up call might be quite unpleasant. Bosnians are already discovering that far from being focused on the Balkans, the EU is now mostly concerned with itself, rather like the OHR. But beyond the question of when Bosnia might accede, and the unrealistic hopes many Bosnians have been entertaining, there is the more worrying question of whether the EU's offer, which is exactly the same as the one it holds out to countries without Bosnia's troubled history, will be enough to sustain reform there. The experience of Romania and especially Bulgaria is not encouraging.

Legitimacy needs to be produced in an ongoing process; it cannot be accumulated once, in the manner of political capital. The government's performance with regards to democratic procedures and the provision of services to citizens needs to be of a certain quality that remains more or less consistent over time. Despite countless assistance programs, it is not clear that the Bosnian authorities can achieve this at present, especially on the output side. Bosnians are still getting very little value from their very expensive government. The fact that every major piece of reform in the past has had to be underwritten by international bodies does not bode well for a Bosnia without the authority of the OHR.

It would be all too easy to present an entire catalogue of policy issues where Bosnia's governments have failed their constituents. They have failed to create the conditions for robust economic growth, a failure that is especially damaging since it concerns an issue that was neglected by the international community until rather late in the game. (An early success, however, was the creation of macroeconomic stability.) They have also failed to replace the dominant concept of security as the zero-sum security of individual ethno-national communities with a concept of security that would encompass the entire country. These are by far the most serious failures since peace and prosperity (that is, public security and economic growth) and a viable state are mutually dependent.

In order to be seen as legitimate, then, the state will need to deliver key services to citizens on an ongoing basis, and continuously be receptive to their wishes and aspirations. In Bosnia, this continuous production of legitimacy is a severe problem - not because, as critics like David Chandler or Knaus and Martin have charged, the state was imposed from outside but because a large proportion of its citizens reject the very notion of Bosnian statehood, especially since the central level is prevented by the entities from delivering services to citizens. Ten years of peace implementation and external state-building have failed to decisively change that dynamic.

## 4.2 Outlook for 2006/2007

Bosnia has a rough patch of road ahead. Its division into three communities, to which one may add the group of citizens who will not vote along ethnic lines, means that no single party and no coherent alliance of parties is likely to achieve an outright working majority at the state level, a situation that is further complicated by the fact that the different alignments in the entities may necessitate different coalitions at state and entity level. This will almost inevitably mean a period of several months to allow for consultations during which little progress on the key issues of police and constitutional reform, and hence closer ties with the EU, is to be expected. The High Representative is likely to be a marginal figure in all this, in sharp contrast to coalition talks after previous elections.

The post-election wrangling is, however, not the biggest challenge Bosnia is facing; after all, complex coalition talks are hardly exclusive to the Balkans. Much more worrying is the deterioration of public discourse in the run-up to the October poll. This could be dismissed as mere electioneering that will have been forgotten the day after the election. The fact remains, however, that this political discourse is an expression of Bosnia's continuing divisions, which make ethno-national mobilization as effective an electoral strategy today as it was ten years ago. It is not just the rhetoric but the substance of political

contention that makes key reforms so difficult to achieve: since every issue is refracted through the ethno-national lens, politics still tend to be zero-sum.

Nonetheless, neither police nor constitutional reform will disappear as pressing political projects for Bosnia. The pressure to agree to police reform - both from the international community and from Bosnians eager to have closer ties with the EU - may simply prove too strong for the RS to resist much beyond the election; any accommodation may also be helped by the recognition that implementation will present numerous opportunities for all sorts of delays. Agreement on police reform would pave the way for an SAA to be concluded and for the PIC to confirm, probably in February 2007, its decision to close down the OHR. Should RS opposition prove as firm as it is at current, Brussels might well be tempted to seek some sort of compromise on an issue that it has declared to be non-negotiable, for a simple reason: the EU has no strategy for the stabilization of the Western Balkans other than enlargement. In a sense, it needs the countries of the region as much as they need it. We may yet see countries admitted to accession, candidate, or association status that may not be entirely ready for it.<sup>69</sup>

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<sup>69</sup> Lynn Bennet, L. 2003: Nepal, Gender and Social Exclusion Assessment. Concept Note. Kathmandu: World Bank. Retrieved on 24 November 2004 from: <http://www.gendratwork.org/updir/NepalGenderandSocialExclusionAssessment-ConceptNote.doc>. 28. The tables were adapted from Harka Gurung 2002: Janajati and Dalit: The subjugated in Governance. Presented at a seminar on 'Policy Inputs for SDCs Governance Concept', Kathmandu.

# Analytical Framework

## FAST Analytical Framework Bosnia and Herzegovina

### ROOT CAUSES

**Historic**

- Legacy of the Former Socialist Federal Republic of Yugoslavia
- Conflict 1992-1995 between all three major ethnic groups (Bosniaks, Croats and Serbs)
- Division of territory due to conflict 1992-1995 (Federation of Bosnia & Herzegovina: Bosniaks and Croats vs. Republika Srpska: Serbs)
- Development of religious differences into ethnic differences, perceiving the other as negative

**Political / Institutional**

- Lack of democratic traditions in Bosnia: authoritarian political culture
- Large segments of Croats and Serbs in- and outside Bosnia rejected the existence of a sovereign Bosnia supported in this by the Tudjman and Milosevic state-building projects
- Parallel power structures along ethnic lines in the Federation of BiH (e.g. Croatian and Bosnian pension funds)

**Societal / Socio-Demographic**

- Unfinished process of forced industrialisation and modernisation with heavy impact on social structure
- Massive number of people displaced during the war, reinforcing existing rural-urban cleavages and accelerating brain drain
- Incapability of different ethnic groups to live together in peace after the war, although Bosnia had exhibited the biggest percentage of mixed marriages in former YU
- Religion as an instrument of mobilisation of ethnic division

**Economic**

- Regional differences in economic development: e.g. heavy industry (coal, iron, thermo-electronic plants...)
- Reorganisation of the economy has proven to be a thorny issue

**International**

- International environment is no longer conducive to keeping Yugoslavia together at all cost



### PROXIMATE CAUSES

**Political / Governance**

- War-time divisions enshrined in constitutional and governance arrangements: slow, overcomplicated and costly administration (slow process of dealing with the past)
- Slow transition process: democratisation, rule of law (judiciary reforms), institutional/administrational reform, e.g. police reform (impunity still predominant)
- Lack of legitimacy of centralising state-building
- Bosnia developed a dependency on the international community: whenever there is no agreement, the decision is imposed by the High Representative (OHR)
- Huge influence of national parties: constitutional provisions supporting ethnic divisions

**Security**

- Influence of organized crime on political groups
- Mines (especially in rural areas → impossibility for returnees to resettle and make a living)

**Societal / Socio-Demographic**

- Legacy of conflict heavily influencing daily life (slow process of dealing with the past)
- Changed demographic composition of some areas (ethnic)
- Discrepancy between level of salaries and pensions in the Federation and in Republika Srpska
- Access to justice, recognition and protection of vulnerable groups (war-related, torture victims, families of the missing, physically disabled persons due to mines) is not yet given. No state law on torture victims yet. Lack of women protection. Increase of female-headed households. Returnees cannot return safely and dignified. No repatriation yet.
- Different treatment of civilian victims of war and war veterans: In 2003, around 30% of the BiH budget was spent on veterans' benefits, while the spending on child and social protection in BiH amounted only for around 1,4-1,6 % of total public spending. There is an ethnic reason behind this: the veterans are rewarded for having fought against the others.
- Until now, mainly NGOs are involved in the process of dealing with the past. Lack of engagement by state institutions.

**Economic**

- RS has earlier been neglected by the international community: economic inequalities between different regions. Now: improvement, but far from equally developed.
- Discrepancy between central cities and development of less central towns and rural areas. Radical shifts through de-industrialization
- Poor socio-economic conditions
- Destroyed infrastructure: factories, plants → lost markets
- Intransparent process of privatization, many companies are not attractive for privatisation
- High unemployment, brain drain, lack of demand-driven higher education
- Agricultural support was not enough → import from Croatia and other countries is flourishing, although Bosnia could be self-sustainable

**Ecology**

- More than 4 % of the territory of BiH (on estimated 10,000 locations) is contaminated by over 67,000 mines and 650,000 unexploded ordnances (agriculture is limited)
- Uncontrolled exploitation of natural resources (e.g. forest pillaging)

**International**

- Agreement of special relationship of the RS with Serbia
- International community is negatively perceived all over BiH → this is also a reason for the stuck reformations process
- Montenegro secession / Kosovo Status negotiations → Influence on Bosnia (forces for secession of RS get strengthened)
- Serbs and Croats perceive the C/TV as biased

### POSITIVE INTERVENING FACTORS

*Decreasing the likelihood of conflict*

- International economic aid
- Commission of Srebrenica shows that war crimes have been committed on all sides
- Establishment of state commission of inquiry/truth
- Establishment of state level security investigations through the State Investigation and Protection Agency (SIPA)
- SAU (Stabilisation and Association Agreement with EU in process, however slow
- By the end of the year, there should be a state level army and a state level police established
- OHR phasing out as a sign for stabilisation, with EU taking over Elections in October 2006

### NEGATIVE INTERVENING FACTORS

*Increasing the likelihood of conflict*

- OHR phasing out might be too early
- Establishment of state commission of inquiry/truth (might be too early and create parallel structures)
- No coming to terms between the Federation of BiH and the Republika Srpska, how the state of BiH should be reformed
- Ethnic tensions raised because of the Montenegrin referendum, especially before the referendum: attempts by some Bosnian Serb political figures to mobilise for the secession of RS from BiH and an incorporation into Serbia proper
- Kosovo Status influences the behaviour of the Bosnian Serbs in BiH
- Organised crime and corruption hampers economic development
- Unresolved institutional processes, e.g. questions of property (e.g. land) not resolved
- Failure to arrest alleged war criminals
- Elections October 2006

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